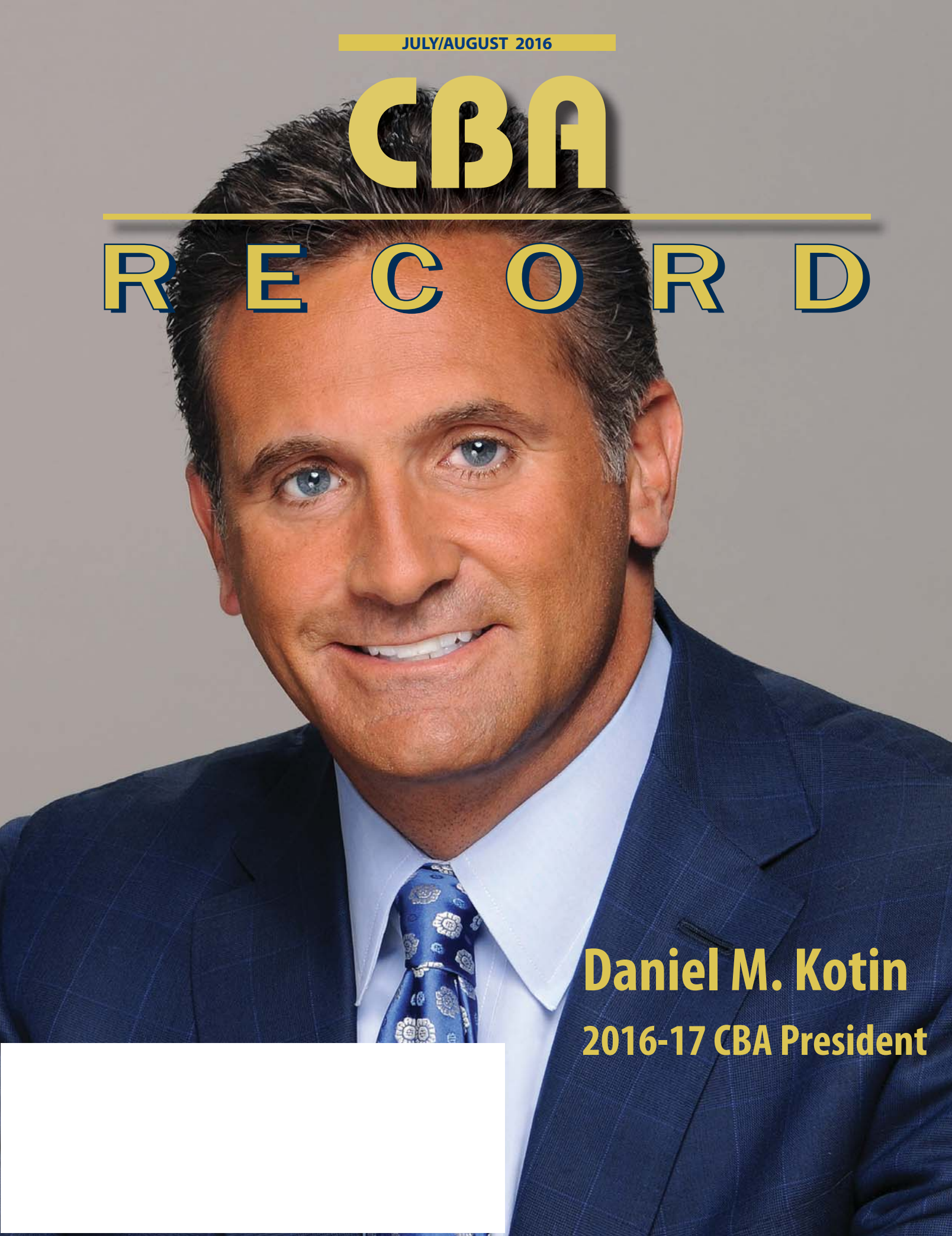


JULY/AUGUST 2016

CBA

R E C O R D



Daniel M. Kotin
2016-17 CBA President



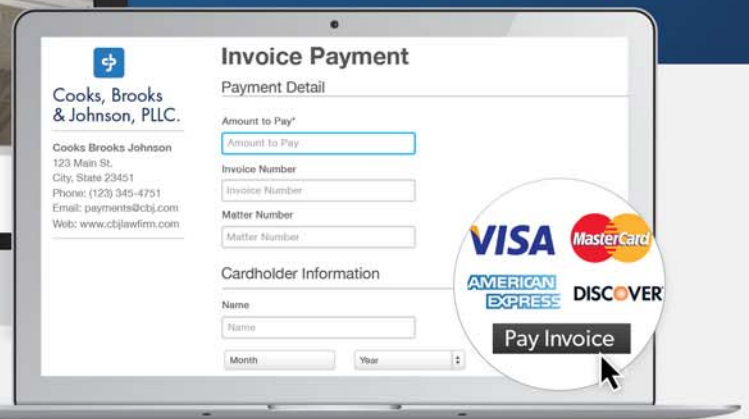
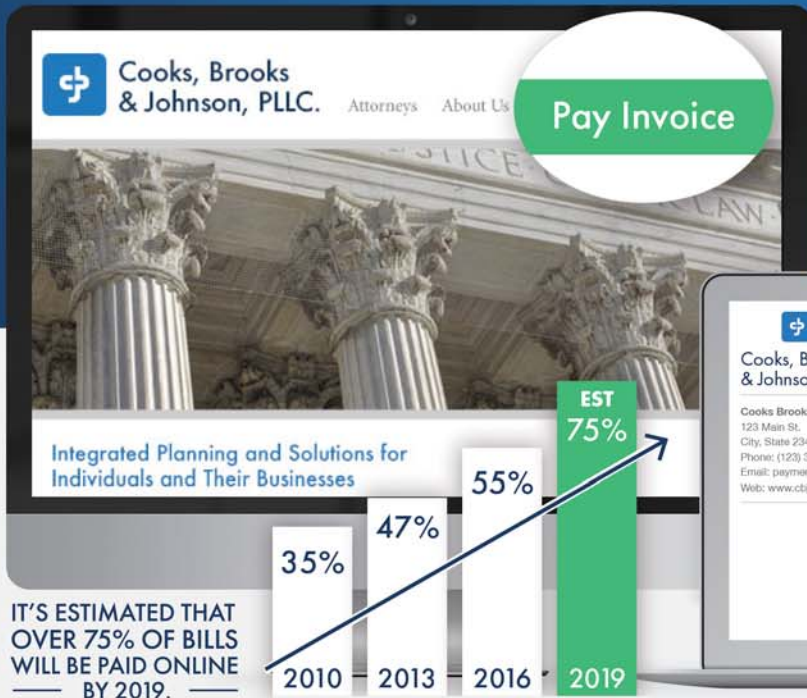
LAWPAY[®]

THE WAY ATTORNEYS GET PAID



THE CHICAGO
BAR
ASSOCIATION

Proud Member
Benefit Provider



1.95% & 20¢ per transaction | No swipe required | No equipment needed | \$5-\$20 monthly

The proven payment solution for lawyers.

Managing payments and growing revenue for over 30,000 law firms in the US, LawPay is the only solution recognized by the ABA. Designed specifically for the legal industry, LawPay guarantees complete separation of earned and unearned fees, giving you the confidence and peace of mind your credit card transactions are handled the right way.

LawPay.com/CBA | 866.376.0950



Have a case to refer?

Look no further than McNabola Law Group.

Competitive fees for referring attorneys

Success rate of almost 98% of cases at trial

Record high verdicts and settlements in Cook, DuPage and Will Counties

Over \$550 million in verdicts and settlements on behalf of our clients



55 West Wacker Drive, Ninth Floor, Chicago, Illinois 60601 • 312.629.2900 • www.McnabolaLaw.com

PERSONAL INJURY • TRUCKING NEGLIGENCE • MEDICAL MALPRACTICE • PRODUCT LIABILITY • AVIATION LAW

WE GET RESULTS

**OVER \$365
MILLION**

Verdicts & Settlements

We are recognized among the top 100 consumer attorneys in Illinois by Leading Lawyers and Illinois Super Lawyers.



WE ARE PLEASED TO WELCOME...



Our Firm's New Partner

GEORGE BRUGESS

Mr. Brugess received a \$22.4 M FELA (railroad injury) verdict soon after coming to the firm.

— AND —

Our New Associate

MICHAEL TERRANOVA

Mr. Terranova, a former U.S. Marine, represents seriously injured victims.



1 East Wacker Drive, Suite 510
Chicago, IL 60601
Phone: 312.477.2500
Fax: 312.477.2501

Learn more about us at:
www.coganpower.com

WE ARE DEDICATED

ACCIDENT & INJURY LAWYERS

With nearly 200 years combined experience, our attorneys are leaders in the legal and philanthropic communities. The firm welcomes your referrals.

CBA RECORD

- 6 President's Page**
A Year in Review
- 10 CBA News**
- 22 Chicago Bar Foundation Report**
- 24 Murphy's Law**
- 50 Legal Ethics**
By John Levin
- 51 Ethics Extra**
By Ricky Breen
- 52 LPMT Bits & Bytes**
By Catherine Sanders Reach
- 54 Summary Judgments**
Daniel A. Cotter reviews Russell Pelton's *The Sting of the Blue Scorpion*

The **CBA Record** (ISSN 0892-1822) is published seven times annually (January, February/March, April/May, July/August, September, October, November) for \$10 per year by the Chicago Bar Association, 321 S. Plymouth Court, Chicago, Illinois 60604-3997, 312/554-2000, www.chicagobar.org. Subscriptions for non-members are \$25 per year. Periodicals postage paid at Chicago, Illinois. POSTMASTER: Send address changes to **CBA Record**, c/o Kayla Bryan, Chicago Bar Association, 321 South Plymouth Court, Chicago, Illinois 60604.

Copyright 2016 by the Chicago Bar Association. All rights reserved. Reproduction in whole or in part without permission is prohibited. The opinions and positions stated in signed material are those of the authors and not by the fact of publication necessarily those of the Association or its members. All manuscripts are carefully considered by the Editorial Board. All letters to the editors are subject to editing. Publication of advertisements is not to be deemed an endorsement of any product or service advertised unless otherwise stated.

CONTENTS

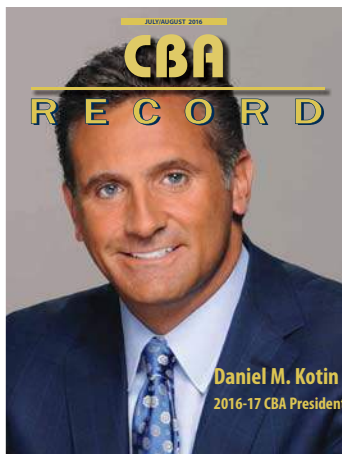
July/August 2016 • Volume 30, Number 4

INSIDE THIS ISSUE

- 32 Instruction in a Premises Liability Case: Getting Beyond the Complaint**
By Paul V. Esposito
- 38 President Daniel M. Kotin: Leadership, Dedication, and Enthusiasm**
By Amy Cook

YOUNG LAWYERS SECTION

- 42 Protecting Our Children**
By Kathryn Carso Liss
- 44 Defining Limits of Police Investigations During Traffic Stops: Police Safety vs. Privacy**
By Carson Griffis



On the Cover

This month's CBA Record cover features 2016-17 President Daniel A. Kotin.

CBA RECORD

EDITORIAL BOARD

Editor-in-Chief

Amy Cook

Amy Cook Consulting

Features Editor

Justin Heather

Summary Judgments Editor

Pamela S. Menaker

Clifford Law Offices

YLS Journal Editors-in-Chief

Oliver A. Khan

Arnstein & Lehr LLP

Nicholas D. Standiford

Schain Banks Kenny & Schwartz Ltd.

Shannon R. Burke

American Bar Association

Anne Ellis

Proactive Worldwide, Inc.

Clifford Gately

Heyl Royster

Angela Harkless

The Harkless Law Firm

Jasmine Villaflor Hernandez

Cook County State's Attorney's Office

John Levin

Bonnie McGrath

Law Office of Bonnie McGrath

Clare McMahon

Law Office of Clare McMahon

Peter V. Mierzwa

Law Bulletin Publishing Company

Kathleen Dillon Narko

Northwestern University School of Law

Adam J. Sheppard

Sheppard Law Firm, PC

Rosemary Simota Thompson

U.S. Department of Justice

William A. Zolla II

The ZOLLaw Group, Ltd.

THE CHICAGO BAR ASSOCIATION

David Beam

Director of Publications

Joe Tarin

Advertising Account Representative

PRESIDENT'S PAGE

BY DANIEL M. KOTIN

Congratulations, Thank You, and Let's Get to Work



As I begin my year as the 140th President of the Chicago Bar Association, I realize that I have a tough act to follow.

Judge Patricia Brown Holmes has had a fantastic year at the helm at this great organization. Of particular note, she has initiated and completed several programs highlighting the importance of promoting diversity and inclusion within our profession. Because her career has been so broad and so successful, Judge Holmes has a voice that is heard by all, and she has brought instant credibility to these causes.

Behind her efforts, The Chicago Bar Association is becoming a leader among legal associations around the world in promoting the need for a more diverse and inclusive profession. Her two-day continuing legal education program in Lausanne, Switzerland focused on diversity, and was co-sponsored by 13 international and minority bar groups. She also hosted a variety of public television programs focusing on problems facing not just our

profession, but society as a whole. In the end, Judge Holmes has increased the size of the Chicago Bar Association's global footprint, and given us a louder and more credible voice in our efforts to improve our legal system and impact our community.

We are all grateful for her hard work and leadership during this past year, and we are excited that she has agreed to continue her efforts to promote diversity and inclusion through on-going initiatives into this next bar year.

For me, serving as President of the Chicago Bar Association is truly a life achievement and career highlight. I vow to do all I can to be worthy of this opportunity, particularly since it follows the paths of two of my mentors—Phil Corboy (my uncle), and Tom Demetrio—both of whom served as presidents of the CBA. It is also worth noting that my father, Larry Kotin, who is my first and greatest mentor, was also intimately involved in this organization, and served on our Board of Managers in the 1980s.

Our year ahead promises to be a good mix of fun and comradery combined with the hard work it will take to effectuate changes needed to benefit our legal system and ultimately our citizens.

Stay tuned for details about our annual continuing legal education trip which will be held in London, England from April 10th through 13th, 2017. Despite the fact that most of our members have already been to London (perhaps multiple times), this trip promises to expose you to a London and its legal system that you have never seen before, and that you will



The Chicago Bar Association's 7th Circuit Social Security Disability Law Conference

September 16 & 17, 2016

Practical advice for Social Security Lawyers.

Presented by the CBA Social Security Law Committee

8.5 IL MCLE Credit, including 6.5 IL-PR MCLE Credit (subject to approval)

FRIDAY, SEPTEMBER 16, 2016

8:00-8:30 a.m.

Breakfast (included in registration)

8:30-8:45 a.m.

Introductory Remarks

Hon. Sherry D. Thompson, *Regional Chief Administrative Law Judge*

8:45 a.m. - 11:45 a.m.

Anatomy of a Hearing (3 IL PR MCLE Credit, pending approval)

The audience will be given a hypothetical set of facts from which opening statements, direct examination of a client, cross examination of a medical expert and cross-examination of a vocation expert, and closing arguments will be discussed and sample strategies provided.

Speakers:

Joni Beth Bailey, *Attorney at Law*
Robert Angermeir, *Attorney at Law*
Adriana M. de la Torre, *The de la Torre Law Office LLC*
Joseph Shull, *Attorney at Law*

12:00-1:30 p.m.

LUNCHEON (included in registration)

1:45-2:45 p.m.

How is Pain Disabling (1 IL MCLE Credit)

Speakers:

James W. Atchison, *DO, Medical Director, Center for Pain Management, Rehabilitation Institute of Chicago*
Anne C. Hartwig, *Attorney at Law*

3:00-4:00 p.m.

How to Make Your Best Case at the Appeals Council (1 IL PR MCLE Credit, pending approval)

Speaker:

Beth A. Alpert, *Beth Alpert & Associates*

4:15-5:15 p.m.

Fee Issues (1 IL MCLE Credit)

Speaker:

Thomas Bush Jr., *Attorney at Law*

5:15-6:30 p.m.

Networking Cocktail Reception (included in registration)

SATURDAY SEPTEMBER 17, 2016

8:00-8:45 a.m.

Breakfast (included in registration)

8:45-10:00 a.m.

Searching for Important Issues in the Record and Writing a Persuasive Federal District Court Brief

(1.25 IL PR MCLE Credit, pending approval)

Speakers:

Magistrate Judge Aaron E. Goodstein, *U.S. District Court, Eastern District of Wisconsin*
Magistrate Judge Mary M. Rowland, *U.S. District Court, Northern District of Illinois*
Jennifer Fisher, *Attorney, Former Administrative Law Judge for the Social Security Administration*

10:15-11:30 a.m.

Persuasive Brief Writing and Oral Advocacy in the Seventh Circuit (1.25 IL PR MCLE Credit, pending approval)

Speakers:

Barry A. Schultz, *Law Office of Barry A. Schultz PC*
Eric Schnauer, *Attorney at Law*

\$100 CLE-Advantage & Law Students
\$250 Registration Fee

Registration:
www.chicagobar.org/cle | 312-554-2056

The Chicago Bar Association

www.chicagobar.org

OFFICERS

President

Daniel M. Kotin

Tomasik Kotin Kasserman, LLC

First Vice President

Hon. Thomas R. Mulroy

Circuit Court of Cook County

Second Vice President

Steven M. Elrod

Holland & Knight LLP

Secretary

Jesse H. Ruiz

Drinker Biddle & Reath LLP

Treasurer

Maurice Grant

Grant Law LLC

Executive Director

Terrence M. Murphy

Assistant Executive Director

Elizabeth A. McMeen

BOARD OF MANAGERS

Ashly I. Boesche

Alan R. Borlack

Hon. Maureen E. Connors

Mary K. Curry

Hon. Thomas M. Durkin

Hon. Timothy C. Evans

Hon. Shelvin Louise Marie Hall

Robert F. Harris

Patricia Brown Holmes

Matthew T. Jenkins

Michele M. Jochner

Kathryn Carso Liss

Pamela S. Menaker

Paul J. Ochmanek Jr.

Eileen M. O'Connor

Nigel F. Telman

Frank G. Tuzzolino

Andrew W. Vail

Allison L. Wood



CBA President Dan Kotin and the CBA Board of Managers departed Burnham Harbor for a lovely evening cruise on July 19. The picture-perfect weather provided the perfect ambiance for members to get better acquainted and enjoy Chicago's beautiful skyline. The CBA has a myriad of exciting activities coming this fall. Watch this space and www.chicagobar.org for more information. Photos by Bill Richert.

likely never have an opportunity to see in the future, unless you join us next April. Some of the special opportunities include a chance to observe a criminal trial from the well of an Old Bailey courtroom, a boat ride through Runnymede with a lecture from one of the world's foremost authorities on the Magna Carta, and tours of the Supreme Court and the House of Lords (both of which are not open to the public). Our trip is gaining momentum every day. Feel free to contact me for more information. My e-mail is president@chicagobar.org. Otherwise, stay tuned for more information.

On a more substantive level, we will continue and expand our efforts to address a terrible problem which is impacting our society—access to justice. The stark fact is that 90% of our citizens cannot afford to pay for the legal services they need. At the same time, we are faced with the sad reality that there remain thousands of lawyers in Illinois who are either unemployed or underemployed. We will be focusing on

programs and initiatives this year to bring these two groups together, and to effectuate changes needed to help our legal system benefit the very citizens whom it was constitutionally created to serve.

These efforts will obviously need a great deal of help. We are implementing an initiative with our friends at LexisNexis to educate the public about legal services that currently exist, but about which the public is unaware. We truly appreciate this partnership. But none of these efforts can be completed without the help of our membership as well. So, please reach out to me or anyone at the CBA and share your thoughts, your ideas, or your willingness to participate in any of our substantive programs this year.

As you read this, I hope you are enjoying a great summer. Thank you for the opportunity to serve as president of this organization. Let's make it a great bar year at the CBA! ■

Refer with confidence

*Competitive Referral Fees
No Renegotiation When The Money Comes In*




*Personal Injury
Construction Site Negligence
Workers' Compensation*

MORICI, **ATTORNEYS AT LAW**
FIGLIOLI & ASSOCIATES

 312-372-9600

 mfa-law.com

150 N. Michigan Ave · Ste 1100 · Chicago, IL
6723 N. Northwest Highway · Chicago, IL

 312-372-9602

 [mfachicago](https://www.facebook.com/mfachicago)

**MFA
LAW**
MFA-LAW.COM

CBA NEWS

CBA ANNUAL MEETING

140th President to Provide Public Better Access to Justice

By Peter Mierzwa
Editorial Board Member

Outgoing President Hon. Patricia Brown Holmes passed the ceremonial Lincoln Gavel to incoming President Daniel M. Kotin in front of a capacity crowd of about 300 who attended the Chicago Bar Association's 143rd Annual Meeting, June 23 at the Standard Club.

Holmes expressed her pride in being the second African American female CBA President after Justice Joy Cunningham. She highlighted the many events and activities she led that focused on diversity and inclusion during her term.

Kotin recognized Holmes' tremendous accomplishments and provided her a commemorative gavel and flowers. But that wasn't all. Kotin had heard that Holmes enjoyed Champagne, and he had one final gift for her—a Dom Perignon gift basket. After rousing applause for Holmes, the stage was Kotin's.

"For me, serving as president of the Chicago Bar Association is one of the greatest opportunities that I can imagine receiving as a practicing lawyer here in Chicago," said Kotin, who will serve at the association's 140th President. Access to justice initiatives will be Kotin's main focus in addition to growing the CBA's membership.

Kotin invited the attendees and the broader CBA membership to join him in making positive strides this coming year



President Daniel M. Kotin greets Appellate Judge Shelvin Louise Marie Hall at the Association's Annual Meeting Luncheon. Photo by Bill Richert.

by quoting former CBA President, mentor to many of Chicago's top lawyers and his uncle—Philip H. Corboy: "I have no grand illusions that we are going to change the world during the next year. And I have no great ideas that we are going to change much of our profession. But with a little luck, and with a little help from all of you, we will make a dent in it."

The Nominating Committee reported that Thomas R. Mulroy would be First

Vice President, Steven M. Elrod would be Second Vice President, Jesse H. Ruiz would be Secretary and Maurice Grant would be Treasurer. New members to the Board of Managers are Alan R. Borlack, Hon. Thomas M. Durkin, Hon. Timothy C. Evans, Hon. Shelvin Louise Marie Hall, Robert F. Harris, Michele M. Jochner, Kathryn Carso Liss, Pamela S. Menaker, Paul J. Ochmanek, Jr., and Andrew W. Vail. ■

WE ARE NOT JUST NURSING HOME LAWYERS



We may be the go-to nursing home lawyers in Illinois, but we have repeatedly won multi-million dollar verdicts and settlements in a variety of serious injury, accident and medical malpractice matters.

Most recently we recovered a \$7.5 million settlement for an injured boat worker that was THE LARGEST JONES ACT RECOVERY EVER RECORDED IN ILLINOIS. Our firm held the previous Illinois record Jones Act settlement of \$4.5 million set in 2008.

OTHER NOTABLE RESULTS:

- A \$17.7 Million Medical Malpractice/Brain Injury Settlement
- A \$6.5 Million Birth Injury Settlement
- A \$6.5 Million Record Kane County Wrongful Death/Trucking Accident Settlement
- A \$2.4 Million Pedestrian Accident Verdict

**We've shared millions in attorney's fees with our referring lawyers on many of these cases.
CALL STEVE OR JOHN AT 312-332-2872 TO DISCUSS REFERRALS.**



ATTORNEYS AT LAW

325 North LaSalle Street, Suite 450 • Chicago, Illinois 60654 • Phone: 312-332-2872 • Toll-free: 877-374-1417 • Fax: 312-332-3112
www.LevinPerconti.com • www.nursinghomelaw.com
Questions@LevinPerconti.com

Diversity and Inclusion Shine at Annual Awards Luncheon

By Kathleen Dillon Narko
Editorial Board Member

Twelve attorneys and judges received Vanguard Awards for making the law and legal profession more accessible to and reflective of the community at-large. The Chicago Bar Association and 11 other local bar associations co-sponsored the award reception and luncheon Wednesday, April 20, at the Standard Club.

Call for Inclusion

Many of those receiving awards stressed the importance of diversity and inclusion in our profession. Decalogue Society of Lawyers honoree Justice Michael B. Hyman stated a theme followed by many at the luncheon: “This is no time for indifference or inaction... We lawyers must do whatever we can to destroy these wrecking balls [of bigotry] that are destroying America from within. We are one human family, united in our diversity and multiculturalism. We must stand together. We must stand together for equality and dignity for all. We must stand together for inclusion.... We must stand together for one another.” Leslie Richards-Yellin, honored by the Black Women Lawyers Association of Greater Chicago, reinforced these sentiments, stating, “Chicagoans know that to be a great city all groups have to work together, and all groups have to increase the diversity of the city.”

Jayne Reardon, honored by the Women’s Bar Association of Illinois, echoed the role of the attorneys in supporting diversity and inclusion, stating, “We need everyone who is willing to do the work [to promote increased inclusion in our profession] to be included in the effort.” Standish E. Willis, honored by the Cook County Bar Association, urged everyone to join a movement to



President Patricia Brown Holmes with award recipients. Photos by Bill Richert.



Recently appointed Deputy Mayor Andrea Zopp greets award recipient Zaldwaynaka (Z) Scott.

Connect with Lawyers and Judges in Your Practice Area

Chicago Bar Association and Young Lawyers Section

Committees

No extra fees to join to committees – it's included with your CBA membership!



CBA Practice Committees

Administrative Law
Adoption Law
Alternative Dispute Resolution
Animal Law
Antitrust Law
Asset Protection
Aviation Law
Bankruptcy & Reorganization
Business Law
Civil Practice
Civil Rights & Constitutional Law
Class Action
Commercial Finance & Transactions
Commercial Litigation
Committee on Attorney Malpractice Law
Consumer Credit
Consumer Law
Criminal Law
Customs & U.S. International Trade Law
Cyber Law & Data Privacy
Domestic Relations
E-Discovery
Elder Law
Election Law
Employee Benefits
Energy, Telecommunications & Water
Environmental Law
Federal Civil Practice
Federal Taxation
Financial Institutions
Financial & Investment Services
Food Law
Futures & Derivatives Law
Gaming Law
Health Law
Immigration & Nationality Law
Insurance Law
Intellectual Property Law
International & Foreign Law
Juvenile Law
Labor & Employment Law

LGBT Committee
Local Government
Media & Entertainment
Mental Health & Disability Law
Military Law & Affairs
Municipal Departments
Probate Practice
Real Estate Taxation
Real Property Law
Securities Law
Social Security Law
Sports Law
State & Local Tax
Tort Litigation
Trade & Professional Associations Law
Traffic Laws
Trial Practice
Trust Law
Workers' Compensation

Young Lawyers Section

Serving members in practice less than 10 years.

Bankruptcy
Career Assistance
Civil Rights
Corporate Practice
Creative Arts
Criminal Law
Education Law
Environmental Law
Estate Planning
Family Law
Health & Hospital Law
Insurance Coverage
Intellectual Property Law
International Corporate & Trade Law
Labor & Employment Law
Legal & Regulatory Compliance
Professional Responsibility
Real Estate Law
Tort Litigation
Women in the Law

And many more! See complete list online.

No other legal profession puts you in touch with so many attorneys and judges who live and practice in the Chicago area. Whether you are looking for a new position, a new client or expert advice in a specific legal area, you'll find it through the CBA committee network. **Join one of 130 legal specific committees today - no extra fee required.**



Join today at www.chicagobar.org/committees.

provide human rights to everyone “regardless of race, religion, [or] gender.”

Judge Ramon Ocasio focused on the need for diversity within the judicial system, stating “when a judiciary doesn’t reflect the community it serves, we fall short: many miles of what justice requires.” Ocasio urged attorneys to reflect critically on the makeup and purpose of the judicial system and seek diversity. Zaldwaynaka Scott, honored by the Chicago Bar Association, emphasized “the power of law to effect change,” citing changes in law to end segregation.

Judge William J. Haddad (Ret.) of the Arab American Bar Association of Illinois, suggested a need for greater inclusion. He noted the quarter million Arab-Americans in the Chicago area are “very concerned about the negative rhetoric they’re seeing in the media, talking about barring people based on religion or ethnicity. Our community is very proud of their history in this country.” Haddad accepted the award on behalf of the Arab-American community in Chicago.

Serving the Underserved

Some of the honorees expressed their gratitude for the opportunity to help underserved populations through their legal work. Sharon Hwang explained how the Chinese American Bar Association provides professional development for Chinese-American lawyers and “a means to provide legal services for our growing Chinese-speaking population.” Mark Dobrzycki, Executive Director of the Amicus Poloniae Legal Clinic and honored by the Advocates Society, was grateful for “the opportunity to serve people who otherwise would not have the chance to find legal help that makes their lives better.” The Lesbian and Gay Bar Association of Chicago honored Will Thomas posthumously. Presenters noted that Thomas was passionate about the association’s scholarships for law students to work at LGBT civil rights organizations.

Bar Association Mentoring

Others thanked their sponsoring bar associations for support throughout their careers. “I am where I am today because

Looking for Affordable Meeting Space?

The CBA has a variety of meeting rooms and can provide catering and audio/visual services for client conferences, firm meetings, social gatherings etc. Call Michele Spodarek, CBA Conference Center Manager at 312/554-2124 for details.

of this organization,” stated Judge Jessica O’Brien, honored by the Asian American Bar Association of Chicago, noting the mentoring she received from many members. Rosa Maria Silva thanked the Hispanic Lawyers Association of Illinois, stating, “They have provided me with many mentors who have helped me along my legal career. They have always encouraged me and supported my endeavors.”

The 12 honorees show by example how attorneys can make the law and legal profession more accessible to and reflective of the community at-large. ■


THE JOHN MARSHALL
LAW SCHOOL
CENTERS FOR EXCELLENCE

ADVANCE YOUR CAREER WITH A HIGHER DEGREE OF SKILLS & KNOWLEDGE

7 Advanced LLM Degrees

- Employee Benefits
- Estate Planning
- Information Technology & Privacy Law
- Intellectual Property Law
- International Business & Trade Law
- Real Estate Law
- Tax Law

Select degrees and courses available online.

20% Tuition Discount for CBA Members—
Call for Details

Call 1.866.460.2022 or visit www.jmls.edu/LLMdegrees.

Apply Now for Summer & Fall 2016



A TOUGH ECONOMY IS FUEL FOR FRAUD.

Greater financial pressure on employees and companies has increased the likelihood of fraud in the workplace. Recent numbers are staggering: for companies both large and small, 5% to 7% of annual revenues are lost to internal fraud. That makes a strong case for fraud risk management.

Bring in Wipfli's fraud and forensics team to assess risk, uncover schemes and establish controls. We have deep knowledge and professional business credentials. Our digital forensics lab enables us to retrieve evidence in a secure environment equipped with the latest IT tools. We also provide expert litigation support.

wipfli.com/fraud

WIPFLI^{LLP}
CPAs and Consultants

Law, Legacy, and the Lake

By Rosemary Simota Thompson

Historian, WTTW broadcaster, and storyteller Geoffrey Baer delighted attendees at last month's Kogan Media Awards luncheon, honoring the legacy of Herman Kogan. Since 1989, the CBA has honored Kogan's 50+ year commitment to legal journalism with an annual writing competition. The CBA's Kogan Media Awards honor journalists who cover the legal community, courts, judges, police, and public officials who administer justice. This year, *The Chicago Lawyer*, *Sun-Times*, *The Chicago Daily Law Bulletin*, and Better Government Association took top honors. Joining Baer were special guests John Flynn Rooney of *The Chicago Daily Law Bulletin*, who was honored with a special lifetime achievement award, and Rick and Mark Kogan, sons of Herman Kogan.

When Justice Michael B. Hyman gave a tribute to the career of John Flynn Rooney, his words sparked a standing ovation. After all the honors had been bestowed, Emmy award-winning television writer, producer, and program host Baer regaled the audience with Chicagoland historical anecdotes and lake lore.

Baer observed that the recent dust-up over the proposed Lucas Museum on the lakefront is not the first controversy over this coveted real estate. Over the years, there were other pitched battles over use of the lakefront featuring captains of industry, politicians, and the retail icons Marshall Field and Montgomery Ward. To fully understand the tug-of-war over the lakefront, Baer went back to an early plat map dated July 2, 1836. It stated: "PUBLIC GROUND." A common to remain forever Open, Clear, and Free of any buildings and other Obstructions Whatever." This brief notation has made the lakefront contested turf for almost two centuries.

Frontier Settlement Grows into the World's Fastest Growing City

Early entrepreneurs recognized the strategic importance of Chicago's river and



President Patricia Brown Holmes greets Kogan participants Daniel M. Kotin, Justice Michael B. Hyman, speaker Geoffrey Baer, and Kogan Committee Chair Dennis Culloton. Photo by Bill Richert.

lakefront. Indian trading posts gave way to Fort Dearborn as the city evolved. By the early and mid-1800s, Chicago had exploded into a boomtown. Baer gave this recap: "A Canal had opened in 1848 connecting the Great Lakes to the Mississippi via the Chicago River, a series of treaties had banished Native Americans west of the Mississippi, and what had been a little frontier settlement had become the fastest growing city in the world as land speculators flooded in from the East. And long before the Field Museum spat, the Lakefront was already threatened."

Meanwhile, railroad progress was uniting America and igniting trade. A natural transportation hub, Chicago was a magnet for railroad development. Senator Stephen A. Douglas helped the Illinois Central obtain a land grant to the lake. Baer even showed a clip of an Illinois Central trestle running along the lakefront. Whatever happened to the plat map designating the lake as public ground? That question continues to reverberate through Chicago's history.

The George Lucas of his day, Marshall Field left the city a bequest of \$8 million to build a museum at the site of today's Buckingham Fountain. Montgomery Ward, spokesman for "Friends of the Parks" of his day, went to court to stop it. Chicago power brokers, newspapers, and business leaders led the stampede to stop Ward. "A human icicle" is how the *Chicago Tribune* described Ward, but the Illinois Supremes ruled in Ward's favor. A month before Field's bequest was to expire, an alternate site was found on Illinois Central land near 12th Street. Problem solved.

1933 World's Fair, Precursor to McCormick Place

Fast forward to the 20th century: During the Great Depression, Chicago city government was deeply in the red. The solution? Plan a World's Fair to celebrate the city's centennial. During this period of darkness, the Chicago World's Fair was an inspiration to the country and the world...and it turned a profit. Buoyed by this success, City Fathers began holding

SAVE ON LEGAL RESEARCH AND WRITING SERVICES

The team of experienced attorneys at LegalResearch.com now offers discounted services to CBA members—on your terms, your schedule and your budget. Visit www.legalresearch.com/CBA for more information or call 844/638-6733 for a free consultation.

railroad fairs, pageants, and other diversions at this site. With such regular revenue flow after the Fair, power brokers and city planners resolved to build a permanent fair and exposition center by the lake. The plan's biggest booster was Colonel Robert McCormick, editor and publisher of the Chicago Tribune, which he used as a bully pulpit for pet projects. Lakefront defenders fought against the plan for years. In 1960, McCormick Place made its lakefront debut. When it burned down seven years later, detractors considered the fire as possible divine retribution for the city's encroachment upon the lakefront. But in Chicago, politics rule, and the massive structure was rebuilt. Recently, Mayor Rahm Emanuel proposed using McCormick Place as an alternate site for the proposed Lucas Museum, so the controversy endures.

In addition to lakefront lore, Baer had plenty of other tales of Chicago's history, replete with fascinating characters and riveting stories. He concluded by noting that at the heart of these stories, one often finds a juicy legal dispute. A glance at today's headlines concerning the Lucas Museum is proof that history often repeats itself—especially when coveted lakefront land is at stake. ■

THANK YOU AND WELL DONE



At the Kogan Awards luncheon, Justice Michael B. Hyman offered the following remarks about notable legal journalist John Flynn Rooney, who passed away from complications from Lou Gehrig's Disease on June 30:

John, we are humbled and inspired by your fortitude and attitude, and that of your loving family.

Two years ago this month, May 2014, John Flynn Rooney announced in the *Chicago Daily Law Bulletin* that ALS, Lou Gehrig's disease, had claimed him as it had his mother. Then,

last August, John's byline appeared above an article entitled, "A Farewell to the Legal Community." After 33-year career in journalism, 27 of them with the Law Bulletin Publishing Company, John notified his readers that the time had come for him to retire.

Today, the legal community, formally and publicly, says to you, John, thank you and well done.

If something involved law, John reported on it. John was our eyes and ears up and down LaSalle Street; in and around the public and private corridors of our courthouses, and throughout the Bar associations and law schools.

Every evening, I'd always look forward to reading whatever John wrote for that day's edition. I was not alone. John's writing has a way of making you feel as if John is talking to you as a friend.

John told stories, our stories, and he told them with incisive writing, insight, and intelligence. That John is not a lawyer is hard to believe, except for the fact, fortunately, that he never wrote like a lawyer.

No detail seemed too minor to escape his attention. No question appeared too tough to ask. No story was too big or too small, or too difficult, to handle. And, there never was a personal, partisan, or ulterior motive when it came to the way John practiced journalism.

A true professional, John was always friendly, down to earth, and reassuring. On deadline, he projected a level of calmness whatever the circumstances, which a lot of lawyers would not mind having themselves.

When John started at the Law Bulletin, an editor asked if he was passionate about the law. John said he didn't know. Soon enough, a passion about the law fueled a career.

It did not take long for the legal community to reciprocate—here was a journalist we could respect, trust, and most of all, like. No one has ever said a bad word about John's reporting or John . . . a feat even the legendary Walter Cronkite never achieved.

John, on behalf of the Kogan Award Committee, the Chicago Bar Association, and the legal community, a heartfelt and grateful thank you.

Thank you for your 27 years of keeping us "in the know" and connected to our professional world. Thank you for putting up with us all those years. And thank you for caring so much about the law, the legal profession itself, and, especially, about all of us.

We care about you. God bless.

—Justice Michael B. Hyman

Celebrating Excellence

By Nina Fein

Editorial Board Member



Award recipients Paula Hudson Holderman and Kristen E. Hudson. Photo by Bill Richert.

The CBA's Alliance for Women held its 2016 Annual Awards Luncheon on May 24, 2016 at the Standard Club to honor two of its own for their outstanding contributions to the legal community. For more than 20 years, the Alliance has helped advance women in the law and to promote gender parity. This year, the Alliance selected lawyers who embody superlative qualities: Kristen E. Hudson of the law firm of Chuhak & Tecson, P.C. and Paula Hudson Holderman, who recently retired from Winston & Strawn. Also, prior to the award ceremony, in memoriam, the Alliance paid tribute to member Ginger Wilson. Wilson was a dedicated professional, known for her contributions to the Alliance for Women and the African American community.

The first award presented was Alta Mae Hulett Award, named for a teacher who chose to advance her education and study law. In 1872, she became the first woman to pass the Illinois bar. Yet, in a patent act of gender discrimination, subsequently

she was denied the right to practice law in Illinois. Undaunted, she led the fight to lobby the Illinois legislature to pass a law to give women, married or single, the unconditional right to practice law. Her unwavering commitment to fairness and equality opened the doors for women lawyers to work in the state. The Alliance's Founder's Award honors the lifetime achievements of one exceptional veteran woman lawyer in Illinois.

Rising Star: Kristen E. Hudson

The Alta Mae Hulett Award was presented to Kristen E. Hudson. When she accepted the award, she noted the presence of her mentor in the audience. In her remarks, Hudson offered guiding principles for the emerging generation of women lawyers. She recommended that to honor the legacy of Alta Mae Hulett, women lawyers needed to focus on not who has "the best shoes in the office," but on developing best practices skills. A strong advocate for the benefits of mentorship, Hudson encouraged women

to find their own professional mentors. When that's not possible, she stated that women lawyers must step up and mentor themselves. Hudson counseled that women need to find thoughtful and deliberative ways and people to help them move forward on their paths to success. She encouraged women lawyers to "Dream Big," looking beyond the immediate barriers to a broader stage to motivate them to meet the challenges in the workplace each day. Hudson's straightforward advice teamed well with the insightful counsel of her esteemed co-honoree, Paula Hudson Holderman.

A Brilliant Career: Paula Hudson Holderman

The 2016 Founder's Award recipient Paula Hudson Holderman declared that her best advice to women lawyers is to be mindful about avoiding unintentional yet customary missteps during the course of their careers. Holderman cautioned colleagues to detour from trying to be one of the "guys," but instead to simply be their "authentic" selves as they worked each day focused on effective practice skill development. She also cautioned her audience to take care of themselves, understanding that healthy mind-body experiences allowed one to survive the rigors of a law practice and the stress of the workday. Holderman, a trailblazer urged women to understand that they can not do everything themselves and that they must ask colleagues, family and friends to help them accomplish work tasks and life chores. In that way, they can be fresh, ready to address their work days and sustain a dedication to their goals. Holderman also held out the need for intentionality in a career, so that women can prioritize their life's decisions, from simple wardrobe choices to strategic decisions about giving to important civic and philanthropic causes. She concluded that if women lawyers embrace these ideas, they would be able to look back on successful careers, feeling that they had not settled for being ordinary, but were extraordinary and that they had helped

continued on page 56



START YOUR Career Right

Our New Lawyers Program protects you, your clients – and your financial future – against unintended mistakes. It's easy to apply and (really!) affordable. Your first year probably costs less than your annual smartphone bill.

For those who:

- ▶ **Have been active <3 years**
- ▶ **Are claims-free**
- ▶ **Are planning to go solo**

Visit isbamutual.com/newlawyer
or call 800 473-4722 to get
coverage now!



ISBA Mutual
Lawyers' Malpractice Insurance

CLE & MEMBER NEWS

Last Call for Membership Dues

Don't forget to renew your CBA membership this summer. Dues must be received by August 31 to maintain all savings and benefits including: free CLE, free noon hour committee meetings live and webcast, low cost business management and technology skills training, free solo small firm resource portal, client development workshops, complimentary hands on job search/career advancement programs, free judicial roundtables, joint events with other professional groups, leadership training, affordable practice management consulting, pro bono legal and community service volunteer opportunities, members only discount programs, and much more.

There is no doubt that these are challenging times for the legal profession. Budgets are tight and time is a precious commodity. The CBA is aware of this, is working hard to meet your needs and has not raised dues in over 10 years. Keep

up with the latest legal developments. Network with the brightest legal minds in Chicago. Meet future employers, mentors, business contacts and friends. Get job search help. The CBA is where you belong. Make connections, grow your business and enrich your professional future. Renew today via www.chicagobar.org, US mail or call 312/554-2020.

Special Billing Notes: Reduced dues are available for unemployed members and those with financial hardships. Call 312/554-2131 or see dues hardship form at www.chicagobar.org. For dues installment plan, call 312/554-2020. If you do not wish to renew for this membership period, please call 312/554-2135 or email kbryan@chicagobar.org to resign your membership and avoid reinstatement fees in the future. ■

CBA Welcomes New Admittees

On May 5, approximately 550 new attorneys were admitted to practice law in the state of Illinois. To help introduce new admittees to the legal profession, the CBA offers free membership and free CLE for one year.

Other benefits include job search resources, how-to seminars, participation

in committee activities, career development services, legal resource guides, networking opportunities, social events and much more. If you know a new lawyer who has not yet activated his or her complimentary membership, please encourage them to do so. Call 312/554-2133 for more information. ■

Free Seminars from West LegalEdcenter

The West LegalEdcenter can help you keep current in your practice area anywhere, anytime. With over 65 respected CLE providers, the West LegalEdcenter offers hundreds of online CLE programs, including most CBA and YLS seminars.

And now, you can access two free CBA seminars on the West LegalEd Center by renewing your CBA membership by May 31. To receive this special offer, send in

your dues payment by May 31 and make sure the CBA has your email address on file. In June 2016 and January 2017, you will receive an email confirmation from West LegalEdcenter with your free registration information. For more information on the West LegalEdcenter and to see current program listings, visit www.chicagobar.org and click on the CLE tab, then West LegalEdcenter. ■

The CBA
is your
local spot
for MCLE

Register for a Seminar Today

312/554-2056

www.chicagobar.org

Committee Participation

Over the summer, all committee members were asked to review/change their committee assignments for the new bar year via the online committee sign up form at www.chicagobar.org under the Committees Tab. If you wish to change your committee assignments, please take a moment to do so now. (Note: All committee members will remain on their current assignments unless they make changes to their committee record.)

Members who are not currently serving on committees are invited to get active this year. A complete description of all CBA and YLS committees, along with their meeting dates and new leadership information is available at www.chicagobar.org under the Committees Tab.

Most CBA and YLS committee meetings qualify for free MCLE credit. The amount of credit depends on the length of the presentation (average credit is .75 hours). And many committee meetings are webcast live so you can earn free credit without leaving your office or home (only live webcasts count for credit, not archived meetings).

Confirmation of committee assignments and 2016-17 meeting date schedules will be emailed to all committee members in mid-August. Call or email Awilda Reyes (312/554-2134, areyes@chicagobar.org) for more information and check your in-box for the CBA e-Bulletin on Thursdays.

CBA membership is now more valuable than ever!

At \$150 a plan year, the CLEAdvantage allows you to save time and money in meeting your MCLE requirements.

Unlimited CLE for Only \$150!

CLEADVANTAGE

ANYTIME, ANYWHERE

100's OF SEMINARS + WEBCASTS
www.chicagobar.org ➔



IN-PERSON



ONLINE



ON DEMAND

Save on Minimum Continuing Legal Education Costs with The Chicago Bar Association's Unlimited* CLE Plan – the CLEAdvantage.

It's a simple and cost effective solution for CBA members. **For \$150 a plan year**, you will receive:

**In-person
attendance at an
unlimited number
of CLE and YLS
seminars**

**Access to CLE
Webcasts at
www.chicagobar.org**
**Both live and archived
seminars receive
Illinois MCLE*

**Free CLE DVD
rentals
from the CBA
Legal Bookstore**

Members also receive:

Free Monthly Seminars with MCLE Credit!

- Free Illinois MCLE credit for attending in-person or live Webcasts of CBA and Young Lawyers Section committee meetings that qualify for credit. *No extra fees to join committees or attend noon-hour meetings!*
- Individual member access to a personal MCLE credit history report at www.chicagobar.org that enables members to track both CBA and non-CBA sponsored CLE.

To join the CBA or the CLEAdvantage Plan visit www.chicagobar.org ➔

Non-members call: 312-554-2133 • Members call: 312-554-2056 ☎

*See complete CLEAdvantage program terms and conditions at www.chicagobar.org. Some restrictions may apply. Plan available to CBA members only. The CBA is an approved provider of MCLE in Illinois. For information on Illinois MCLE requirements, visit www.mcleboard.org.

Chicago Bar Foundation Report



25 Years a Lawyer

By Bob Glaves, CBF Executive Director

A few months ago the congratulations emails started to arrive in my inbox because this month marks my 25th anniversary as a lawyer. The emails weren't coming from anyone I know, but from people trying to sell me "mementos" of the occasion.

While I have been very fortunate in my legal career and remain proud to be a lawyer today, I won't be buying any of that stuff. As anniversaries often are though, it was a time to take stock of what has happened over the time since I took the plunge, and it specifically got me thinking about the trajectory of access to justice since those heady days when I got sworn in. So I thought I'd use the occasion to look back at where we've been and what we can learn from that going forward.

The story of Sisyphus from Greek mythology definitely comes to mind as we look back at the trajectory of our cause over the past 25 years. It's important to understand why, despite many real advances, there is such a persistently large gap between our nation's ideal of equal access to justice and the reality for the majority of

low-income and disadvantaged people, and increasingly the middle class as well. At the same time, we've collectively learned a lot about how to move that proverbial boulder up the hill of justice more efficiently and effectively. And both sides of these lessons can serve as a springboard to a better future.

Back in 1991....

When I first got sworn in back in January, 1991 and began my career in private practice, I had not given much thought to how we were doing as a profession and as a justice system as far as access to justice goes. It turned out that the Lawyers Trust Fund of Illinois had done the first statewide legal needs study not long before that and found 80% of people facing civil legal problems were not getting often critical legal help. So the answer was not so good.

Back then, there weren't as many organizations dedicated to this cause, and overall we had a much smaller pro bono and legal aid system serving the Chicago area. Computers were still something of a novelty in legal practice, and the Internet was a few years out from being ubiquitous in our lives. CARPLS was just coming on the scene as the first central legal aid hotline, a groundbreaking development at that time.

The number of people served by legal aid and organized pro bono programs in Illinois was measured in the tens of thousands then, and the majority of funding came from the federal government. There was no state funding for legal aid (even

back in the good old days when we actually had a state budget!), and the legal community's role was a lot more modest.

To put some context around the resources dedicated to addressing this cause back then, funding for the pro bono and legal aid programs serving Cook County totaled \$18.9 million by 1994, which in today's dollars would be about \$30 million. 58% of that funding came from government in 1994, virtually of all of it from the federal government and most of it relatively unrestricted (i.e., programs could use the funds as they saw fit to address what they saw as the greatest needs in the community).

The legal community contributed \$1.5 million (\$2.4 million in today's dollars) and with a few notable exceptions like Chicago Volunteer Legal Services and the federal court's trial bar program, pro bono was more often done on an ad hoc basis by individual lawyers dedicated to the cause rather than through organized efforts.

Mid-career Changes

By the time I reached the midpoint in my career, a lot was changing in both our profession and in the pro bono and legal aid system. In 1999, I made the move from private practice to taking the helm at the CBF, and the "dotcom" boom was in full swing.

CARPLS was now more established as a hotline, and the early planning was starting around the project that later would become Illinois Legal Aid Online (ILAO). The idea

Note: This article is from a "Bobservations" blog series on the CBF website. You can see the full series at chicagobarfoundation.org/bobservations.

that people would have access to and use the Internet to get legal information and resources—particularly low-income and disadvantaged people—was considered at best questionable back in 2001 when ILAO was being launched, and it was definitely a groundbreaking idea. It is hard to imagine now when virtually everyone has a smart phone, but back then those were just cell phones and weren't close to universally available yet.

The pro bono and legal aid system served 103,000 back then, with \$36.3 million in total funding (\$47 million in today's dollars). Pro bono was becoming more institutionalized in both the legal aid programs and in the larger law firms and corporate legal departments, and the first full-time pro bono counsel were now present in a few of the largest firms. The legal community was getting more active in financial support for the cause as well, providing about \$3 million in contributions along with increasingly more pro bono assistance.

The courts were starting to get more engaged in the efforts to help the growing numbers of people coming to courts on their own as well. The CBF and several partner legal aid organizations were working with the Circuit Court (and later the federal courts and the City's Department of Administrative Hearings) to develop advice desks to help unrepresented litigants, and these efforts were showing a lot of promise.

The View Today

As I look at the system today, the reality remains that the great majority of low-income and disadvantaged people who need legal help can't get it, and this is true for a growing percentage of people in the moderate-income category as well. That part is frustrating for sure. At the same time, we've made tremendous progress as a community in making legal help more available to more people, with great promise going forward.

The pro bono and legal aid system serving the Chicago area served more than 175,000 people last year, more than triple the number back in the early 1990's as the system has grown more efficient and

effective. Millions more now have access to online information and resources through Illinois Legal Aid Online as well.

Funding for the pro bono and legal aid organizations serving our community today stands at \$59.3 million, not quite double the amount back in the early 1990's in real dollars. The mix has changed quite a bit though. Only 43% of the overall funding comes from government now, and the great majority of that is restricted to specific purposes and often not sustainable over the longer term. The failure of government at all levels to provide adequate funding or to even keep pace with funding from earlier years has been a huge factor in the persistent gap in access to justice. Due to population growth and other demographic trends, many more people are eligible and in need of legal help, exacerbating the chronic underinvestment at the government level.

There is a lot of positive amidst that frustrating trend though. There now is a true continuum of legal information and assistance available for people in need. While it does not yet have the necessary resources to come close to serving everyone in need, people now have access to a range of service options including Illinois Legal Aid Online for information and resources, CARPLS and other programs for advice and brief services, and a network of impressive pro bono and legal aid organizations serving a broad range of legal issues for people who require extended representation and advocacy.

The legal community has really stepped up in its support, both through the CBF and through direct support for the organizations serving our community. In 2015, the legal community provided \$14.8 million in financial support for this cause in Cook County along with hundreds of thousands of pro bono hours. Pro bono is now institutionalized among the largest firms and corporate legal departments, and in many small and mid-sized firms and law departments as well, evidenced by the formation of a thriving organization devoted to law firm pro bono, the Association of Pro Bono Counsel.

The courts themselves are doing a lot

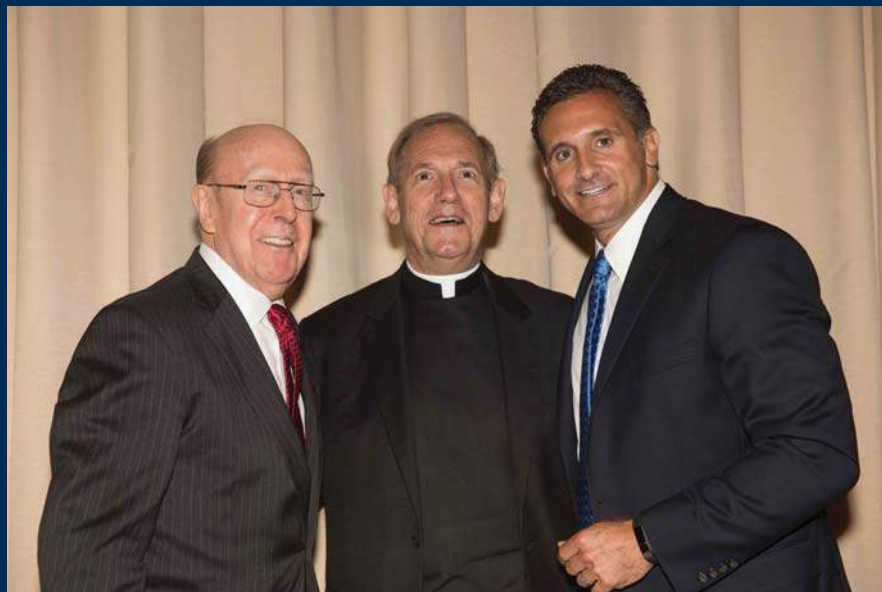
more to make things better as well. There now is a network of self-help resources, advice desks and court-based pro bono programs in the Circuit Court and in the federal courts. The Illinois Supreme Court has become a national leader through its Commission on Access to Justice and Civil Division of the Administrative Office of the Illinois Courts, which are leading the way in making the court system more user-friendly and accessible for people without lawyers.

More recently there has been a lot more concerted focus on the moderate income segment of our community, with the CBF's Justice Entrepreneurs Project becoming one of the national leaders in these efforts. A number of other green shoots are starting to appear on the scene as well.

In sum, there are a lot of challenges remaining out there in the quest for justice for all. The commitment from government at all levels to this fundamental American principle remains far short of what is necessary to achieve equal access to justice. And there still is much more that our profession and justice system can and must do to improve access. At the same time, looking back over 25 years there have been impressive innovations and significant progress that underscore that we can make a real difference and ultimately fulfill our nation's promise. I remain proud to be a lawyer and look forward to working with our amazing legal community and our many other dedicated partners towards that better future. ■

MURPHY'S LAW

BY TERRENCE M. MURPHY, CBA EXECUTIVE DIRECTOR



William J. Bauer, Senior Judge, US Court of Appeals, and Monsignor Kenneth Velo congratulate Daniel M. Kotin on his induction into the office of President at the CBA's Annual Meeting on June 23. Photo by Bill Richert.

Justice **John Paul Stevens** will be the keynote speaker at this year's Stevens Award Luncheon, which will be held on Wednesday, September 14, at the Standard Club of Chicago. A reception for Justice Stevens and our 2016 honorees will begin at 11:30 a.m., followed by the Awards Luncheon in the Grand Ballroom. The Justice John Paul Stevens Awards honor lawyers and judges whose legal careers best exemplify Justice Stevens' integrity and commitment to public service. Nominations for the Justice Stevens Award must be submitted to **Terrence Murphy** on or before August 5 at tmurphy@chicagobar.org.

Justice Stevens served as Second Vice-President of the association in 1970, and resigned that office on his nomination to the U.S. Court of Appeals by President Gerald R. Ford. Justice Stevens served as an Associate Justice of the United States Supreme Court from 1975-2010, and is the third-longest serving justice in the Supreme Court's history. Justice Stevens

has published several books, including *Six Amendments—How and Why We Should Change the Constitution*, and *Five Chiefs*, which is a compendium of memories of each Chief Justice he served with, from Chief Justice Fred Vinson through the Court's current Chief Justice, John Roberts.

Tickets for the Justice Stevens Award luncheon are \$75 per person, or \$750 for a table of ten. For more information or to make your reservations, contact CBA Events Coordinator **Tamra Drees** at 312/554-2057 or tdrees@chicagobar.org.

93rd Annual Golf Outing is September 21

Don't miss the Association's 93rd Annual Golf Outing on Wednesday, September 21, at Harborside International Golf Course, 11001 S. Doty Avenue in Chicago. Harborside International is a favorite golf destination and among Chicago's finest public courses. Harborside has country club fairways and greens along with some monster traps that make it a challenging and fun course. Angie Cruz has already

secured a number of sponsors and prizes for this year's outing, which promises to be one of the best ever. Golf, carts, lockers, lunch and a buffet dinner with cocktails are included in the \$195 reservation fee (\$170 for golf only). The outing begins with lunch at 12:00 noon, followed by a shotgun start at 1:00 p.m. Join your colleagues from the bench and the bar at this CBA Classic. For more information or to make reservations, contact **Angie Cruz** at acruz@chicagobar.org.

CBA Open House & All-Bar Reception

The CBA is hosting an Open House & All-Bar Reception for members to meet President **Daniel M. Kotin** and YLS Chair **Kathryn (Katie) Carso Liss** on Thursday, September 22, from 5:00-7:00 p.m. at CBA Headquarters. Dan is a founding partner at Tomasik Kotin Kasserman, LLC and Katie practices with Jean Conde, P.C. Dan is a trial lawyer concentrating his practice in personal injury, products liability and premises liability law. Dan comes from a prominent family of legal all-stars. His father Larry was an accomplished Chicago trial lawyer and an active member of the CBA for his entire career. Dan's father served on a number of committees and as a member of the Association's Board of Managers in 1985-87. Dan's uncle, Philip H. Corboy, was one of America's leading trial lawyers who also was a lifelong active member, serving as President in 1972-73. Katie concentrates her practice in family law, juvenile, adoption and guardianships. Katie has planned a number of special projects including programs during Child Protection Awareness Week and Human Trafficking Awareness with a focus on children and young adults. Save the date and make sure to stop in and say hello to these two outstanding leaders.

The reception will be held in the Winston & Strawn Presidents Room on the second floor of the Association. There is no charge for the reception and cocktails, and hors d'oeuvres will be served. RSVP to events@chicagobar.org.



The Chicago Bar Association

Attorney's Court Calendar 2017

Organize your day with The Chicago Bar Association's 2017 Attorney's Court Calendar. Our quality leather-bound book is designed to help you keep track of appointments and makes it easy to track billable time in hourly increments. The calendar allows you to include important information such as frequently called numbers, deadlines,

and more. It also includes phone numbers and addresses for judicial circuit courthouses/circuit clerks, other frequently called legal numbers, and CBA member information.

You'll always be on-time with the CBA Attorney's Court Calendar!

The cost of the 2017 Attorney's Court Calendar is \$21.50 for CBA members and \$25.50 for nonmembers (includes Illinois sales tax).

2017 CBA Attorney's Court Calendar

I would like to order ___ copies of the 2017 CBA Attorney's Court Calendar.
\$21.50 CBA member/
\$25.50 nonmember (includes Illinois Sales Tax. Shipping and Handling: Enclose \$7.95 for the first copy and a \$3.95 per each additional copy).

Total Order: \$ _____

All orders must be prepaid and are non-refundable (also no credits available).

Save on Shipping! Stop by the CBA Legal Bookstore and pick up your copy in person after October 10, 2016.

Name _____

Firm _____

Address _____

City _____ State _____ Zip _____

CBA Number _____ Phone _____

Payment Information:

Visa MasterCard American Express

Discover Check Enclosed

Acct No. _____ Exp. _____

Name as it Appears Card _____

Signature _____



Mail to: The Chicago Bar Association
321 S. Plymouth Court, Chicago, IL 60604
Order online at www.chicagobar.org
Fax to 312-554-2054

For more information: 312-554-2130 (CBA Legal Bookstore)

JUSTICE STEVENS NOMINATIONS

The Chicago Bar Association is now accepting nominations for its annual Justice John Paul Stevens Award. The Award is presented to Illinois Attorneys who have shown throughout their careers that they are extraordinary individuals and who have demonstrated extraordinary integrity and service to the public and/or community. The Awards will be presented this fall at the Justice John Paul Stevens Award Luncheon.

Nominations may be submitted in writing to: The Chicago Bar Association, Attn: Terrence M. Murphy, Executive Director, 321 S. Plymouth Court, Chicago, IL 60604. Fax: 312/554-2054, or tmurphy@chicagobar.org.

7th Circuit Social Security Disability Conference

The Social Security Law Committee is hosting a 7th Circuit Disability Conference on Friday, September 16–Saturday, September 17. The Conference will feature Regional Chief Administrative Law Judge **Sherry D. Thompson**; Retired Social Security Administration Law Judge **Jennifer Fisher**; **Dr. James W. Atchison** (DO), Medical Director, Center for Pain Management, Rehabilitation Institute; Magistrate Judge **Aaron E. Goodstein**, U.S. District Court, Eastern District of Wisconsin; U.S. Magistrate Judge **Mary M. Rowland**, Northern District of Illinois, and other prominent lawyers.

The Conference will be held at CBA Headquarters, and will also be available online via webcast to social security practitioners in other states. Topics to be discussed include: the anatomy of a hearing, how pain is disabling, how to make your best case at the Appeals Council, searching for important issues in the Record and writing a persuasive Federal District Court brief, and persuasive Brief Writing and Oral Advocacy in the Seventh Circuit. Conference attendees will receive 8.5 Illinois MCLE Credit, including 6.5

Illinois PR-MCLE Credits. Registration for the conference is \$250 per person, and includes breakfast, lunch and a reception on Friday, and breakfast on Saturday morning. The conference will conclude on Saturday morning at 11:30 a.m. For more information or to make reservations, visit www.chicagobar.org/cle.

CLE in London

See London as you've never seen it before! The CLE programming is being hosted by our friends from LexisNexis at their International Headquarters. Events for members and guests include: Tours of the House of Lords, the Supreme Court, and the Royal Courts of Justice, a boat cruise to Runnymede featuring a lecture by one of England's foremost experts on the Magna Carta, followed by a tour of Windsor Castle, a reception & dinner at London's oldest pub, a musical event at the famous 12th century Temple Church, followed by a gala reception/dinner in the Grand Hall, an opportunity to view a trial from the "Well" courtroom floor at Old Bailey. Don't miss the CBA's CLE program in London, England April 10-13, 2017. Look for the fall flyer announcing further details for this truly unique and outstanding program in London.

Congratulations

Congratulations to incoming leaders: Hon. **Israel A. Desierto**, President, Illinois Judges Association... **Brian W. Welch**, President, 7th Circuit Bar Association... **Vincent F. Cornelius**, President, Illinois State Bar Association... Hon. **Mary Colleen Roberts**, President, Alliance of Illinois Judges (second term)... **Natalie L. Howse**, President, Cook County Bar Association... **Curtis B. Ross**, President, Decalogue Society of Lawyers... **Leslie Richards-Yellen**, President, National Association of Women Lawyers... **Joanne R. Driscoll**, President, Appellate Lawyers Association and **Christopher T. Hurley**, President, Illinois Trial Lawyers Association.

Michael A. Pope, **Timothy L. Bertschy** and **Christine M. Ory** received a state proclamation from Governor Bruce Rauner for their leadership in founding the Illinois Equal Justice Foundation... **Karen**

Enright has become a partner at Blair, Caravelli, Irmen & Enright... Freeborn & Peters LLP has combined with Richmond, Virginia-based firm Brenner, Evans & Millman... **Tim Huffman** from the Legal Assistance Foundation is the 2016 recipient of the Thomas Morsch Award... **Robert Rupp** is the DuPage County Bar Association's new Executive Director... Judge **Tom Mulroy** and his wife Elaine are proud new grandparents of Cal Mulroy... **Ginger Lamb** is the new VP and Publisher of the *Chicago Daily Law Bulletin*... **Sharon R. Fairley**, head of the Independent Police Review Authority, met with the CBA's Board of Managers to discuss the work of her office... Judge **Anthony Montelione**, retired Presiding Judge of the Fifth Municipal District, received the Southwest Bar Association's Lifetime Achievement Award.

Matthew A. Passen and the YLS will receive the National Association of Bar Executives LexisNexis Community & Educational Outreach Award for its End Distracted Driving Initiative... **Kirkland & Ellis** and **Dentons** were honored by Equip for Equality for their longtime pro bono support... **Pamela Sakowicz Menaker** is a newly elected member of the ISBA's Board of Governors, and also a newly installed member of the CBA's Board of Managers.

The John Marshall Law School presented their Distinguished Service Awards to: **Bruce Farrel Dorn**, **Sherri Dzik** and **Michael Gesas**... their Diversity Awards to Illinois Appellate Court Justice **Jesse G. Reyes**, and Judge **Jessica Arong O'Brien**, and presented **Marilyn J. Criss** with the Honorary Service Award... The Decalogue Society of Lawyers honored Rabbi **Gedalia Dov Schwartz**, Justice **Laura C. Liu** (post-humously), **Gail Schnitzer Eisenberg**, **Sharon L. Eiseman**, **Nicole A. Annes**, **Jessica L. Berger**, **Peter C. Tessler** and **Maria A. Zyskind** at the Society's Annual Awards and Installation Dinner.

Meredith Martin Addy has become a partner at Tabet DiVito & Rothstein, LLC... **Christina Egan** was appointed managing partner of McGuire Woods' Chicago office... **Seth I. Appel** has become a partner at Pattishall McAuliffe, and **Kristine A. Bergman** is a new associate... **Clare J. Quish** was recently appointed by



A Special Notice to all Lawyers Who Reside in or Practice in Cook County

The Moses, Bertha & Albert H. Wolf Fund

The Chicago Bar Association manages the Moses, Bertha, and Albert H. Wolf Fund to aid attorneys who reside or practice law in Cook County and are ill, incapacitated or superannuated. Through the Fund, the CBA provides financial assistance in the form of grants and loans.

Eligible recipients also include lawyers in Cook County who receive assistance from the Lawyers Assistance Program and are in need of medical assistance.



"I can say without hesitation that the generous support that I have received from the Wolf Fund has enabled me to receive medical treatment for several disabling conditions and prevented me from becoming homeless. My hope is that I will be able to return to the full-time practice of law and someday make a substantial contribution to The Chicago Bar Association's Wolf Fund in return for all the help they have given me. I am ever so grateful."

— Wolf Fund Recipient



THE
CHICAGO
BAR
ASSOCIATION

For more information, please contact Terrence M. Murphy, Executive Director
312-554-2002 • tmurphy@chicagobar.org



Set sail with the Young Lawyers Section on August 19 for a Chicago Boat Cruise! Join the YLS for an evening aboard a private charter on the Chicago River and Lake Michigan on Friday, August 19, 2016, from 8:00-11:00 p.m. Board at the Wendella Dock on the north side of the river behind Trump Tower. Casual attire preferred. Tickets are \$50 per person and can be purchased at www.chicagobar.org/ylsboat. Ticket price includes open bar. Presented by Attorneys' Title Guaranty Fund Inc. and ATG Legal Serve. Thank you to our event sponsors: 33 Capital Group Inc., Quarles & Brady LLP and McCorkle Court Reporters, Inc. Music provided by DJ Steve Kuzminski.

the Illinois Supreme Court as an at-large Cook County Judge... **Tanya Solis** and **Melody Gaal** are new associates at Chapman, Spingola LLP... **Jerry W. Glover** and **Travis W. Life** of Leavens, Strand & Glover, LLC participated in "Is The Sky The Limit? Drones and Filmmaking."

Graham C. Grady, partner, Taft, Stettinius & Hollister LLP, was invited to become a member of The Counselors of Real Estate... Justice **Anne M. Burke** moderated a seminar entitled "Harsh Justice: the widening divide between America and Europe"... **Louise Arnott** has joined Michael Best & Friedrich LLP... **Laura Beth Miller** presented a special session on IP Law, "The Interplay Between Agency Decisions and the District Courts" at InHouse Innovates Super Conference, which was sponsored by Brinks, Gilson & Lione.

Chasity A. Boyce has joined Skadden Arps Slate Meagher & Flom, LLP... **Peter M. Henry** was added to Smith Amundsen's commercial transaction group, and **David M. Schoenherr** was added to the firm's corporate practice group... **James M. Quigley**, Beermann, Pritikin, Mirabelli, Swerdlove LLP, received certification as a family law

trial advocate from the National Board of Trial Advocacy... Illinois Appellate Court Justice **Maureen E. Connors** presented the 2016 Liberty Bell Award to **Justin Hayford** for his outstanding service to the AIDS Legal Council.

Matthew O. Stromquist was named a partner at Pilgrim Christakis LLP... Retired Judge **Allen Goldberg**, **Paul Lurie**, and Professor **Sharon Press** presented at "How a Mediator Deals with Unequal Knowledge Between the Parties" seminar... JMLS Professor **Ann M. Lousin** received the Illinois Historical Society's Certificate of Excellence... **Jeffrey Singer**, Segal, McCambridge, Singer & Mahoney Ltd., was selected to serve as a board trustee for the Eisenhower Fellowships... **Lauren J. Wolven** and **Sheri E. Warsh**, partners at Levenfeld, Pearlstein, LLC, were featured speakers at the Capitol Strategies Women's Forum... **Karl R. Fink**, Fitch, Even, Tabin & Flannery LLP, was a featured speaker at the American Intellectual Property Law Association's spring meeting... **Alexander T. Dumitriu** has been added to Howard & Howards business and corporate law group... **Christopher R. Reinkall** was named a partner at Doherty & Progar,

LLC... **Michael J. Sorich** has joined the Cavanagh Law Group... **Daniel A. Cotter**, Butler, Rubin, Saltarelli & Boyd, LLP, was a featured speaker on cyber crime at Morgan & Westfield's Deal Talk... **Elizabeth A. Khalil** was appointed to Dykema, Gossett's new cannabis law practice group... **G.A. Finch** was appointed by Governor Rauner to the Illinois Civil Service Commission.

Teresa M. Becvar is a new partner at Stephan, Zouras LLP... Hon. **Neil H. Cohen** received the Northwest Suburban Bar Association's 2016 Public Service Award... **Manuel Flores**, a partner at Arnstein & Lehr LLP, spoke at the Polsky Center's FinTech Conference... **Deepali Doddi** is an associate in Ice, Miller LLP's Data/Security practice group... **Joanne Marie Rogers** has become a partner at Nielsen, Zehe & Antas, P.C.... **Jamie L. Wolf** was added to LaRose & Bosco Ltd's Insurance Group, and **David J. Aron** was added to the firm's Personal Injury and Commercial Litigation Group... **Richard L. Samson** is the new managing partner of Ogletree, Deakins, Nash, Smoak & Steward, P.C.... **John G. Levi**, Chair of the Legal Services Corporation's Board, received the Shriver Center's Equal Justice Award... **Rebecca K. Wohltman**, Mathis, Marifian, & Richter Ltd., was elected to the Board of Trustees of McKendree University... **Hugh A. Abrams** has become a partner in the IP Group at Shook, Hardy & Bacon... **Joseph M. Callaghan** of Mayer, Brown received the Award for Excellence from the U.S. District Court and Federal Bar Association... **Bruce A. Radke**, Shareholder at Vedder Price was a featured speaker on Cyber Risks Best Practices and Preparedness.

Francis A. Citera, Greenberg Traurig, LLP, was a featured speaker in a seminar about class actions "Is it Time to Say Goodbye?"... **Charles F. Smith, Jr.**, litigation partner at Skadden, Arps, Slate, Meagher & Flom LLP, spoke at the Midwest Anti-Corruption Compliance Forum on "Whistleblower Reports"... **Eileen M. Sethna**, Chuhak & Tecson, P.C., was appointed to lead the firm's attorney banking practice group... **Patricia S. Kocour**, Swanson, Martin & Bell,

continued on page 57

CBA CAREER CENTER



Your destination for exciting legal job opportunities and the best resource for qualified candidates within the legal industry.

Employers:

- EMAIL your job directly to job seeking legal professionals
- PLACE your job in front of our highly qualified members
- SEARCH our resume database of qualified candidates

Legal Professionals:

- POST multiple resumes and cover letters or choose an anonymous career profile that leads employers to you
- SEARCH and apply to hundreds of fresh jobs on the spot with robust filters
- SET UP efficient job alerts to deliver the latest jobs right to your inbox



www.chicagobar.org/careercenter



Get Free Illinois MCLE Credit Through CBA/YLS Committee Meetings!



Get Together

CBA/YLS Committees... Where Lawyers Meet

Information, Experience, Recognition, Networking, Business Development—All at NO EXTRA COST and a Minimal Time Commitment.

Join a CBA or YLS committee today to receive email notice of meetings!

Current Committee Members:

You will remain on your current committees unless you make changes at www.chicagobar.org/committees.

New Committee Members:

Join at www.chicagobar.org/committees.

To Gain Knowledge

- Learn from experts in your practice area
- Discuss case law updates
- Obtain law office management advice

To Get Results

- Be more effective in court
- Gain helpful and cost-saving practice tips

To Lead Change

- Review, debate and recommend changes to court rules and pending legislation

To Move Ahead

- Develop business and support networks
- Gain leadership skills and presentation experience
- Build relationships essential to professional and personal growth

Free MCLE Credit Through Committee Meetings

- Most CBA and YLS committee meetings qualify for Illinois MCLE credit (the amount of credit depends on the length of the presentation - average credit is 0.75 hour). Live Webcasts of meetings also qualify for Illinois MCLE credit. **All of our committee meetings are free, thus this is a great way to earn Illinois MCLE credits at no cost!**

- *Free IL MCLE Credit*
- *Attend In-Person or Live Webcast*
- *New Lunch Options*

Visit www.chicagobar.org/committees for more information.



Attend
In-person or
Live or
Archived
Webcast

2016-2017 CBA & YLS Committees

FREE IL
MCLE
CREDIT

What's In It For You and Your Firm?
**Information, Experience, Recognition, Networking, Business Development—
Free and a Minimal Time Commitment!**

Increase your expertise and expand your professional contacts through participation in CBA and YLS Committees. Meet judges and lawyers who share your interests and concerns, hear a wide variety of expert speakers, help improve the law and administrative procedures which govern your practice area and receive important notice of legislative proposals, written materials and networking events. Over 120 committees meet on a monthly basis (September to June) during the noon hour at CBA Headquarters. There are no special requirements or extra "section" fees to participate in committees. **Most CBA and YLS committee meetings qualify for Illinois MCLE credit (in-person or live Webcast attendance - average credit is 0.75 hour). All committee meetings are free, thus this is a great way to earn Illinois MCLE credit at no cost!** *Note: Meeting dates are subject to change - see weekly eBulletin email or www.chicagobar.org/committees for topic, speaker, Webcast and MCLE credit information.* Members can attend any committee meeting.

CBA Practice Committees

- Administrative Law (3rd Monday/Every Other Month)
- Adoption Law (2nd Tuesday)
- Alternative Dispute Resolution (1st Thursday/12:00 p.m.)
- Animal Law (3rd Thursday)
- Antitrust Law (4th Wednesday/Every Other Month)
- Asset Protection (4th Wednesday)
- Aviation Law (1st Wednesday)
- Bankruptcy & Reorganization (3rd Wednesday)
- Business Law (1st Wednesday/Subcommittee assignments vary)
- Civil Practice (2nd Tuesday)
- Civil Rights & Constitutional Law (1st Thursday)
- Class Action (4th Thursday)
- Commercial Finance & Transactions (3rd Thursday)
- Commercial Litigation (4th Wednesday)
- Committee on Attorney Malpractice Law (1st Tuesday)
- Consumer Credit (1st Wednesday/Every Other Month)
- Consumer Law (1st Thursday)
- Criminal Law (2nd Tuesday)
- Customs & U.S. International Trade Law (3rd Thursday)
- Cyber Law & Data Privacy (3rd Tuesday)
- Domestic Relations (2nd Wednesday/Subcommittee Assignments Vary)
- E-Discovery (As Called)
- Elder Law (4th Monday/12:45 p.m.)
- Election Law (2nd Friday)
- Employee Benefits (3rd Friday)
- Energy, Telecommunications & Water (2nd Thursday)
- Environmental Law (1st Tuesday)
- Federal Civil Practice (1st Tuesday)

- Federal Taxation (4th Tuesday/Division Assignments Vary)
- Financial Institutions (2nd Wednesday)
- Financial & Investment Services (2nd Tuesday)
- Food Law (3rd Monday)
- Futures & Derivatives Law (3rd Wednesday)
- Gaming Law (As Called)
- Health Law (4th Wednesday)
- Immigration & Nationality Law (3rd Thursday)
- Insurance Law (1st Wednesday)
- Intellectual Property Law (4th Tuesday/12:00 p.m.)
- International & Foreign Law (2nd Tuesday)
- Juvenile Law (3rd Thursday)
- Labor & Employment Law (2nd Wednesday)
- LGBT Committee (4th Wednesday)
- Local Government (2nd Tuesday)
- Media & Entertainment (4th Thursday)
- Mental Health & Disability Law (1st Tuesday)
- Military Law & Affairs (1st Tuesday)
- Municipal Departments (1st Thursday/8:00 a.m. and 3rd Thursday/12:00 p.m. at Richard J. Daley Center)
- Probate Practice (3rd Tuesday)
- Real Estate Taxation (1st Thursday)
- Real Property Law (2nd Thursday/Subcommittee Assignments Vary)
- Securities Law (3rd Thursday/Subcommittee Assignment Vary)
- Social Security Law (3rd Thursday)
- Sports Law (As Called)
- State & Local Tax (2nd Monday)
- Tort Litigation (2nd Wednesday)
- Trade & Professional Associations Law (2nd Tuesday)
- Traffic Laws (1st Thursday)
- Trial Practice (As Called) **NEW!**
- Trust Law (2nd Monday)
- Workers' Compensation (1st Thursday/12:30 p.m./Every Other Month)

CBA Service Committees

- Alliance for Women (4th Tuesday)
- Continuing Legal Education (2nd Monday)
- Creative Writing (1st Friday/5:15 p.m.) **NEW!**
- Government Lawyers (4th Tuesday/Bimonthly)
- Human Rights (3rd Wednesday)
- Law & Literature (2nd Tuesday - 5:15 p.m. at Daley Center)
- Law Practice Management & Technology (2nd Friday)
- Lawyer Referral Service (1st Monday, Every Other Month)
- Legal Aid (2nd Thursday/12:00 p.m.)
- Media Production (4th Wednesday)
- Mindfulness and the Law (4th Friday) **NEW!**
- Professional Fees (2nd & 4th Thursday)
- Professional Responsibility (3rd Friday/12:00 p.m.)
- Solo/Small Firm Practitioners (1st Tuesday)
- Unauthorized Practice and Multidisciplinary Practice (2nd Monday/Bimonthly)

CBA Special Committees

- CBA Chorus (Wednesday Evenings)
- CBA Record Editorial Board (2nd Thursday/12:00 p.m.)
- Committee on Racial & Ethnic Diversity (As Called)
- Entertainment/Christmas Spirits (As Called)
- Finance (As Called)
- Herman Kogan Media Awards (As Called)
- In-Court Lawyer Referral (As Called/4:00 p.m.)
- Interfaith Law (As Called)
- Judicial Evaluation (As Called)
- Judicial Evaluation Appellate Review (As Called)
- Legislative (2nd & 4th Monday)
- Membership (As Called)
- Past Presidents (As Called)
- Public Affairs (1st Thursday)
- Symphony Orchestra (Wednesday Evenings)

- Task Force on Issues Affecting Women as They Age (1st Thursday/Every Other Month/12:00 p.m.)

Young Lawyers Section Committees

Serving members in practice less than 10 years.

- Bankruptcy (1st Tuesday)
- CBA Moot Court Competition (As Called)
- Career Assistance (1st Tuesday)
- Civil Rights (3rd Wednesday)
- Corporate Practice (2nd Thursday)
- Creative Arts (1st Wednesday)
- Criminal Law (2nd Friday)
- Education Law (2nd Thursday)
- Environmental Law (4th Thursday)
- Estate Planning (1st Tuesday)
- Family Law (1st Wednesday)
- Fundraising (As Called) **NEW!**
- Future of the Profession (1st Monday) **NEW!**
- Health & Hospital Law (4th Thursday)
- Insurance Coverage (2nd Tuesday)
- Intellectual Property Law (1st Wednesday)
- International Corporate & Trade Law (3rd Monday)
- Labor & Employment Law (4th Thursday)
- Law Exploring (1st & 3rd Wednesday/5:30 p.m.)
- Law Student (As Called)
- LEAD for Large Law Firms (1st Monday) **NEW!**
- Legal & Regulatory Compliance (2nd Wednesday)
- Professional Responsibility (1st Wednesday)
- Public Service/Outreach (As Called)
- Real Estate Law (4th Tuesday)
- Social (As Called)
- Tort Litigation (4th Thursday)
- Women in the Law (1st Tuesday)

as of 6/24/16

Questions? 312-554-2134 or areyes@chicagobar.org

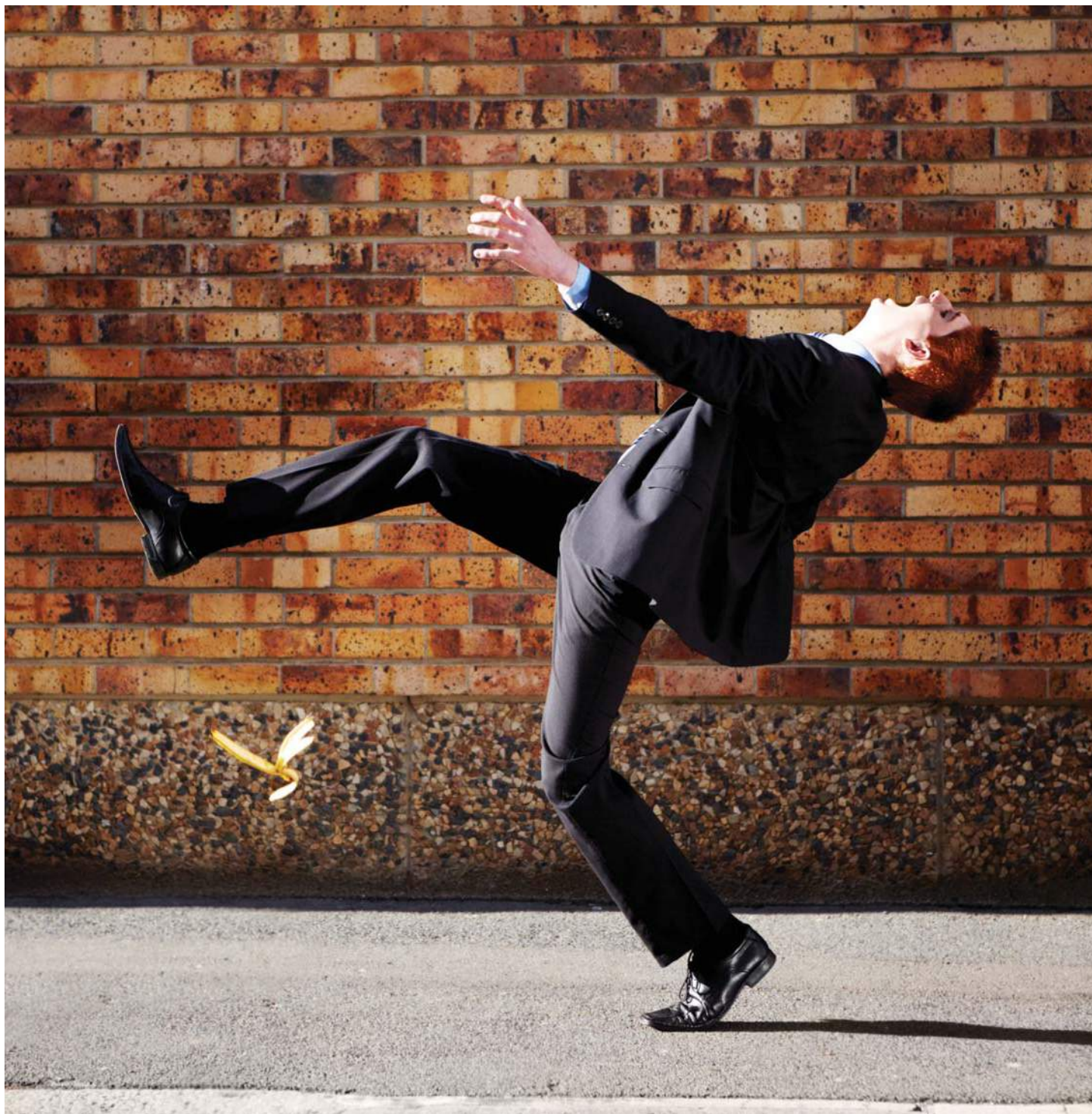
Join today at www.chicagobar.org/committees.



By Paul V. Esposito

Instruction in a Premises Liability Case

Getting Beyond the Complaint



A plaintiff always gets the first word. He decides on what claims he will raise. He chooses the factual allegations. A plaintiff is the undisputed master of his complaint. That's how it should be. Plaintiff is the one seeking relief.

But with rare exception, cases are not decided on pleadings. A defendant has every right to challenge a plaintiff's theory of the case and to offer his own. And when supported by the law and evidence, a defendant has a right to jury instructions on it.

That is one lesson of *Mikolajczyk v. Ford Motor Co.*, 231 Ill. 2d 516, 901 N.E.2d 329 (2008). Relying on the consumer-expectation test, plaintiff claimed that a car seat was defectively designed. Ford responded that the risk-utility test applied and requested a jury instruction on it. Plaintiff argued that because plaintiffs are the “masters of their complaint,” it would be “utterly absurd’ for defendants to ‘choose the theory plaintiff pursues at trial.’” 231 Ill. 2d at 547.

The Supreme Court sided with Ford. There is a difference between a theory of liability and a method of proof. The competing tests were methods of proving that a product was defective. Each party is entitled to instructions covering his “theory of the case,” a term broadly construed:

The expression “theory of the case” does not refer to the plaintiff’s theory of liability. It refers, instead, to each party’s framing of the issues and arguments in support of its position. It is, therefore, well established that while a plaintiff is entitled to an instruction setting out her own theory of the case, based on her theory of liability and her chosen method of proof, she may not unilaterally preclude the giving of a jury instruction that presents the defendant’s theory of the case, so long as the defendant’s instruction accurately states the law and is supported by the evidence. 231 Ill. 2d at 549-50.

The rule of law seems clear enough. But it hasn’t been applied in premises liability cases.

Three appellate decisions are noteworthy. In *Wind v. Hy-Vee Stores, Inc.*, 272 Ill. App. 3d 149, 650 N.E.2d 258 (3d Dist. 1995), plaintiff tripped on a mat at a store entrance. Customers had previously complained about the mat. Plaintiff argued that its placement and maintenance were activities and so IPI B21.02, the ordinary negligence burden-of-proof instruction, applied. Under it, plaintiff was only required to prove that defendant acted negligently, plaintiff was injured, and defendant’s conduct caused

the injury. Defendant countered that the mat was open and obvious and so IPI 120.09, the premises-liability burden instruction, applied. It required the additional proof that “(1) a condition on the property presented an unreasonable risk of harm to persons on the premises; (2) the defendant knew or should have known of this condition; and (3) the defendant should have anticipated that persons would not discover the danger or would otherwise fail to protect themselves against it.” 272 Ill. App. 3d at 153. The trial court gave defendant’s instruction. The jury found for defendant.

The Third District reversed. It ruled that defendant’s premises-liability instruction imposed an inappropriate burden on plaintiff. It rejected defendant’s argument that the mat, if defective, was an open and obvious “condition” on the floor. The court treated the case as involving defendant’s “activity,” and so ruled that the ordinary negligence instruction applied. Because of evidence that defendant acted negligently, plaintiff was not required to prove defendant’s notice of the problem. The court treated the open-and-obvious condition of the mat as relevant only to comparative fault, not duty.

In *Reed v. Wal-Mart Stores, Inc.*, 298 Ill. App. 3d 712, 717-18, 700 N.E.2d 212 (4th Dist. 1998), a woman stepped on a rusty nail protruding from a board lying in defendant’s garden section. A jury found for defendant. Relying on *Wind*, the Fourth District reversed because the trial court gave IPI 120.09 rather than B21.02. Plaintiffs “seem to allege” claims for both ordinary negligence (causing the condition) and premises liability (maintaining the condition). Because plaintiffs are “masters of their complaint” and may “proceed under whichever theory they decide,” plaintiffs’ ordinary negligence instruction should have been given. 298 Ill. App. 3d at 718.

In *Smart v. City of Chicago*, 2013 IL App (1st) 120901, 43 N.E.3d 532, plaintiff was injured when his bicycle tire allegedly lodged in a groove created by street resurfacing operations. Plaintiff



sued the city for negligent maintenance. Plaintiff tendered IPI 120.02, a premises liability instruction on duty. The city tendered IPI 120.08, a premises liability burden instruction. Plaintiff objected based on an IPI note stating that ordinary negligence instructions apply if plaintiff alleges an activity or a condition arising out of a defendant's business. Plaintiff argued that a resurfacing activity caused the accident. The city contended that resurfacing had paused and that any condition was open and obvious. The trial court gave plaintiff's instructions.

The First District rejected the city's "fundamental premise" that plaintiff was pursuing a premises liability claim. Plaintiff's complaint "sounded in negligence, not premises liability." *Id.* at ¶47. Giving IPI 120.02 "did not transform the case into a premises liability case." *Id.* at ¶48. Because the project was ongoing, albeit not then in motion, it was an "activity" preventing the use of IPI 120.08. *Id.* at ¶13. Based on *Reed*, the court ruled that if an activity

precedes an injury, a plaintiff may claim negligence, premises liability, or both.

The court rejected the city's argument that IPI 120.08 was proper because plaintiff needed to prove that the condition was not open and obvious. The "'known or obvious risk' principle" negates a duty and is related to comparative negligence, and so the burden lied with the city.

Specific Negligence Instructions

The decisions essentially hold that cases involving activities on premises are ordinary negligence cases. But a premises liability claim is a negligence claim, just like professional liability and construction negligence claims are negligence claims. They are specific types of negligence claims, with specific standards governing them. They are not controlled by ordinary negligence instructions, regardless of how a plaintiff pleads.

Claims involving activities on land do not lose their character as premises liability claims. The Premises Liability Act, 740 ILCS 130/2, states:

The duty owed to such entrants [on premises] is that of reasonable care under the circumstances regarding the state of the premises *or acts done or omitted on them.* (Emphasis supplied).

In *Rhodes v. Illinois Cent. Gulf R.R.*, 172 Ill. 2d 213, 665 N.E.2d 1260 (1996), an injured man was found in defendant's warming house. Defendant reported him to the police but failed to follow up. Plaintiff claimed that the delay was crucial. The case was analyzed under premises liability rules. A defendant can be liable if property is dangerous "by reason of a condition or activity on the premises." 172 Ill. 2d at 230 (emphasis supplied). Decedent was not found "where a condition or activity on the premises posed a danger to him." 172 Ill. 2d at 231 (emphasis supplied). "[T]he only duty owed to him by ICG *under a premises liability theory* was the duty to refrain from willfully and wantonly injuring him." 172 Ill. 2d at 231 (emphasis supplied). *See also Sollami v. Eaton*, 201 Ill. 2d 1, 772 N.E.2d 215 (2002). (failure to supervise and warn about "rocket" jumping on trampoline treated as premises liability issue).

Restatement

Illinois premises liability law is governed by §§343 and 343A of the Restatement (Second) of Torts. *Diebert v. Bauer Bros. Constr. Co.*, 141 Ill. 2d 430, 434, 566 N.E.2d 239 (1990). Comment a to §343 states that the section must be read together with §343A, which provides:

(1) A possessor of land is not liable to his invitees for physical harm caused to them by any *activity or condition on the land* whose danger is known or obvious to them, unless the possessor



Now save up to 26% with UPS! All thanks to the Chicago Bar Association

Take advantage of new savings with UPS offered to you as a member of the Chicago Bar Association. We have recently enhanced our relationship with UPS in order to provide the best value to our members.

You can now save up to 26% off Express Shipping with the peace of mind that comes from using the carrier that delivers more packages on time than anyone. Simple shipping! Special savings! It's that easy! Just go to www.ups.com/savings for details or to enroll. For more information call (800)325-7000.



**“ONE OF THE
BEST BUSINESS
DECISIONS THE
FIRM HAS MADE.”**

NICOLE ALEXANDER

DIRECTOR OF PROFESSIONAL AND BUSINESS DEVELOPMENT
MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
NEW JERSEY

West LegalEdcenter®

Is your firm struggling to manage CLE requirements cost-effectively? MDM&C isn't. "West LegalEdcenter has become our one-stop shop for all of our CLE, for all of our offices and all of our attorneys," says Nicole. "Within our first year alone, we saved close to \$100,000." West LegalEdcenter gives your firm access to thousands of learning and development programs, accredited in your firm's jurisdictions, in a variety of convenient, accessible formats.

Hear Nicole's story and view a demo of West LegalEdcenter at westlegaledcenter.com/link/testimonial.

Learn more about McElroy, Deutsch, Mulvaney & Carpenter, LLP at mdmc-law.com.

Call 1-800-241-0214, option 3 to learn more.



THOMSON REUTERS™

should anticipate the harm despite such knowledge or obviousness (emphasis supplied).

Accord, Bruns v. City of Centralia, 2014 IL 116998, ¶16, 21 N.E.3d 684. (affirming summary judgment for defendant). So liability for an activity on land is governed by the premises liability rules.

The appellate decisions suggest that if a dangerous condition is created by defendant, ordinary negligence rules apply. That is not the holding of *Donoho v. O'Connell's Inc.*, 13 Ill. 2d 113, 148 N.E.2d 434 (1958), cited in *Wind*. Plaintiff slipped on a greasy, grilled onion ring in a restaurant. The Supreme Court discussed the concept of notice in premises liability cases:

[W]here the foreign substance is on the premises due to the negligence of the proprietor or his servants, it is not necessary to establish their knowledge, actual or constructive (*Pabst v. Hillmans*, 293 Ill. App. 547); whereas, if the substance is on the premises through acts of third persons, the time element to establish knowledge or notice to the proprietor is a material factor. *Schmelzel v. Kroger Grocery and Baking Co.* 342 Ill. App. 501. at 118.

Pabst explains the basis for the *Donoho* rule. Plaintiff slipped on a string bean that fell out of a store container overly filled by defendant's agent. *Pabst* ruled that defendant's conduct created a reasonable inference that it knew about beans on the floor. Given defendant's knowledge,

it was unnecessary to prove how long the bean had been on the floor so to establish constructive notice. Having relied on *Pabst*, the Supreme Court did not eliminate the requirement of proving notice. It ruled that proving a defendant's conduct may operate as proof of notice. In short, *Donoho* created a method of proof. The case remains as a premises liability case. After all, a person was injured by a condition on the premises. Nothing in *Donoho* states that a premises liability case changes into an ordinary negligence case based on notice issues.

Methods of Proof

Donoho is a precursor to *Mikolajczyk* as to methods of proof. *Mikolajczyk* recognizes that a product liability claim does not morph into something else based on which test is applied. The tests are merely different ways of proving that a product was unreasonably dangerous. In a premises liability case, a plaintiff also has different ways of proving notice. A plaintiff may prove the length of time a condition existed, a prior complaint about the condition, or a defendant's creation of it. Regardless of the method used, premises liability rules require proof of notice.

Perhaps the biggest problem with the appellate cases is that a plaintiff is not the "master" of the jury instructions. The giving of instructions depends on the theories offered by each party and the supporting evidence:

"Generally speaking, litigants have the right to have the jury instructed on each theory supported by the evidence. Whether the jury would have been persuaded is not the question. All that is required to justify the giving of an instruction is that there is some evidence in the record to justify the theory of the instruction. The evidence may be insubstantial." *Mikolajczyk*, 231 Ill. 2d at 549 (emphasis supplied), quoting *Heastie v. Roberts*, 226 Ill. 2d 515, 543, 877 N.E.2d 1064 (2007).

Accommodating Multiple Theories

A trial court's task is to provide instructions that accommodate those theories.

It can be a difficult task, perhaps no better illustrated than in the premises liability area. After tripping on a mat at a store entrance, a patron files a one-count complaint for ordinary negligence. She contends that the owner laid down a deteriorated mat, an activity creating a dangerous condition. She introduces a deteriorated mat claimed to be involved, one of several mats produced during discovery. The owner admits that it laid down a mat but denies that the mat offered at trial was the one. Two store employees testify that the actual mat was in good condition when laid down and afterward. They testify that the mat was in a well-lit area, easily and entirely visible. The owner also contends that the patron was not looking where he was walking.

The patron's theory rests on ordinary negligence—the failure to eliminate a danger. The owner's theory rests on premises liability—the mat was open and obvious, and the owner lacked notice of any problem. Ordinary negligence instructions will not cover the owner's defenses.

But both theories can be covered in the premises liability instructions. IPI 120.02 recites the owner's duty "to exercise ordinary care to see that the property was reasonably safe for the use of those lawfully on the premises." It can be modified to include the duty to conduct reasonably safe activities.

Other instructions cover the issues and burdens. As adapted, IPI 120.08 states:

Amari & Locallo

The law office of Amari & Locallo is pleased to announce its newest partners:

Katherine A. O'Dell and Joseph F. Locallo III



With offices in Chicago and Bloomingdale, Amari and Locallo is able to aggressively represent commercial, industrial, and multi-unit residential property owners in acquiring fair, equitable real estate tax assessments throughout the Cook and collar counties.

Chicago Office
734 North Wells Street Chicago, Illinois 60654
Phone: 312•255•8550 / Fax: 312•255•8551

Bloomingdale Office
236 West Lake Street, Suite 100
Bloomingdale, Illinois 60108
Phone: 630•307•3700 / Fax: 630•307•3737

Plaintiff seeks to recover damages from defendant. In order to recover damages, the plaintiff has the burden of proving:

First, there was a condition on the property which presented an unreasonable risk of harm to people on the property.

Second, the defendant knew or in the exercise of ordinary care should have known of both the condition and the risk.

Third, the defendant could reasonably expect that people on the property would not discover or realize the danger or fail to protect themselves against it.

Fourth, the defendant was negligent in one or more of the following ways: *(to be enumerated)*

Fifth, the plaintiff was injured.

Sixth, the defendant's negligence was a proximate cause of the plaintiff's injury.

Paragraph "Second" allows both sides to argue the issue of notice. Paragraph "Third" allows both sides to argue whether the mat was open and obvious or subject to

the "distraction exceptions." *Sollami*, 201 Ill. 2d at 15-16. In fact, it may be modified to include the "deliberate encounter exception." 201 Ill. 2d at 15-16; see IPI 120.09. The open-and-obvious issue bears both on an owner's duty and on a patron's contributory negligence. 201 Ill. 2d at 15-16; *Choate v. Indiana H.B.R.R.*, 2012 IL 12948, ¶34, 980 N.E.2d 58 (moving train open and obvious to 12-year old). IPI 128.02 would instruct on comparative negligence as an affirmative defense.

Conclusion

Plaintiff *is* the master of his complaint, but that doesn't count for much once the evidence has been offered. When the evidence supports differing instructions, they must be given regardless of the complaint. The law and the facts are the ultimate masters. ■

Paul V. Esposito is a partner at Clausen Miller PC in Chicago and concentrates his nationwide practice on record preservation at trial and appellate advocacy.

BlueTie Vault

BlueTie is offering 10% off BlueTie Vault to all members of the Chicago Bar Association. BlueTie Vault is a cloud based storage system that allows users to retrieve important documents in second from anywhere and any device.

Save time and money with BlueTie's secure and easily accessible Vault that allows firms to customize and organize digital documents to best suit them. Learn more at <http://www.bluetie.com/technology-innovation/bluetie-vault-for-law-firms>.

SELL YOUR PRACTICE with Chicagoland Business Brokers



*We specialize in Professional Practice Sales
Doctors and Lawyers on Staff
Locally owned and operated*

*"We handle transitions
from start
to finish"*



CHICAGOLAND BUSINESS BROKER



CALL NOW!

chicagolandbusinessbroker@gmail.com Call 224-458-9388

By Amy Cook

Meet Incoming CBA President Daniel M. Kotin

Leadership, Dedication, and Enthusiasm





With outgoing President Patricia Brown Holmes at the CBA's annual meeting on June 23. Photos by Bill Richert.

DAN KOTIN ADMITS HE DOESN'T DO RELAXATION well. The CBA's incoming president is a partner in a successful law firm and, with wife Jean, is raising three active boys in Winnetka. He is a recent president of the Society of Trial Lawyers and a faculty member and former president of the Board of Governors at Loyola University College of Law. He has served in leadership roles for the Illinois Trial Lawyers Association and the ARDC Hearing Board, and has held numerous positions at the CBA. He's on community boards and has coached mock trials and his kids' sports teams. It's clear that we're in good hands in terms of leadership abilities.

"I don't like down time," he explains. But how does he find the time to fit it all in? "There's always time to do what needs to be done."



Kotin grew up in Evanston. When it came time to think about a career path, the choice seemed obvious: "Practically my entire family on both sides are lawyers." The list includes his grandfather, dad, and uncles, including his mom's brother, legendary Chicago lawyer Phil Corboy.

Still, Kotin's first thought was to go into broadcast journalism. His dad's advice, however, was to get a law degree first and "put it in your back pocket." But after Loyola University law school, he landed a good job with McDermott Will & Emery. The concept of pocketing the law degree evaporated, he says.

Mentors Matter

He worked for about a year with his father, Larry Kotin, who passed away when Dan was only 28. His dad, Dan says, was his first and most important mentor. "He watched me try my first jury case, which is something I'm very grateful for, and it was a great success."

He then took his practice to Corboy & Demetrio, where he stayed for 18 years. "Phil Corboy—for me and anyone else at his firm—mentored through osmosis. You would watch him do his

thing and adopt it. Over the course of 50 years Phil had developed the 'Corboy Way.'"

The Corboy Way carries on, Kotin says, though it's hard to put into words. "It's more of an overall way of practicing law. It was his entire personality. He was always concerned with doing the right thing. Of course, he wanted success on behalf of the client, but his primary goal was to never compromise integrity and reputation."

The next step for Kotin was starting his own firm, Tomasik Kotin Kasserman. "I was given every opportunity at Corboy, and the next step was to do it on my own. The time felt right." His practice focuses on plaintiffs' personal injury. However, he says he has never felt "pigeonholed" as a specialist in one area. His practice is wide-ranging and he loves the diversity of his firm's cases. "It's refreshing that each case is unique. I learn something new every day. In a way it's stressful, because you can never know all the answers, but it's a reason to look forward to the day ahead. I'd be miserable doing the same thing every day."

"We Did Something Good"

Trying cases is his favorite part of being a lawyer, but fewer cases are going to trial now. Overall, he just wants to make clients happy. "Getting a good result for a client. Having that final meeting when you can give them money, sign final documents, reminisce, and give them a hug. Going to bed at night feeling we did something good. That's what I enjoy."

Why The CBA is Special

Kotin has been preparing for the CBA presidency for the past year, though he says there's a difference between serving as the vice president and the president: "During this past year, it was 'their' year [to accomplish their agenda]; this year it's 'my' year." CBA presidents' firms must always be fully on board with the time commitment the person makes. Kotin adds that his cases and clients will continue to be handled properly. He finds the added responsibilities of the bar presidency exciting, and acknowledges,



Taking the helm at a CBA Board of Managers Boat Cruise event on July 19.

With CBA 1st Vice President Judge Thomas R. Mulroy.

All of us at TKK are very proud of Dan and what he has accomplished in becoming the 140th President of the CBA! Dan's presidency is simply a reflection of his many years of commitment to our legal profession and the CBA. He truly cares about making our profession a better one, as demonstrated by his tireless and unselfish contributions to the CBA and other important organizations. By the same measure, having practiced and tried cases with Dan, I am proud to say that he consistently upholds the highest principles of the legal profession in placing our clients first, and always tenaciously fighting to ensure exceptional outcomes for clients, often times under the most difficult circumstances. With Dan's unwavering commitment to our profession and his leadership, this is no doubt going to be a fantastic year for the CBA.

Tim Tomasik, Partner, Tomasik Kotin Kasserman

Dan Kotin mentioned that he is active in the CBA because it is fun and because he meets people he otherwise likely would not. We are thankful that he has been active—he is a great person to know and will be a great leader of this organization. Dan is committed to the betterment of our profession and to the greater community. He will have an amazing year; we can be assured.

Dan Cotter, Partner, Butler Rubin Saltarelli & Boyd, Past CBA president

I have known Dan Kotin for many years and have seen him rise up the CBA ranks for the past several years. We started out at the YLS during our early years—many moons ago! I have always been impressed with Dan—he is intelligent and no doubt a great trial lawyer. He is well respected in the legal community. When you give him a project, you know it will be done well. He is a trusted man and his word carries weight. But what impresses me most about Dan is that despite all the successes he has had in his career, he remains the same nice guy who will go out of his way to help you when you need it. It is also equally impressive to see his deep commitment and love for his family and friends.

I know Dan will be a great CBA president because he has what it takes: passion to help people, commitment to do the best for the organization, and the love to make a difference. I look forward to a great year with Dan leading one of the best bar associations in the country, if not the world!

Aurora Austriaco, Austriaco & Associates, Past CBA president

"I'll probably miss [being president] when it's over."

Kotin has been a CBA member since his career began. "I tell everyone to join the CBA. When I started at a big firm, they paid for one membership—it could be anything. While some chose something like East Bank Club, I chose the CBA. I have been able to meet people with whom I would never have crossed paths otherwise. Great relationships have stemmed from my CBA work." He continues, "The CBA does really good work—very substantive work, things I couldn't do on my own. And doing it with people who are good friends makes it fun."

Lawyers can choose from a multitude of organizations to network, enhance their careers and do community work. What's different about the CBA? "Our bar association is broad based and equal," he says. "There are bar associations that are political, ethnic or religious. The CBA is completely apolitical, non-partisan and focuses on improving our members' practice and the public's access to lawyers."

Bar Year Goals

Kotin doesn't want to have a "theme" per se, because, he says, good ideas can get lost. Access to justice will continue to be a focus, but "that is such an enormous problem, there is no way we can fix it in one year. We will keep trying to make inroads to help our citizens."

Another priority for Kotin is preserving the wisdom of legendary Chicago lawyers. He is saddened, for instance, that Phil Corboy's perspective on tort law has not

CBA MEMBERSHIP

The CBA is one of the nation's leading metropolitan bar associations, and is regarded for its committee programs, CLE seminars, Young Lawyers Section, Law Practice Management "How To" programs, and more. Your membership supports the important work of the association in serving our legal community, the administration of justice, and the public.

Need further assistance? Call 312/554-2031.

been memorialized, and he doesn't want to lose others' insights. He plans to interview distinguished Chicago lawyers and hopes to capture their perspective and what they think their legacy might be.

"I hope this bar year is one that's remembered and talked about positively. If we can make a dent in the access to justice crisis, I'll be proud of that. I'd also like to maintain member enthusiasm. Bar association membership around the country is declining because of how lawyers live their lives. We don't need to go to law libraries; we don't need to go somewhere to sit in a meeting. But with that convenience, you lose face-to-face contact. The CBA helps maintain that contact, and we want to keep members physically and directly involved."

London Calling

Kotin asks all members to get ready for a special spring CLE trip to London. He realizes that many folks in the Chicago legal community have travelled to London before, but says, "I can guarantee access to a London you've never experienced before." He notes that the location and getting CLE credit are important, but what will make the trip great instead of good is the people.

Have a Profession, Not a Job

When asked to give advice to help someone be a better lawyer, Kotin responds, "Make sure that you're doing something in law you believe in. Caring about what you're doing is 90% of the battle. If you think of your work in law as a profession, rather than as a job, you'll have a big head start."

Amy Cook runs a legal communications consulting firm and is Editor-in-Chief of the CBA Record



Receiving the gavel of leadership.



With Justice Thomas L. Kilbride.



The TKK team.

"I have served with Dan on the CBA Board and Executive Committee. No one has more energy or works harder on CBA projects. Those attributes will serve him well as president."

Tim Eaton, Partner, Taft Stettinius & Hollister

To paraphrase Emerson, "The good lawyer does not have an eye to every side and angle of contingency, and qualifies all his qualifications, but one who works so heartily on your behalf, that you get out of a scrape." That is Dan Kotin, a good lawyer, who works as hard for the CBA as he does for his clients. We are lucky to have him.

Judge Thomas Mulroy, Circuit Court of Cook County

Dan Kotin is a guy you want in the foxhole with you. He outworks, outthinks and outperforms his adversary each and every day. Dan has never looked for, nor accepted, the easy path. Instead he simply works hard, is honest and loyal. It has served him well over his career and frankly makes him the best friend and partner I could have. I am blessed to have had Danny in my life. . . .this time next year the entire CBA will feel the same way.

Shawn S. Kasserman, Partner, TKK

**CBA YOUNG
LAWYERS SECTION**

Chair

Kathryn Carso Liss
The Law Offices of Jean Conde PC

First Vice-Chair

Jonathan B. Amarillo
Taft Stettinius & Hollister LLP

Second Vice-Chair

Brandon E. Peck
Peck Ritchey LLC

Member Service Manager

Shawna S. Boothe
Schiff Hardin LLP

Public Service Manager

Alexander M. Memmen
The Memmen Law Firm, LLC

Project Officer

Octavio Duran
Bekkerman Law Offices

Project Officer

Paraisia Winston Gray

Secretary/Treasurer

Carl M. Newman
*City of Chicago Department of
Law*

YLS Journal Co-Editors in Chief

Oliver A. Khan
Arnstein & Lehr LLP

Nicholas D. Standiford
*Schain, Banks, Kenny & Schwartz,
Ltd.*

Assistant Editor

Elizabeth Babbitt
Taft Stettinius & Hollister LLP

YLS Director

Jennifer Byrne



Protecting Our Children

**By Kathryn Carso Liss
YLS Chair**

In keeping with tradition, every chair of the YLS develops a unique theme and corresponding programs for their bar year. The past YLS chairs have all done excellent jobs during their respective bar years and, through their leadership, provided a lot of insight and guidance for which I am thankful. This past bar year finished strong and successfully focused on *The Complete Lawyer*, under the leadership of Matt Passen. The year prior, Paul Ochmanek effectively implemented his theme of *Open Opportunities* by developing new programs in line with his theme. Mary Curry's year was *Future of the Legal Profession* and Natacha McClain led the YLS in the program *Get Involved in Your Community*. The list continues with additional impressive initiatives spanning more than 40 years.

The theme this bar year is *Protecting Our Children*. Children are one of the most vulnerable groups of people in our society as their voices are often not heard. As a family law attorney, I strive to hear the child's voice with the goal of doing what is in the child's best interest. Often I see children who are withdrawn, depressed or angry, perhaps as a result of their parents' extreme anger towards each other, abuse by

a parent or loved one, and/or neglect by a parent or loved one. Fortunately, there are good advocates out there for these children. Child advocates need not be attorneys. They can be counselors, volunteers, teachers, mentors, doctors, etc. Unfortunately, some children do not have advocates due to a lack of awareness or funding. There needs to be a larger discussion of support for parents who are struggling with the stresses of parenting so that these children do not suffer abuse or neglect. By helping parents succeed at being parents, their children directly benefit. These are important issues that should be discussed and addressed in our community.

This bar year, I plan to collaborate with Chicago organizations that serve abused and neglected children as well as victims of child trafficking. Specifically, the YLS will work with Chicago Alliance Against Sexual Exploitation (CAASE) in presenting a seminar to various organizations throughout Chicago this bar year. The YLS will have speakers from CAASE and Heartland Alliance discuss domestic and international child trafficking and sexual exploitation during Human Trafficking Awareness Week, which will occur in January 2017. The YLS will also create a week of programming in the spring of 2017 to raise awareness for child abuse protection.

Regarding the YLS's public service programs, the YLS will continue to work with Legal Prep. The YLS will also continue many of its successful public and member service programs including the Pro Bono Fair, Wills for Heroes, Serving our Seniors, E-Mentoring and Texas Hold'em. Additionally, the YLS is planning several family-friendly events such as a Cubs game, a boat cruise, and a pie-making competition slated for September 2016.

I am honored to be the YLS Chair and to lead a dedicated and talented group of young lawyers. Our officers this bar year are: Jonathan Amarillo, First Vice-Chair; Brandon Peck, Second Vice-Chair; Alex Memman, Public Service Manager; Shawna Boothe, Member Service Manager; Carl Newman, Secretary/Treasurer; Parai-

continued on page 48

The Search is On to Find...

The Chicago Bar Association's Best Pie Baker!

*Presented by the Young Lawyers Section
All Proceeds Benefit the Chicago Children's Advocacy Center*



Join us as Chicago lawyers, law students and friends square off in the Young Lawyers Section's first annual pie competition benefiting the Chicago Children's Advocacy Center! All CBA members, law students, friends and family members (especially children) are welcome to attend and/or enter the competition.

The competition will be judged by a panel of "celebrity" judges and the top three competitors will take home a prize.

Not a baker? Come and watch the fun, grab a slice and enjoy great entertainment for families, including a face painter and balloon artist.

Saturday, September 10, 2016

10:00 a.m. - 1:00 p.m.

(Judging begins at 10:30 a.m., winners announced at 12 p.m.)

The Chicago Bar Association, 2nd Fl.
321 S. Plymouth Ct., Chicago, IL 60604

Pie Competition • Children's Activities • Slices for Sale

A donation of \$10 per person / \$15 per family is suggested.

Donations will be accepted at the door.

Free to enter the competition!

**Contest rules, baker's registration, and attendee RSVP
at www.chicagobar.org/ylspie.**



ILLINOIS AND U.S. SUPREME COURTS CONTINUE TO DEFINE LIMITS OF POLICE INVESTIGATIONS DURING TRAFFIC STOPS

Police Safety vs. Privacy

By Carson Griffis



Three recent cases in the Illinois Supreme Court and United States Supreme Court—*People v. Cummings*, 2014 IL 115769 (*Cummings I*), *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), and *People v. Cummings*, 2016 IL 115769 (*Cummings II*)—deal with the length of time that an officer may delay a stop when investigating crimes unrelated to the initial reason for a traffic stop. While these cases place important limits on the amount of time that a police officer can detain a driver in order to conduct such unrelated inquiries, they also provide time for an officer to complete the purpose of the stop and to conduct other “ordinary inquiries” such as checking the driver’s license or determining whether the driver has outstanding warrants, even if the officer lacks any suspicion that the driver is unlicensed or has an outstanding warrant.

THESE CASES HIGHLIGHT THE ways in which courts must strike a balance between the government’s interest in protecting police officers—whose safety is peculiarly at risk during traffic stops—and private citizens’ privacy interests—which may be invaded when the police begin a line of investigation that has nothing to do with the initial reason for the stop.

***People v. Cummings*, 2014 IL 115769
(*Cummings I*)**

Derrick Cummings was driving a van owned by a woman named Pearlene Chattic, who had a warrant out for her arrest. A police officer pulled the car over and saw that Cummings, a man, was driving. The officer knew Chattic was a woman—and that Cummings could not be Chattic—but still asked Cummings for his driver’s license. Cummings could not produce one, however, as his license had been suspended. He was arrested and charged with driving on a suspended license.

The Illinois Supreme Court held that the police officer’s request for Cummings’s license “impermissibly prolonged the stop because it was unrelated to the reason for the stop.” Stating that “the reasonableness

of a traffic stop’s duration [is linked] to the reason for a stop,” the court concluded that, because the officer had no reason to believe that Cummings was Chattic once he realized that the van’s driver was a man, the officer’s request for Cummings’s license unreasonably prolonged the stop. The court expressly overruled those cases, holding that a police officer may always request identification during a traffic stop, even if he lacks a reasonable, articulable suspicion to continue the stop.

***Rodriguez v. United States*, 135 S. Ct. 1609
(2015)**

Shortly after *Cummings I* was decided, the United States Supreme Court issued its decision in *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), which also addressed the permissible length of an investigation that is unrelated to the initial purpose of a traffic stop. In *Rodriguez*, the officer pulled over the defendant because he had seen the defendant’s car slowly veer onto the shoulder of a Nebraska highway, then jerk back onto the road. After the officer had run a records check on the defendant and written him a warning, the officer asked for permission to walk a drug-sniffing dog around the car. The defendant said the

officer could not, but the officer ordered the defendant out of the car and performed the sniff anyway. The dog alerted to the presence of drugs, leading to the recovery of methamphetamine in the car. The district court and the Eighth Circuit Court of Appeals held that the seven or eight minutes it took to perform the dog sniff did not constitute an unreasonable delay, and that the sniff itself was a minor intrusion on the defendant’s liberty.

The U.S. Supreme Court disagreed. The Court stressed that traffic stops may last no longer than the time the officer needs to complete the purpose of the stop. While acknowledging that a police officer could permissibly perform “unrelated checks” during the stop, the Court held that the officer could not do so “in a way that prolongs the stop.”

Thus, much of the Court’s analysis in *Rodriguez* seems to support the outcome in *Cummings I*. Like *Cummings I*, *Rodriguez* closely ties the permissible length of a traffic stop to the reason for the traffic stop. Both cases stated that, if the police detains a person once the reason for the stop is complete, then that delay is unreasonable, even if it is only a few minutes.



On remand, Cummings noted that *Rodriguez* only authorized “ordinary inquiries” during a traffic stop. And, Cummings argued, the officer was not conducting an “ordinary inquiry” when he asked for Cummings’ license because the officer did not pull Cummings over for a traffic violation. In other words, because this was not an ordinary traffic stop, the “ordinary inquiries” of an ordinary traffic stop—such as checking to see if the driver had a license—would not apply. Cummings argued that, once the officer saw that he was not Chatic, there were no inquiries left to be made as a part of the stop, since the officer’s only reason for pulling over the van was that he believed Chatic was the driver.

The Illinois Supreme Court disagreed, citing *Rodriguez*’s express reference to a driver’s license check as an “ordinary inquiry” of a stop. And, the court stated, such an inquiry cannot unreasonably prolong a stop because the inquiry is automatically part of the mission of any traffic stop. That is so even if, as in Cummings’ case, the police did not pull over the driver for a traffic offense. The court determined that a police officer’s interest in safety during the traffic stop justified the check for a driver’s license even though the officer’s reasonable suspicion “vanished upon seeing” Cummings.

Applying *Rodriguez* and *Cummings II*

Understanding the contours of *Cummings II* and *Rodriguez* requires an examination of the possible situations in which they would apply. The first example arises when an officer pulls over a driver for some kind of traffic violation (e.g., speeding, failure to signal when changing lanes, etc.). During the stop, the officer can take the time to write a ticket and to perform the “ordinary inquiries” listed in *Rodriguez*—check the driver’s registration, proof of insurance, driver’s license, and any outstanding warrants.

It is important to note that, during the time the officer needs to issue the ticket and conduct the “ordinary inquiries,” he or she may also investigate other matters, even if they have nothing to do with the original reason for the traffic stop. For example, if two police officers conducted the stop

But the Court in *Rodriguez* added that, beyond determining whether to issue a traffic ticket, a police officer’s mission during a routine traffic stop includes “ordinary inquiries incident to the traffic stop.” And the Court listed several examples of “ordinary inquiries”: checking the driver’s license, determining whether the driver has outstanding warrants, checking the car’s registration, and making sure the driver has proof of insurance. The Court justified the performance of these inquiries on the basis that the police should be able to ensure that the person they are encountering is not dangerous or operating the car illegally. In other words, an officer’s interest in safely performing the traffic stop allows them to perform these inquiries. With respect to the specific case before the Court, however, the Court held that the officer unreasonably prolonged the stop because performing a dog sniff went beyond “the officer’s traffic mission.”

***People v. Cummings*, 2016 IL 115769 (*Cummings II*)**

The State appealed the Illinois Supreme Court’s decision in *Cummings I* to the U.S. Supreme Court, where it remained pending during the Court’s consideration of *Rodriguez*. After deciding *Rodriguez*, the Court remanded to the Illinois Supreme Court to reconsider *Cummings I* in light of *Rodriguez*.



NIELSEN CAREER CONSULTING

CAREER COUNSELING FOR ATTORNEYS

STRATEGIES AND SUPPORT FOR YOUR CAREER IN OR OUT OF THE LAW

- 30 YEARS OF EXPERIENCE
- OVER 3500 CLIENTS

SHEILA NIELSEN, MSW, JD

THE PARK MONROE
65 E. MONROE ST., STE. 4301
CHICAGO, IL 60603
(312) 340-4433

WWW.NIELSENCAREERCONSULTING.COM



New for
members!

The Chicago Bar Association Online Library

With over 1000+ files (and growing), the CBA's Online Library includes selected articles, checklists, slide decks and sample documents culled from the past two years of continuing legal education courses, committee meetings and the *CBA Record*. As a member you can search, view and download substantive content from experts near and far and make the most of your membership.

The CBA Online Library is hosted by BlueTie Vault, an online document storage and search platform that syncs digital files and emails to a shared online searchable repository.

The Library will continue to grow, so check back frequently!

Getting Started:

Using the Library is as simple as 1, 2, 3:

1. Go to www.chicagobar.org/onlinelibrary and log in as a CBA member.
2. Enter your search terms in the search box and click on the green search button on the right. Search over 1,000 files in 80+ categories plus advanced options including proximity, synonym and sounds like. See the User Guide on the site for tips on how to build a search like a pro.
3. In the search results click on a file to get a preview and read online; you can also download or print the files.

Adoption • Alternative Dispute Resolution
Animal • Business Law
Antitrust Law • Asset Protection
Aviation • Bankruptcy • Civil Practice
Civil Rights • Class Action
Commercial Litigation • Consumer
Criminal • Customs • Cyber Law
Domestic Relations • eDiscovery
Elder • Election • Employee Benefits
Energy • Environmental • Federal Civil
Federal Taxation • Finance
Futures and Derivatives • Gaming
Health • Immigration • Insurance
Intellectual Property • International
Juvenile • Labor and Employment
Law Practice Management • LGBT
Local Government • Media
Mental Health • Military • Municipal
Probate • Real Estate Taxation
Real Property • Securities
Social Security • Sports
State and Local Tax • Technology
Tort Litigation • and more!

www.chicagobar.org/onlinelibrary



TRAFFIC COURT MATTERS ON CBA-TV



Watch CBA TV's latest production "Common Traffic Matters" on the CBA's YouTube Channel at www.youtube.com/chicagobar. Sadzi M. Oliva, Chief Administrative Law Judge at the Illinois Department of Child and Family Services, and Mary Celeste Meehan, attorney at law, cover implications for those under 21, the everyday traffic ticket, and serious offenses resulting in suspension.

MEET THE COMMITTEES NIGHT

Come out and meet the Young Lawyers Section's practice and specialty committees - everything from Bankruptcy to Estate Planning to Women in the Law - on Thursday, September 8, from 5:30-7:30 p.m., at the CBA. Meet and mingle with YLS leaders, enjoy complimentary appetizers and cocktails, and sign up for committees. Nonmembers and law students welcome. Register online at www.chicagobar.org/ylsevents.

together, one could run a warrant check on the driver in the squad car, while the other could remain at the car and ask the driver about anything—the driver's immigration status, whether there were any drugs in the car, or whether the driver had been drinking alcohol. In theory, the officer remaining at the car could even perform a dog sniff of the car, provided that the sniff could be completed in the time it took the officer in the squad car to complete the "ordinary inquiries."

But *Rodriguez* still places an important limit on the length of any traffic stop. The stop must be tied to the length of time

required to complete the mission of the traffic stop, including the completion of any "ordinary inquiries." Any delay beyond that time will result in the traffic stop being unlawful.

Conclusion

Of course, what constitutes a reasonable amount of time to complete the "ordinary inquiries" is still open to interpretation. Practitioners should be mindful that, even though the police may be ostensibly performing an "ordinary inquiry" such as checking a driver's registration, an argument could still be made that the police took longer than necessary in order to complete that inquiry. That is because, as the Court recognized in *Rodriguez*, officers may only take the time "necessary to" effectuate the purpose of the traffic stop, which includes the "ordinary inquiries" sanctioned in *Rodriguez* and *Cummings II*. While *Cummings II* has freed police to undertake "ordinary inquiries" incident to traffic stops even when a driver has not been pulled over for a traffic violation, how long such inquiries may take remains an open question. ■

Carson Griffis serves as a law clerk to Justice David W. Ellis at the Illinois Appellate Court.

**YLS Chair
continued from page 42**

sia Winston and Octavio Duran, Project Officers; and Oliver Khan and Nick Stanford, Co-Editors of the YLS Section of the Record. Our directors this bar year are: Mark Abellera, Tracy Brammeier, Alexis Douglas, James Gay, Svetlana Gitman, Nick Holland, Yana Karnaukhov, Lindsay Margolis, Jeff Moskowitz, and Thomas Reynolds. Our Special Project Coordinators this bar year are: Tom Cramer, Alison Field, Danielle Genter, Mike Gentithes, Carolyn Howard, Peter McNamara, Alex Perraud, Goli Rahimi, John Risvold, and Andrew Stevens. We also have a great group of young lawyers serving as Committee Chairs and Legislative Liaisons for the YLS' now 28 committees.

Given the accomplished attorneys on our Executive Council and the passion and dedication of the YLS' members, the 2016-2017 bar year is sure to be a success! ■

FIRST ANNUAL PIE COMPETITION

Join the Young Lawyers Section on September 10 as Chicago lawyers, law students and friends square off in the CBA's first annual pie competition benefiting the Chicago Children's Advocacy Center! All CBA members, law students, friends and family members (especially children) are welcome to attend and/or enter the competition. The competition will be judged by a panel of "celebrity" judges and the top three competitors will take home a prize. Not a baker? Come and watch the fun, grab a slice and enjoy great entertainment for families, including a face painter and balloon artist. A donation of \$10 per person / \$15 per family is suggested. To learn more and to register visit www.chicagobar.org/ylspie.



The Chicago Bar Association's

93rd Annual

GOLF OUTING

SEPTEMBER 21, 2016



*Sponsorship
Opportunities
Available!*

The CBA's Annual Golf Outing is a terrific way to get involved with the CBA while enjoying an afternoon on the links (instead of behind your desk!). Not a golfer? Stop by the dinner for some great networking!

Location:

Harborside International Golf Course
11001 S. Doty Ave. East, Chicago

Schedule:

12:00 p.m.	Lunch
1:00 p.m.	Shot Gun Start
6:15 p.m.	Dinner

Pricing

Golf & Dinner - \$195.00

Includes 18 holes of golf, golf cart, locker, lunch (sandwich and beverage), dinner, and prizes.

Golf Only - \$170.00 (no dinner)

Dinner Only - \$35.00 (invite a friend!)

Reservations:

Online registration and PDF form available at

www.chicagobar.org/golf

or

contact Angle Cruz at 312-554-2132 or

acruz@chicagobar.org.



LEGAL ETHICS

BY JOHN LEVIN

The Billable Hour: Its Heyday May Be Ending

The last edition of the **CBA Record** (April/May 2016) contained an article by Chicago Bar Foundation Executive Director Bob Glaves entitled “The Billable Hour Needs to Go.” The article was written in the context of providing access to justice to the low and moderate income individual or business who has been priced out of the market for legal services. The article also contains a reference to a “Pricing Toolkit” to educate attorneys on how to provide services to low and moderate income clients and to develop methods of billing alternative to the traditional hourly rate.

Over the years the problem of access to justice has been addressed in countless forums, including many of these columns. As an unsolicited endorsement, I recommend the Pricing Toolkit to any lawyer interested in investigating alternative billing methods. It is a clear presentation of many of the possible methods, and can be downloaded from: chicagobarfoundation.org/pricing-toolkit.pdf.

The purpose of this column, however, is to put into historical context the billable hour as applied to corporate clients and suggest that its heyday may be ending.

Simplicity to Specificity

The first legal bills I ever saw (in the late 1960's) simply stated “For legal services

rendered in connection with ...” followed by a dollar amount. Both the lawyer and client knew what the services were worth (like buying a car), and if the client thought the bill was too high, the client would ask for a reduction or never use that lawyer again. That was how the market worked.

Then in the 1970's, the simple invoice came with pages of time sheets based on fifteen (and then six) minute increments. My belief then was that someone in corporate management or accounting had questioned the legal bills and demanded some sort of backup. Quantifying the time spent seemed to be a good basis of valuation. The secret was that the law department approved the bills on the old method—what was the fair market value of the service rendered, and paid little attention to the time spent.

The following is my personal opinion and not based on any independent investigation. The legal profession forgot that the time sheets were mere validation of the fair market value of the services rendered, and began to believe that the value of the services was based on the time spent on the matter—a questionable concept. This was followed by an explosive growth in the size of law firms and legal fees (the more lawyers - the more hours to bill). The concept that time spent equated to value of service also spread from the corporate world to services provided to low, moderate and middle income clients, where it really was not applicable.

Reigning In

Corporate pushback came over time. Corporate law departments took on more and more of the work once directed to outside



John Levin's Ethics columns, which are published in each **CBA Record**, are now indexed and available online.

For more, go to <http://johnlevin.info/legaletics/>.

WHAT'S YOUR OPINION?

Send your views to the **CBA Record**, 321 South Plymouth Court, Chicago, IL 60604, or dbeam@chicagobar.org. The magazine reserves the right to edit letters prior to publishing.

counsel, who were pricing themselves out of the market. There were many other techniques for mitigating the effect of the unrestricted hourly rate. I personally used techniques such as limited scope representation, in which the outside counsel's responsibilities were limited to certain functions; project budgeting in which specified tasks were costed at specified rates; limiting use of associates on a matter; and adjusting the fee through caps, discounts to the hourly rate, or blended fees. These techniques, as well as others, are referenced in the Pricing Toolkit.

Risks of Being Wrong

Getting rid of the hourly rate entirely, however, has proven difficult. In my private conversations with partners of large firms, we acknowledged that we could agree on a fixed price for a number of types of matters. However, the risk of being wrong was too great to try the concept except in limited instances. My (very unscientific) survey has shown that this is still the case. Nevertheless, the heyday of the hourly rate is ending, and I predict that its unqualified use in the future will become more and more limited. ■

John Levin is the retired Assistant General Counsel of GATX Corporation and a member of the CBA Record Editorial Board.

ETHICS EXTRA

BY RICKY BREEN

Oh, No! What Have I Done?

You are a lawyer, pressed by time, family activities, job commitments, and continuing legal education requirements on top of client expectations. You have many tasks to do and deadlines to meet, but your child has taken ill and you forget to file that pleading. You intend to take steps to remedy your mistake in the morning, but then your car breaks down. Things cascade from there.

A week later, your client calls for an update on his matter. What do you do: Admit your oversight, blame it on your innocent paralegal, or try to hide your mistake and hope it never comes to light?

Unlike Shakespeare, this comedy of errors will not delight. This mistake could come back to haunt you and presents the ethical dilemma of whether a lawyer must report an error to a client. The answer is “yes,” with the understanding that disciplinary authorities consider a variety of factors when determining the degree of punishment for a lawyer’s error. A critical factor is whether the client would have a claim for malpractice against the lawyer. If so, and if there is also a violation of the Rules of Professional Conduct, the punishment can be severe.

The Attorney Registration and Disciplinary Commission and ultimately the Illinois Supreme Court examine lawyers’ failure to report errors to clients on a sliding scale. Three rules are critical.

First, Illinois’ Rule of Professional

Conduct 1.4(b) states that a lawyer “shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” Second, Rule 1.4(a)(1) states that a lawyer “shall promptly inform the client of any decision or circumstance with respect to which the client’s informed consent is required by the rules.” Third, Rule 1.7 also imposes a duty on the lawyer to step down if “there is a risk that the representation of one or more clients will be materially limited by...a personal interest of the lawyer.” The lawyer’s own interests must not adversely affect the representation of the client. The first two rules control the conduct of lawyers and impose a duty on lawyers to own up to their mistakes when representing clients. The third admonishes lawyers to step aside when their interest overrides loyalty to the client, and they cannot maintain objective judgment.

Lawyers are Human, Too

Brian Pollock, in “Surviving a Screw-up,” points out that normal human instincts explain lawyers’ hesitation to inform clients of mistakes. 34 LITIG (No.2) 24 (2008). “Embarrassment, desire to protect reputation, the need to please, and fear of the consequences” are key factors that drive lawyers to hide their mistakes from the client.

Thus, in *In re James Bentivoglio*, Commission No. 06 SH 12, M.R. 21135 (November 17, 2006), the ARDC respondent, a firm associate, was assigned to represent a defendant in an employment contract case in 2001. His assignment was to evaluate whether a counterclaim was warranted; he decided it was, but never filed a counterclaim. In addition to failing to file the counterclaim, he failed to comply

with discovery to the extent that the court twice imposed monetary sanctions, in November 2002 and December 2003. The respondent paid these sanctions out of his own pocket and never informed the client of the sanctions. The court eventually granted the plaintiff’s motion for a default judgment roughly three years after Bentivoglio had been assigned the case. The respondent informed his client of the judgment against him, but did not tell the client that it was a default judgment. Nearly four years after being given the assignment the respondent further complicated the problem by misrepresenting to a supervising partner that a counterclaim had been filed, that the client had paid one of the sanctions, and that only one sanction had been entered instead of two. Thus, Bentivoglio failed to keep his client properly informed of proceedings that under Illinois Rules 1.4(a)(1) and 1.4(b) required the client’s informed consent.

For his misconduct, and with the presence of mitigating factors, the Illinois Supreme Court, on consent, imposed a 30-day suspension for the respondent’s negligence and misrepresentation. Bentivoglio’s several mistakes led him to lie to both the client and the supervising partner.

Mitigating Factors

In *In re Kenneth Marquis Battle*, Commission No. 2014PR00017, M.R. 27084 (January 16, 2015), Battle failed to file a personal injury case within the statute of limitations. In addition to his initial mistake, Battle engaged in a series of miscommunications with the client about the incident and her medical condition. Eventually she became suspicious and contacted the clerk of the court. When she confronted Battle about his conduct, he met with her and offered a settlement agreement, which would relieve him of liability upon his payment to her of the settlement monies. Moreover, he never advised her to seek advice of independent counsel. In preparing the settlement agreement Battle violated Illinois Rule 1.7 as he put his own personal interest above that of the client.

continued on page 57

Ricky Breen was a June graduate of John Marshall Law School and a member of the Morrissey Scholars program.

LPMT BITS & BYTES

BY CATHERINE SANDERS REACH

Should I Be Encrypting Client Email?

Rethinking Email Encryption

Confidentiality is the bedrock of the attorney-client relationship. Depending on the type of client you represent and the work you do an unencrypted email exchange may not provide enough protection for confidential communication. In Illinois ISBA Ethics Advisory Opinion 96-10, issued in 1997 and affirmed in 2010, says that lawyers may use email without encryption unless unusual circumstances require enhanced security measures. Commentary in the Illinois opinion concludes that: "...because (1) the expectation of privacy for electronic mail is no less reasonable than the expectation of privacy for ordinary telephone calls, and (2) the unauthorized interception of an electronic message subject to the ECPA is illegal, a lawyer does not violate Rule 1.6 by communicating with a client using electronic mail services, including the Internet, without encryption. Nor is it necessary, as some commentators have suggested, to seek specific client consent to the use of unencrypted e-mail. The Committee recognizes that there may be unusual circumstances involving an extraordinarily sensitive matter that might require enhanced security measures like encryption. These situations would, however, be of the nature that ordinary telephones and other normal

means of communication would also be deemed inadequate."

Much has changed since 1997. Read in light of the known, legal interception of email transmissions by the government and the increased use of webmail services that offer free service in exchange for access to the text of the email is it still reasonable to rely on an expectation of privacy and legal protection of email transmissions? Add to those concerns consider these scenarios: you are unaware that a divorcing spouse knows your client's email login and password; a client uses a public computer to access email and fails to log out; a client emails with you using a corporate email account that she has waived her personal privacy rights on (see 17 Misc. 3d 934 (Sup. Crt. NY Co., October 17, 2007)). These and other issues prompted the State Bar of Texas to revisit using email for confidential communication in Opinion 648 (April 2015) and concluded that while lawyers may still communicate confidential information by email, certain circumstances would suggest it is prudent to encrypt the email or use another form of communication. In addition to ethics opinions, lawyers may be subject to regulatory or statutory duties under laws like HIPAA/HITECH, data breach notification laws, CFPB, SOX, and others. For all of these reasons, the "unusual circumstances involving an extraordinarily sensitive matter" referenced in the Illinois opinion as a reason to encrypt email may not seem so extraordinary now.

There are a variety of ways to encrypt email communications. For large firms working with corporate clients, firms representing governments, lawyers representing political prisoners and other circumstances

may require an end to end encryption solution such as PGP to be set up and used by both parties. For firms serving these types of clients that have little IT help, services like Absio's Dispatch provide rock solid encryption. Once in place the process is relatively seamless.

However, lawyers who work with consumer clients including estate planning, family law, bankruptcy, criminal, real estate, civil rights etc. may not have a long term relationship with their clients or have the level of sensitivity in the communication that warrants a long term encryption key exchange. For those situations attorneys can still encrypt email on a short term or case by case basis by using some of the "on demand" email encryption options available.

Email encryption vendors are responding to the marketplace and have begun to offer easy-to-use solutions for people who send and receive sensitive correspondence. These programs are designed to be simple for the user to implement and do not require additional hardware. While the recipient will be aware that an encryption program has been used, and they may need to be supplied with a password, they will not need any special software to access the email. The vendors understand that not all information needs to be encrypted so they offer flexibility to choose which messages are important to secure and track. As always, if a trial version is offered by the vendor, try before you buy to see if the program fits your needs.

You've Got (Encrypted) Mail!

Virtru for Business (www.virtru.com) is a low cost program (\$5 per month) that works with webmail services, such as Gmail and Yahoo, with Outlook 2010 and newer, Mac Mail, and on iOS and Android devices. Virtru is easy to use. The recipient receives an email from you explaining that you have sent a secure message and directing the recipient to a secure website to read it. You can customize this message and toggle it on and off. Recipients must log in to the site with their email credentials to verify their identity, where they can then read the message and reply. The reply is also encrypted. Virtru adds two other

Catherine Sanders Reach is the Director, Law Practice Management & Technology at the CBA. Visit www.chicagobar.org/lpmt for articles, how-to videos, upcoming training and CLE, services, and more.

For more information on email encryption, including demonstrations of these apps and more, see the archived CLE program "Encryption for Lawyers" (10/07/2015) and the How To... videos at www.chicagobar.org/howto

functions: "Disable Forward" and "Set Expiration." If you click Disable Forward when sending an email, the recipient will be unable to forward it. If you click Set Expiration, you can set a date and time for the message to expire, after which the recipient will be unable to read it. Finally, Virtru detects and automatically encrypts outbound email that contains personal information such as social security numbers and credit card information.

If having an audit trail along with encryption, including registered e-receipts, time stamps and more appeals then check out RPost's Rmail (www.rpost.com) service which bundles email encryption with their proof of delivery service and now even electronic signatures. Rpost's Rmail works with Outlook, Apple, Android, BlackBerry, webmail, LotusNotes and more. RPost's tools are not free, with a cost of about \$129 per year for a solo. Once installed Rmail adds a button to MS Outlook much like Virtru. However, click on the button to realize there are lot of options to consider in addition to encryption. You can add "side notes" for cc or bcc recipients, invoke an esignatures, and send large attachments via LargeMail transfer service. You can also automatically convert attachments to PDF, password protect the PDF, add a client/matter number, and authenticate the email with a digital seal. All these options can be set as a standard default configuration, or invoked when necessary. As you can tell, it will behoove you to get a little training with the representatives at RPost to make sure you are getting the most out of this sophisticated tool. The user experience itself differs from the other two products mentioned. If you do not predefine a

continued on page 56



LPMT

**The Chicago Bar Association
Law Practice Management
& Technology Division**

Save on law practice management and technology tools with CBA membership:





Advantage Technologies

Get a free onsite technology assessment (normally \$395) including a review of hardware, software, security protocols, backup system and more. <http://adv-tech.com/chicago-bar-member-benefits/> or 877-723-8832



BlueTie

Securely find and retrieve client matters and other important information in seconds anytime, anywhere. Members get a 10% discount. www.bluetie.com/technology-innovation/bluetie-vault-for-law-firms or 800-BLUETIE



Citrix ShareFile

Citrix ShareFile
A cloud-based storage service that offers comprehensive and secure file sharing. Members get a 10% discount for life. <http://sf-mktg-pages.sharefile.com/Chicago-Bar-Association-LP.html> or 800-441-3453



CosmoLex

Practice management, billing and accounting (No QuickBooks™ required), all in one login. Members get a 10% lifetime discount. www.cosmolex.com/resources/partners/strategic/chicago-bar/ or 866-878-6798



TheFormTool

TheFormTool Pro
The easiest and most powerful document assembly software in the world. Members save 15% off the lifetime license with discount code CBA921MA. www.theformtool.com/links/chicago-bar-association or 866-311-6000



LegalConference.com

Document sharing with real time video editing with a secure file system. Members save 30% on annual subscriptions. <https://secure.legalconference.com/referral/chicagobar.aspx> or 800-529-5121



Legal-lease

A platform dedicated to matching legal and other professionals with available shared law office space in established firms. Members get 15% savings when they sign up to list their spare offices on legal-lease. www.legal-lease.com/cba



LegalResearch.com

Nationwide expert level research, case-specific analysis and accurate writing solutions. Members Save 15% on on-demand legal research and writing services. www.legalresearch.com/CBA or 844-638-6733

See complete list of discounts at www.chicagobar.org/save.

CBA RECORD 53

SUMMARY JUDGMENTS

REVIEWS, REVIEWS, REVIEWS!

Murder on an Air Force Base



The Sting of the Blue Scorpion

By Russell Pelton

Outskirts Press, 2016



Reviewed By Daniel A. Cotter

As the Cold War with the Soviet Union intensified and involvement in the Vietnam conflict deepened, America was on edge in the 1960s. On the domestic front, racial tensions were front and center. Against this backdrop, Russell Pelton sets his second novel, *The Sting of the Blue Scorpion*, at the Wurtsmith Air Force base in the 1960s, where Pelton

Daniel A. Cotter is a Partner at Butler Rubin Saltarelli & Boyd LLP, where he chairs the Insurance Regulatory and Transactions practice. He is a member of the CBA Record Editorial Board and a Past President of the CBA.

served for several years as an attorney in the Judge Advocate General Corps. Pelton's novel details the racial and Cold War tensions of the era from the perspective of a firsthand witness. A retired Chicago litigator, Pelton's two novels have both featured character Tony Jeffries, here with Jeffries as a much younger lawyer at the beginning of his career.

In January 1961, the Air Force Strategic Air Command 379th Air Expeditionary Bombardment Wing was reassigned from Florida to the Wurtsmith Air Force Base in Iosco County, Michigan, to disperse the Air Forces fleets of B52 bombers over a wide area to avoid an attack by the Soviet Union. A number of African-Americans ended up at Wurtsmith as a result of the transfer. (Wurtsmith was decommissioned after the Cold War ended).

Scorpion opens with a young woman's late-night abduction in a pickup truck with a camper attached to it. The camper and truck are witnessed by a young teen couple who saw the vehicle from a short distance, with an African-American man at the wheel. The white victim is brutally raped and murdered and the crime committed on the Wurtsmith base. Shortly after this crime is committed, Lieutenant Jeffries, a recent law school graduate, arrives with his wife at the base.

A second murder occurs on base shortly after the first. The military men refer to the "Blue Scorpion" striking again (blue is the color of the Air Force dress uniform.) The base brass and the town mayor put pressure on the attorneys to find the enlisted man responsible for the gruesome crimes. Pressure is put on the attorneys by the base brass and the local town mayor to find the

RESOURCES FOR NEW LAWYERS

Just getting started in the practice of law in Chicago? The CBA offers many resources and programs to help new lawyers. Find out more about MCLE, start-up boot camp, career & mentoring services, practice area pointer videos, and volunteer opportunities. All under the YLS tab at www.chicagobar.org

enlisted man responsible for the gruesome crimes. The attorneys narrow down the possibilities to a short list, and decide that George Torrance, an enlisted African-American with a criminal past including violence, is their man.

Torrance is arrested and placed in custody on the base. A top senior Captain who prosecutes Air Force trials around the country is named to prosecute the court martial of Torrance. The top JAG officer on at the base, Major Bob Cunningham, is slated to defend Torrance based on the JAG Corps rules of representation. However, he is suddenly reassigned by the leadership because "Bob Cunningham's too good." Jeffries is quickly promoted to Captain and informed he will defend Torrance. Jeffries has no trial experience but begins to prepare for the trial with the assistance of a new lieutenant on the base. Jeffries meets with Torrance and Torrance's girlfriend and eventually reaches out to Cunningham for guidance and advice.

Torrance maintains his innocence, but Jeffries initially does not believe him. Yet as Jeffries prepares the defense, he begins to doubt that Torrance is guilty of the crimes he has been charged with committing. Jeffries aggressively attacks the prosecution's witnesses and puts on a vigorous defense, including putting his client on the stand. The book ends with a shocking surprise that the reviewer shall not disclose for fear of spoiling it for the readers.

Pelton is an entertaining writer who hooks the reader from the first page and keeps the plot twisting and turning until the last page. As the cover of *Scorpion* states, "here's an authoritative, highly entertaining legal storyteller." We agree with that verdict and very much look forward to Pelton's next novel, ready to be stung again. ■

Reduce Your Student Loan Payments

“Credible helped me reduce the lifetime interest paid on my student loans and
save \$55,000”

- Jordan Adams, Class of 2012



Start Saving Today



Submit One Form

Complete one form and get offers from up to eight lenders.



Lower Your Rates

Refinancing rates start at just 1.90%.



Get Your Savings

The average lawyer saves over \$40,000.

password with your client/recipient then the user will receive an email with a system generated password, then another email with a PDF attachment. The PDF attachment contains the text of the encrypted email you sent and the user will need to have the password from the previous email to open it. The recipient opens the PDF and can click on “secure reply—click here” to respond via the same encryption process. Fortunately all these emails to the recipient have clear instructions, but it would probably be best to establish a password with a client in advance for ease of use. Also, between all the read receipts, instructions, email attachments, the system generates quite a number of emails. You can adjust your settings to reduce the messages.

Citrix ShareFile (www.sharefile.com) also has a tight integration with MS Outlook which provides email encryption as well as the usual “attach file” functionality found in competitors. This functionality comes with Business plans, which starts at five employee accounts.

The configuration of the Ribbon tool is extensive, offering options for attachment policies, how links are inserted, and sharing options. All the defaults can be over-riden if necessary.

To encrypt an email simply set up a new message or respond to a message and click on the Sharefile icon on the far left to turn encryption on. The Send icon will now read “Send Secure”. You can configure the encryption to require that the recipient log into ShareFile (by creating a free account) or only require the recipient enter a name and email address (not recommended). You can also get a read receipt (not the Microsoft kind that requires the recipient to agree) and expire the email and attached files if desired. This encrypts the body of the email as well as any attachments.

One nifty thing about sending the email encrypted from MS Outlook with ShareFile is that your ShareFile online folder has an inbox that shows your encrypted emails and any responses, since the recipient can respond via encrypted



Lake Michigan Luxury Home for Sale. 5658 & 5652 Cedar Beach Lane, Belgium, WI. Feel like you are on vacation Oceanside. 30 minutes north of Milwaukee, steps from Harrington Beach State Park. Unique currents warms the shallow water, great for swimming. 115 feet of sandy frontage on 2 adjacent lots. Main home: two story cape cod, 3 bedrooms, 2 full bath, sun porch, fully updated kitchen, laundry on main, full basement, 2.5 car garage, patio, view of the Lake from every room. 2nd home: cottage with great remodel opportunity, 2 car garage. Buy both and get 4.5 garage spaces, and update the cottage as a guest house, or tear it down and build an addition on the main home. Or, buy either separately. Price: Cottage separately with 60' frontage and 2 car garage \$199,000. Main home separately with 55' frontage and 2.5 car garage - \$649,000, OR both homes at the package price of \$749,000. Contact the owner, Debra Tuttle, for photos, specs, and to set up a showing: Debra@mediatemilwaukee.com, or cell: 262-613-1627.

message as well by clicking on a link built into the original message.

If you use the ShareFile sharing tools in the Ribbon group you may not need to encrypt the email itself, as the “attach files” will put the files into ShareFile and provide the recipient a link. The files are encrypted in your ShareFile account. The Ribbon tools include “attach files”—to send a link to a file directly from ShareFile or sent to ShareFile from your local drives, “convert attachments”—which adds any forwarded attachments to ShareFile and sends a link, or “request files”—which adds a link to your outgoing message so that the recipient can click on it to securely send you a file through ShareFile.

Do a Test Run

Obviously these are but a few of the options available, and you should examine your work flow and habits, what platform and programs you use to send email, and

test a few options with your staff or an unsuspecting family member to make sure everything works the way you expect it to. That said, the above email encryption options are easy to use for the sender and recipient, and offer a much better level of security, privacy, and confidentiality than an unencrypted email. ■

AFW Awards Luncheon continued from page 18

other women learn to give and receive the gratitude that comes with making an undeniable difference in the world.

As she closed, Holderman reminded the audience of a quotation of the legendary former U.S. Secretary of State Madeleine Albright, who said, “Remember, there is a place in hell for women who do not help other women.” The audience gave Holderman a resounding standing ovation. ■

Murphys Law continued from page 28

LLP, was elected to the American Board of Trial Advocates...**Jeffrey M. Alter**, **David A. Axelrod**, **David R. Nordwall**, and **Leslie J. Rosen** were honored by the Illinois Trial Lawyers Association for their work on the Amicus Curiae Committee... **Charles Vogt** has joined SmithAmundsen's construction and product liability practice group...**Seth E. Darmstadter** was named a partner and co-founder of Michelman & Robinson LLP's Chicago office... **Genevieve E. Charlton** has become an associate at Barnes & Thornburg, LLP... **Carrie E. Byrnes** was named a partner in Michael Best & Friedrich's Employee Benefits Group...**Kara A. Allen**, Chuhak & Tecson, P.C., participated in Misericordia Siblings 19th annual "The Artist In All" program...**Peter V. Baugher**, partner at Honigman, Miller, Schwartz & Cohn LLP, and president of the Chicago International Dispute Resolution Association, was a speaker at the Cook County Circuit Court's International Commercial Arbitration and Mediation Forum.

Karlie J. Dunsky is a new associate in Franczek, Radelet's Immigration Practice Group...**Christopher T. Groham** is special counsel to Duane, Morris LLP... Denton's US Senior Counsel **Roderick A. Palmore** received the General Counsel Lifetime Achievement Award from the NY Stock Exchange Governance Services... **Michael B. Cohen** has become a partner at Quintairo, Prieto, Wood & Boyer P.A.... **Andrew N. Plaszczycki** is of Counsel to Johnson & Bell Ltd's Commercial Litigation Practice Group...**Tracy A. Brammeier**, Clifford Law Offices, was appointed to the Illinois Trial Lawyers Association's Board of Managers.

Loyola Law School Dean **David N. Yellen** received Loyola's Dux Mirabilis Award. Yellen has become the fourth president of Marist College in New York... **Daniel F. Cullen**, Baker & McKenzie LLP, has returned as partner in the firm's tax practices group...**Antonio M. Romanucci**, Romanucci & Blandin LLC, was nominated Third Vice-President of the Illinois Trial Lawyers Association... Birthday greet-

ings to Hon. **William J. Bauer**, 7th Circuit U.S. Court of Appeals (who is ageless) and to **Thomas A. Demetrio**.

Condolences

Condolences to the family and friends of Hon. **Abner Mikva**, Hon. **Louis Garippo**, and **John Flynn Rooney**. ■

Ethics Extra continued from page 51

Battle was censured, on consent, because of several mitigating factors. He was active in the legal community and served on several boards. Several judges had indicated their willingness to testify in his behalf. In addition, Battle had closed his solo practice and joined a larger firm where he no longer litigated personal injury cases. Finally, Battle showed remorse for his conduct and was cooperative during the ARDC proceeding.

Compare *In re Daniel Koehl*, Commission No. 99 CH 98, M.R. 17677 (November 28, 2001), in which the ARDC respondent also neglected to file the client's claim on behalf of her son within the applicable statute of limitations. He compounded this error by telling the client that he had filed the claim, that he had negotiated a settlement, and eventually paid her nearly \$14,000, following a series of misadventures with his bank. The client had expressed concern that the settlement monies were insufficient to meet her son's medical needs. Thus, Koehl's actions prevented the client from making informed decisions regarding the settlement in violation of Rule 1.4(b).

Before the ARDC, Koehl claimed, as a mitigating factor, that he had no previous disciplinary actions before the Commission. The Commission rejected this, stating that Koehl's prior good conduct did not outweigh the grave extent of his current misconduct. Citing *In re Lewis*, 562 N.E.2d 198 (1990), the Commission suspended Koehl from the practice of law for five months and stayed three months

DAILY PRACTICE AREA UPDATES

The CBA is pleased to introduce the second year of CBA Newsstand by Lexology, a daily email that provides valuable and free practical know-how.

Learn more at www.chicagobar.org/newsstand.

on condition that he complete a course in ethics and law office management during the first two months. He failed to take the courses. Koehl's problems were exacerbated during his five months' suspension because he practiced law during that time.

Koehl sorely needed the law management course, for he found himself once more before the ARDC for failing to disburse checks to appropriate entities following a real estate transaction. Once again, when queried, he lied to clients and entities entitled to the monies. The net results of the two occasions of misconduct were that Koehl was suspended from the practice of law for two years and until further order of the court. As of this writing, Koehl remains unauthorized to practice law.

Remorse and Cooperation

In summary, a lawyer who makes a mistake should promptly try to rectify it; however, under Rule 1.4, the lawyer must inform the client of the mistake. When the lawyer admits a mistake and/or is called to question for the mistake, the ARDC procedures and ultimately the Illinois Supreme Court will consider many factors before meting out punishment. These factors include whether the lawyer has prior disciplinary actions, whether the lawyer has any peers testifying in his behalf, and whether the lawyer handles the same type of case in which the mistake was made. Perhaps, most important, is whether the lawyer evinces remorse and fully cooperates during the ARDC proceedings. Finally, under Rule 1.7, lawyers should be acutely aware of their attitudes towards their client and should step aside when they no longer feel loyalty to their client or when they have a personal interest in the matter that precludes objective judgment. ■

Office Services Showcase



ISBA Mutual
Lawyers' Malpractice Insurance

**This year, Illinois lawyers
+ law firms got back
\$1.7 Million**

isbamutual.com 800 473-4722

RETRIEVE CHICAGO

ACCIDENT AND INCIDENT REPORTS

FAST!!

We have picked up over 500,000 reports at Chicago Police headquarters in the past fifteen years. Costs are minimal and service is speedy.

Robin Enterprises Corporation

Phone: 312/440-4990
Fax: 312/440-4996
E-mail: lrobinent@gmail.com




Financial Forensics

- Economic Damages
- Lost Profits / Earnings
- Business Interruption
- Financial Investigations

On average, law firms report over 40% of client payments are past due.

The way Chicago attorneys get paid.

LAWPAY

CREDIT CARD PROCESSING

VISA DISCOVER MasterCard AMERICAN EXPRESS

866.376.0950 | LAWPAY.COM/CBA

AffiniPay is a registered ISO/MSP of BMO Harris Bank, N.A., Chicago, IL



MFA Co-founding Partner, David Figlioli, handles Worker's Compensation and Disability cases, as well as PEDAs and PSEBA claims in the office.

**POLICE & FIREFIGHTER
DISABILITY & PENSION CLAIMS**

REFER WITH CONFIDENCE

150 N. Michigan Ave, Suite 1100 · Chicago, IL 60601
(312) 372-9600 · MFA-LAW.COM

forensic accounting

Financial Investigations
Expert Witness Testimony
Damage Calculations
Fraud Examinations

Tracy Coenen, CPA, CFF
Chicago 312.498.3661
Milwaukee 414.727.2361
www.sequenceinc.com

sequence inc.
Forensic Accounting, Investigations, and Expert Services

Landex Research, Inc.
PROBATE RESEARCH

**MISSING/UNKNOWN
HEIRS LOCATED
NO EXPENSE TO ESTATE**

Domestic & International Services for:
Courts, Lawyers, Trust Officers,
Administrators, Executors

1345 Wiley Road, Suite 121
Schaumburg, Illinois 60173
Phone: 847-519-3600/800-844-6778
Fax: 800-946-6990
www.landexresearch.com

ADVERTISE

If you would like to reach out to more than 22,000 Chicagoland Lawyers with your message, try the **CBA Record** for as little as \$200 per issue.

Contact Joe Tarin at
jtarin@chicagobar.org

Legal Malpractice Insurance for CBA Members

Contact us to make sure you
get the best pricing on your
lawyers' professional
liability insurance.

Other CBA sponsored programs:

Life Insurance

Disability Insurance

Long Term Care

Health Insurance



Tyler T. Sill
Vice President | Sales & Marketing
CBA Administrators, Inc.
321 S. Plymouth Court, 6th Floor
Chicago, IL 60604
tsill@chicagobar.org
Ph. 312.554.2077
Fax 312.554.0312

Visit www.chicagobar.org/insurance
for complete details.



This is an evolving legal world.

This is embracing the future and leaving your competition in the past.

This is your essential legal research solution.


This is Lexis Advance.®

In a fast-changing world, Lexis Advance gets you to relevant results faster and more easily with comprehensive, current content delivered by cutting-edge technology.

Step into the future at

➔ thisisreallaw.com/lexisadvance



 LexisNexis®

LexisNexis, Lexis, Lexis Advance and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Copyright 2013 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LEX-2895