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From the Editor

Legal Conflict Rooted in Our History
By Azam Nizamuddin

Issues involving religion, American nationalism, the economy, same-sex marriage, and individual liberties continue to divide America as never before. On the other hand, we have seen this before. Early in our history, during the term of the second President of the United States, John Adams, Congress passed the infamous Alien and Sedition Acts of 1798, designed among other things, to weaken the opponents of the Federalist Party. Subsequently, during the presidency of Thomas Jefferson, a dispute between the executive branch of government and Congress led to the first significant Supreme Court decision, *Marbury v. Madison.*

As some of you know by now, I am a big fan of American legal history. I find it fascinating to discover the lived experiences and personalities of many of the founders of our nation. Part of my interest lies in the fact that our society is not monolithic. Today, we all take our cultural, racial, economic, and political diversity as a given – except perhaps in certain ideological quarters that seek to re-establish a particular homogeneous culture and ideology that is expressed politically. But the diversity of perspectives we find ourselves with today is not new and it has existed in the early years of our nation as America transitioned into a constitutional republic. This is particularly the case with respect to the intersection of state and religion. It is no accident that the role of state and religion is found in the US Constitution and embedded in the Establishment and Free Exercise Clauses. These two fundamental clauses of the First Amendment contain an inherent tension that continues to be the subject of cases in our federal courts.

But the tension embedded in the Establish-ment and Free Exercise clauses finds its roots prior to the ratification of the US Constitution and the First Amendment. I would like to share a dispute between our founders that highlights this ongoing tension of state and religion.

Prior to the ratification of the US Constitution, the thirteen American colonies approached the issue of state and religion in different ways. For example, in New England, the so-called “Puritans” sought to create a joint state and religious establishment based on the Christian Bible. This group was eventually part of the Congregationalist Church. On the other hand, arguably the most powerful and influential colony in late 18th century America was the Commonwealth of Virginia, which took a different approach. The Anglican Church, or formerly the Church of England, initially dominated Virginia. However, by the mid-18th century, other denominations were being established including Lutherans, Dutch Reformed, Baptists, Methodists, Roman Catholics and even Jews.

After the American Revolution, a more pluralistic environment developed which sought to balance the interests of competing church and religious institutions. Despite this developing pluralism, however, in 1785 the famed patriot Patrick Henry sponsored a bill in the Virginia legislature advocating a taxation bill in order to support religious teachers.

In response came the dynamic duo James Madison and Thomas Jefferson. Madison and Jefferson were from Virginia and both were vehemently opposed to the state sanctioning of religion. *(Continued on page 6)*
Thoughts on Legitimate Tax Avoidance

What's your biggest expense?

House payments? Car payments? College expenses?

For most of us and our clients, the real answer is Income Taxes.

Unfortunately, most of us do not have proactive tax professionals. We use historical tax advisors who look at what we did in the past; complete appropriate forms; and then tell us how much we owe. The only prospective tax advice that we receive is provided when our estimated future year quarterly tax payment costs are computed.

Supreme Court Justice Louis Brandeis, likened legitimate tax avoidance to taking the freeway instead of taking the tollway. On the other hand, he stated, “If, however, I drive through the toll booth without paying the toll, I would be committing tax evasion.”

Tax attorneys have traditionally looked at what people are doing and then given them proactive ideas of how to legitimately reduce future taxes.

Today, estate planning clients want sound legal counsel on how to achieve their life and legacy goals in the most efficient tax cost manner. They want to enjoy the benefits of lower taxes while they are alive, as well as lower taxes for their loved ones upon their death.

At Law ElderLaw, we have experienced advocates to provide tax-smart proactive advice. We always say that planning to live is more important than planning to die.

At Law ElderLaw, we can help you or your clients reduce the biggest expense!

Rick L. Law, Esq.
In June, my predecessor handed over the reins of the DCBA and my name was next on the ledger card. With great humility and along with the DCBA Board and staff, we have made sincere efforts to enlighten, inspire and excite our members regarding the practice of law in DuPage County over the past several months.

We have yet to exhaust such efforts and continuing through 2018, our commitment is strong. Being mission-focused and through the continued advancement of our profession, we intend to infuse a passion and energy into each of our professional lives throughout the coming months.

At our leadership retreat held this past fall, we worked on adapting to the new legal environment, figuring out how we can provide the right mix of benefits and opportunities to more members, while maintaining all of the programs that have made our association meaningful and important in the lives of lawyers for many years.

Fundamentally, I continue to believe in the value in gathering as a professional group. We’ve got a great “think tank” of younger lawyers figuring out what future lawyers in our community will want and need from their association, as well as senior lawyers considering how they can best serve the legal community with their unique and experienced perspective.

Further, I am a believer that the more you contribute to the progress of your profession, the better lawyer you will ultimately become. Maybe it sounds a bit corny, but this belief is based on personal experience and the many stories of lawyers that are regularly involved in the DCBA’s activities.

With that, I will put out an invitation and New Year’s resolutions for you to accept. Let’s make the next year an example of what it means to be a great advocate, an educated attorney, and a versatile professional. We will be better attorneys and people as a result.

As emphasized at our monthly meetings, the DCBA Board and the Brief are resolved to ensure that we listen to our membership and continue to be a resource for each member. How? By providing free CLE to members; continuing support of Legal Aid and the Bar Foundation; supporting our judiciary; engaging in current legal issues; publishing related articles; and finally, by promoting civility and professionalism within the practice.

Finally, as we move into 2018, as a DCBA member, you will be surrounded by the most dedicated and competent legal professionals anywhere. We can all be proud that lawyers in this circuit have long held a reputation for showing intelligence, candor, diligence, and respect to the judiciary, courtesy to opposing counsel, and uncompromising loyalty to their clients. A keen tradition of professionalism has long been the hallmark of DuPage County lawyers.

And if you have ideas about how the DCBA can improve, please let us know. Share your ideas about what we can do for you. We welcome and serve all of our members – regardless of how you connect with us.

On behalf of the DCBA Board and dedicated staff of the DCBA, we wish you a Happy New Year. We hope to see you often.
May this New Year bring you many blessings and achievable resolutions.

Editor's Message (Continued from page 3)

For Jefferson, religion had to be extricated or walled off from the government such that it did not unduly burden the smooth functioning of the state. For Madison, religion was free to exercise its continuous role in society but without government sanction. Madison's influence and political acumen in the arena of religious freedom was on full display in the famous dispute with his bitter political foe, Patrick Henry. In opposition to Henry's bill, Madison wrote one of the most important essays in US history called the “Memorial and Remonstrance Against Religious Assessments.” Madison vigorously called for the defeat of this bill by saying:

“Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man.”

Due to Madison's persuasive abilities and clarity of thought, the Virginia legislature voted to defeat Patrick Henry's bill. The event, coupled with the passage of Jefferson's Bill for Establishing Religious Freedom, preceded the convening of the Constitutional Convention a couple of years later. As a result of both state establishment of religion as in New England and a more pluralistic attitude in Virginia and elsewhere, we can see the eventual development of the Free Exercise and Establishment clauses.

As we said our goodbyes to 2017, we begin 2018 in the DuPage County legal community with a new Chief Judge, Dan Guerin. The DCBA Brief would like to thank his predecessor Kathryn Creswell for her steady leadership and contribution to the DCBA community in particular.

Judge Guerin is a highly respected judge with impeccable trial and judicial experience. This month’s issue includes a biographical essay about Judge Guerin. We wish him much success in his new position. For our January issue, we would like to thank former Editor in Chief, Tony Abear as the Articles Editor. As usual, we have several important articles this month. We begin with an analysis of American Disabilities Act when an employee’s status is on trial. We appreciate their timely and helpful contribution to the DCBA Brief. Former Judge Michael Panter provides a narrative of negotiation lessons he has garnered over the years. Thanks also to our colleague Christine McTigue for the case law updates in January.

May this New Year bring you many blessings and achievable resolutions.
Tony Abear is a graduate of Montini High School in Lombard, Illinois; a graduate of the University of Illinois in Champaign/Urbana, Illinois; and a graduate of DePaul University College of Law in Chicago, Illinois. Tony owns Abear Law Offices. He is a lifelong Cubs fan, reportedly a terrific dancer, and exceedingly humble. And he has a good sense of humor.

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32 Illinois Law Update
- Editor Christine Olson McTigue
Let’s say an employee with a known disability walks into his supervisor’s office. An argument ensues over, (1) the employee’s request for a reasonable accommodation and (2) the supervisor’s critique of the employee’s job duties. The employee’s outburst goes from a profane tirade to physically grabbing the supervisor by the arm to get his attention. The employee is terminated on the spot.

The employee files a discrimination charge with the Equal Employment Opportunity Office (“EEOC”) and after an investigation, obtains a right-to-sue letter, whereby he files suit in federal court. After discovery is completed, the employer moves for summary judgment claiming that the employee’s argumentative behavior (even if partly caused by his disability and during the request for a reasonable accommodation) is not protected under the Americans with Disabilities Act (“ADA”).

One might think that the employee has a tenable case. After all, he is disabled, the supervisor knew about it, the disability may have contributed to his outburst and it occurred in the context of discussing a reasonable accommodation. However, given the right facts, the employer has a strong case that the termination was not based on a disability, but rather occurred because of misconduct that is not tolerated at any level in the workplace.

Even if an employee claims to have a disability, the ADA acts as a shield to protect the employee for disparate treatment on the basis of the disability. It does not however, give employees greater protections under the law or otherwise insulate behavior that an employer would not otherwise tolerate from non-disabled employees. This article will explore the ways that an employee may be hard pressed to show a discriminatory motive based on the employee’s own bad behavior.

**Prima facie case**

Proving discrimination comes in one of two ways. The first is finding direct evidence, such as an admission by the employer...
that the party was terminated because of a protected characteristic. This is rare. The second (and often used) method is the indirect way: 1) a showing that the employee falls into a protected category; 2) was performing up to the employer's legitimate expectations; 3) suffered an adverse action (e.g., termination); and 4) similarly-situated employees outside the protected class (viz. non-disabled) were treated better. This method attempts to isolate the variables that could result in a non-discriminatory reason for a termination. If the plaintiff and comparable employee(s) outside the protected class are the same except for (in this case) a disability, the inference can be made that the disability caused the termination.

Insubordination
The ADA is not a statute that requires "just cause" for discharges, so at-will employment is still alive and well in Illinois. If an employer knows that an employee is disabled and the employee engages in insubordination, the latter conduct is legitimate grounds for termination. An employee becoming upset with a co-worker to the point of causing disruption at work is not ADA-insulated behavior. "An essential function of almost every job is the ability to appropriately handle stress and interact with others." If a disabled employee fails in this regard, the employee is at risk of disciplinary action, including possible termination. Taking this a step further, insubordination shows that an employee is not meeting his employer's legitimate job expectations. Insubordination comes in all shapes and sizes. On the lesser end of the spectrum is not following orders; on the other end is violent behavior towards supervisors and co-workers.

Reasonable Orders
There is a bit of irony when one of the orders (or requests) by an employer is that the employee produce documentation to substantiate medical absences from work. For example, in the construction trade, the health of a worker could impact not only that worker's job safety, but also the safety of co-workers. An employer that is left in the dark on repeated absences would certainly want some information from the employee about time missed. The employer could require the employee to bring a doctor's note — a reasonable request. A refusal is insubordination, even if the employee is claiming he is disabled.

The ADA also does not prohibit employers from controlling the work environment. If an employee is insubordinate and refuses to follow orders, this is legitimate grounds for discipline. The ADA also does not protect a disabled worker who, for reasons unrelated to the disability, performs work in an unsatisfactory manner and fails to follow the employer's general work standards. This issue dovetails into one aspect of the plaintiff's ADA case — whether he could perform the job according to the employer's legitimate expectations. If the employee cannot satisfactorily show this at the summary judgment stage, the case falters because the disability was not the but-for cause of the adverse action.

Violent behavior
Not surprisingly, the ADA "does not require an employer to retain a potentially violent employee." The ADA only "protects a 'qualified' employee, that is, an employee qualified to do the job for which he or she was hired; and threatening other employees disqualifies one." In Palmer v. Circuit Court of Cook County, Ill., the court found no evidence that plaintiff was fired because of her mental illness; rather, she was fired because she threatened to kill another employee. While the cause of the threat may have been plaintiff's mental illness, the fact that the unacceptable behavior was precipitated by a mental illness does not afford protection under the ADA.

This makes logical sense. Retaining a known violent employee (regardless of the cause) subjects the employer to a negligent

About the Author

Brian M. Dougherty is a partner in the litigation group at Goldstine, Skrozdzi, Russian, Nemec and Hoff, Ltd. His practice area includes representing employees and employers in employment disputes arising under state and federal law, commercial landlord-tenant matters and business torts. Brian is currently the Associate Editor on DCBA Editorial Board.

4. Mayo v. PCC Structural, Inc., 795 F.3d 941, 944 (9th Cir. 2015).
5. Williams v. Airborne Exp., Inc., 521 F.3d 765 (7th Cir. 2008).
6. Habib v. NationsBank, 279 F.3d 563, 566 (8th Cir. 2001) (refusing to supply a doctor's note to substantiate an illness has been held to be insubordination).
8. Id.
9. Palmer v. Circuit Court of Cook County, Ill., 117 F.3d 351, 352 (7th Cir. 1997).
10. Id. at 352.
11. Id.
12. Id.; Newland v. Dalton, 81 F.3d 904, 906 (9th Cir. 1996) (termination was not retribution for alcoholism, but rather in response to attempting to fire a rifle in a bar).
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retention claim if it could pose a safety risk to other employees. Employers should be allowed to terminate such employees without subjecting themselves to ADA liability. If not, then this places an employer in a Hobson's choice – pick your poison – a state-law tort claim or a federal claim. The ADA is not meant to be that heavy handed.

This also applies when the employee is requesting a reasonable accommodation. At some point in the ADA-mandated interactive process, an employee's behavior may cross the line into unprotected behavior. For example, in a recent Seventh Circuit case, the employee claimed that he was engaging in the interactive process with a general foreman which devolved into a profanity-laced tirade from the employee and his employee grabbing the general foreman. The court found that the employee halted the interactive process by his defiant behavior. Thus, even if an employee can show that he was disabled at the time and that an accommodation existed, an employer can justifiably terminate the employee without being liable under the ADA.

**Suspicious Timing and Misbehavior**

One argument used by employees is the timing between the disclosure of the protected activity (informing the employer of a disability and the need for an accommodation) and adverse action, such as an employee being terminated. If the latter comes on the heels of the former, this would tend to support the argument that the protected activity motivated the adverse action. But there could be an intervening event that motivated the adverse action. For example, an employee walks into a supervisor’s office, says he has a disability that needs accommodating. The employer requests more specifics and ask for medical documentation, and then the employee becomes severely agitated and starts “tearing apart” his boss's office. The supervisor then fires the employee. On summary judgment, the trial court would be hard pressed to deny judgment given the employee's disruptive behavior – an intervening event. “[W]here ‘significant intervening event’ separat[es] an employee’s protected activity from the adverse employment action he received, a suspicious timing argument will not prevail.” The reason is that the employee's behavior (in this case) had nothing to do with the ADA’s interactive process. This process requires the parties to engage in good faith discussions about the need for an accommodation. An employer may have too little information to determine what type of accommodation an employee needs, thus requesting more medical information from the employee. If the employee does not cooperate, the interactive process fails and the blame falls on the employee. The interactive process impliedly requires the parties to

14. Id. at 5.
15. Loudermilk v. Best Pallet Co., 636 F.3d 312, 315 (7th Cir. 2011).

The ADA is not a statute that requires just cause for discharges, so at-will employment is still alive and well in Illinois. If an employer knows that an employee is disabled and the employee engages in insubordination, the latter conduct is legitimate grounds for termination.”

17. The interactive process contemplates an employee providing information to the employer that only the employee can access; if the employee refuses, he is not acting in good faith. Beck v. University of Wisconsin Bd. Of Regents, 75 F.3d 1130, 1135, 1137 (7th Cir. 1996) (“A party that fails to communicate, by way of initiation or response, may also be acting in bad faith.”) (emphasis added); 29 C.F.R. Appx. § 1630.9; Equal Employment Opportunity Commission, Employer-Provided Leave and the Americans with Disabilities Act, at 5 (May 9, 2016) (“An employee requesting leave as a reasonable accommodation should respond to questions from an employer as part of the interactive process …”) https://www.eeoc.gov/eeoc/publications/ada-leave.cfm (visited May 17, 2016).
operate with a certain amount of decorum. If the employee, while engaging in the process, becomes verbally abusive, that too could cause the process to fail. At some point, requesting an accommodation can cross the line into misbehavior so that it is no longer protected.\textsuperscript{18}

Another situation could arise when the employee violates a workplace policy, and then seeks an accommodation of the employer’s overlooking the infraction. The ADA, however, does not require employers, as an accommodation, to excuse past misconduct, or in other words, apply retroactive leniency.\textsuperscript{19} The EEOC agrees, holding that the ADA is prospective only.\textsuperscript{20} The various courts of appeal that have considered this are all in accord with this view.\textsuperscript{21} An employer could get into hot-water if it applied different standards to disabled and non-disabled employees when handling performance deficiencies. This could be part of a plaintiff’s pretext argument.

**Similarly-Situated Employees**

One of the biggest difficulties with the indirect method approach is locating a similarly-situated employee that was not in the protected class (viz. not disabled) and treated better than the plaintiff. “Whether two employees are "similarly situated" is a common sense inquiry that depends on the employment context.”\textsuperscript{22} “All things being equal, if an employer takes an action against one employee in a protected class but not another outside that class, one can infer discrimination.”\textsuperscript{23} “The ‘similarly situated’ prong establishes whether all things are in fact equal.”\textsuperscript{24} “To make this showing, a plaintiff need not present a doppelganger who differs only by having remained in the employer’s good graces.”\textsuperscript{25} “But the comparator must still be similar enough to eliminate confounding variables, such as differing roles, performance histories, or decision-making personnel, [so as to] isolate the critical independent variable: complaints about discrimination.”\textsuperscript{26}

This is easier said than done because while a clone employee need not be presented (and would be nearly impossible to find in the targeted company), it is not that difficult for an employer to offer sound reasons why the plaintiff was disfavored and another employee was not. The similarly-situated analysis then becomes a battle over differentiating conduct without any clear guidance from the courts.

For example, if the plaintiff suffered from tardiness and personnel difficulties, and a comparator did not, then that may be enough to show that the two employees are dis-similar.\textsuperscript{27} What about a factor that is not documented, like a supervisor’s opinion of the plaintiff? If a supervisor has a negative opinion (that may come out at a deposition) of the plaintiff, this too could be enough to show dissimilarities.\textsuperscript{28}

Other factors can be more objective. If a comparator’s salary is substantially lower than the plaintiff’s, this too is a materially differentiating factor.\textsuperscript{29} A plaintiff with a longer tenure at a job might be on a shorter leash when compared with a newer employee who needs time to grow.\textsuperscript{30} In those situations, an employer would be expecting more in terms of a performance from a longer-tenured worker when compared with one who might be learning the ropes and earning a lesser salary.\textsuperscript{31}

This is what makes discrimination cases so difficult when using the indirect method of proof. If an employer digs deep enough, it could probably find dissimilarities between the plaintiff and co-workers that supports the differentiation in treatment.

**Pretext**

Once the employer produces evidence of a non-discriminatory motive, the burden shifts to the employee to show that the employer’s reason was a pretext.\textsuperscript{32} What matters is whether the employer honestly thought the employee engaged in the

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18. See Jennings v. Tinley Park Cmty. Consol. Sch. Dist. No. 146, 864 F.2d 1368, 1375 (7th Cir. 1988) (holding “that an employee may not use legitimate opposition to perceived unlawful employment discrimination as a gratuitous opportunity to embarrass a supervisor or thwart his ability to perform his job.”).
20. Id. at 31.
21. Id. at 32.
22. Filar v. Bd. of Educ. of City of Chicago, 526 F.3d 1054, 1061 (7th Cir. 2008).
23. Id. (citation omitted).
24. Id.
25. Id.
26. Id. (internal quotations marks and citation omitted).
27. Balderston v. Fairbanks Morse Engine Div. of Coltec Indus., 328 F.3d 309, 322 (7th Cir. 2003).
28. Id.
29. Id.
31. Sartor v. Spherion Corp., 38 F.3d 275, 279-80 (7th Cir. 2004) (substantial difference in work experience is differentiating factor).
32. Serdyn, 656 F.3d at 551.
misconduct and whether that belief motivated the employer’s decision to take action.\textsuperscript{33} For instance, if an employee argued that he was not the aggressor in a confrontation with a co-worker that precipitated his discharge, that type of evidence may be insufficient to create a genuine factual dispute because it does not speak to the employer’s beliefs at the time the decision was made.\textsuperscript{34} An affidavit like that only speaks to the employee’s state of mind and his interpretation of events. But the courts repeatedly have said that they do not sit as super-personnel departments to judge the wisdom of disciplinary decisions, so how the employee characterizes the event will not carry the day.\textsuperscript{35}

Conclusion

Some employees (wrongfully) believe that once an employer is notified that the employee is disabled and/or requests a reasonable accommodation, that the employee is otherwise protected for otherwise termination-worthy behavior. Such is not the case, as the courts have shown time and time again. It is not that difficult for an employer to show a legitimate reason for termination that is unrelated to a disability. This is even more so when there is some minor dispute between the employee and employer as to what actually triggered a misconduct-based termination. An employer’s good faith belief on the fateful interaction could be just enough to prevent the case from heading to a trial. □

\textsuperscript{33} Buie v. Quad/Graphics, Inc., 386 F.3d 496, 505 (7th Cir. 2004).
\textsuperscript{34} Id.
\textsuperscript{35} Stephens v. Erickson, 569 F.3d 779, 788 (7th Cir. 2009).
With the ever present danger of identity theft, people must be vigilant in the protection of their information and be aware of dangers beyond just someone tampering with their personal information for financial gain only. Another form of identity theft that is increasing at an alarming rate is criminal identity theft, or the deliberate use of someone else’s personal identifying information without his or her permission to impersonate them and commit deception or other crimes. The person whose identity has been assumed fraudulently by another may suffer adverse consequences, especially if they are held responsible for the perpetrator’s actions.

Attorneys must look to any available avenues to assist clients when they are victimized, as it can be difficult for the victim of criminal identity theft to recognize exactly what is going on and it can be exceedingly difficult to clear their marred criminal record, therefore leaving them feeling violated and helpless. Following are some examples of scenarios showcasing aspects of this increasing area of concern and this article outlines how to formulate a plan to assist clients that are victims of such deception.

Scenario I
One day you get a call from a Client or prospective Client. He or she was driving along some evening, possibly coming home with groceries, when all of a sudden the flashing lights of a squad car came up behind their car. It seemed that law enforcement was attempting what appeared to be a routine traffic stop. At the time Client thinks, “I wasn’t speeding, I stopped for that traffic light, I know I didn’t miss that stop sign, my plates are current, where’s that darn insurance card?!”

Client dutifully pulled over and waited for the officer to walk up to his window. However, what came next from the police was loud, verbal direction to show his hands, get out of the car slowly, place hands on the hood, etc. Thereafter Client spent the next hour or more, either right there in the street or otherwise down at the police station, trying to prove who he is and that he does not have a warrant out for his arrest.

Worse than this scenario, consider a variation where Client receives a knock at his hotel room in the middle of the night. Seems that his license plate was “run” in the parking lot by local law enforcement and it showed a warrant for his arrest. Now the police are at his hotel room door and looking to take him into custody.

By the time the Client comes to see you he will likely have a pretty good idea who used his name as an alias name. That person will be the person who is the actual person that law enforcement seeks pursuant to that person’s conduct and for which there is an outstanding criminal warrant; unfortunately your Client’s name will be reflected as a known alias. That person that used your Client’s identity will likely be someone Client knows and it is likely a family member, a friend, an in-law, etc. If Client knows where that person is and has no reservation about reporting same to the authorities, he should do so and hopefully the properly served warrant will execute and your Client will be exonerated. However that may not occur.

The Steps to Take
If Client does not know the whereabouts of the warrant subject, short of directing your Client to change his name, you will need to take steps to try and get that warrant quashed. Firstly, find out the status, details and case number associated with the warrant(s) through whatever means you have at your disposal. Next, prepare a “Petition to Intervene and Motion to Quash” citing Illinois Code of Civil Procedure §5/2-408 (735
ILCS 5/2-408). Yes, the Code of Civil Procedure. While 735 ILCS 5/2-408 is ordinarily used for intervention within civil proceedings, such is also used as a proper method for intervention within criminal proceedings.\(^1\)

Said petition needs to establish a basis for intervention and relief. Identify that your Client is a resident of the State of Illinois, a resident of the relevant county, and as such a “person” of the State of Illinois. Next, further identify that on information and belief there is currently a warrant for arrest pending against the real subject of the warrant and that it is not proper against the movant / your Client. State the relationship between your Client and the real subject of the warrant.

Your petition should identify that on one or more occurrences, prior to issuance of said warrant, that the real subject of the warrant usurped Client’s identity resulting in Client’s name being identified as an alias of the real subject. This is an act of identity theft. As a direct result of the identity theft, the real subject’s use of Client’s name as an alias name causes Client to be the subject of investigation and inquiry by law enforcement who believe they have apprehended the real subject when encountering Client.

Your Client has been deprived of his personal liberty. Such deprivations of Client’s personal liberty may include multiple incidents. You should identify them in affidavit form which you will attach to the pleading. Identify how many times Client has been pulled over, how much time he has spent at the police station, how many times he has been temporarily detained by the police.

Further, each time your Client is detained by law enforcement, and each time his license plate is randomly checked, he is bound by the pending charges and warrant because your Client has suffered the criminal identity theft. Yet your Client’s rights as a “person” of the State of Illinois are not being properly represented by the state, notwithstanding efforts by Client both individually and through your office to resolve the situation informally (which will also be outlined in Affidavit form).

Additionally, if you or your client has been able to determine the whereabouts of the real subject (for example that the real subject of the warrant is in custody outside the jurisdiction or that he is deceased) then certified copies of record in support thereof need to be included with your petition. The prayer for relief will request granting of the Petition to Intervene and further request quashing of the pending warrant.

At a hearing on your petition, the necessity of testimony from your Client is dependent on the circumstance. For example, if through original certified public records tendered to the court, you are able to show the real subject of the warrant is deceased it is unlikely that you will need testimony from the Client.

Remember, regardless of the status of the real subject (incarcerated elsewhere, deceased, etc.), you need to get this in front of the court at which time you will be able to argue on behalf of your Client. The ultimate result at hearing will depend on the facts of your particular case but your ultimate goal, regardless of how it looks on the court order, is having the warrant quashed.

Scenario II

You get call from another Client with another report of a different series of events. Client just received a “Notice to Appear” and a “Petition to Revoke Court Supervision” for failing to pay a traffic ticket fine as part of a guilty plea in a traffic case. On further inquiry with the local office of the Illinois Secretary of State, Client finds out he has a traffic ticket conviction in a different county on his driving record. However, perhaps your Client has never even been pulled over by the police of that county.

Unlike Scenario I, your Client is less likely to know who is passing themselves off as your Client at traffic stops. In this scenario, a police officer likely simply accepted the subject’s proffered identify when that subject said he did not have his driver’s license on his person. However, in that instance where a police officer accepted the excuse of the real subject for not

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In our prosecution and defense of class actions throughout the United States in Federal and State Courts, we are proud of our recent accomplishments, which include the following:

**RECENT CLASS ACTIONS**

**Breach of Warranty Claims for Consumer Products**
We have obtained class certification or are pursuing class actions in numerous state and national product defect cases involving products such as automobiles, faucets, infant car seats, laptops, and windows. We achieved trial, appellate and state Supreme Court victories in some of these cases affirming class certification and have entered into settlements in a number of these cases that benefitted class members.

**Data Breach and Privacy Violation Cases**
We are currently representing consumers in class action cases involving data breach and privacy violation claims affecting tens of millions if not hundreds of millions of consumers.

**Junk Text Messages and Autodial Voicemail Solicitations**
Represented a national settlement class of consumers who received alleged junk text messages from various national chains or corporations such as Domino’s Pizza, Cox Media, Burger King and Mattel. Each class member who made a claim to receive $105 or their pro rata share of the fund if there were not sufficient funds to pay $105. The total settlement fund was $16,000,000.

**Overcharges in Consumer Invoices Such as Phony Tax Charges**
Court certified a class of all customers of a national hotel chain’s large hotel. Following successful interlocutory appeal, judgment in favor of the class for millions of dollars in damages, prejudgment interest and all attorneys’ fees. Affirmed on appeal. Class received in excess of 90% of overcharges with monies being mailed to each class member following win on appeal. Settled identical cases on a class-wide basis against numerous other national hotel chains.

**Vocational School Violation of Illinois Law Requiring Accurate Disclosure of Employment Statistics**
Court certified class seeking millions of dollars in refunds and other damages for all students who took a medical sonography course but did not obtain jobs in the field. The class claimed that Defendant violated the Consumer Fraud Act’s provision for vocational schools by failing to disclose that very few graduates obtained jobs. Appellate and Supreme courts refused to hear an appeal of class certification order.

**Breach of Contract and Gift Card Cases**
Represented national class of consumers that received a $25 purchase reward card that allegedly did not contain an expiration date but which defendant claims should have contained an expiration date and will no longer honor. Class action certified by District Court and 7th Circuit denied request for interlocutory appeal of class certification. In separate state court suit, class certification approved by New Jersey appellate court.

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**Unpaid Overtime Class Actions**
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**Auto Repossessions**
Class certification order affirmed by the Appellate Court. 365 Ill.App.3d 664. Represented class with co-counsel in claims involving alleged violations of Illinois automobile repossession laws. Case settled with each of the over 7,600 class members able to claim up to $2000. In addition to the damages payment, debt totaling $6.5 million was forgiven to as all class members as part of the settlement.

**Hidden Voice Mail Charges in Telephone Bills**
Court certified consumer fraud claims for failure to disclose hidden voicemail charges. In 2005, Crain’s Chicago Business listed the settlement as the third highest settlement/verdict in Illinois.

**Class Action Defense**
Defended national marketing company in four Fair Credit Reporting Act class claims seeking over $100,000,000 brought in federal courts in Chicago and Maryland. Defended national residential mobile home rental chain in consumer fraud claims. Defend a number of large to mid-size companies in class claims throughout the country including defending a landlord in class claims alleging violations of Illinois security deposit laws, a municipality in claims involving alleged illegal fines, and a medical services finance company regarding alleged illegal loans for plastic surgery procedures. Also act as advisors and co-counsel with attorneys who have asked us to assist them in defending their clients against class claims.

We enter into referral and co-counsel agreements with attorneys who assist us in prosecuting class action or whistleblower claims.

We are also investigating the following Potential Claims:

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Manufacturers, retailers and advertisers who materially misrepresent how a product works or performs or who knowingly sell a materially defective product.

Junk text messages received from national or well-established companies.

**Areas of Interest:**

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Whistleblower (Qui Tam) Claims
Unfair Check Overdraft Fees
Healthcare Product Fraud
Defective Car & Vehicle Products
Insurance Fraud
Fair Credit Reporting Act – FCRA
Fair Debt Collection Practices Act – FDCPA
Privacy Violations
Violation of Car Repossession Statutes
Vocational School Deception
Excessive Late Charges
Infomercials & Deceptive Advertising
producing a state issued identification, that officer would at minimum still require the subject operator to provide a driver’s license (DL) number and a description of the vehicle; that information will appear on the citation.

The first step in this scenario is for you or your Client to obtain a copy of Client’s driving record, the court version, which has to be requested specifically from your local Illinois Secretary of State driver’s license facility. It will show everything regarding the Client’s DL to date. Then obtain copies of all court records from the traffic cases listed. The records will show dates, times, counties and vehicles involved in the traffic stop. This information, along with whoever would be close enough to your Client to have memorized his DL number, will narrow down the possible identity of the person who perpetrated the fraud. Remember though, your goal is not prosecution of criminal action, your goal is to clear your Client’s driving record.

Thereafter prepare a “Motion to Vacate and Dismiss” citing Illinois Code of Civil Procedure §2-301 and 1-1401 (735 ILCS 5/2-301 & 735 ILCS 5/2-1401). Yes, just as in the scenario before: the Code of Civil Procedure. Although a section 2-1401 petition is usually characterized as a civil remedy, its remedial powers extend to criminal cases. §2-301 requires that prior to the filing of any other pleading or motion, a party may object to the court’s jurisdiction over the party’s person on the ground of insufficiency of process or insufficiency of service of process. You are filing a motion to dismiss the entire proceeding or any cause of action involved in the proceeding by filing a motion to quash service of process. As it relates to your Client, he has never been served.

In addition to statutory and case citation, your motion should include a recitation of all details contained in the traffic citation highlighting the date, time and location of the citation. Also include an affidavit containing all information and documentary support necessary, if possible, to reflect that your Client was nowhere near the traffic stop and could not have been the person who committed the cited violation. Include in your argument that judgment was entered absent any jurisdiction over petitioner, coupled with said judgment having been fraudulently obtained, that said judgment is void as to your Client, the petitioner. At hearing thereon, your Client should be ready to appear and give testimony if needed.

Subsequent to filing your petition, notify the Secretary of State of Illinois Fraud Unit to request what is called a “protective stop” on your Client’s DL. Your request will include a copy of what you have filed with the court and request a “Law Enforcement Protective Stop” designation be applied to your Client’s DL. Once applied, in the event of a police stop wherein a person asserts your Client’s name, regardless of what the driver may tell the police officer, the driver will be required to produce the actual physical DL.

Criminal identity theft may be far from the most common type of identity theft, but while it is lesser known it causes significant damage. Victims of criminal identity theft find themselves in unique situations, and attorneys must look to any available avenues to assist clients by providing them the rights and remedies available under all available laws.
The Uniform Fraudulent Transfer Act: An Analysis of Its Broad Application

By Anne M. Skrodzki

The Uniform Fraudulent Transfer Act (“UFTA”) was initially drafted by the National Conference of Commissioners on Uniform State laws in the mid-1980’s as a successor to the 1918 Uniform Fraudulent Conveyance Act (“UFCA”) and more recently revised as the Uniform Voidable Transactions Act (“UVTA”) in 2014. Illinois adopted the 1984 version of the UFTA in 1989. The UFTA itself, at the intersection of state law and Federal civil, criminal and bankruptcy law has developed a robust caselaw, which in part, the 2014 amendments seek to address. With further revisions on the horizon, it is useful to examine the implementation of the UFTA in Illinois as well as the proposed revisions to the UFTA and potential effects on Illinois practitioners beyond its usual application.

Background
The UFTA developed as a significant change to the UFCA necessitated, in part, by the revisions to the Bankruptcy Code enacted in 1978, as well as the effect of the near-universal implementation of the UCC. The core purpose of the law remained unchanged: to define actual and/or constructive fraud in transactions by debtors and, therefore, determine which transfers subsequent creditors could seek to void.

The text of the UFTA states:

“A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: (1) with actual intent to hinder, delay or defraud any creditor of the debtor; or (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor: (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.”

The text of the law goes into further detail in attempting to define “actual intent” by elucidating eleven factors to be considered when evaluating the intent of a debtor:

“(1) the transfer or obligation was to an insider; (2) the debtor retained possession or control of the property transferred after the transfer; (3) the transfer or obligation was disclosed or concealed; (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit; (5) the transfer was of substantially all the debtor’s assets; (6) the debtor absconded;
(7) the debtor removed or concealed assets;
(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.9

The 1984 UFTA changed the term “conveyance” to “transfer” in its title due to the common understanding that the term “conveyance” connotes a transfer of real property and not other kinds of property.10 The tentacles of the UFTA are in fact far-reaching and intersect with almost every area of legal practice. In addition to creating a direct cause of action, the UFTA is frequently implicated in bankruptcy proceedings and indeed has been integrated into the U.S. Bankruptcy Code.11 While the Bankruptcy Code has an independent version of the UFTA, it also explicitly authorizes trustees to use applicable state law to avoid a transfer12 – which, under Illinois law, has the effect of lengthening the look-back period to four years.13 The extensive body of precedent in bankruptcy jurisprudence reflects that the analysis of individual transactions is highly fact specific and offers significant room to argue.14

Non-Traditional Uses

The extensive litigation generated by future creditors should catch the attention of transactional practitioners in the areas of both estate planning and corporate law. The UFTA can be used to seek recovery from an individual after corporate assets have been transferred into individual control, as a parallel or alternate course of action to seeking the piercing of a corporate veil.15 Therefore, corporate practitioners should be familiar with the UFTA and should consider whether transactions – including distributions, accelerated loan repayments, or even leveraged buyouts16 – might run afoul of the UFTA. Estate planners should also therefore be wary – since much of estate planning includes transfers to insiders for no or non-equitable value, an estate planner should be aware not only of the source of the funds in an individual’s estate (whether funds were potentially subject to a UFTA avoidance upon their transfer into the estate) but also of the individual’s overall net worth and the value of the planned transfers to trusts or other individuals in proportion to the same, in order to circumvent an argument that they caused insolvency with relation to existing or future creditors.

The UFTA has some application in more unusual fields. For example, family law practitioners may utilize the UFTA to attack transfers of allegedly marital property.17 While the elements of a fraudulent transfer somewhat overlap the concept of the dissipation of a marital estate as set forth under the Illinois Marriage and Dissolution of Marriage Act (“IMMDA”),18 the UFTA offers the advantage of the remedy of avoidance of the transfer where the marital estate has been largely or completely alienated. In addition, parties to a dissolution proceeding should be cautious regarding discovery in situations where the UFTA may be implicated, as it has been used to avoid transactions to a wife in partial satisfaction of obligations under a marital settlement agreement.19

9. Id.
17. See, e.g., In re Marriage of Romano, 2012 IL App (2d) 091319 (March 21, 2012); Wachowski v. Wachowski, 2017 Ill App (2d) 160416-U (March 17, 2017); In re Marriage of Shuff, 2015 IL App (2d) 140297-U (March 12, 2015); In re Marriage of Del Giudice, 287 Ill.App.3d 215 (1997).

About the Author

Anne M. Skrodzki is an associate and leads the Family Law practice group at Goldstine, Skrodzki, Russian, Nemec and Hoff, Ltd. in Burr Ridge, IL. She focuses on all areas of Family Law, including prenuptial agreements, divorces, and custody disputes, and is also a trained Family Mediator. She also contributes to the Estate Planning practice group and has been named a 2017 Emerging Lawyer in Family Law, Family Law Alternative Dispute Resolution, and Estate Planning, Trusts and Wills.

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310 South County Farm Road, Suite J, Wheaton, Illinois 60187
New Amendments on the Horizon?
The 2014 Amendments suggested and approved by the Uniform Law Commission did not make substantive changes to either section of the law quoted above (except to update the term “fraudulent” to “voidable”). The committee explained that the 2014 revisions were not meant as a significant rewrite of the substance of the law, but rather contained minor updates to terminology. Indeed, the most significant revisions were made to the comments, in order to incorporate updates to definitions and explanations that reflected current application of the UFTA in caselaw. However, practitioners should keep in mind that the 2014 amendments (which have not been enacted in Illinois) change the special definition of “insolvency” for partnerships. In the Illinois Compiled Statutes, the exception reads as follows:

“A partnership is insolvent under subsection (a) if the sum of the partnership’s debts is greater than the aggregate, at a fair valuation, of all of the partnership’s assets and the sum of the excess of the value of each general partner’s nonpartnership assets over the partner’s nonpartnership debts.”

This section is deleted in its entirety in the 2014 update in order to address two failings of this language: first, that “the general definition of insolvency . . . does not credit a non-partnership debtor with any part of the net worth of its guarantors.” This creates an inequity between partnership and non-partnership debtors that is otherwise inexplicable and therefore unjustified. Additionally, the credit to the partnership for the net worth of its individual members only makes sense if the members are also wholly liable for the debts of the partnership – and not if the partners’ net worth is not available to the partnership for use in debt satisfaction.

Conclusion
The UFTA remains a useful tool in the arsenal of civil litigators and an area of law with which transactional attorneys must familiarize themselves, as it has far reaching implications in many practice areas.

22. UNIFORM VOIDABLE TRANSACTIONS ACT (2014).
23. 740 ILCS 160/3 (c)(2016).
25. Id.
Eliminating the Statutes of Limitations for all Sexual Assault Crimes

By Alex Yorko

On March 29, 2017, the Illinois Senate passed Senate Bill 189 unanimously, which seeks to eliminate “the statute of limitations for all felony child abuse and sexual assault crimes.” Then, on May 18, 2017 the Illinois House passed the bill unanimously as well. In August 2017, Governor Rauner signed the bill into law thus eliminating the “statutes of limitations for all felony criminal sexual assault and sexual abuse crimes against children.” The law became effective immediately in August when Governor Rauner signed it. Herein is a review of whether this proposal could lead to an increase of wrongful convictions. Additionally, herein is a review of whether the statutes of limitations for all sexual assaults should be eliminated. The article concludes by urging the legislature to lift the statute of limitations for all sexual assault crimes, regardless of the victim’s age.

The Statute of Limitations for Child Sex Crimes Under the Previous Law

Under the prior Illinois law, in most cases, a statute of limitations period existed for child sexual abuse crimes. When the victim of a sexual abuse crime was under the age of 18, “prosecution for criminal sexual abuse [was permitted to commence] within one year of the victim attaining the age of 18 years.” In such cases, the time period for prosecution did not “expire sooner than 3 years after the commission of the offense.”

Previously in Illinois, during the prosecution of an individual for “criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual abuse, or felony criminal sexual abuse,” prosecution “[was permitted to commence] within 20 years after the child victim attains 18 years of age.” However, when “corroborating physical evidence is available” or if an individual who suspected child abuse or neglect but failed to report it under the Abused and Neglected Child Reporting Act, prosecution of such crimes could be commenced at any time. So, if the statute of limitations had expired, and later “corroborating physical evidence [became] available,” or if a person who was obligated to report the abuse failed to do so, one could still be prosecuted for sexual acts even though the abuse occurred years earlier.

Senate Bill 189 Changes to the Law

Senate Bill 189 removed certain portions of the law and added some new provisions that will aid victims. When the bill took effect in August 2017, the portion of the previous law that stated “prosecution for criminal sexual abuse may be commenced within one year of the victim attaining 18 years” if the victim is under 18 years old was replaced. The sentence in the proposal immediately following eliminates the condition that “in no such case shall the time period for prosecution expire sooner than 3 years after the commission of the offense.” The bill effectively removed the statute of limitations for child sexual abuse crimes, but it left the statute of limitations in effect for crimes involving child pornography, solicitation of a child, juvenile prostitution, and similar sexual offenses involving children.

The law removed the portion that states “when corroborating physical evidence is available or an individual who is required

1. Thank you for Professor Emeritus Jeffrey A. Parness and Professor Matthew Timko for their helpful comments. Any errors are mine.
6. 720 ILCS 5/3-6 (d).
7. Id.
8. 720 ILCS 5/3-6 (2).
9. 720 ILCS 5/3-6 (2).
10. 720 ILCS 5/3-6 (1)(j).
11. Id.
12. SB189
13. SB189
to report an alleged or suspected commission of any offenses under the Abused and Neglected Child Report Act fails to do so,”14 which will allow an abuser to be prosecuted at any time.15 Additionally, the new law states that “[w]hen the victim is under 18 years of age at the time of the offense, a prosecution for failure of a person who is required to report an alleged or suspected commission of criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual abuse, or felony criminal sexual abuse under the Abused and Neglected Child Reporting Act may be commenced within 20 years after the child victim attains 18 years of age.”16 So, the statute of limitations still remains unchanged for those who fail to report criminal sexual assault, but sexual abusers of children are no longer protected by the statute of limitations.

While the Illinois legislature has lifted the statute of limitations for child sexual abuse crimes, when the victim is over the age of 18, the current statute of limitations remains unchanged. Under the current law, “prosecution for criminal sexual assault, aggravated criminal sexual assault, or aggravated criminal sexual abuse may be commenced within 10 years of the commission of the offense if the victim reported the offense to law enforcement within 3 years after the commission of the offense.”17 So, although the statute of limitations for victims of child abuse will be lifted if the bill passes, the proposed legislation would not change the statute of limitations if the victim is over the age of 18.

Sexual abuse and other sexual crimes against children remains a serious problem in this country, and in Illinois. As of late February 2017, there have been 4,978 allegations of sexual abuse of a child in Illinois alone.21 Out of those nearly 5,000 victims, 877 cases are confirmed to have been victims of sexual abuse, while the rest of the cases are allegations.22 However, these numbers only reflect the cases that have been reported by victims and are under investigation.23 It remains unclear how many cases have gone unreported. Child victims of sexual abuse can feel very confused when a perpetrator, who is often in a position of trust, sexually abuses the child.24 While resources exist that have the task of looking for signs of child abuse,25 it can still be difficult without a child coming forward. Additionally, while there is much need for support of child abuse victims, there is often times very little funding for such programs.

**Why Eliminate the Statute of Limitations?**

Several public policy concerns propelled the bill through the Senate Criminal Law Committee, where it passed with a 10-0 vote, and through the Senate and House, where it also passed unanimously.18 The Senator Scott Bennett who introduced the bill had worked primarily “on cases of child sexual abuse and assault”19 when he was an assistant state’s attorney. He said “victims [often] hesitate in coming forward,”20 as it is difficult for child abuse victims to come forward where the abusers are in a position of trust. Additionally, usually a child victim is embarrassed or feels threatened by the abuser, again prompting a child to refrain from coming forward.

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14. SB189.
15. Id.
16. Id.
17. 720 ILCS 5/3-6 (1)(i)
19. Id.
20. Id.
22. Id.
23. See Child Sexual Abuse chapter from “By the Numbers” manual, http://icasa.org/forms.aspx?PageID=463 (last visited Apr. 13, 2017). “Many children who are sexually abused do not tell anyone of the abuse. Often, the crime is never reported to the police. In one survey, 42% of all respondents who were sexually abused told someone of the abuse within a year, 21% told someone at some point after a year had passed, 36% never told anyone. Only 3% reported the crime to police.”
24. See also Adult Survivors of Child Sexual Abuse. RAINN https://www.rainn.org/articles/adult-survivors-child-sexual-abuse (last visited Apr. 13, 2017). Many child sexual abuse survivors can feel guilty for not being able to stop the abuse or may blame themselves. Around 93 percent of the victims of child sexual abuse know their abuser. The abuser can be a sibling, relative, coach, instructor, or a parent of another child. Additionally, these abusers can manipulate their victims to keep quiet by making threats or claiming that the activity is normal.
25. For example, the Illinois Coalition Against Sexual Assault provides counseling, intervention, and advocacy for victims of sexual assault. To learn more, visit their website: http://www.icasa.org/home.aspx?PageID=500.

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### About the Author

Alexander Yorko is a 2L at NIU College of Law. He hails from Lake Villa, Illinois and studied English at Northern Illinois University before attending law school at NIU College of Law. He enjoys running, biking, and swimming.
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The passage of Senate Bill 189 was aided by former U.S. Speaker of the House, John Dennis Hastert, who admitted openly to sexually assaulting students while coaching at Yorkville High School. Unfortunately, Hastert could not be prosecuted for his crimes because the statute of limitations had passed. He was prosecuted instead for financial crimes to which he pled guilty. Hastert was "sentenced to 15 months in federal prison," which, to his victims, is just a slap on the wrist.

Will the Passage of this New Law Lead to Wrongful Convictions?
As Senator Bennett points out, cases of sexual assault are more difficult to prove as time passes. Some may fear that this new law could lead to wrongful convictions. However, although wrongful convictions do "occur in our criminal justice system," and some "of deliberately fabricated crimes are child sexual assault cases," most child victim claims "are claims brought when the victim remains a child." Even so, this law is unlikely to lead to increased wrongful convictions, as procedural safeguards remain in place to "protect defendant’s rights." During trial, victims are vigorously cross-examined "in an effort to discredit their testimony." If the prosecution lacks physical scientific evidence, the jury will be less likely to convict.

Wrongful convictions are not likely to increase as a result of this new law. The prosecution will still obviously have to prove beyond a reasonable doubt that abuse actually occurred. In addition to scientific evidence, when multiple victims come forward, this might be able to serve as additional evidence that the sexual abuse did in fact happen. As long as multiple victims "come forward with similar testimony against an individual, prosecutors can make a case, and this bill allows for that." As long as procedural safe guards remain intact, an increase in wrongful convictions should not happen.

Eliminate the Statute of Limitations for all Sexual Abuse Crimes
Should not the bill lift the statute of limitations for all victims of sexual abuse, regardless of the age of the victim? Similarly to the difficulty for children to come forward, it is also difficult for adult victims forward about sexual assault. The topic is not an easy one to discuss. Many victims of sexual assault have historically been accused of "wanting it" or "asking for it" by the way the victim was dressed, or the neighborhood that the victim was walking in, or by body language. Unfortunately, this attitude towards victims of sexual abuse remains intact today, lending victims to refrain from reporting. Moreover, the fear that someone’s name may be brought into the spotlight, fear of the abuser, and fear of what society might think, can lead a victim to refrain from reporting a sexual assault at the outset.

Conclusion
With the procedural safeguards serving to prevent wrongful convictions, the statute of limitations should be lifted for all sexual assault crime. Passing Senate Bill 189 was a step in the right direction, but the statutes of limitations for all sexual assault crime should be eliminated. Sexual assault victims, regardless of their age when the abuse occurred, often times refrain from reporting such abuse for similar reasons.

27. Id.
28. Id.
29. Id.
31. Id.
32. Id.
33. Id.
35. See Victims of Sexual Violence: Statistics, RAINN https://www.rainn.org/statistics/victims-sexual-violence (last visited Apr. 13, 2017). “94% of women who are raped experience post-traumatic stress disorder (PTSD) symptoms during the two weeks following the rape. 30% of women report PTSD symptoms 9 months after the rape. 33% of women who are raped contemplate suicide. 13% of women who are raped attempt suicide.” Victims of sexual assault also may suffer from drug abuse, and victims tend to have relationship problems with family, friends, and intimate partners.
Ever since the first caveman traded a few spicy pterodactyl wings for a woolly mammoth loincloth, mankind has been negotiating and mediating. Hoping to learn from the past, I asked my friend Mark Rabinowitz, an experienced litigator and history buff, to discuss memorable negotiations in history – and the lessons to be learned from them.

Positional Strength
Like so many litigators, Mark believes in “positional strength” – that the practical reality is that, in virtually every negotiation, might makes right.1 Together we explored that idea.

“We can look at the purchase of Manhattan in 1626 by Peter Minuit from the Native American tribe, the Canarsees,” he said. “Minuit was negotiating on behalf of the New Netherland Colony because, as you know, the Dutch initially settled the New York area. Looking at the negotiation itself, what’s quite interesting is, what did each party think they were getting and what did each party actually get?

“The generally accepted story is that Manhattan was primarily controlled by the Weckquaesgeeks, a tribe that was not present at the negotiations. The Canarsees didn’t really control Manhattan. Plus, for the Native Americans, who migrated between summer and winter quarters, land, water, and air were not rights that could be traded or even owned. So the Canarsees purported to sell something they didn’t believe that they actually owned.

“But what Minuit was getting was of some value to the Colony. It was a no lose-situation for them. Minuit traded goods that

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1. “A party either has bargaining power or it doesn’t, an on-off switch that determines in an incredibly sloppy fashion whether the apparently weaker party will gain access to a host of contract doctrines that work to the detriment of the apparently stronger party.” Daniel D. Barnhizer, Propertization Metaphors for Bargaining Power and Control of the Self in the Information Age, 54 Clev. St. L. Rev. 69, 84–85 (2006).

“Negotiating against someone who has a clearly dominant position is one of the greatest fears when negotiating. However, just as smaller people can learn to defend themselves against bigger and stronger attackers, we can learn to overcome a weak bargaining position to negotiate more effectively. It is no fun entering a negotiation with a weak position. This is especially true when the opposing negotiator senses your weakness and attacks with tactics aimed at getting you to accept an unreasonable ‘take it or leave it’ offer. Therefore, the projection of power during negotiations can increase how successful you’ll be.” Alain Burrese, Negotiation Theory & Practice, Mont. Law., May 2008, at 26 (discussing the importance of focusing on strengths to win a negotiation).
were worth 60 Guilders at the time, now worth between $2,600 and $15,600. In 1846 a New York historian valued it at $23." In return, Minuit received the equivalent of a quit claim deed and the prospect of future trade with the Canarsees.

The negotiations often are portrayed as the stronger party getting more of what it wants. But which was the stronger party? Which party got the best of the deal? When the selling party didn’t even own the property it was selling, was that even an actual negotiation?

We looked at another example. "Another key negotiation in world history is the Treaty of Paris. There are numerous treaties of Paris from different periods in history, but the one I’m referring to was in 1783, the negotiations to end the American Revolutionary War. Britain recognized the United States as an independent, sovereign state, and renounced its claims to territory and property. The U.S. gained territory east of the Mississippi River, north of Florida, and south of Canada. The parties released prisoners of war and the U.S. gained fishing rights off Canada.

"By the end of the war, the balance of power had shifted in favor of the colonies. The British lost fairly convincingly at Yorktown. The Colonies were able to extract from the British the concessions they wanted. The British had been so badly bloodied that they were content to withdraw from the New World for the most part. The British got concessions that they probably would have gotten anyway, like the recovery of property that had been seized and the release of prisoners, but they didn’t gain anything really substantial. It was a concession. The British lost the war. The stronger party’s usually going to come out with the better deal, regardless of its negotiating strategy and tactics. If you’ve got the power, if you’re the 800-pound gorilla, you’re going to be able to eat the banana.”

Timing
The more interesting point has to do with timing. Negotiations are all about risk. When your opponent’s risk is at its highest level, the likelihood of a favorable outcome increases. As your opponent’s risk decreases, your negotiating leverage also diminishes. If you wait to negotiate until you go to the mat and then you lose, you are not going to have the same negotiating strength that you had before. Once you show your cards, you lose the positional strength that comes from your opponent’s risk.

During the Revolutionary War, negotiations had been ongoing since 1782. Despite the huge financial burden that the war imposed, King George Ill simply was not willing to compromise. He believed that his disloyal subjects were a threat to monarchist principles. He won a lot of the early engagements and possibly could have made a deal when Washington was at his weakest at Valley Forge. If the King had been willing to compromise and make peace early, some of the present-day U.S. possibly still could be English territory.

The Gambler’s Fallacy
This is the classic gambler’s fallacy seen over and over in negotiations. When one party feels like it’s “ahead,” the prospect of losing becomes unimaginable. Mark agreed.

2. “In poker, if you have a hand that you think might be worth playing, you should usually ‘take a cheap card’ when the circumstances permit it. A ‘cheap card’ refers to the situation where another card (or series of cards) remains to be played and the betting in this particular round is light, so that by making only a small bet, the player will have an opportunity to ‘see another card.’ That next card is referred to as a ‘cheap card’ because the price of seeing it is ‘cheap.’ In litigation, the concept of the cheap card applies to the timing of settlement. A good lawyer will look for opportunities to ‘take a cheap card’ in the form of waiting for an additional development in the case before settlement, in the belief that waiting for the new development (which may prove to be very positive) will not cost much in terms of litigation expense or risk of the case becoming materially worse for the lawyer’s client. Thus, it is usually wise to defer settlement discussions (absent major incentives from the other side) when you are awaiting the other side’s document production and already have made your own, when you are anticipating a ruling that neither side believes will be favorable to your client, but if it were favorable would greatly improve your client’s chances of success, or in like situations.” Lawrence D. Rosenberg, Lawyers’ Poker: Using the Lessons of Poker to Win Litigation, 54 The Advoc. (Texas) 10, 8 (2011).

3. The gambler’s fallacy makes the unwarranted assumption that “the odds for an event with a fixed probability increase or decrease depending on recent occurrences.
“You’ve got to strike while the iron is hot. As you know, the inclination is to think that if you’re on a winning streak, you’re going to continue to win. Sometimes you lose that strong position because you think it’s going to get stronger. In fact, it gets weaker. Timing is everything in negotiation, as is the case with many things.”

Later events
Mark’s next example is a true negotiation that now seems to have been a really bad deal for one side. Does that make it a bad negotiation?

In the Louisiana Purchase in 1803, the US acquired 828,000 square miles, doubling the size of the country. “The total consideration, both cash and debt, was the equivalent of $250 million today. It represented the entire territory of six states, Arkansas, Missouri, Iowa, Oklahoma, Kansas, Nebraska, and portions of Minnesota, North Dakota, South Dakota, New Mexico, Texas, Montana, Wyoming, Colorado, and Louisiana. The Southern parts of what are now the Canadian provinces of Saskatchewan and Alberta also were included in the deal and ceded to Britain in 1818.

“The key here was France, which controlled the Louisiana territory from 1699 to 1772, then ceded it to Spain. In 1800, three years before the purchase, it was returned to France in negotiations. Napoleon had given up on the New World. He was interested in selling. That is what drove the ability of the Americans to pick up this territory. As you know, it was not developed at that time. Really, the primary goal for the Americans was control of New Orleans. They wanted to ensure free transit of the Mississippi River all the way to the sea in New Orleans. That was the key for them. By acquiring the territory along the Mississippi, they were able to consolidate the territory to the east.

“These were wild, undeveloped territories, with very few settlements. There were no interstate highways and shopping malls, as you know. It did not appear to be as good a deal then as it does now, but it was the bargain of several centuries.

“We acquired it because the French, thousands and thousands of miles away across the Atlantic, weren’t interested in the cost, expense, and burden of having to maintain control in a different hemisphere. In particular, there had been a revolt in what is now Haiti, and they were dealing with that as well. France was in the middle of the wars following the French Revolution and it didn’t want a side battle.”

The Americans had no idea that the arrangement was going to turn into such a phenomenal deal. Jefferson originally sought to buy New Orleans and the surrounding area for up to $10 million, but the French offered a much larger territory for $15 million. Neither party could imagine the potential value of the territory. Price was never the issue, but rather the question was whether Jefferson possessed executive authority to negotiate such a transaction.

How later events work out does not prove the negotiation was flawed. In every negotiation, all you can do is collect the best data you can get and make the best decision you can.

Positional strength is a photograph. Life is a video. In litigation, one deposition, one motion, one seated juror makes an entirely new case. If you chase every jackpot, you’re going to get burned some of the time. You have to know ‘when to hold ’em and when to fold ’em.”

Knowing when to say when
Another example of not knowing when to say when, is the Congress of Vienna in 1815, which ended the wars of the French Revolution and the Napoleonic Wars. “Napoleon had conquered much of Europe, and he just kept expanding further into new territory. Eventually [Napoleon] overextended himself in 1812 in the Russian campaign, and decimated his Grande Armee. He just overplayed his hand.”

Napoleon was sitting on a big stack of chips but made just one bet too many.

“What Napoleon could have done to preserve his power was not go into Russia. He bit off more than he could chew. The vastness of the terrain, thousands and thousands of miles. He was supplying the troops in Moscow and in between from
Paris. They ended up in a completely disorganized, chaotic retreat, with the Cossacks attacking them on the retreat, killing thousands and thousands of troops. If he just had a more realistic view of the limits of his resources and capabilities, didn’t go into Russia and overextend himself, he probably would have continued to control much of Europe for a while longer.

“What you found in the Congress of Vienna was a defeated power, France, dictated to by the Austrians and Russians and British. [Napoleon] rolled the dice one last time, and it came up snake eyes. If he had taken his chips and gone home, he would have rolled for a lot longer.”

**Pushing your opponent to the wall**
Gambling in war is especially risky because war is rarely ever totally over. No one goes away. Even when you’ve totally and completely won, failing to continue to consider risk can bite you hard.

“The Treaty of Versailles in 1919 is a fascinating and perhaps the most hotly debated negotiation in recent world history. The Central Powers, who were allied with the Germans, eventually were defeated by the Allies. The Germans wanted to continue fighting on, but an ultimatum was given by the Allies.

“It was not called World War I at the time, as you know, because there had been only one such war in the 20th Century. They called it the Great War or, ironically, the War to End All Wars. It went on for years. Millions of people died. It resulted in the end of the Austro-Hungarian Empire. You had countries divided up and redistributed at the end of the war. The Treaty of Versailles also had a war guilt clause, which required Germany to accept responsibility for having caused the war. They made 25,000 square miles of territorial concessions, involving seven million inhabitants. They had to pay reparations that were worth $442 billion in today’s dollars. They were required to disarm. There are many historians who criticize the Treaty of Versailles as having been a victor’s peace, too harsh.

“Germany was forced to sign the deal. But they never bought into it. The Germans took the opposite attitude, which was, we’re the victims, we’re going to get revenge, we’re going to avenge this injustice. Historians debate what should have happened. What did happen is that the Allies, secure in their knowledge of their utter victory and unwilling to go through another terrible war, let Germany rearm and the world went back to war.”

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In the end, Mark’s history lesson shows that negotiations are not simply about strength. More important is knowing how and when to use it. Good poker players can win when they have good or bad hands. Great litigators are great mediators who know when to fight and when to fold.

It was another case of the gambler’s fallacy: having already won, the Allies mistakenly assumed that winning again was certain. When a party wins and gets a good deal, driving hard for an even better deal is risky. We see that in mediation when one party entirely blows a perfectly good deal for itself by pushing too hard for an even better deal.

Knowing when to fight

One of the most talked about negotiations of the 20th century, which was related to the Treaty of Versailles at the end of World War I, was the Munich Accords of 1938. It’s another good example of how failing to use positional strength at the right time can be disastrous.

Germany was threatening to annex the Sudetenland provinces of Czechoslovakia. The British in particular did not believe that Hitler and the Germans had an all-encompassing goal of dominating and controlling Europe.

“Germany and France and Britain and Italy sat down with the Germans in an attempt to persuade the Germans to stand down from their threats. Germany had threatened to attack Czechoslovakia. They accused the Czechs in the Sudetenland provinces, where there were a lot of German ethnic residents, of having attacked the German residents. Many of the reports were false. The Germans’ goal was to take over Czechoslovakia.

“The British goal was to avoid war at all costs. And they paid those costs. There were three million ethnic Germans within Czechoslovakia, in the Sudetenland. What you saw was one party, the Germans, who were committed to using every tactic they could, and actually had planned to attack Czechoslovakia on October 1st of 1938, the day after they ended up signing the accords. They were prepared to go ahead.

“The British were not prepared to fight. The British had announced that, ‘We’re going to make peace.’ Chamberlain, on his way to meet Hitler in Cologne, Germany, specifically said, ‘My objective is peace in Europe. I trust this trip is the way to that peace.’ They renounced any intention to fight, which kind of...took away all their negotiating power. They communicated weakness. They telegraphed to Hitler that all he had to do was say, ‘Well, I am ready to fight,’ and he was going to get the better end of the deal.

“There was vast opposition to the Munich Accords. Chamberlain and the British had learned the lesson in World War I that you should never fight a war. But, if the other party’s willing to fight, you’re going to lose the negotiation.”

Hitler employed the common negotiation tactic of playing to your opponent’s ego by flattering and praising Chamberlain. “When Chamberlain arrived in Cologne, Germany, he was given a lavish welcome. They had a brass band playing ‘God Save the King.’ They piled flowers and gifts on him to soften him up. During the negotiations, an aide to Hitler walked into the room where Hitler was meeting with Chamberlain and reported that Czechs had murdered numerous German ethnic residents to elevate the sense of crisis and to strengthen his position, when in fact the reports were completely false. What you had was a really strong, resolute party negotiating against somebody who was not prepared to stand up to him, and was prepared to surrender. And that’s what happened.”

The Munich deal turned out to be a terrible mistake. The world went back to war, a war that was even worse than World War I. Britain should have called Hitler’s bluff or at least recognized the need to play its strong hand. In retrospect, they may have set themselves up for future failure by pushing for too much in 1919, according to many historians.

“I think if the Allies had stood up to him in Munich, he might have backed down. He actually had an attack on Czechoslovakia planned, but that was after years of the Allies saying, ‘World War I was horrible, we’re not doing this again.’ He was pretty confident that they weren’t going to fight back. It was just a
repetition of the mantra that war is bad, we can’t ever have war. He was on pretty safe ground thinking that he had the upper hand.”

BATNA
In negotiation theory, this is called failing to know your BATNA, “best alternative to a negotiated agreement.” Churchill and others knew what a terrible deal it was. But the British could not accept that their BATNA, standing up to Hitler, was much much better than the deal and they paid a terrible price for it as he invaded much of Europe and got stronger and stronger.

The recentness of WWII, especially to us Boomers, stands as the classic “High Noon” moment for recognizing and accepting the need to fight when there is no other way.

History 101
In the end, Mark’s history lesson shows that negotiations are not simply about strength. More important is knowing how and when to use it. Good poker players can win when they have good or bad hands. Great litigators are great mediators who know when to fight and when to fold.

Unfortunately, too many litigators get seduced by the gambler’s fallacy and fail to look for and accept important opportunities to make good deals. And good deals, as history teaches, are usually win-win.

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4. “A general rule that applies to any negotiation strategy is that counsel know a client’s best alternative to a negotiated agreement (BATNA), i.e., the client’s walkaway position.” Robert C. Larner and Thomas Smith, Awareness of best alternative to negotiated agreement, 3 Ohio Jur. 3d Alternative Dispute Resolution §25, 2017.
Illinois Human Rights Act and Appellate Practice

In a 4 to 3 decision, the Illinois Supreme Court declines to hear a case and provides guidance on Supreme Court Rules 316 and 308. Rozsavolgyi v. City of Aurora, 2017 IL 121048

Patricia Rozsavolgyi filed charge of discrimination on the basis of disability with the Illinois Department of Human Rights against the City of Aurora. In the course of the litigation, the trial court certified three questions for review pursuant to Supreme Court Rule 308. The third certified question asked whether the Tort Immunity Act applies to a civil action under the Human Rights Act where a plaintiff seeks damages, fees and costs, and if so, should the court overrule prior decisions which held that the Tort Immunity Act applies only to tort actions and does not bar actions for constitutional violations.

The appellate court allowed the Rule 308 petition for leave to appeal and a divided panel answered the three questions. Rozsavolgyi petitioned the appellate court for rehearing on the third question, and also requested the appellate court to certify the question for review to the supreme court under Supreme Court Rule 316. The appellate court granted the request under Rule 316. In a 4 to 3 decision, the majority of the justices of the supreme court declined to review the case on the ground that the third certified question was overbroad and accordingly, the appellate court should not have issued a certificate of importance under Rule 316. The majority, therefore, vacated the appellate court’s decision and remanded the case.

The decision began by discussing Rule 316, which provides that an appeal “shall lie to the Supreme Court upon certification by the Appellate Court that a case decided by it involves a question of such importance that it should be decided by the Supreme Court.” The court stated that Rule 315, which governs petitions for leave to appeal, provides some guidance as to the type of factors that the court considers in determining to allow review, such as the general importance of the question presented, the existence of conflict between the decision at issue and a decision of the supreme court or appellate court, the need for the exercise of the court’s supervisory authority, and the final or interlocutory character of the judgment sought to be reviewed. The court cautioned that Rule 316 provides an “exceptional” avenue of appeal and should be exercised “rarely and only when unequivocally warranted.”

As for the Rule 308 certification, certified questions are questions of law subject to de novo review. If the certified question will result in an answer that is advisory or provisional, the question should not be certified. If the answer to the question is dependent upon the underlying facts of the case, the certified question is improper. The granting of a certified question does not stay proceedings in the lower court. The supreme court noted that the appellate court serves as a “gatekeeper” and must “carefully question whether the case before it warrant consideration outside the usual process of appeal.”

There are two prongs to Rule 308. First, there must be substantial grounds for difference of opinion. This prong is satisfied where the question of law had not been previously addressed or where there is a conflict between the appellate districts or with the supreme court. The second prong is that resolution of the question will materially advance the ultimate termination of the litigation.

The majority declined to answer the certified question, and again felt the need to remind the litigants and lower courts that appellate review of interlocutory orders is not favored and appellate courts should “sparingly” exercise their authority to certify questions under Rule 316.

A lengthy and sharp dissent was filed. The dissent stated that the certified question presented an issue of law that was not dependent on the facts of the case. The state of the law on the third question was uncertain and lacking in clear direction. If the question was too broad, the dissent saw no problem in reformulating the question for review. Finally, the dissent chided the majority for not even mentioning, let alone failing to consider, the defendant’s cross appeal. The dissent stated that the majority erred in viewing the appellate court’s Rule 316 certification as limited only to the certified question, since an
appeal under Rule 316 is of the entire case. The dissent also stated that the majority should not have vacated the appellate court’s decision, but simply let it stand as to the first and second certified questions.

**Damages**

**Emotional Distress**

*The Illinois Supreme Court once again addresses emotional distress as an element of damages. Cochran v. Securitas Security Services USA, Inc., 2017 IL 121200*

The issue raised in *Cochran* was whether a plaintiff who brings a cause of action for tortious interference with the right to possess a corpse must allege willful and wanton misconduct. The supreme court answered this question “no,” holding that recovery in such a case is available upon proof of ordinary negligence.

In reaching its holding, the court spent much of the decision discussing emotional distress as an element of damages in a negligence action. This was required to clarify past cases, specifically the case of *Mesinger v. O’Hara*, which was decided in 1914, and whether *Mesinger* stood for the proposition that in a case involving interference with a corpse, emotional distress was only recoverable for willful and wanton conduct.

When *Mesinger* was decided, the rule in Illinois was absent a contemporaneous physical impact or injury, there could be no recovery for emotional distress. In 1983, the court abandoned the “impact rule” in *Rickey v. Chicago Transit Authority*. After *Rickey*, the supreme court clarified that the impact rule remains the law for direct victims of negligence, whereas a bystander’s claim is governed by the zone-of-danger rule. The court noted that in time, these rules came to be understood as the rules governing recovery of emotional distress in all negligence cases. In 2011, in *Clark v. Children’s Hospital*, the court explained that the zone-of-danger rule does not apply where a tort has already been committed against the plaintiff, who asserts emotional distress as an element of damages for that tort.

In light of this statement, the question in *Cochran* was whether the theory of liability alleged was one solely for negligent infliction of emotional distress, or an independent tort for which emotional distress was simply an element of the plaintiff’s damages. The court stated with “complete confidence” that Cochran’s claim fell within the category of cases in which a tort had already been committed against the plaintiff, and the plaintiff asserted emotional distress as an element of damages for that tort. This holding conforms is in line with section 868 of the Restatement (Second) of Torts, which makes clear that recovery for interference with a corpse can be based upon intentional, reckless, or merely negligence conduct.

**CRIMINAL CASES**

**Juvenile Court Act of 1987**

*In a 6 to 1 decision, the Illinois Supreme Court held that a juvenile is not entitled to a jury trial under the Juvenile Court Act. In re Destiny P., 2017 IL 120796*

The State filed a petition for adjudication of wardship against Destiny P (the respondent). The petition charged the respondent, then 14 years old, with four counts of first degree murder, one count of attempted murder, one count of aggravated battery with a firearm, three counts of aggravated unlawful use of a weapon, and one count of unlawful possession of a weapon. The respondent did not have a criminal background.

Respondent moved for a jury trial, while conceding that the Juvenile Court Act of 1987 (705 ILCS 405/5-101(3), 5/605(1)) does not afford a jury trial to first-time offenders charged with first degree murder. Respondent argued that this denial violated her due process rights and equal protection. The trial court found that the statute violated equal protection, and denied the due process challenge. The supreme court reversed the trial court on the equal protection basis, and affirmed on the due process basis.

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**About the Editor**

Christine Olson McTigue is a past editor of the *DCBA Brief* and serves on the Board of Directors of the DuPage Bar Foundation. She received her B.A., *magna cum laude*, Phi Beta Kappa, from the University of Minnesota; and her J.D. from Loyola University of Chicago.
As for the equal protection challenge, the court emphasized the narrow focus of its analysis, whether the legislature violated the equal protection clauses of the United States or Illinois constitutions. The respondent contended that no fundamental rights were at issue. Therefore, the court employed the rational basis scrutiny and considered whether the challenged classification bears a rational relationship to legitimate governmental purpose. The respondent’s claim failed because she could not show she was similarly situated to two comparison groups: first-time juvenile offenders charged with first degree murder and tried under the regular provisions of the Act, and recidivist juvenile offenders charged with entirely different crimes and tried under one of the two recidivist statutes (the VJO or the HJO statutes). The court held that the comparison groups must be in all relevant respects alike, and they were not.

Regarding the process challenge, the respondent argued that she raised an issue of first impression, whether following the Juvenile Justice Reform Provisions of 1998, due process required a jury trial for a juvenile facing mandatory incarceration because of a first degree murder charge. The court rejected this argument in light of its prior decision in *In re Jonathan C.B.*, 2011 IL 107750, where the court determined that even following those 1998 amendments, due process does not mandate jury trials for juveniles.

**Domestic Battery Statute.**

The *Illinois Supreme Court rejects a constitutional challenge to the domestic battery statute. People v. Gray, 2017 IL 120958*

Matthew Gray was convicted of aggravated domestic battery, 720 ILCS 5/12-3.3. Gray challenged the conviction, arguing that application of the statute to him violated his substantive due process. The appellate court agreed, but the supreme court reversed.

On November 2, 2017, Gray and the victim, Tina Carthron, spent an evening together drinking. Fifteen years earlier, the two dated for approximately two years. In October of 2011, Carthron saw Gray and later visited Gray at his apartment. Carthron was not interested in resuming their romantic relationship. On the night in question, Gray and Carthron spent the evening drinking together. They argued over a phone call Gray received, but later listened to music, watched TV, and had sex. The next morning, they resumed the argument over the phone call and Gray stabbed Carthron.

It was undisputed that Gray and Carthron were the only two people in the apartment at the time of the stabbing. It was also undisputed that based upon their prior relationship, Carthron was a family or household member under 720 ILCS 5/12-0.1, which includes persons who have or have had a dating or engagement relationship. On appeal, Gray argued that this definition was unconstitutional as applied to his case. An “as-applied” challenge protests how a statute was applied in the particular context, so the challenging party’s particular facts and circumstances are relevant. Such a challenged is reviewed under the rational basis test, where a statute will be upheld if the statute bears a reasonable relationship to the public interest to be served and the means adopted are a reasonable method of achieving the desired objective.

The appellate court observed that the State has an interest in preventing abuse between persons who share an intimate relationship. By its plain language, the definition of household member had no time limit. The supreme court noted that the legislature could rationally have believed that persons who have had a dating relationship are more likely to batter a former partner, even after the relationship is over. The absence of a time limit on former dating relationships recognizes that such relationships may render persons more vulnerable to abuse by former partners.

Applying the rational basis to the facts of the case, the court concluded that it was reasonable to regard Gray and Carthron as family or household members for purposes of the domestic battery statute. They had known each other for over 20 years, they continued to see each other, and their relationship remained close.

The court concluded that the legislature’s decision not to include a time limit on former dating relationships, when applied to the facts of Gray’s case, was reasonable and rationally related to the statutory purpose of curbing domestic violence. However, since the appellate court did not address all the issues raised by Gray, the supreme court remanded the case to the appellate court for consideration of his remaining contentions.
Cast, crew and makeup artists all needed for Judges’ Nite 2018. Volunteer now.

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48 Where to Be in January
At the United States Military Academy at West Point, the time period from the start of the new year until mid-March, is known as the Gloom. That’s because the skies are nearly always grey, the cadet uniforms are grey, and even the rocks and trees look grey.

Fortunately, as the DCBA enters 2018, the membership has fond memories of the holiday season immediately past, and the upcoming events of the early part of the New Year to keep things on a more pleasant note. Without a DuPage version of the Gloom, the holiday season was filled with parties hosted by the Justinians, DAWL, the Criminal Defense Lawyers Association, and, of course, the DCBA. DCBA President Gerry Cassioppi hosted the group at a new venue in Naperville, Elements, where the Bar and Bench exchanged greetings and brought toys to be distributed to those children of the county who could use a bit more holiday cheer.

Both Bench and Bar then turned out a few days later for the Bar Foundation’s breakfast, helping to raise funds for that important organization, while having a nosh before court. InBrief is pleased to report that all calories had been surgically removed from the tons of goodies at these festive events.

For anyone who could still think of eating or drinking one more morsel after all those parties and breakfasts, it was then time for the family gatherings, and New Year’s Eve celebrations!

In the Courts
With January comes the new state-wide requirement for a veterans’ court or treatment oriented track in all circuits. InBrief had not seen very much news, as of way back in mid-November, as to just what the 18th Circuit was planning. Perhaps it will follow the MICAP system, which has been in place for some time, and is working quite well.

And, 2018 also brings the moment we’ve all been waiting for: statewide electronic filing! InBrief will be auctioning off his stone tablets and chisels in grudging acceptance of this electronic contrivance, with high hopes that it won’t slow down the filing process any further. And won’t it be great if one no longer has to pay Cook County $4.95 for a no-fee filing?

Will County Court Passes
Beginning January 2, attorney passes for Will County will move operations to the Will County Courthouse Sheriff’s Office on the first floor. The new hours of operation will be 12:30 p.m. - 4 p.m., Monday through Friday. Later in 2018, Attorney Passes will be available for purchase online at any time.

InBrief was reading the DCBA Brief article on the malpractice insurance suggestion taking effect under Supreme Court Rule 756e. It’s a suggestion, with the alternative of taking a multi-hour proactive management based course available. The writer noted that nearly half of solo practitioners do not carry malpractice insurance “to protect their clients.” InBrief had been under the impression that the purpose of insurance was to protect the insured, but perhaps malpractice insurance is simply going the way of mandatory automobile insurance. It will be interesting to see how the cost of the alternative cost and lost time compares to the insurance premiums.

People, Places
What will Judges’ Nite producer Christina Morrison, and Director Nick Nelson have in mind for this year’s edition? They will be assembling the cast and crew for the next performance of Judges’ Nite, in early January. March 2, at the Mac at College of DuPage, is the planned date and venue. There are no prerequisites for joining the cast, or assisting the crew with costumes, decorations, and stage work. Singing and acting talent will be allowed, but a sense of humor is much more important.

Mia McPherson has opened her solo practice once again, with an office in Elmhurst.

SpyratosDavis LLC welcomes Andrea Kmak to their Lisle office as an associate attorney.

As this issue was being assembled, Associate Judge Jeff MacKay was appointed by the Supreme Court to Circuit Judge, filling the vacancy created by the retirement of Chief Judge Kathryn Creswell at the end of November. □
John F. Kennedy once wrote, “Leadership and learning are indispensable to each other.” The act of reading is necessary for any literate society. For attorneys and judges, it is an indispensable tool to analyze and comprehend facts and legal concepts. For many, however, it is an act of joy and learning. It is this activity, which I noted during my conversation with the incoming Chief Judge of the 18th Judicial Circuit, Daniel Guerin. Judge Guerin has an impressive book collection of American history and contemporary politics in his office. His impressive library contains many biographies of US presidents, such as Thomas Jefferson, George Washington, Abraham Lincoln, FDR, and JFK. A survey of his life reveals that in addition to reading, his education and life experience manifest the values of fairness, hard work, and justice.

Judge Guerin comes from a family of six children. He attended Maine South High School in Park Ridge where he played on the basketball and tennis teams. After high school, Judge Guerin attended the University of Illinois at Champaign-Urbana where he was a journalism major. Subsequently, Judge Guerin earned a Juris Doctor degree from DePaul University College of Law. After graduating from law school, Judge Guerin worked for the DuPage County State’s Attorney’s office where he worked in the misdemeanor and felony criminal divisions. For thirteen years, Judge Guerin worked as an Assistant State’s Attorney, handling some of the most serious cases in that office. While working at the DuPage County State’s Attorney’s office, he worked under legendary prosecutors, James Ryan and Joe Birkett whom he deeply admires. As one can assume, some of his most memorable cases as a prosecutor involved some horrific crimes. In fact, one of his most sensitive cases involved a 6-year-old victim who he had to put on the witness stand to identify the perpetrator of the crime. This was no ordinary task and involved a high degree of sensitivity, empathy and deftness, which takes years to develop. Another case involved a ghastly murder of a young woman by her boyfriend who burned his victim in order to prevent identification by family and authorities. Through sophisticated forensic techniques, Judge Guerin was able to procure identification of the victim. In both cases, Judge Guerin was able to obtain a successful conviction.

In March 2003, while working as the Supervisor of the Domestic Violence and Child Abuse Unit of the DuPage County State’s Attorney Office, he was appointed as Associate Judge. As most judges, his judicial career began in Traffic Court and he eventually settled in the Misdemeanor Division and then later in the Felony Division. But Judge Guerin’s assignment in the Felony Division did not allow him a gradual transition from common petty criminal cases to more serious ones. He recalled how when he first transferred to the Felony Division, one of his first cases involved a capital punishment case. It was a multiple homicide case known as People v. Tenney. The trial lasted nearly 5 weeks given the nature of the crime and the capital offense.

Subsequently, the Illinois Supreme Court appointed Judge Guerin as Circuit Judge in 2010. Since that time, he has served as Presiding Judge of both the Misdemeanor and Felony Divisions. He was one of the first judges in the State of Illinois to utilize cameras in the courtroom. The case was People v. Borizov and involved a triple murder. But, unlike the chaos that ensued during the O.J. Simpson murder trial in the early 90’s, cameras in the courtroom have worked fairly well and without much controversy in DuPage County and in Illinois in general.

(Continued on next page)
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Judge Guerin loves the law and is actively involved in the administration of the courts in DuPage County and in Illinois. As the incoming Chief Judge of the 18th Judicial Circuit, he would like to make sure that judicial assignments are most effective for the people who use the court system. Judge Guerin believes that the judicial system runs best when all of its moving parts work together to produce justice and treats everyone with fairness and dignity. For him, this involves not only judges and attorneys, but it also includes the Clerk of the Circuit Court, the DCBA community, the court reporters, the deputies and probation officers, the Guardians Ad Litem, Family Shelter Services, and the court administrative staff. He contends, “They all play a vital role in the administration of justice in this County.”

While he will no longer have a courtroom adjudicating criminal cases, Judge Guerin is concerned with several institutional and societal issues which affect the lives of everyday people. For example, as a result of recent changes in Bond Court legislation, courts now have to consider non-monetary bail for some low-level crimes. Judges will now have to consider a presumption of non-monetary forms of bail for all crimes. Additionally, the new legislation permits the court system to consider making a pre-trial risk assessment as to which defendants can be released on bail. This will require policies that ensure fairness, but also consistency. However, it will also have an economic impact on the court system, as more probationary officers will be needed along with the use of new technologies and equipment to consider non-monetary bail.

A second area of concern for Judge Guerin is the increase in the heroin and opioid epidemic in Illinois. As a judge, he frequently witnessed young people repeatedly being charged with possession of these deadly drugs. Because these crimes carry the weight of a felony conviction, young people between the ages of 18 and 25 often have significant challenges procuring employment and in many cases have tarnished their education and careers. Judge Guerin believes the time has come for DuPage County to consider establishing a special court to administer young first time offenders who are charged with these crimes to undergo a special program with greater oversight, more consistency, educational panels, and other programs that can prevent addiction and prevent further violations of the law.

He is mindful of the budgetary constraints for any new programs and looks forward to working in collaborative fashion with law enforcement partners such as the State’s Attorney, Public Defender, Probation officers, the DCBA community and of course the DuPage County Board.

As the incoming Chief Judge of the 18th Judicial Circuit, he would like to thank his predecessors who have paved the way for one of the best judiciaries in the State of Illinois. In particular, he would like to thank Judge Kathryn Creswell for her leadership and stewardship.

Judge Guerin looks forward to working with “the best judiciary in the State of Illinois.” His appreciation and respect for his colleagues on the bench led to the upcoming assignments of the new presiding judges for 2018. His selection of the following judges seeks to take advantage of the hidden talents and energy of the judiciary:

Acting Chief Judge will be Judge Robert Kleeman

Presiding Judge of Law Division will be Judge Ron Sutter

Presiding Judge of Chancery Division will be Judge Bonnie Wheaton

Presiding Judge of Domestic Relations will be Judge Robert Anderson

Presiding Judge of Felony Division will be Judge Liam Brennan

Presiding Judge of Misdemeanor and Traffic will be Judge Paul Marchese

Judge Guerin is the recipient of many accolades for his professional and community work including the “Felony Assistant of the Year Award” in 1996, the DuPage Family Shelter “Justice System Partner Award” in 2006, and the La Rabida Children’s Hospital “Big Hearts for Young Heroes Award” for his work for victims of child abuse. In addition to his role in the Judiciary of DuPage County, Judge Guerin loves to spend time with his family including his wife and three children. He is an avid reader of history and particularly of American legal and political history. He coaches basketball, soccer, and baseball, and can also be found playing golf on occasion. □
Creative Team Has High Hopes For Judges’ Nite 2018

By Anonymous

This author decided to change things up for our annual plug for Judges’ Nite by interviewing the creative leaders who bring you the show: Director Nick Nelson and Producer Christina Morrison:

Anonymous: Nick Nelson, you are the Director for the fourth year in a row and claim credit for the majority of the writing; tell us what show-goers can expect.

Nelson: I’m glad you asked, Anon. This year we will be bringing everyone’s favorite stories, TV shows and movies to life through the lens of the DuPage County legal community.

Anonymous: Christina, what are the important details people should be aware of?

Christina: Tryouts are on the first Saturday of January at noon in the Bar Center and the show is on March 2nd, at the McAninch Center at the College of DuPage. Last year we raised over $18,000 to benefit Legal Aid and I have already told Napoleon, I mean, Nick, that if he doesn’t do better this year I am going to kick him in the nards.

Anonymous: Nick, I sense a little tension here.

Nick: I like to refer to our Producer as the Harvey Weinstein of Judges’ Nite – the relationship is complicated, but we can’t do it without her. Also, “tryouts” is an overly ambitious term. If you have a pulse and want to have fun, come join us.

Anonymous: Is there anyone else you would like to give credit to?

Christina: Credit? No. But I can tell you that Steve Armamentos is the best Band Director we will have this year and Jack Provenzale and Mike Drabant will act as Music Coordinators again (and I do mean “act.” I mean, have you seen some of these people dance?).

Come on out for the Judges’ Nite 2018 show; Nick and Christina will find a way to use your “talents” for a great cause. It is a grand time and the cast and band have far more fun than people our age should have. If you can’t participate, bring your friends and family to the show. The venue is wonderful, the writing is fresh and you don’t have to be a courthouse insider to get the jokes. Proceeds go to Legal Aid which helps the underprivileged of DuPage County with their legal needs. And if the show sucks, well, it’s for charity.

Note: Judges’ Nite also includes great auctions, but we need your help to make them great. If you can donate an item – sports or other event tickets; vacation home time, a great bottle of wine, or other items, please contact Cindy Allston at callston@dcb.org. All donations are appreciated. □

LRS Stats
10/1/2017 - 10/31/2017

The Lawyer Referral & Mediation Service received a total of 1,169 referrals, including 55 in Spanish (1,039 by telephone, 11 walk-in, and 119 online referrals) for the month of October.

If you have questions regarding the service, attorneys please call Barb Mendralla at (630) 653-7779 or email bmendralla@dcb.org. Please refer clients to call (630) 653-9109 or request a referral through the website at dcb.org.

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ABA TECHSHOW has over 30 years of experience bringing lawyers and technology together. Legal work today is dependent on technology to manage day to day activities, to practice more competently, and to service clients more effectively. ABA TECHSHOW teaches you how technology can work for you. Through the expansive EXPO Hall, CLEs, presentations, and workshops, you will be able to get your questions answered and learn from the top legal professionals and tech innovators, all under one roof. Regardless of your expertise level, there’s something for you at ABA TECHSHOW.

As a member of DuPage County Bar Association, we want you to know that you can register for ABA TECHSHOW 2018 at a special reduced rate. This discount only applies to registrants that qualify for the Standard registration and will save you $150. You will be able to register online with a DCBA discount code, once available. Watch the Docket for details.

Celebrate over 30 years of legal technology and innovation. Network with legal technology experts from around the globe, March 7-10, at the Hyatt Regency Chicago. Don’t forget to visit www.techshow.com for current information on ABA TECHSHOW 2018, the best place for bringing lawyers and technology together.
DCBA Update

Resolve to Make the Most of Membership

By Robert T. Rupp

Keeping with the theme of several other columns in this month’s issue, I wanted to offer my own suggested resolution for DCBA members. If you are reading this in your own copy of DCBA Brief, then you have already made the big resolution to commit to DCBA membership. For that, the organization and I thank you! In the months ahead though, I would suggest that you resolve to explore the benefits of DCBA membership and take advantage of a program, product or service that you have not used before. To that end, I’d point to some of our most valuable but least used benefits as a great place to start.

Career Center
If you are looking to fill a position, post your opening on the DCBA Career Center, taking advantage of your member discount on 30, 60 or 90 day listings. Career Center postings are viewed by several hundred job seekers each month. You can also highlight your listing in our weekly e-mail and boost your posting’s online listing. DCBA member firms also have the benefit of complimentary internship postings.

If you are a DCBA member looking for a job, make the Career Center part of your search. Your full profile and updated resume will be available to those looking to fill positions and you will be notified when positions open that match your skills and interests. Resources are also available for resume writing, interview tips, career advancement strategies and job search coaching.

Online Directory
Active members logged in to the DCBA website can search for other members using a wide selection of criteria in the online member directory. If you are searching for a member and are not certain of the spelling, use only the beginning of the name to receive the most feedback. When searching by Section or Committee, State Licensure information or Law Concentration Listings, choose from the drop down lists. You may also combine criteria to narrow your search. To search for a member who speaks a particular foreign language, type the language directly into the text box provided. Once your search results appear, just click on the member name to see his/her complete profile and contact information. For a handy desktop reference, you may wish to purchase the latest print version at the ARC, the Bar Center or online in the DCBA webstore shop.

Ask a Senior Lawyer
Members of the DCBA Senior Lawyers Division have offered to take inquiries from fellow DCBA members seeking advice in the areas listed. DCBA members using this service are offered up to two 30 minute consultations on their question. By using this service, you consent to the stipulation that the consultation and participation in the “Ask a Senior Lawyer” program is not a replacement for and should not be assumed or portrayed as a co-counsel relationship or lawyer referral service. Click on the Ask a Senior Lawyer link under Programs and Resources on the DCBA website to get started or to add your name to the roster for consultations.

Online CLE
The Illinois Institute for Continuing Legal Education (IICLE®) and the DuPage County Bar Association (DCBA) are excited to offer a new IICLE® Share collaboration to provide DCBA members a high quality and reliable online learning experience. Each month, several lunchtime MCLE programs are recorded so that the videos and materials can be made available through IICLE. (Continued on page 46)

About the Author
Robert Rupp is the Executive Director of the DuPage County Bar Association. He has worked in professional association management since 1994, serving a variety of national and international medical and legal associations, including the American Bar Association.
The Board of Governors met on October 20, 2017 at the Chicago Regional ISBA Office to discuss agenda items and issues for the upcoming Mid Year Meeting being held at the Palmer House in Chicago on December 7th through 9th. Items discussed included the following:

**ISBA Administrative Transition Policies**

The Executive Committee and the Board are moving forward to develop policies and employment parameters for top ISBA administrative positions that may arise due to retirements, top leadership leaving for other positions, long term illness or death or for any other reason. With policies in place, when there is need to replace a person on the leadership administrative staff, the Executive Committee and Board will not be starting from scratch with job descriptions and position parameters. This would also include basic templates for employment contracts for various leadership positions, resulting in a much more efficient hiring process for new senior leadership.

Staff reviewed the Association’s final financial reports for the year ending 6/30/17. In general the Association out performed its estimates with income being modestly higher than expected and expenses lower in most areas. Adjustments were proposed for the 2017/2018 budget.

The Board reviewed and discussed the “At Large” Board seats that are set aside for underrepresented sections of the ISBA to have a seat on the Board. The President Elect makes these appointments. The program was to sunset in 2021 unless extended by the Board and approved by the Assembly. The subcommittee reviewing the proposal strongly proposes that the program continue. They propose that prospective at large members be able to self-nominate and all nominations be reviewed by the Diversity Leadership Council with their recommendations being sent on to the President Elect for selection. The terms were recommended to stay at two years rather than be expanded to three.

**Lead Generation Issues**

Over the summer, the ISBA has continued discussions with the ARDC over lead generation policies and how programs of non-attorney lead generator companies are impacted by the Rules of Professional Conduct. The ARDC is in the process of establishing guidelines that assist Illinois attorneys who wish to be part of such programs with maintaining their professional duties under the Rules of Professional conduct. More details should be available for the Mid-Year Meeting.

**Photos in Connection With ISBA Election Materials**

An issue was raised on the impact candidate photos may have upon election results in ISBA elections. The concern was that inclusion of candidate photos might have the potential to perpetuate bias in the election. The Board reviewed the areas of the ISBA election policies where candidate photos may be used and discussed the pros and cons of having photos allowed. The Board determined to take no action on the matter and let stand the current ISBA election policies.

**Presidential Term Limitations**

The Board discussed a proposed policy limiting ISBA Presidents to one term in office. (Continued on page 46)
A new year brings a fresh start. Legal Aid is a service dedicated to giving less fortunate individuals a fresh start and the platform to excel once the burden of any legal problems is removed. So many volunteers dedicated to advocating for the poor and vulnerable make our program strong. There are about 400 attorneys that give of their time and effort, through Legal Aid. The kindheartedness of our volunteers never ceases to amaze me. Legal Aid also had the pleasure of having two volunteers and two interns serve in our office during 2017, and we are so grateful to have received their help.

Interns hold a special place in my heart because they are the future of our legal profession. We hope to promote ideals of service within our profession by teaching interns and new volunteers the importance and need to provide legal services to the low income population; we show them the benefits of providing pro bono services; and we promote and instill the attitude of treating colleagues and clients with civility and dignity. Over the last few years one of our interns, Lisa Murphy, has even come to serve as one of our Board members.

Kasey Coughlin interned with Legal Aid during the Spring Semester of 2017. At the time, Kasey was a 3L at John Marshall. She graduated this past May, passed the bar exam, was sworn into the Bar in November, and has hung up her own shingle concentrating in real estate, probate, and family law. Her motto is, “compassion combined with knowledge is a powerful tool.” I asked Kasey what she gained most from her experience at Legal Aid and I was very touched by her one word answer, “Confidence.” I remember how intimidating it was to be a new attorney, and it brings joy to hear that her opportunity to learn and observe court experiences brought out the best characteristics in our intern. It speaks not just of our program, but of the judges and colleagues she interacted with and observed along the way.

Komal Siddiqui was a College of DuPage Paralegal Intern with us during the Spring Semester of 2017. She is an immigrant from Pakistan, and would like to go on to law school. She graduated from her paralegal program this past May. She is fluent in Urdu and English.

Marly Robles is an attorney in Ecuador. She began to volunteer with our office during the fall of 2017, and continues to volunteer. She came to the U.S. two years ago and has applied for political asylum. Although Marly is working on her English verbal skills, she is very proficient in writing in English and Spanish, and has been an asset to Legal Aid by translating many forms that staff had not had the time to translate from English to Spanish.

Nathan Scurtu, a Downers Grove native, is currently a 3L at Kent. He will graduate this coming May, and was a volunteer in our office during the Fall Semester of 2017. I was very impressed by his conscientiousness and good nature. He is first generation Romanian-American, and emigrated with his parents at a young age, but is fluent in both English and Romanian. At first, Nathan felt that he may have some concerns about helping with divorce work because of his faith, but concluded after his time with our Program that the services Legal Aid provides is really focused on helping children and families transition through a very crisis-filled stage of that client’s life.

I am very grateful for the time I get to spend with interns and volunteers. Our program and community are stronger because of them, and I am so excited to see where the future takes them. I know they will excel and I will be able to say, “I knew them when…” □
“Mega Meeting’s back and can we all agree? You’ve got the inside track to knock out all your CLE!”

If you don’t remember this song from Judges’ Nite 2016, you’re not alone. Only the performers hear these songs repeatedly for the rest of their lives.

On February 3, the 2018 DCBA Mega Meeting will take place at the Lisle Sheraton. This meeting will offer a full day of programming focused on the theme “Working Together Winning Together.” In planning the agenda, condensed to one full day after several years of two-day programming, the CLE Committee consisting of David Clark, Scott Pointner and Charles Wentworth, worked to identify sessions that will address the inherent conflicts that exist within the practice of law, but that offer clear advice and potential solutions that demonstrate the profession coming together.
Welcome to our new DCBA Members.

Attorneys: Amanda T. Adams, Law Offices of Amanda T. Adams LLC; Seth Matthew Aigner, Aigner Law Group, LLC; Edward C. Eberspacher, IV, Meyer Law Group LLC; Daniel P. Johnson, Sr., Davi Law Group, LLC; Gregory J Jordan, Jordan & Zito LLC; Patricia M. Nelson, Prairie State Legal Services, Inc.; Amy Dickerson Rettberg; Cheryl S. Richards, Riordan Fulker-son Hupert & Coleman; Arben Kurtovic, Office of the State’s Attorney; Jonathan E. Meacham, Office of the State’s Attorney; Trisha L. Simmons, Office of the State’s Attorney; Erin Shanahan Johnson, Office of the State Appellate Defender; Jennifer M. Lutzke, City of Naperville; Mansoor Broachwala; Kasey Coughlin, Law Office of Kasey Coughlin; Devra Hake, U. S. Court of Appeals for Seventh Circuit; Paloma Hospedales-Mohammed, PHM Law, LLC; Nicholas Kamide, Kamide Law Office; Tyler James Kemper, Huck Bouma, PC; Rachel Keung; Christina Nannini; Meenaz Praohan; Amanda Righs, DeVriendt & Associates.

Affiliate Members: Colleen Ceh Becvar, Trinity Advocacy Group; Carmen Carbonara, Stewart Title Co.; Ryan M. Kwiatkowski, Retirement Solutions, Inc.; Brian Olson, ISBA Mutual.

Legal Community Members: Samantha Oestreicher, Mirabella, Kincaid, Frederick & Mirabella, LLC; Lynn Schnuelle, Vistex Inc.; Cristina Severson, Mirabella, Kincaid, Frederick & Mirabella, LLC.

Student Members: Katherine Anderson; Gabriella M Dubsky.

The format has also been changed to provide an experience for attendees that is different than the traditional one-hour session provided most every day in the Attorney Resource Center. The morning sessions will be 2.5 hours, providing the time necessary to do a deep dive into the topics being covered. The afternoon plenary will provide the chance to fill the new requirement for diversity related PRMCLE.

Attendees will have the chance to earn 5.5 credits (MCLE & PRMCLE Pending Approval) for attending the entire day’s programming. Sessions will include:

- Estate Planning & Probate – Fiduciary & Investment Fees, Fee Erosion of Investment returns, prudent investing and the DOL fiduciary rule, Estate Planning Considerations & The Presumptively Void Transfer Act
- Business Law – Negotiating a Business Purchase or Sales Contract
- Client Representation before Special Courts
- Residential Development Boot Camp
- Chancery Division, Law Division and Felony Division Judges Panels
- Diversity Plenary Session - Mentoring and Diversity to Bridge Lawyer Generations with presenter Sandra Yamate from The Institute for Inclusion in the Legal Profession
- Client Communication Skills
- Religion and Politics at the US Supreme Court
- Lending, Credit and Mortgage Issues Post Divorce

As has been done in the past, an exhibit hall will be available for attendees to meet with vendors providing goods and services to the legal community. The exhibits will be open all day, beginning with breakfast, through several scheduled breaks, and will close with a cocktail reception on Saturday at 4:30 p.m.

Full Price registration is $425 for the day, with DCBA Members enjoying a discounted rate of $225. There is a $75 discount off both of these for registrations received by January 8th. It is also worth noting that the second day of the Domestic Relations Guardian ad Litem Training will be taking place at the Sheraton from 8 a.m. – Noon on February 3 in conjunction with the Mega Meeting. Anyone attending the GAL program can add the State of the Courthouse Luncheon, all afternoon programs and the expo reception for $75. Visit dcba.org or call the DCBA office at (630) 653-7779 to register today. □
DCBA update

(Continued from Page 41)
The DCBA catalog on iicle.com offers MCLE and PRMCLE courses for free or at a reduced fee as a benefit of your DCBA membership. Free and reduced prices are only available by navigating to IICLE through the DCBA website after logging on. Full charges will apply if you navigate directly through iicle.com or do not log in. With several new programs being added each month, this is a great resource if you cannot attend MCLE meetings in person or find yourself needing last minute credits.

DCBA provides tremendous value for your dues investment. If you ever have a question or need help to fully utilize your member benefits, DCBA staff are always happy to help at (630) 653-7779 or bar@dcba.org.

ISBA Update

(Continued from Page 42)
Currently, there is no prohibition against a past ISBA president running a second time for ISBA Third Vice President which would lead to them being President for a second term through the automatic succession provisions as it applies to ISBA Officers. After discussion, the Board approved the policy limiting any ISBA President to one term. It does not restrict a past ISBA president election to the Board of Governors or the Assembly. It was felt that it is in the best interest of the Association to have a flow of new Presidents and new ideas into that office.

Delay of E-filing Requirement for Tax Rate Objections
The State and Local Taxation Section Council has urged the Board to contact Chief Judge Timothy Evans of the Circuit Court of Cook County and request he petition the Illinois Supreme Court for a six month delay in enforcement of the e-filing requirement for Tax Rate Objections since over 8,000 such complaints are expected to be filed in January of 2018 (due to the running of the applicable statute of limitations for the recent tax year.) The Section council argues that the system will simply not be ready to handle the deluge of these cases expected to be filed. The ISBA will contact Judge Evans regarding this matter.

President Elect Jim McCluskey has asked me to remind everyone who wishes to serve on a section Council or Committee to nominate themselves prior to 2/2/18 so that he can start naming members to section councils and committees after that date. Forms and instructions are on the ISBA website. Do not hesitate to nominate yourself if you have an interest in serving on a council or committee. He also asked me to remind you that the ISBA Annual Meeting is going back to the Abbey in Fontana WI. (near Lake Geneva) for 2018 and to save the dates: June 14 through 16, 2018. No agenda information or room rental information are available at this time.
Naperville

PROFESSIONAL OFFICE SPACE AVAILABLE IN NAPERVILLE: 2 - 3 offices are available. Shared office space is located in Naperville close to I-88 and Rt. 59. Includes furnished offices, secretarial and waiting room area, large conference room, WIFI, kitchenette, 2 bathrooms. Support staff negotiable. For more information call: 630-596-9400.

Lisle

Office with Momkus McCluskey LLC overlooking the Morton Arboretum! The firm is expanding and has offices and cubicles for rent effective immediately. Includes use of conference rooms, reception, common kitchen, internet, ample parking, among many other amenities. Situated in the Arboretum Lakes Office Park, the office sits near the intersection of I-88 and Rte. 53. Contact Jennifer Friedland at 630.493.0627.

Oak Brook

Furnished office for rent in Oak Brook near Oakbrook Mall. Perfect for solo practitioner. Office is within small suite of 4 offices, with conference room and kitchen. For more information, call Nicole at 630 560 6002 or email assistant@takiguchilaw.com.

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630.653.4119 (fax)
Where to Be
In January

Guardian Ad Litem (GAL) Training Reminder!

Attorneys interested in getting or staying on the list to be appointed as a Guardian ad Litem in domestic relations cases in DuPage (and looking to earn CLE credit) should mark their calendars for January 15, 2018 and February 3rd and plan on attending this year’s Domestic Relations Guardian ad Litem Training. The training consists of two sessions. Attending both sessions is required to remain on the list.

Session One will be held on January 15th (court holiday) from 9 a.m. (registration 8:30 a.m.) until 4:30 p.m. in the Auditorium at the DuPage County Administration Building (421 N. County Farm Road, Wheaton, IL). Session One will cover topics including relocation of minor children; differences between pre and post decree cases; dealing with dependency issues; testifying as a GAL, and will include a panel of mental health evaluators and a panel of judges who will take questions from attendees.

Session Two will take place on Saturday, February 3rd from 8 a.m. (registration 7:30 a.m.) until 12:15 p.m. at the Sheraton Hotel, 3000 Warrenville Road, Lisle, IL during the DCBA Mega Meeting. Session Two will cover topics including GAL Overview (Roles, Rules and New Statutes; Interviewing and Reports (Who and What to Leave In or Out); Special Needs Children; and How to Bill and Collect GAL Fees.

The cost is $200.00 for DCBA members and $400.00 for non-members, and the price includes continental breakfasts, drinks and snacks on both days. You're on your own for lunch during the break in Session 1. GAL attendees will receive a discount on lunch and afternoon Mega Meeting sessions on February 3. If you can't attend the live sessions on 1/15/18 or 2/3/18, the sessions will be recorded for OnDemand viewing at a later date. In addition to completing the GAL requirement, attendees will earn 10 hours of MCLE/PRMCLE.

You can register on the dcba.org website. If you have any questions, contact Janine Komornick at jkomornick@dcba.org.
Wintrust Mortgage in concert with DCBA is introducing the Member Mortgage Benefits Program. This program grants DCBA members exclusive access to custom mortgage options with the benefit of a $500 gift card.*

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We are committed to keeping your information confidential, secure and private. Wintrust Mortgage recognizes the reasonable expectation of your privacy and the importance of protecting that privacy.

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**HOW TO GET STARTED?**
To learn more about the Wintrust Employee Mortgage Benefits Program, contact your Mortgage Benefits Team:

**WINTRUST MORTGAGE**

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*Membership with Affinity Partner must be disclosed to loan originator before application is submitted in order for Affinity Member to receive Affinity program benefit. Please allow for 30 days after loan closing to receive Affinity gift card. All approvals are subject to underwriting guidelines. Program rates, terms, and conditions are subject to change at any time. Wintrust Mortgage is a division of Barrington Bank & Trust Company, N.A., a Wintrust Community Bank NMLS# 449042. © 2018 Wintrust Mortgage.
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