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It’s May, which by my very unscientific poll is most people’s favorite month. The grass is green, the lilacs are blooming, the temperature is perfect, golf clubs are out of the basement, and it’s time to plant! I wrote this column at the beginning of March and as I was watching it snow, was wondering when we could put away the heavy coats and gloves. Now is the time.

We have various months during the year to start anew – September for the start of the school year, January for the start of the new year. Spring, however, is a true time for renewal. Winter is over, we have nice weather to look forward to, the days get longer, and perhaps a summer of baseball will lead to a Chicago team in the World Series.

I hope you were able to attend Judges’ Nite. It was a great show. 360 people attended and over $15,000 was raised for Legal Aid. Congratulations and a round of applause for the producer, directors, writers, cast and crew for their talent and hard work. The Judges’ Nite Band was superb and played a fantastic opening set before the show started. We have a review of the show by Mike Sitrick, lots of photos, and a piece about the prizes and winners. Make sure to take a look in the News & Events section.

Thank you to Judge Robert Gibson who offered to write a tribute to Justice Antonin Scalia. The article, “In Memory of Justice Antonin Scalia,” is thoughtful and scholarly, and also reflects on the personal side of the late justice. Thanks also to Judge Kenneth Popejoy who provided the photograph that accompanies the article.

When not rehearsing for and appearing in Judges’ Nite, John Pcolinski had time to serve as this month’s lead articles editor. Thanks, John, for your work on this issue. Wayne Brucar authored our cover article about challenging a constitutional violation of rights, “Going Through the Motions: A Quick Guide to Terms, Analysis and Filings.” Jeffrey Parness and David Saxe, a third year student at NIU law school, sent us “Illinois Parentage Disestablishments after A.A. and the 2015 Parentage Act.”

Are you ready to vote in the DCBA election? Please take a look at the News & Events section, where we feature the biographies and photos of those running for the open seats on the Board of Directors and Third Vice President spot. Also in News & Events we have a piece about the DCBA mock trial competition written by Tim Klein, as well as a report on the legislative breakfast that DCBA leadership hosted in February. Finally, why not get a group of friends together and watch the Kentucky Derby in style at Arlington Racecourse at DCBA’s Derby Day event. Please refer to Where to Be in May for the details.

Christine McTigue has her office in Wheaton. She concentrates her practice in civil appellate law and insurance coverage matters. Christine is on the panel of neutral commercial arbitrators for the American Arbitration Association, and is a court-certified mediator for the law divisions of DuPage and Cook counties. She received her Bachelor of Arts, magna cum laude, from the University of Minnesota and her J.D. from Loyola University of Chicago.
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President's Message

Bravo Judges’ Nite . . . Bravo

By James J. Laraia

It goes without saying that every year the cast, crew, and musicians for Judges’ Nite exceed our expectations and provide an outstanding show full of laughs, slight barbs, and a good time for all. Over the last decade of being a member of the DCBA Board, I had always heard about the amount of time and effort that goes into writing, producing, directing, and rehearsing the show. This year I observed these efforts first-hand, and it was eye-opening for me. I now have a greater sense of gratitude for the accomplishments made by our colleagues who are involved in Judges’ Nite. I also quickly learned how terrifying it can be to step onto that stage and have to perform in front of your peers in the legal community.

As you will read about in the pages of this Brief, Judges’ Nite this year sold more than 360 tickets and raised more than $15,000 for DuPage County Legal Assistance Foundation. This is an incredible accomplishment. I would be remiss not to recognize the efforts of the show’s producer Christina Morrison and DCBA staff, especially Cindy Allston, for all of their work and efforts in promoting the show, putting together the silent auction, selling 50/50 raffle tickets, and creating the playbill. Thank you to all who donated items for the silent auction, bought raffle tickets and sponsored our event through the ads in the playbill. We appreciate all of your support.

I believe one of the main reasons for the lasting success and growth of Judges’ Nite is the smart, witty, and entertaining writing. This year’s Judges’ Nite was no exception, with a great script written in large part by our Director Nick Nelson and Assistant Director Brent Christensen. Not only did the show include tasteful inside jokes for those in the DuPage legal community, but also touched on national topics which allowed the entire audience to feel like they were “in on the joke.” I thought the writing was spectacular and applaud the writers for a great script, and I cannot wait to see next year’s show.

To the performers in the show, I simply do not know how you do it. Your poise and presence on stage is matched only by professionals. You make it look so easy as you deliver your lines or lead the chorus, and I envy your abilities. The writing gets the show onto the stage, but your delivery is what provides the audience with the entertainment that filled the auditorium with laughter. Thank you for all of the time and effort, the weekend and late night practices, and the outstanding performances that made this Judges’ Nite so memorable.

Last, but certainly not least, I want to thank The Judges’ Nite Band for your incredible musical talent and foundation for the show. I especially want to thank Dave Winthers, Jack Provenzale, and John McTigue for all of your support in getting me through my very off-key and out of rhythm performance. I appreciate your patience and understanding in helping me “take the stage” and I promise I will never ask you to be part of such a horrible one minute and twelve seconds of “entertainment” again.

On behalf of all of the members of the DCBA, Bravo Judges’ Nite for another wonderful show and for helping us raise over $15,000 for DuPage Legal Aid. Bravo!!!

James J. Laraia (“Jay”) is a partner with the law firm of Laraia & Laraia, P.C. of Wheaton, Illinois. He concentrates his practice in the areas of family law, general civil litigation and chancery matters. He was licensed by the Supreme Court of the State of Illinois in 2001, after having received his Juris Doctorate from Northern Illinois University College of Law in the same year. Jay received his undergraduate degree from Benedictine University. Prior to joining his current law firm in 2003, Jay was an assistant state’s attorney in DuPage County.
John Pcolinski, Jr., is a partner in the Wheaton Law Firm of Guerard, Kalina & Butkus. He graduated from North Central College magna cum laude in 1983 and The University of Illinois College of Law in 1986. He has been licensed in Arizona since 1986 and in Illinois since 1987. His practice is concentrated in commercial litigation especially chancery litigation relating to contested estates and guardianship matters, business dissolution and valuation and related appeals.

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Introduction
Even if the evidence in a case is overwhelming, the gathering of the evidence can often be challenged under constitutional grounds with motions to suppress. If successful, the State’s case can be eviscerated. Knowing what to look for in the factual basis of a criminal charge is the key to a successful pretrial defense. Initial analysis of governmental conduct in the context of criminal charges involves three basic issues:

- Has there been a seizure?
- Has there been a search?
- Has there been a statement?

If the answer to any of these issues is yes, the inquiry becomes whether inculpatory evidence, either testimonial or physical, has been gathered as a result. Pretrial motion practice addresses the issue as to whether that evidence has been obtained illegally and can be barred from trial. Please note these issues are just the tip of the iceberg in motion practice but set out the most basic and potentially successful attacks.

The Constitutional Intrusion
In order to suppress evidence, there has to be a governmental violation of a constitutional right. To address this, a motion must be generated alleging some type of action which articulates a claim of a depravation of a specific right, either of the person or of property. The motion will typically find its basis in the Fourth or Fifth Amendment of the United States Constitution.

Person
There are two types of seizures of the person which evoke constitutional protections: an investigatory stop and an arrest. A person has been seized within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that they were not free to leave.1 In an analysis of a person’s encounter with police or other government agents, the nature of the interaction must be first be identified as either a nonconsensual or consensual encounter.2

---

Police-civilian encounters have been categorized into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, also known as Terry stops, which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) encounters involving no coercion or detention and thus do not implicate Fourth Amendment interests.3

The first tier involves an arrest, which must be supported by probable cause.4 Probable cause exists when the facts and circumstances known by the arresting officer are sufficient to warrant a reasonable person’s belief that the arrested individual has committed an offense.5 The next tier of encounter involves a temporary investigative seizure, also known as a Terry stop. An officer may conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion of criminal activity, and such suspicion amounts to more than a mere hunch.6 The final tier involves those encounters which are consensual. These encounters involve no coercion or detention and therefore do not involve a seizure.7

Consensual encounters do not implicate the Fourth of Fifth Amendments. If the encounter is not consensual, a determination must be made as to whether the person was detained or in custody and to what extent the detention or custody extended. This distinction is especially important where a statement is in issue. While all arrests entail taking a person into custody, one can be in custody even while not having been arrested. Simply being lawfully detained, such as an investigative stop, can be sufficient to meet the custody requirement to challenge a statement.

Automobile
Traffic stops are seizures under the Fourth Amendment. Since they are less like formal arrests and more like investigative detentions, the reasonableness of a traffic stop is gauged by the standard of Terry. An investigative traffic stop must be temporary and last no longer than necessary to effectuate the purpose of the stop. The reasonableness of the stop’s duration is linked to the reason for the stop.8

Warrantless searches are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well delineated exceptions.9 The Carroll Doctrine holds that warrantless searches are per se unreasonable in the absence of exigent circumstances.10 The “automobile exception” looks to the exigency which confronts police in connection with searching vehicles where the opportunity to search is fleeting since a car is readily movable.11 However, there are limitations upon this exception - the word automobile is not a talisman in whose presence the Fourth Amendment fades away and disappears.12

Building, House Trailer, Watercraft, Aircraft, Motor Vehicle, Railroad Car
Searches and seizures inside a habitable or storage enclosure without a warrant are presumptively unreasonable. This presumption may be overcome in certain circumstances because the ultimate touchstone of the Fourth Amendment is reasonableness. Accordingly, the warrant requirement is subject to certain reasonable exceptions.13 Similar to the automobile exception, where the exigencies of the situation make the needs of law enforcement compelling a warrantless search is objectively reasonable under the Fourth Amendment.14

Involuntary Police Contact
Once police contact has been determined to be involuntary, the circumstances of the contact will drive the analysis of Constitutionality. Illinois has statutorily defined involuntary

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**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, facsimiles, 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 claims involving data breach and privacy violation cases affecting tens of millions if not hundreds of millions of consumers.

**Junk Text Messages, 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 $16,690,000.

**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 Failing to Follow Illinois Law Requiring Accurate Disclosure of Employment Statistics for Obtaining Jobs Following Graduation**
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 provision for vocational schools by failing to disclose that very few graduates obtained jobs. Appellate and Supreme Case refused to hear an appeal of class certification order.

**Breach of Contract and Gift Card Cases**
Representing 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.

**Shareholder Derivative Lawsuits**
We have or are representing shareholders of various corporations in shareholder derivative lawsuits involving claims against management including cases against DeVry, Cole Taylor Bank, and Nalco.

**Unpaid Overtime Class Actions**
Representing putative class members in a number of cases against employers seeking repayment of alleged unpaid overtime or for other wage and hour violations such as failure to pay minimum wages. We have obtained favorable class wide settlements in wage and hour and overtime cases.

**Auto Repossessions**
Class certification order affirmed by the Appellate Court. 365 Ill.App 3d 694. Represented class with co-counsel in claims involving violations of Illinois’ automobile repossession laws. Case settled with each of the 7,600 class members able to claim up to $2000. In addition to the damages payment, debt totaling $6.5 million was forgiven as to 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, Grain’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 class in consumer fraud claim. 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 in 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:

- Violations of Federal and state Wage claim laws by failing to pay overtime to salaried employees, forcing employees to work off the clock or failing to pay minimum wages.
- Whistle Blower claims involving fraud on the government or securities purchasers.
- 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.

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- Wage & Hour Overtime and Minimum Wage Violations
- Whistle Blower (Qui Tam) Claims
- Unfair Check Overdraft Fees
- Healthcare Product Fraud
- Defective Car & Vehicle Products
- Insurance Fraud
- Fair Credit Reporting Act – FCRA
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- Privacy Violations
- Violation of Car Repossession Statutes
- Vocational School Deception
- Excessive Late Charges
- Infomercials & Deceptive Advertising

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police contact in two ways - detention (stop and frisk)\textsuperscript{15} and arrest (custody).\textsuperscript{16} The Illinois and United States Constitutions have set out the limits of legal (constitutional) police contact with individuals.\textsuperscript{17} The following is analysis of the significant areas of inquiry.

**Articulable Suspicion and Scope of Frisk**

Police have a right to investigate possible criminal involvement of a person, but there are strict limitations on the investigation. A pat-down search and seizure is not constitutionally permissible where there is no reasonable belief that person involved is involved in any criminal activity or is armed or dangerous.\textsuperscript{18} Before a police officer may place a hand on the person of a person in search of anything, the officer must have constitutionally adequate reasonable grounds for doing so and, in case of self-protective search for weapons, the officer must be able to point to particular facts from which he reasonably inferred that person searched was armed and dangerous.\textsuperscript{19}

**Probable Cause**

Seizures must be based on probable cause. Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment, and decisions immediately after its adoption affirmed that common rumor or report, suspicion, or even strong reason to suspect was not adequate to support a warrant for arrest. The familiar threshold standard of probable cause for Fourth Amendment seizures reflects the benefit of extensive experience accommodating the factors relevant to the reasonableness requirement of the Fourth Amendment, and provides the relative simplicity and clarity necessary to the implementation of a workable rule.\textsuperscript{20}

**Warrant**

Warrantless searches and seizures are presumed to be unreasonable and in violation of the Fourth Amendment. This presumption may be overcome where the exigencies of the situation make a warrantless search objectively reasonable. Among the exigent circumstances which justify a warrantless search is the need to prevent the imminent destruction of evidence. However, police may not rely on the exigent circumstances doctrine where they created or manufactured the exigency in the first place. Thus, a warrantless search is permitted to prevent the destruction of evidence only if the police are responding to an unanticipated exigency and not to an exigency which they created.\textsuperscript{21}

Probable cause is required for issuance of a search warrant. Probable cause exists if the totality of the facts and circumstances known to the affiant are sufficient to warrant a person of reasonable caution to believe that an offense occurred and the evidence of the offense is at the location to be searched. There must be an established nexus between the criminal offense, the items to be seized, and the place to be searched. Reasonable inferences may be drawn to establish the nexus. Direct information is not necessary.\textsuperscript{22}

**Plain View**

The plain-view exception to the Fourth Amendment’s warrant requirement allows a police officer to seize an object without a warrant if the officer is lawfully located in the place where he observed the object, the object is in plain view, and the object’s incriminating nature is immediately apparent. The requirement that an item’s criminal nature be immediately apparent is the equivalent of probable cause.\textsuperscript{23}

**Inventory**

The threshold issue in considering whether the police have conducted a valid inventory search incident to a tow of a vehicle is whether impoundment of the vehicle was proper. Impoundments may be in furtherance of public safety or community caretaking functions, such as the removal of damaged or disabled vehicles.\textsuperscript{24} A valid inventory search requires that: (1) the vehicle is lawfully impounded; (2) the purpose of the search is to protect the owner’s property, protect the police from claims of lost, stolen, and vandalized property, or guard the police from danger; and (3) the search is conducted in good faith pursuant to reasonable standardized police procedures, not as a pretext for an investigatory search.\textsuperscript{25}

**Search Incident to Arrest**

The search incident to arrest doctrine creates an exception to the warrant requirement for items discovered on an arrestee’s...
person or in the area within his immediate control. The search may not extend beyond defendant’s person and area from which he might have obtained either weapon or something that could have been used as evidence against him. A search of items found on the person of an arrestee is reasonable even where there is no concern that the particular arrestee is armed or may attempt to destroy evidence. An arrestee’s vehicle may be searched incident to the arrest only if the suspect has not been secured and is close enough to the vehicle to reach the passenger compartment. An independent exception permits the search of an arrestee’s vehicle where it is reasonable to believe that the vehicle contains evidence that is relevant to the crime of arrest.

**Legitimate Expectation of Privacy**

Just because someone is involved in a search or seizure arising out of some type of incident does not mean they have legal authority to contest the legality of the government action as a result. Rights attach to the person, not the incident. As a result, to assert a violation of a right, it must be shown the right attaches to the person asserting it.

Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted. A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person’s premises or property has not had any of their Fourth Amendment rights infringed. And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment, it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule’s protections.

Courts no longer use the rubric of standing when analyzing Fourth Amendment claims. Instead, the relevant inquiry is whether the person claiming the protections of the Fourth Amendment had a legitimate expectation of privacy in the area searched. Factors relevant in determining whether a legitimate expectation of privacy exists include the individual’s ownership or possessory interest in the property; prior use of the property; ability to control or exclude others’ use of the property; and subjective expectation of privacy. The defendant challenging a search has the burden of establishing that they had a legitimate expectation of privacy in the searched property.

**The Impingement upon Rights**

So, when exactly does the Fourth Amendment kick in? As previously indicated, an officer stepping up to a person and having a chat is not a governmental impingement on one’s rights. Some type of detention or seizure is necessary.

**Seizure**

A person is seized or detained only when, by means of physical force or a show of authority, their freedom of movement is restrained. The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.

In order to suppress evidence, there has to be a governmental violation of a constitutional right.

As long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person’s liberty or privacy as would under the Constitution require some particularized and objective justification.

A person has been seized or detained within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have

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believed that he was not free to leave. Examples of circumstances that might indicate a seizure or detention, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.  

Stop and Frisk
A police officer may in appropriate circumstances and in appropriate manner approach person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest. In justifying a particular intrusion, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. These facts must be judged against objective standard of whether facts available to officer at moment of seizure or search would warrant a man of reasonable caution to believe that action taken was appropriate.

Intrusions upon constitutionally guaranteed rights must be based on more than inarticulate hunches, and simple good faith on part of an officer is not enough. A dual inquiry is necessary for deciding whether an officer’s investigative detention is reasonable: (1) whether the officer’s action was justified at its inception and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

If there is a reasonable basis to believe that the citizen is armed and dangerous, the officer may conduct a pat-down search to determine if the citizen possesses a weapon. Terry is violated by a search which goes beyond the scope necessary to determine if the suspect is armed.  

A Terry stop must be justified at its inception. In addition, a police officer’s actions thereafter must be reasonably related in scope and duration to the circumstances that warranted the stop in the first place. A Terry stop should last no longer than is necessary to effectuate the purpose of the stop. The State bears the burden of showing that the Terry stop was limited in scope and duration. 

Arrest
An arrest involves three elements: authority to arrest, intention of the officer and the understanding of arrestee, and restraint of the person. The test of arrestee’s understanding is not what the arrestee subjectively thought, but what a reasonable person, innocent of any crime, would have thought had he been in arrestee’s shoes. An arrest is made by an actual restraint of the person or by such person’s submission to police custody. The essence of an arrest is a restriction of the right of locomotion or a restraint of the person.  

A person is lawfully arrested when police officers (1) have a warrant commanding that such person be arrested, or (2) have reasonable grounds to believe that a warrant for the person’s arrest has been issued in the state or in another jurisdiction, or (3) have reasonable grounds to believe that the person is committing or has committed an offense.

Factors to be considered in determining whether an arrest has occurred include: (1) time, place, length, mood and mode of encounter between defendant and police; (2) number of police officers present; (3) any indicia of formal arrest or restraint, such as use of handcuffs or drawing of guns; (4) intention of officers; (5) subjective belief or understanding of the defendant; (6) whether defendant was told he could refuse to accompany police; (7) whether defendant was transported in a police car; (8) whether defendant was told he was free to leave; (9) whether defendant was told he was under arrest; and (10) the language used by officers.

Custody
For a number of reasons, not the least of which is interrogation, the question of whether a person is in custody must be carefully analyzed. Arrest and custody are not synonymous. Custody is more far reaching. Statements obtained from an individual while in government custody, without full warning of constitutional rights, are inadmissible as having been obtained in violation of the Fifth Amendment privilege against self-incrimination.

To determine whether police have taken a person into custody, the trial court must decide whether a reasonable person in

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the defendant’s circumstances would have felt he or she was not at liberty to terminate the interrogation and leave. The court should consider (1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused.

The determination of whether an interrogation is custodial should focus on all of the circumstances surrounding the questioning, such as location, time, length, mood and mode of interrogation, the number of police present, the presence or absence of family and friends of the accused, any indicia of formal arrest or evidence of restraint, the intentions of the officers, the extent of knowledge of the officers and focus of their investigation, and the age, intelligence, and mental makeup of the accused. After reviewing these factors, the court must make an objective determination as to what a reasonable man, innocent of any crime, would have thought had he been in defendant’s shoes.

Miranda
The determination of whether a person is in custody for Miranda purpose involves two inquiries: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. When examining the circumstances surrounding the interrogation, courts should consider the following factors: the location, time, length, mood, and mode of the interrogation; the number of police officers present; the presence or absence of the family and friends of the accused; any indicia of formal arrest; and the age, intelligence and mental makeup of the accused. With respect to the latter inquiry, the accepted test is what a reasonable person, innocent of any crime, would have thought had he or she been in the defendant’s shoes.

Additionally, the mere fact that an accused is not free to leave during a traffic stop or an investigation does not mean that a defendant is in custody for Miranda purposes. The initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned. The interrogating officer’s subjective views on whether the individual is a suspect are relevant only if conveyed by word or deed to the individual.

Conclusion
Once a constitutional violation of rights is identified, the next step is challenging the violation in court with the appropriate motion. Motions to quash arrest and suppress evidence, searches and statements are not only effective tools for positioning a case for trial, but are extraordinarily effective negotiating tools. The ultimate disposition of a criminal case is significantly influenced by pretrial motion practice. It is a litigation opportunity that should not be allowed to pass.

45. People v. Slater, 228 Ill.2d 137 (2008).
In Memory of Justice Antonin Scalia

By Hon. Robert G. Gibson

The author would like to thank Abigail Buckels, Staff Attorney for the 18th Judicial Circuit Court, for her invaluable contributions to the footnoting and fine-tuning of this article.

Justice Scalia once said in an interview: “They ought to pass out to all federal judges a stamp, and the stamp says – WHACK [Pounds his fist] – ‘STUPID BUT CONSTITUTIONAL.’” In construing the United States Constitution Justice Scalia preached originalism, interpreting the Constitution as the framers intended it rather than as an evolving document. In matters of statutory construction he advocated textualism, focusing on the words of the law and the objective meaning of those words at the time of enactment. He railed against a “living Constitution” in colorful diatribes such as: “A Bill of Rights that means what the majority wants it to mean is worthless,” and calling a portion of the majority opinion in Obergefell v. Hodges the “mystical aphorisms of the fortune cookie.” In his dissent in the Obergefell case, Justice Scalia wrote that if he ever joined an opinion that began like the majority opinion (which he quoted derisively), “I would hide my head in a bag.”

His saving grace from being considered merely an insufferable bully was multi-faceted. He often was uproariously funny, and could take it as well as give it out. When Stephen Colbert performed at the White House Correspondents Dinner in 2006, he mercilessly skewered President George W. Bush, teased Justice Scalia and generally mocked conservatism. Since the President was sitting only a few seats away, with other members of his administration at the dais, Colbert later described how when he was done the audience greeted him mostly with silence, and no one would even look at him. The exception was Justice Scalia who approached Colbert with a big smile, reciprocated one of Colbert’s antagonistic Italian gestures to Scalia, and praised Colbert effusively, repeating “great stuff!” Colbert watched him walk away, and couldn’t help thinking, “Don’t you make me love you old man.”

He befriended some of the most unlikely people, teaching Justice Elena Kagan, one of President Obama’s nominees, how to hunt, then frequently taking her to hunt various game, and spending every New Year’s Eve for decades having a couple’s dinner with his wife and the liberal Justice Ruth Bader Ginsberg and her husband. After his death, Justice Ginsburg described their relationship as “best buddies.” Justice Scalia once said, “Everybody I’ve served with on the Court I’ve regarded as a friend. Some were closer than others, but I didn’t consider myself an enemy of any of them.”

Paradoxes also abound from his younger years. An only child raised in a Catholic family, a paradox in and of itself, young

5. Obergefell, 135 S.Ct. 15 2630, n.22.
Antonin, known as Nino, rode the subway to and from his home in Queens to Xavier High School in Manhattan carrying a .22 carbine as a member of the rifle team. Then at school he would trade the rifle for a French horn as a member of the marching band. He excelled as a debate champion, played the lead in Macbeth and other productions, and was a panel member of the popular Sunday television show, “Mind Your Manners.” At home he and his friends would play stickball, as well as street hockey on roller skates with a regular hockey puck.

He likely faced discrimination. He wanted to go to Princeton, and in 1953 when he applied, 55 percent of those who applied to Princeton from private schools were accepted (today the overall acceptance rate is 6.99 percent). Scalia, an Italian-American from Queens, was valedictorian of his class and excelled in a host of extracurricular activities, yet was rejected for admission. Of course discrimination against Nino Scalia cannot be definitely proven, but circumstances suggest it occurred in the clubby atmosphere of 1953 Princeton. Justice Scalia never raised its specter and never embraced a victim’s mentality. Scalia went on to study history at Georgetown and again was valedictorian of his class. He graduated from Harvard Law School and was Notes Editor of the Law Review. After stints in private practice, government practice, and at the University of Chicago teaching law, in 1982 President Reagan appointed Scalia to the federal bench and in 1986 to the United States Supreme Court. The Senate confirmed Justice Scalia 98-0, improbable as that might seem today. He became the first Italian-American to serve on the United States Supreme Court and remained there for just short of thirty years.

One criticism of judges generally is that they decide which side they want to win based on visceral instincts and then figure out a legal justification to reach the desired result. Justice Scalia served as the leading opponent of this type of jurisprudence. His book, written with Bryan Garner, Reading Law: The Interpretation of Legal Texts, runs 567 pages. He debunked attempting to divine the subjective intent of the legislature apart from the text of the legislation, reasoning that legislators bring many individual intentions to the law-making process, requiring compromise, so that attempting to assign a collective intent is an absurdity.

While critics have accused Justice Scalia of creating a theory of legal interpretation that would reinforce his generally conservative beliefs and policy positions, the evidence mostly doesn’t back up the criticism. In Hamdi v. Rumsfeld, Yaser Hamdi, a twenty-year-old American citizen, was arrested by the United States military in Afghanistan. He argued that the government had violated his Fifth Amendment right to due process by holding him indefinitely and not giving him access to an attorney or a trial. Hamdi claimed he was doing relief work and was trapped in Afghanistan when the U.S. invasion began. The government transferred him to Guantanamo Bay for three months, until discovering he held U.S. citizenship and then transferred him to naval brigs in Virginia and later South Carolina. His father filed a habeas corpus petition in federal court.

The plurality opinion by Justice O’Connor, joined by Justices Rehnquist, Breyer and Kennedy, and the partial concurrence by Justices Souter and Ginsburg, are too elaborate to summarize here, but suffice to say that Justice Scalia’s dissent, joined by Justice Stevens, went the furthest in restricting the Executive Branch’s power of detention. Justice Scalia, who worked in the Nixon and Ford administrations and was undoubtedly not mouthing Republican talking points, wrote:

8. Yet critics point out that originalism purports to do just that – assign a collective intent to the Founding Fathers - and at a point even further back in time. Justice Scalia likely had misgivings early on with his approach, once describing it as “faint-hearted originalism,” although in later years he disclaimed the qualifier.

9. Critics have particularly denounced Justice Scalia’s majority opinion in District of Columbia v. Heller, 554 U.S. 570 (2008), striking down a ban on handgun possession for traditionally lawful purposes, such as self-defense within the home, and his siding with the majority in Bush v. Gore, 531 U.S. 98 (2000), which effectively decided the 2000 election in favor of George W. Bush. An exposition of these cases and whether Justice Scalia always adhered to his originalist and textualist approach is well beyond the scope of this article. From this author’s viewpoint, Justice Scalia’s approach remained remarkably consistent throughout his tenure.

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Yet he believed firmly that unelected, life-appointed judges should not make law, that the legislature was elected for that very purpose, and that the Constitution prescribed by its very terms a humble, limited role for the judiciary making it a federal crime to desecrate the flag, and the same five justices struck down that federal statute as well.

Justice Scalia’s approach did not deviate in religious liberty cases, in turn angering the Church at times and at other times angering those making various religious freedom claims. He ridiculed the notion that the First Amendment mandates government neutrality between religion and non-religion, angering the latter, but his approach at times cut against his own faith, and drew criticism from religious leaders.

Also contrary to popular opinion, particularly Republican popular opinion, he more than occasionally came down on the side of individuals asserting constitutional violations by law enforcement personnel, at the expense of more easily convicting criminal defendants. Many of these cases involved Fourth Amendment or Sixth Amendment violations.

Even critics of Justice Scalia’s decisions mostly appreciated his love of intellectual combat. Writing in Slate magazine, Dahlia Lithwick wrote:

Justice Scalia’s often unpopular decisions in favor of individual liberties at the expense of what the majority of people desire at any given moment underscore that his judicial philosophy was to interpret what the Constitution (or statute) says, not what he wants it to say. Otherwise he would never have joined in a decision effectively overturning laws in 48 states relating to flag-burning, joining the unlikely majority of Justices William Brennan, Thurgood Marshall, Harry Blackmun, and Anthony Kennedy. Congress then passed the 1989 Flag Protection Act, doing what it thinks the political branches ought to do, it encourages their lassitude and saps the vitality of government by the people.

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Scalia doesn’t come into oral argument all secretive and sphinxlike, feigning indecision on the nuances of the case before him. He comes in like a medieval knight, girded for battle. He knows what the law is. He knows what the opinion should say. And he uses the hour allotted for argument to bludgeon his brethren into agreement.13

Sister Helen Prejean, the anti-death penalty advocate of Dead Man Walking fame, writes in her book, “The Death of Innocents,” that she once approached Scalia at an airport to say that she was planning to attack his views in print. While an ordinary judge or person would likely say something mild or conciliatory to a nun in such circumstances, she related that Justice Scalia said, “I’ll be coming right back at you,” jabbing his fist in the air.14 Justice Scalia, unlike many of his peers, would often hire socially liberal clerks to challenge his own thinking and to provide counter-arguments. He said: “That kind of clerk will always be looking for the chinks in my armor, for the mistakes I’ve made in an opinion.”15 Despite the combativeness, his clerks considered him a prince to work for, both caring and loyal.

A final paradox of Justice Scalia’s tenure on the court lay in the contrast between his judicial manner and his belief in the constitutional role of the judiciary. His writing style has been described as “equal parts anger, confidence and pageantry”16 - in other words, anything but humble. Yet he believed firmly that unelected, life-appointed judges should not make law, that the Constitution prescribed by its very terms a humble, limited role for the judiciary. He often spoke at legal forums and to the press, but invariably to argue against judicial arrogance.17

Persuade your fellow citizens it’s a good idea and pass a law. That’s what democracy is all about. It’s not about nine superannuated judges who have been there too long, imposing these demands on society.18

Justice Scalia, the grandson of a Sicilian factory worker, married to his wife Maureen for 55 years and father of nine, often touted the necessity of individuals in government doing the right things for the right reasons and doing them competently. “[I]n order for capitalism to work – in order for it to produce a good and a stable society – the traditional Christian virtues are essential.”19 And in an admonition to all of us, as well as himself, Justice Scalia once said:

Bear in mind that brains and learning, like muscle and physical skill, are articles of commerce. They are bought and sold. You can hire them by the year or by the hour. The only thing in the world not for sale is character.20

Justice Scalia stood for getting the right result based on the law as it exists, not making up his own law to please himself, his colleagues, or the public. He knew that he was not the custodian of his legacy. When asked about his most heroic opinion, Justice Scalia responded: “I have no idea. For all I know, 50 years from now I may be the Justice Sutherland of the late-twentieth and early-21st century, who’s regarded as: ‘He was on the losing side of everything, an old fogey, the old view.’ And I don’t care.”21

Justice Scalia leaves us with an outsized legacy as a Supreme Court Justice, as a legal thinker and as an American original. He stood only 5’7” but he towered over his contemporaries in his impact on American jurisprudence. He will be sorely missed. □

14. Sister Helen Prejean is a Roman Catholic nun and Justice Scalia is a devout Catholic with one son who is a priest.
17. Despite Justice Scalia’s general affirmation of separation of powers and a modest role for the judiciary, it should be noted that in two of the most important cases in recent times – Citizens United v. Federal Election Commission, 558 U.S. 310 (2010) (striking down a portion of the McCain-Feingold Act) and Shelby v. Holder, -- U.S. --, 133 S. Ct. 2612 (2013) (striking down Section 4(b) of the Voting Rights Act of 1965) – critics argue he deviated from his principles and voted along party lines. In both decisions he joined a 5-4 majority declaring unconstitutional portions of Congressional acts which cut to the heart of the American political process.
20. In Season of Commencements, Words of Wisdom Heard Anew, NY TIMES (May 27, 1996), http://www.nytimes.com/1996/05/27/us/in-season-of-commencements-words-of-wisdom-heard-again.html. Recent headlines have attacked Justice Scalia for accepting trips from private sponsors. Although no one has pointed to any case being decided by Justice Scalia as a quid pro quo, and this author highly doubts that any such scenario will ever surface, Supreme Court Justices are the only federal judges not subject to any ethics code. Rectifying this unwise policy would appear to be a non-partisan imperative.
Illinois Parentage Disestablishments after A.A. and the 2015 Parentage Act

By Jeffrey A. Parness and David A. Saxe

When birth mothers are married, their husbands are established as fathers under law at birth due to their presumed biological ties. When birth mothers are not married, men claiming biological ties can now be established as fathers under law by signing, together with the birth mothers, voluntary acknowledgments of parentage (VAPs). Such parentage, however, can be disestablished by either rescission or challenge. Presumed fatherhood can be disestablished by rebuttal.

Disestablishment norms recently were altered by the Illinois Supreme Court in the November 2015 A.A. decision, which involved a GAL's challenge to a VAP, and by the Illinois Parentage Act of 2015, effective January 1, 2016. This article explores the changes and posits further alterations to the 2015 Parentage Act in order to better serve the best interests of Illinois children. Specifically, as with other VAP challengers, GALs should be required under the Act to demonstrate that a child's best interests would be served by any post 60-day challenge to a VAP.

The A.A. Decisions

In the Appellate Court, the A.A. case was described as follows: In June 2013, the Illinois Department of Children and Family Services (DCFS) petitioned for an adjudication of wardship of A.A. (and three other children, all born to Caitlin). A.A. was born in April 2013. Caitlin’s husband signed a denial of paternity and was ruled out as A.A.’s biological father, thereby allowing Matthew A. to voluntarily acknowledge parentage (VAP) shortly after A.A.’s birth. Matthew acted in belief that he was the biological father, though he knew he might not be. Caitlin had reason to know that Matthew was not the biological father. When Caitlin informed Cort H. that he likely was A.A.’s father, he denied it and ended their romantic relationship. In August 2013, Cort died.

By November 2013, Matthew “unfortunately” learned he was not A.A.’s biological father. In February 2014, the parents of Cort sought to intervene in the wardship proceeding because they wished to adopt A.A. That same month, the trial court recognized a service plan for Matthew and Caitlin to regain custody of A.A. However, Matthew never had a chance to regain custody since the guardian ad litem (GAL) for A.A. successfully challenged the VAP over Matthew’s objection. In May 2014, the trial court vacated the VAP and declared a parent-child relationship between the deceased Cort and A.A.

The Appellate Court affirmed. The court commended “Matthew A.’s parental instincts and actions regarding A.A.” The court ruled there was no need for an inquiry into the A.A.’s best interests. Further, the Appellate Court did not consider expressly the effect of Cort’s denial of responsibility for A.A. when confronted by Caitlin, or the failure of Cort to pursue fatherhood. The Appellate Court noted that “A.A. should be able to receive social security survivor benefits through Cort H.”

Biology, and perhaps money, reigned supreme. There was no judicial investigation into the VAP challenge limits, which

2. 750 ILCS 46/101, at seq.
4. Id. at ¶7.
5. Id. at ¶10.
6. Id. at ¶11.
7. Id. at ¶31.
8. Id. at ¶30.
9. Id. at ¶31.
by federal statute after 60 days are fraud, duress, or material mistake of fact. There was no inquiry into the possible revival of the statutory marital parentage presumption applicable to Caitlin’s husband since his paternity disestablishment depended upon Matthew’s legal parentage.

The Supreme Court affirmed. The court recognized that Matthew had visited A.A. and P.S., a child born to Caitlin and Matthew, who was placed in the same foster home as A.A. But it determined the Parentage Act of 1984 allowed a GAL action on behalf of a child to declare the nonexistence of a parent-child relationship due to the lack of biological ties in the VAP parent, without first inquiring into the child’s best interests. The court chiefly relied on its earlier decision in John M., wherein a biological father rebutted a husband’s marital parentage presumption without inquiry into best interests. Under the 1984 Parentage Act, parent-child relationships established by a VAP and by a marital parentage presumption were deemed comparable by the Supreme Court.

The 2015 Parentage Act
In A.A., the Supreme Court declared that parentage issues raise “essentially questions of policy . . . more appropriately directed to the legislature than to this court.” The Legislature has implemented new family laws via both a new Marriage and Dissolution of Marriage Act (IMDMA) and the Parentage Act of 2015, each effective January 1, 2016. Yet these new family laws do not undercut the A.A. precedent.

An earlier proposed IMDMA included significant alterations in parentage establishment norms. However, the new IMDMA addresses neither parentage establishment nor disestablishment. The Parentage Act of 2015 alters both parentage establishment and disestablishment norms. As to parentage establishment, the Parentage Act expands those eligible to become presumptive parents, who now arise due to “a marriage, civil union, or substantially similar legal relationship.” Thus, women can be presumed parents under the new Act. Yet the Act also limits presumptive parents by excluding VAP signors.

As to parentage disestablishment, the 2015 Parentage Act no longer combines marital parentage presumption rebuttals and VAP challenges within the same statutory section. One provision recognizes “an action to declare the non-existence of the parent-child relationship may be brought by the child, the birth mother, or a person presumed to be a parent” under the marital parentage presumption statute. Another provision allows a VAP “signatory” to rescind the VAP within 60 days of signing, assuming no earlier “judicial or administrative proceeding.” After 60 days, VAP challenges must be based on “fraud, duress or material mistake of fact,” and usually must be presented within two years of the effective VAP date.

Whether in a marital parentage presumption rebuttal or a VAP challenge, the 2015 Parentage Act comparably allows access to genetic testing, but only where there is no estoppel from denying parentage; where there is no inequity in disproving “the parent-child relationship between the child and the presumed, acknowledged or adjudicated parent”; and where the “child’s best interests” will be served. Yet these prerequi-

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**About the Authors**

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Illinois legislators should consider whether different and more particular disestablishment standards are needed for VAP challenges than for marital parentage presumption rebuttals.

Reforming VAP Parentage Disestablishments

Under the 2015 Parentage Act, GALs seeking court-ordered genetic testing in VAP challenge settings are not required to demonstrate no estoppel, no inequity, and a child’s best interests. Under the Supreme Court’s decision in A.A., any such requirements for GALs must be made by the General Assembly. Legislators should so require GALs, as there should be no court-ordered testing when courts disagree with GALs on estoppel, equity or a child’s best interests. In a comparable setting, when a guardian seeks to dissolve a ward’s marriage, a dissolution proceeding will only be authorized after a “court finds by clear and convincing evidence that the relief sought is in the ward’s best interests.” Here, the guardian and the court are guided by detailed statutory “standards for decision making.”

Further, only a VAP is significantly guided by federal statutory guidelines due to the receipt by Illinois of federal welfare subsidies with strings attached. The Amicus Curiae Brief of the Illinois Department of Healthcare and Family Services in A.A. urged that routine genetic testing orders, as sanctioned in A.A., would violate the federal Social Security Act (and put Illinois at a risk of losing “crucial federal funding”) since the Act requires post-60 day VAP challenges to be founded on “fraud, duress, or material mistake of fact.” The import of this requirement remains unclear in Illinois and nationwide as there is no uniform federally mandated approach. Seemingly, “material mistake” means more than a lack of biological ties in the male signatory, or else the pre and post-60 day norms would be the same, making the requirement silly. Further, the parties responsible for demonstrating the fraud, duress or mistake mandates remain unclear. Are they the signatories only, or do they include others under the Social Security Act who challenge VAPs (assuming other parties have standing under the Act)? Although requiring a non-signatory to establish a signatory’s fraud, duress or mistake seems quite burdensome, not doing so opens the door to VAP challenges regardless of children’s best interests unless, as in Michigan and Alabama, such interests always are considered prior to VAP parentage challenges.

21. 750 ILCS 46/610(a).
22. 755 ILCS 5/11a-17(a-5).
23. 755 ILCS 5/11a-17(e).
In distinguishing between marital presumption and VAP parents, Illinois legislators also should consider whether for VAPs, there should be more limited standing to challenge. A GAL is without standing in Utah, for example, where challenges may be brought only by a “signatory” or “support-enforcement agency.”

Additionally, Illinois legislators should consider whether varying time limits on VAP challenges should be imposed even where there is fraud, duress, or mistake, perhaps with more significant limits applicable to certain challengers, such as male or female signatories or alleged biological fathers. Under the Parentage Act of 2015, all post 60-day VAP challenges must be filed within “2 years after the effective date of the acknowledgment or denial” (i.e., by a husband who denies biological ties). Yet unwed, non-VAP, biological fathers do not have parental status as do VAP signatories, and thus may be accorded less protection, as they often are, for example in adoption proceedings.

Finally, non-biological VAP fathers (and perhaps someday non-birth VAP mothers) increasingly raise, with birth mothers, children born of sex in Illinois and across the country. The Parentage Act of 2015, and the federal Social Security Act, do not require a male VAP signatory to declare expressly a (reasonable) belief in his biological ties to the child, thereby opening the door to both male and female VAP signatories with no biological ties. While the superior parental rights of the biological parents of these children must be respected, there is nonetheless significant room to recognize non-biological VAP childcare under law in order to serve the best interests of children, especially after biological and VAP parents end their romances or after biological parents die, or have their parental rights terminated. VAP norms in Illinois should be amended to allow greater opportunities for judges to protect children, within the limits set by the federal Social Security Act.

**Conclusion**

In its A.A. decision, the Illinois Supreme Court allowed a GAL to seek an order declaring the nonexistence of a parent-child relationship due to the lack of biological ties in a VAP parent without first inquiring into the child’s best interests.

The 2015 Parentage Act, effective January 1, 2016, does not alter this outcome. Like other VAP challengers, GALs should be required under the Act to demonstrate that a child’s best interests would be served by any post 60-day challenge to a VAP.

The legislature also should clarify which parties are responsible for demonstrating fraud, duress, and material mistake of fact in VAP challenge cases; consider more limited standing to challenge VAPs; and explore whether there should be varying time limits to different VAP challenges. Changes can respect, as they must under the 2015 Parentage Act, “the right of every child to the physical, mental, emotional, and financial support of his or her parents,” while allowing Illinois judges enhanced opportunities to better protect children.

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31. See Lehr v. Robertson, 463 U.S. 248 (1983) (such unwed fathers only have federal constitutional parent opportunity interests, not federal constitutional parental status).
32. See, e.g., Leslie Joan Harris, “Voluntary Acknowledgments of Parentage for Same-Sex Couples,” 20 American University Journal of Gender, Social Policy and the Law 467 (2012) (proposing to recast VAPs so they are available to all unmarried couples, same-sex as well as opposite-sex).
33. 750 ILCS 46/102.
Criminal Law

Illinois Supreme Court Affirms Murder Conviction, Declines to Quash Grand Jury Subpoena for Palm Print Evidence

*People v. Boston*, 2016 IL 118661, 2016 WL 756684

The Illinois Supreme Court affirmed the first degree murder conviction of Jerry Boston, rejecting his argument that the lower courts had improperly denied his motion to quash a subpoena for palm print evidence.

The palm print in question was left on the wall of the victim's bathroom in her blood and recovered from the scene of her 1997 killing. Authorities had no leads at that time and the case went cold. In 2004, when the State reopened the matter for investigation, the State requested, and received, a grand jury subpoena for Boston's finger and palm prints. Boston was serving an unrelated life sentence for armed robbery at the time. The prints were taken and delivered to the Illinois State Police crime lab, not to the grand jury. Shortly thereafter, the State was granted a search warrant for Boston's DNA. The sample was consistent with DNA extracted from bodily fluids recovered from the victim. Boston was then indicted for the murder.

Before trial, Boston sought to quash the subpoena and suppress the palm print evidence, arguing that his rights under the 4th Amendment and the Illinois Constitution had been violated when the State used a grand jury subpoena – instead of a search warrant – to obtain his palm print. Boston requested that any evidence obtained from the subpoena be suppressed.

The circuit court, despite noting that the grand jury procedures were "extremely sloppy" and holding that when the State subsequently appeared before the grand jury seeking the indictment, its appearance did not amount to a return of the subpoena to the grand jury, nevertheless denied Boston's motion to quash and suppress the palm print evidence, concluding that the issue of prejudice weighed heavily against Boston given his status as an incarcerated felon. At trial, the State introduced the palm print evidence and the testimony of several witnesses, including Boston's cellmate who testified that Boston had told him about the murder. Boston was convicted of first degree murder.

The appellate court concluded that Boston had not been prejudiced by improper grand jury procedures, given his limited expectation of privacy as an incarcerated felon and the information presented by the State in support of the subpoena.

The supreme court's analysis was circumscribed to whether the circuit court had made an error of law in denying Boston's motion to quash the subpoena and suppress the palm print evidence. Boston argued that the requirements for the issuance of a grand jury subpoena had not been met in his case; namely, that the State lacked the requisite individualized suspicion required for the issuance of a subpoena. Recognizing that the U.S. Constitution does not require a preliminary showing of reasonableness (including individualized suspicion) before the issuance of a grand jury subpoena for noninvasive physical evidence, including palm prints, the supreme court turned to the Illinois Constitution's zone of personal privacy. It, in contrast, requires some showing of individualized suspicion as well as relevance before a subpoena may be issued.

The supreme court concluded that the State had sufficient individualized suspicion to request a subpoena for Boston's palm prints. It supported this conclusion by noting that the State had informed the grand jury that Boston was an ex-boyfriend of the victim and that police had received information linking him to the killing. Although the assistant State's Attorney had not provided an affidavit to the grand jury in support of the issuance of the subpoena, the supreme court noted that Boston had not alleged that any false statements were made to the grand jury, mitigating this procedural failing. The supreme court concluded that Boston's case was hardly a "rogue police investigation" or "dragnet" as was the case in cases Boston had relied upon on appeal.

The supreme court also rejected Boston's arguments that the State had abused the grand jury's subpoena power in light of
the noninvasive physical evidence sought and that no prejudice had befallen him because, despite the State’s “sloppy” procedure, the State could still have obtained the palm print from the grand jury for analysis and use in indictment.

In her dissent, Justice Burke criticized the State’s conduct and called it a “complete breakdown of the procedures governing the grand jury process.” She highlighted the State’s failure to provide “evidence” in support of the grand jury subpoena in the first instance and the State’s making the subpoena returnable to the State’s attorney and not to the grand jury as examples of the prosecuting attorney’s failure to “comport themselves in a manner which ‘inspires respect for the administration of justice.’”

Unemployment Benefits
Illinois Supreme Court Addresses Disqualification for Unemployment Benefits Based upon Misconduct
Petrovic v. Dep’t of Employment Security, 2016 IL 118562, 2016 WL 454034

In Petrovic, the Illinois Supreme Court clarified evidentiary requirements for employers’ protests to terminated employees’ claims for unemployment benefits based upon misconduct before the Illinois Department of Employment Security, holding that “in the absence of evidence of an express rule violation, an employee is only disqualified for misconduct if her conduct was otherwise illegal or would constitute a prima facie intentional tort.”

Petrovic applied for unemployment benefits after being terminated from her job at American Airlines. American filed a protest because she was “discharged for misconduct connected with [her] work.” Her claim was denied after a hearing. The denial was affirmed by the board of review. The circuit court reversed, holding that American had failed to provide any proof that Petrovic had violated an express rule. The appellate court reversed. On appeal to the supreme court, Petrovic argued that the board’s decision was clearly erroneous and she prevailed.

In her 24th year with American Airlines, Petrovic received a call from a friend who worked at another airline requesting a favor for a passenger that was going to be flying American. In response, Petrovic arranged for a bottle of champagne and an upgrade to first class for the passenger. Approximately three weeks later, she was terminated by letter because the champagne and upgrade had not been properly authorized, purportedly in violation of Rule 16 and Rule 34 of American Airlines employee policy. Rule 16 addressed misrepresentations of fact and Rule 34 addressed dishonesty in relation to the company.

In its protest against Petrovic’s unemployment claim, American did not address either rule brought up in the termination letter, but stated that Petrovic had “left her work area without her manager’s approval to secure an undocumented upgrade for a friend of a friend” and that “[o]nly authorized employees may issue an upgrade[,] and employees are expected to remain in their work area . . .”

During the hearing before the claims adjudicator, Petrovic’s supervisor offered general statements about policies regarding management approval not being followed and questions being asked of the wrong people. Petrovic testified that her conduct was fairly common in the industry, especially for international travelers, that no one had offered any protests to her requests at the time, and that she was not aware of any rule prohibiting what she had done. The adjudicator made no finding that Petrovic had violated a specific rule of her employment, but concluded that “there are some acts of misconduct that are so serious and so commonly accepted as wrong that employers need not have rules covering them,” and “[i]n this case, the claimant’s action in giving away the employer’s champagne and a free upgrade to first class was unacceptable by any standard.”

The board of review incorporated the adjudicator’s findings and made no additional findings of fact or conclusions of law.

The circuit court reversed the board, holding that American had failed to provide any proof that Petrovic had violated an
express policy or rule. It was not, then, “misconduct,” under the law. The appellate court reversed, holding that Petrovic’s actions had violated American’s policy that only authorized employees may issue upgrades.

Before the supreme court, Petrovic argued that the state defendants had no standing to appeal the circuit court’s decision in her favor and that she had not committed any “misconduct.” The court addressed each issue in turn.

The court rejected Petrovic’s standing argument, noting that the Department of Employment Security is uniquely “entrusted with administering” the Act and has “independent interests in maintaining a uniform body of law involving the Act and protecting the fund.” In contrast, the comparison Petrovic made to a zoning board, whose only purpose is to decide cases before it, was inapt.

On the topic of misconduct, the court gave an extensive treatment on the mixed question of law and fact presented. Applying a “clearly erroneous” standard, highly deferential to the administrative agency, the court nevertheless found that Petrovic had not committed “misconduct” as defined by the Act. “Misconduct” must satisfy three requirements: “(1) a deliberate and willful violation (2) of a reasonable rule or policy of the employer governing the individual’s behavior in the performance of her work, that (3) either (a) harmed the employer or a fellow employee or (b) was repeated despite a warning or explicit instruction from the employer.” The court noted that being “fired” does not always equate to “misconduct” and that the above analysis must be applied to the set of facts surrounding a termination; an employer must “satisfy a higher burden than merely proving that an employee should have been rightly discharged.”

In Petrovic’s case, the court reviewed the facts of her termination for evidence of “deliberate and willful” violations of American’s rules and found none. It reasoned that for a violation to be “deliberate and willful,” evidence must exist in the record demonstrating that an employee was aware that the given conduct was prohibited. The court found no evidence in the record that rose beyond the level of “vague and conclusory statements” about company policy.

Addressing language in American’s written protest that “[Ms. Petrovic] was made aware of this policy through PC based training,” the supreme court held that no competent evidence of any such awareness or policy was in the record. Moreover, the court noted that the evidence in the record indicated that Petrovic had not actually done any of the “issuing” herself, but had merely made inquiries. Policy violations by others have no bearing on whether a claimant’s conduct was forbidden.

Finally, addressing the board’s finding that “some acts of misconduct that are so serious and so commonly accepted as wrong that employers need not have rules covering them,” the supreme court acknowledged the body of appellate law that supports the inferential finding of misconduct “by a commonsense realization that certain conduct intentionally and substantially disregards an employer’s interests.” The court rejected the application of the commonsense rule to this case and sided with Petrovic, holding that the evidence did not support any conclusion that her actions were illegal or that they would constitute a prima facie intentional tort. The appellate court was reversed and the circuit court’s decision declaring Petrovic eligible for benefits was reinstated.

**Condominium Law**

Illinois Supreme Court Addresses Liens for Assessments under the Condominium Property Act

1010 Lake Shore Ass’n v. Deutsche Bank National Trust Co., 2015 IL 118372, 43 N.E.3d 1005

In a significant ruling for condominium associations across Illinois, the Illinois Supreme Court construed section 9(g)(3) of the Condominium Property Act regarding the circumstances under which liens for assessments created under the Act may be extinguished following a foreclosure sale. Affirming the lower courts, the supreme court held that unless payments are made on newly accruing assessments after the sale, the lien survives and relief may be sought against the purchaser for payment of same.

After purchasing a condo in a foreclosure sale, defendant Deutsche Bank received a demand for payment from the plaintiff condominium association for past due assessments. Deutsche Bank refused and the association sued, arguing that the unpaid assessments had not been extinguished in the foreclosure sale because Deutsche Bank had failed to pay the assessments accruing after it purchased the unit. Deutsche Bank argued that it could not be liable for assessments that had accrued before it acquired the unit because any lien relating to the assessments...
had been extinguished upon the conclusion of the foreclosure proceeding. The association prevailed on summary judgment in the circuit court and was awarded all the past due assessments and possession of the unit.

On appeal, Deutsche Bank again argued that the assessment liens had been extinguished in the foreclosure and that it could only be liable for assessments accruing after the sale. The appellate court disagreed, pointing out that section 9(g)(3) states that making post-sale payments “confirms the extinguishment” of the lien created when the prior owner failed to pay the assessments. Having failed to do make those payments, Deutsche Bank had not extinguished the lien and was liable for all past due assessments.

Before the supreme court, Deutsche Bank again argued that the lower courts had misconstrued section 9(g)(3) of the Act. The supreme court rejected this argument and affirmed the rulings below, clarifying that the language of the Act mandates an additional step beyond the extinguishment of the lien in the foreclosure action: the payment of those assessments that accrue after the foreclosure sale. Deutsche Bank’s interpretation was contrary to the plain language of the Act providing that “such payment confirms the extinguishment of any lien created.” The supreme court also rejected Deutsche Bank’s arguments from sections 9(g)(4) and (5) which hold foreclosure sale purchasers other than mortgagees accountable for only 6 months’ worth of past-due assessments. Section 9(g)(3), the court held, applies to all purchasers, mortgagees included.

Addressing Deutsche Bank’s arguments that the lower courts’ construal of section 9(g)(3) conflicted with section 15-1509(c) of the Foreclosure Law, which provides that the vesting of title in a foreclosure sale purchaser acts as a bar to claims of parties to the foreclosure action, extinguishing junior liens, the supreme court held that both statutes could be construed harmoniously and consistently with one another. Section 9(g)(3)’s “confirms the extinguishment” language is simply an additional step to be followed after the extinguishment of the lien under the Foreclosure Law. The requirement to pay future assessments also does not have any bearing on a foreclosure purchaser’s ability to convey clear title, provided it complies with section 9(g)(3) and actually pays those assessments.
The Partners at Law Elderlaw are pleased to announce that Rick L. Law has been appointed as Kendall County Public Guardian and Administrator.

FOR IMMEDIATE RELEASE
February 19, 2016
Governor Announces Appointments

Name: Rick Law
Position: Kendall County Public Guardian and Administrator

Governor Bruce Rauner has appointed Rick Law as Kendall County Public Guardian and Administrator. Law’s extensive experience makes him a natural choice for this position.

Currently, Law is a managing partner at Law ElderLaw LLP. The firm concentrates on elder law, estate planning and guardianship.

Law has presented to the Illinois State Bar Association on numerous occasions and is the co-author of the American Bar Association Book “Alzheimer’s and the Law: Counseling Clients with Dementia and Their Families.”

Law holds a bachelor’s degree in political science from Illinois State University and a law degree from Northern Illinois University. He lives in Oswego.
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InBrief
By Terrence Benshoof

InBrief has it on good authority that there will actually be several sunny days in May.

The DCBA welcomed Judge John Darrah to Cantigny for Law Day celebrations at the end of April. Nice to have His Honor back in our neck of the woods!

As another DCBA year slows to a close, President-elect Ted Donner invites one and all to his Installation on June 10 at the Medinah Country Club. Judge William Bauer will be the keynote speaker and swear in the new officers. This year the installation will be combined with the Presidents’ Ball to make it very festive. InBrief better get his tux to the cleaners before that event!

The new electronic filing system appears to be functioning fairly well here in the 18th Circuit. It did take InBrief some time to figure out that there was no place for plugging in his yellow pad. And the stone tablets, well... .

People, Places
Chantelle Porter is now a partner with A. Traub & Associates, in the Lombard office.

The Village of Oak Brook has a newly elected Trustee, Ed Tiesenga

Brigid Duffield has been named the Chair of the Hearing Board of the Attorney Registration & Disciplinary Commission.

Mark Bishop has opened his new office, Law Offices of Mark S. Bishop, LLC, in Warrenville.

The NIU pizza party was held on February 11th at Pizza Villa in DeKalb. It was a great event with free pizza, wine and beer to welcome newcomers to the practice of law. 24 NIU students and 9 DCBA members attended. Buri Banerjee gave a short talk on what to expect as a new attorney on the job. The students must have been encouraged by her talk since 18 of them are now DCBA members.

In the Courthouse
The Law Library is looking for attorneys and courthouse personnel whose creative juices lend themselves to the arts. They are specifically seeking landscapes, abstracts and still life drawings, paintings and photography pieces that are framed and ready for display. The artwork will be unveiled the first week of May with ongoing submissions welcome. For more information, contact the Law Library reference desk at 630.407.8811 or email Mary.Anderson@dupageco.org.

Welcome
Welcome to our new DCBA Members.

Affiliates: Robert E. Headrick, Robert E. Headrick & Assoc., Inc.; Vivian Toomaire, VN Mutual Solutions.

Legal Community: Elizabeth Hamby, The Stogsdill Law Firm; Hallie Zingre, Pfeiffer Law Offices, P.C.

Pensions, Medicaid and the Budget Were the Topics at the DCBA Legislative Breakfast

By Christine McTigue

DCBA’s annual legislative breakfast was held on February 23, 2016, at the Lisle Hilton. Illinois State Senators Tom Cullerton and Michael Connolly attended; as did State Representatives Patti Bellock, Kathleen Willis and Mike Fortner. From the federal level, representatives from the offices of Congressmen Randy Hultgren and Bill Foster, and a representative from Senator Mark Kirk’s office attended.

The guests discussed issues of local and federal government with members of DCBA leadership present at the meeting. One topic of discussion was the proposed tax on legal services. “Every thing is on the table” as far as service taxes, but nothing concrete has been proposed and such taxes are not imminent.

The primary topic discussed was the state budget and funding. The budget has 32 billion dollars in general revenue and there is a 3 billion dollar deficit. Currently, ninety percent of the budget is being paid, the result of court orders and consent decrees. Universities, community colleges and social services are not being paid on a regular basis.

Pension and Medicaid obligations are the two driving forces in the budget. The state’s current Medicaid budget is $19 billion. There are now 3.3 million residents on Medicaid. The biggest cost to the state is pensions, which make up 25 percent of the budget. Pensions only amount to eight percent of most states’ budgets.

As for a new budget, Governor Rauner wants reform before he addresses revenue. A balanced budget will not be achieved by cuts alone; there is a need for additional revenue. If cuts are made without an increase in revenue on a state level, then local governments will be forced to raise taxes.

Other issues discussed were the state criminal justice reform commission, which has introduced some pieces of legislation but will introduce more substantive pieces this fall; ideas regarding pensions, such as a proposal to buy out pension obligations; federal monies spent on the states; and the nomination of a replacement for Justice Scalia.
The Lawyer Referral & Mediation Service received a total of 475 referrals, including 26 in Spanish (356 by telephone, 3 walk-in, and 116 online referrals) for the month of February.

If you have questions regarding the service, attorneys please call Cynthia Garcia at (630) 653-7779 or email cgarcia@dcba.org. Please refer clients to call (630) 653-9109 or request a referral through the website at www.dcba.org.

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LRS Stats

Visit the DCBA Career Center today at http://dcba.org
Just a Reminder:
E-Filing in Civil Cases Is Mandatory and E-Orders Are on the Way

By Christine McTigue

We reported about e-filing in our January issue. This is a reminder that e-filing in civil cases is now mandatory. E-filing is online at www.i2File.net.

Do you need help with e-filing? The clerk's office has staff available to help at the eFile terminals located in the clerk's office. There is also a terminal in the Attorney Resource Center in one of the cubicles and will be terminals in the law library as well. You can also refer to the i2File User Manual found at https://www.i2File.net/I2F/I2file_User Manual.pdf. Email support is available at support@i2File.net.

There is no additional fee to e-file in DuPage, but you must pay any statutory filing fees. Once your filing has been accepted, i2File will allow you to pay any fees using a credit card. Law firms can sign up with the Circuit Clerk's office to pay using Automated Clearing House (ACH). This system will automatically charge filing fees to your designated bank account, thus avoiding credit card fees. The form required to sign up for ACH payments can be found at http://www.dcba.org/?page=LegalResearch under DuPage County.


In our March issue, we reported that electronic orders are coming to civil courtrooms, starting with the Chancery Division. Training sessions are in the works.

There’s More to Mike Clancy Than Med-Mal Mediation

Mike Clancy continues to successfully mediate MedMal, Nursing Home & Hospital disputes. But he is also helping DuPage County Lawyers and their clients settle:

- Personal Injury Cases
- Probate Disputes
- Construction Defect Cases
- Real Estate Disputes
- Construction Accidents & Fatalities
- Property Damage & Subrogation

Call Mike at 630-584-7666 to schedule your next mediation or go to www.ClancyMediations.com

Resolute Systems, LLC

MEDIATION, ARBITRATION &ADR CONSULTING

St. Charles: 630-584-7666  Chicago: 312-346-3770
255 38th Avenue, Suite G, St. Charles, IL 60174
The Blood Drive Competition Is Back!
By Christine McTigue

Sponsored by Lawyers Lend a Hand, spearheaded by Judge Paul Marchese and former DCBA Executive Director, Eddie Wollenberg, the blood drive is set for April 28th from 11 a.m. to 6 p.m. It will be held in bloodmobiles located in the parking lot east of the 505 S. County Farm Rd. building, adjacent to the parking garage. There will be two competitions again this year. One is private vs. public attorneys, and the second is between government agencies. In case you forgot, last year the government attorneys beat the private practice attorneys, and the clerk’s office aced out the other government entities. Friends and family will be included in the competition, but they should tell the person at the registration desk what team they are on.

Last year, 99 people donated. The organizers hope to exceed 100 donors this year.

For more information, please visit the following link from Heartland Blood Donors: https://ht.heartlandbc.org/donor/schedules/city, then click on sponsor name search and enter DCBA. For those new to the process, you will be asked to create an account with Heartland or enter your username and password if you have donated in the past. Walk-ins are also welcome. ☐
Mock Trial Another Complete Success!

By Timothy J. Klein

The DCBA mock trial competition was held February 13th at the courthouse in Wheaton. A total of 28 high schools competed that Saturday, fielding 33 teams, which were observed by 50 lawyer-evaluators (some of whom were actual judges). The competition was overseen by DCBA member Sean McCumber, as it has been in past years. Sean coordinated the herculean task of getting almost 20 courtrooms operational on a Saturday – when the courthouse is normally shuttered.

This year’s problem, as in past years supplied by the ISBA, involved a dispute between two hockey players arising out of a hockey altercation that spiraled out of control. The litigants were members of opposing semi-pro teams who engaged in a fight during a game. A suit for personal injuries was filed for negligence and battery, arising out of the use of a hockey stick during the on-ice fight. Mock trial team members played various roles in the trial, including the players, referee, and even expert medical witnesses. The materials provided to the teams included pleadings, jury instructions, and verdict forms.

All teams argued two rounds, leading to the “final” round to crown the champion team. I had the extremely good fortune to be a judge, then evaluator, for the Timothy Christian High School’s Mock Trial “B Team,” then “A Team.” When I saw the Timothy Christian “B Team” present its case, I thought to myself – “If this is a “B” team, I’d like to see the “A” team perform!” I got my wish, and was an evaluator of their “A Team” in the second round. In the end, the Timothy Christian “A Team” did battle with the Hinsdale Central team – with Timothy Christian taking home the James McCarron Award trophy and bragging rights.

All of the teams proved their complete knowledge of the underlying facts, and put on their direct and cross examinations with real skill and enthusiasm. These high schoolers were amazing, and these competitions continue to renew my faith in these extremely capable teens – as they are the litigators of the future. Their parents, coaches and teachers all deserve our highest praise! Our DCBA can be proud, too, of its continued role in the development of such high caliber talent. Congrats to all . . . and see you next year! □
Proposed Rule Changes Top Agenda at February Board of Governors Meeting

By Kent A. Gaertner

The ISBA Board of Governors met on February 26, 2016, and considered requests by certain Section Councils to modify various rules affecting their areas of practice or ISBA actions. The first proposed rule change involves Judicial Advisory polls. The second involves changes to restrictions on discovery in criminal cases under Supreme Court Rule 415.

The ISBA Standing Committee on Judicial Advisory polls suggested that a change be made to Rule 6.02 of the Judicial Advisory Polls manual to allow for the public release of the results of any such poll. Current Section 6.02 states:

“Each candidate polled will be provided with the results of the poll which shall consist of their individual scores for each question. Results shall be sent to each candidate within the time frame established by the Committee and chief judge. They shall be sent by regular USPS mail.

Results of associate judge appointment polls will be sent only to the chief judge of the circuit. There will be no public release of results on associate judge appointments.”

The Standing Committee felt that this rule was viewed as vague by some circuits and there was confusion concerning whether or not a Chief Judge could release results once they were in his or her possession. Representatives of some circuits advised that they would not participate in the ISBA polling if they were not able to publicly release the results and would conduct their own polls instead.

In an effort to clarify the rule and be more transparent, the Committee asked the Board to approve modifying Section 6.02 to provide for the public release of the poll results after an opportunity for an applicant to withdraw their name within 24 hours before the release. After review by ISBA General Counsel, the following modified language was proposed:

“All associate poll results shall be released to the public, except for the results of candidates who wish to withdraw. The Chief Judge requesting a poll shall provide the ISBA with email addresses for all candidates. After conducting an associate poll and tabulating the results, the ISBA will notify the candidates of their results via email. Candidates have 24 hours after the results of their poll are sent to them to withdraw. After 24 hours, the remaining candidates’ results will be forwarded to the Chief Judge and published by the ISBA via the ISBA website.”

The Board agreed to make the modification to the rule but with an amendment. Instead of twenty-four hours to withdraw an application, applicants will have forty-eight hours to do so, not counting weekends or federal holidays.

The next proposed rule change request came from the Traffic Law Section Council supported by the Criminal Justice Section Council. The Traffic Law Section Council proposed to amend Supreme Court Rule 415(c) and (d). The Rule requires that in felony, and certain juvenile matters, discovery materials must remain in the exclusive possession of the lawyer and the lawyer may not make copies for distribution. Under the current rule, a criminal defense attorney receiving discovery from the State cannot pass that material directly to his client. He/she must instead read it to him, pre-

About the Author

Kent is the Eighteenth Judicial Circuit’s representative on the ISBA Board of Governors. He is the principal of Kent A. Gaertner P.C. and “Of Counsel” to Springer Brown, LLC. where he concentrates his practice in bankruptcy and workouts. He was president of the DCBA in 2009/2010.
Proposed Rule Changes Top Agenda at February Board of Governors Meeting

About the Author

pare a summary of the discovery for the client or sit with the client while the client reviews the discovery. In cases where the discovery could be in numerous bankers boxes, this is unduly burdensome to defense counsel. Current Rule 415(c) and (d) states:

Rule 415. Regulation of Discovery
(c) Custody of Materials. Any materials furnished to an attorney pursuant to these rules shall remain in his exclusive custody and be used only for the purposes of conducting his side of the case, and shall be subject to such other terms and conditions as the court may provide.

(d) Protective Orders. Upon a showing of cause, the court may at any time order that specified disclosures be restricted, conditioned upon compliance with protective measures, or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled in sufficient time to permit counsel to make beneficial use there.

In lieu of Rule 415(c) and 415(d), the Traffic Law Section Council proposes adopting ABA Criminal Justice Standards 11-6.4 and 11-6.5 (found at: http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_discovery_blk.html#6.4) which reads as follows:

New Proposed Rule 415(c):
Custody of Materials
Any materials furnished to an attorney pursuant to these standards should be used only for the purposes of preparation and trial of the case, and should be subject to such other terms and conditions as the court may provide.

New Proposed Rule 415(d):
Protective Orders
Upon a showing of cause, the court may at any time order that specified disclosures be restricted, conditioned upon compliance with protective measures, or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled is disclosed in sufficient time to permit counsel to make beneficial use of the disclosure.

The Traffic Law and Criminal Justice Section Councils felt that the current rule unduly restricts the defense counsel from representing his client by making it difficult for the defendant to review the discovery without being in the presence of the attorney. It does not protect potential witnesses, which was one of its goals, because the defendant still has access to the contents of the discovery. The rule may be violative of the first amendment and unnecessarily restricts counsel’s ability to communicate with his client.

It also can lead to absurd results where one defendant is charged with a felony due to prior convictions and a second defendant is charged with a misdemeanor, both for the same offense. In that situation the misdemeanor defendant can receive a copy of the discovery but not the felony defendant. A felony defendant can also get access to the discovery through a Freedom of Information request but not directly from his own lawyer.

The Board voted to approve the proposed rule change and send it on to the Illinois Supreme Court for its consideration. The Board’s position was that protective orders were appropriate and sufficient to protect those who need protecting in any case.

By the time you read this article, the elections for ISBA offices will be underway. Voting starts March 29th and ends April 28th. There are 16 positions on the Assembly for the Eighteenth Judicial Circuit with only 10 candidates running. That means 6 will have to be appointed by the Board of Governors. If you are interested in serving on the assembly, please send a letter expressing your interest and setting forth your qualifications to ISBA President Umberto Davi, President-Elect Vince Cornelius, Past President Rick Felice, ISBA Executive Director Bob Craghead and myself. These posts will be filled at the May 20th meeting of the Board. The Assembly meets twice a year, at the ISBA Annual Meeting in June and in December at the Mid-year Meeting. If you have an interest in being involved in ISBA leadership, I encourage you to submit a letter with your qualifications. □
Legal Aid Update

New Developments at Legal Aid
By Cecilia Najera

The DuPage Legal Assistance Foundation, a 501(c)(3) Corporation which oversees the activities of the DuPage Bar Legal Aid Service, presents each year a copy of its Annual Report to the membership of the DuPage County Bar Association. The members participating in the Service have the following qualifications: (a) a licensed attorney in good standing in the State of Illinois; (b) membership in the DuPage County Bar Association; and (c) an interest in the activities of and the purposes for which this corporation has been formed.

2015 ANNUAL REPORT
(Year ending June 30, 2015)
DUPAGE LEGAL ASSISTANCE FOUNDATION
An Illinois not-for-profit corporation

PURPOSE
The DuPage Legal Assistance Foundation is dedicated to providing the highest level of legal representation possible to the lower income residents of DuPage County and was incorporated as a 501(c)(3) charitable organization on October 10, 1975 for the following purposes:

A. To assist natural persons and community organizations to secure legal protection against injustice and to obtain due process of law and the equal protection of the laws;

B. To promote knowledge of the law and of legal process, rights and responsibilities among the poor and the public generally; and,

C. To study the use of law and legal process to combat poverty and living conditions among the poor and to provide counsel to natural persons and groups seeking these ends.

(CURRENT STAFF)
DUPAGE BAR LEGAL AID SERVICE

Executive Director/
Managing Attorney
Cecilia Najera

Staff Attorneys
Brenda M. Carroll
Robin Slattery

Support Staff
Robin Roe, Office Manager
Maribel Rodriguez, Secretary/Receptionist
Lucy Cortez, Intake Coordinator

Interns
Timothy Golen
Alyssa Harms
Gabi Lovelace

LEGAL AID STATISTICS
The DuPage Bar Legal Aid Service, located at the DuPage County Bar Center, processes daily phone screenings from individuals seeking legal assistance. During the screening process, applicants are asked a series of questions to determine if their legal situation meets the program’s financial and case-type guidelines in order to receive free legal assistance. In addition to the preliminary screening, written application with supporting documentation is required from each individual in order to verify their individual’s eligibility. Once qualified, the applicant is assigned to a staff attorney or an attorney who is a member of the DuPage County Bar Association (DCBA). Applicants who are denied, but fit other criteria, may be referred to the No Retainer Program or DCBA’s Modest Means Program, Prairie State Legal Services or DCBA’s Lawyer Referral Service. In addition to serving qualified applicants, Legal Aid is often appointed by the Court to act as GAL or represent an individual that may be deemed vulnerable without representation.

About the Author
A Wheaton native, Cecilia “Cee-Cee” Najera is a graduate of the University of Iowa and received her J.D. from Southern Illinois University. She served as the DCBA New Lawyer Director from 2004 to 2009 and is currently the Director of DuPage Bar Legal Aid Service.
Legal Aid 2014-2015 Comparison Statistics

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<td><strong>Total Pro Bono Hours</strong></td>
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DUPAGE LEGAL ASSISTANCE FOUNDATION STATEMENTS OF FINANCIAL POSITION FOR THE YEAR ENDED JUNE 30, 2015

**ASSETS**

**Current Assets**
- Cash: $42,724
- Grants Receivable: $1,785
- Prepaid Expenses: $1,222
- **Total current assets**: $45,631

**Total Fixed Assets**: $27,577

**TOTAL ASSETS**: $73,208

**LIABILITIES AND NET ASSETS**

**Current Liabilities**
- Accounts Payable: $444
- Accrued Expenses: $8,042
- **Total current liabilities**: $8,486

**Net Assets**
- Unrestricted: $64,722
- **Total net assets**: $64,722

**TOTAL LIABILITIES AND NET ASSETS**: $73,208

What’s next?
Ted Donner will be sworn in as DCBA President on June 10, 2016

Presidents’ Ball and Installation Dinner
MEDINAH COUNTRY CLUB - BLACK TIE OPTIONAL
visit dcba.org or call (630) 653-7779
Candidates Announced for DCBA Directors and Third Vice President

The deadline for nominating petitions closed just as this issue was going to press. Following are the biographies candidates submitted with their nominating petitions, printed in alphabetical order within each election category. Ballot positions will be determined by a random drawing. The Third Vice president’s race is uncontested. There are three Board of Director and one New Lawyer Director positions up for election. Members may vote for up to Three Directors and one New Lawyer Director candidate. Information to vote by electronic ballot was distributed to eligible voters on or around April 10, 2016. Voting members may request a paper ballot by contacting Leslie Monahan at (630) 653-7779. All ballots, paper or electronic, must be received by 5:00 pm on May 2, 2016. For more information, contact the Bar Center at (630) 653-7779.

3rd Vice President – Uncontested

Stacey McCullough – is a sole practitioner in Wheaton concentrating in criminal, juvenile and traffic defense. She is certified as an Illinois Municipal Administrative Hearing Officer. Stacey was a dedicated DuPage County Public Defender from 1994-2004. A member of the DCBA, ISBA, DAWL and the DuPage County Criminal Defense Lawyers Association (Treasurer 2016/2017), she received the Board of Directors Award in 2000. Stacey is a current Director of the DCBA, having served since 2014, and previously served as a Director from 2005-2007. She is a member of the Budget Committee, Lawyer Referral Service Committee, Public Interest and Education Commission, and DuPage Bar Foundation. Previous service includes Chair of the DCBA Criminal Law (03/04) and Local Government (05/06) Committees, Editor of the Media Committee (05/06), and President of the DCCDLA (2006). Stacey received her B.A. in Criminal Justice from U.I.C. (1991) and her Juris Doctor from Loyola University (1994).

New Lawyer Director Candidates – 1 Vacancy

Sooha Ahmad – is a family law associate at the Davi Law Group in Wheaton. She earned her undergraduate degree from Rutgers University in 2007 and graduated from Widener University School of Law in 2012. Sooha was admitted to practice in New Jersey in 2013 and in Illinois in 2014. While in law school, she was Vice President and Treasurer of the Public Interest Law Alliance. Sooha is a member of the ISBA, DCBA, and DAWL. Additionally, she has twice been a cast member in Judges’ Nite and served on the JN Auction Committee, where she helped solicit donations for a record-setting year.

Amalia Romano – is currently an Assistant State’s Attorney practicing criminal law in DuPage County. Throughout law school she clerked for United States District Judge John Darrah and at the Law Offices of Michael Fleming. Before her work as an Assistant State’s Attorney, she was an associate at DiTommaso & Lubin. She serves on the Leadership Committee of the DCBA New Lawyers Division as well as the Real Estate Committee. She is also active with DuPage Inns of Court and Justinian Society. She attended Elmhurst College (B.A. 2011, Political Science) and Chicago-Kent College of Law (J.D. 2014, Intellectual Property Certificate).
Director Candidates – 3 Vacancies

**Terry Benshoof** - has been an active member of the DCBA over the past 10 years, involved in the Judges’ Nite cast, several committees, and social events, past Editor-in-Chief of the DCBA Brief, and InBrief columnist, digging up DCBA dirt. He’s going for a second term on the Board, because being a mentor, involvement in the senior lawyers’ division, giving seminars, and running veterans’ organizations still allows him a couple hours a week to work, and he needs to do more things that don’t pay. He promises, when elected, to abide by the “term limits” principle, and limiting his DCBA Board tours to two.

**Mark Bishop** - Fellow Members, I’ve served as our General Counsel, Associate General Counsel, and as Chair of both the Civil Law and ADR Committees. I recently left a firm to start my own practice – the Law Offices of Mark S. Bishop, LLC – a challenge I would never have attempted without the support and encouragement I received from all those I’ve met during 16 years with the DCBA. If elected, I hope to pay it forward by promoting all that the DCBA offers in hopes that others will develop the same great relationships that have made my experience in our community so rewarding.

**James S. Harkness** - It is my pleasure to request your vote to continue serving as a Director for the DCBA. I have served the Bar for eleven years on the following: Director, 2015 – Current; Planning Committee, 2013 – Current; and both Chair and Vice Chair of CLE, 2015 – Current; Business Law Committee, 2013 – 2015; Law Day Committee, 2013 – 2014; Professional Responsibility Committee, 2009 – 2011; Civil Law & Practice Committee, 2007 – 2009; Alternative Dispute Resolution Committee, 2006 – 2008. If you would like a list of ISBA, community, political and charitable activities, please let me know. Thank you for your consideration.

**John Pcolinski** - John Pcolinski is the only person on the planet to be the proud owner of both the prestigious DCBA “Loose Cannon” award and even more elite “Was Highly Recommended for Rookie of the Year Judges’ Nite 2016” award (take that Jay Laraia and John McTigue). Sadly, those are pretty much the highlights of his DCBA career. His accomplishments over his last two terms as a member of the Board of Directors have been largely focused upon snarky comments, self-amusement and moderately good attendance. If re-elected he promises to strive for increasing glimpses of comprehension and occasional flashes of mediocrity.

**Scott Pointner** - Scott is a Member at Rathje & Woodward, LLC, and has earned an AV Martindale-Hubbell rating. Scott concentrates his practice in commercial litigation, commercial real estate, corporate, finance, and homeowners association law. He has been a featured speaker at numerous continuing legal education seminars. Serving as General Counsel for the Wheaton Chamber of Commerce since 2009, he received its 2009 Outstanding Leadership and 2012 Executive Awards. He and his family are active members of St. Irene’s church in Warrenville. His deep transactional and litigation experience make him an ideal candidate for the DCBA Board.

**Richard J. Veenstra** - Rick Veenstra is a Deputy Chief in the Civil Bureau of the DuPage County State’s Attorney’s Office. He serves as legal counsel to the County Board, to the County’s Finance and Procurement Departments, and to its Ethics Commission. Rick is a graduate of Elmhurst College and DePaul University’s College of Law and has been a DCBA member since 2003. He is a former Addison Township Trustee and was a member of the Village of Addison’s Planning and Zoning Commission for 12 years. Rick lives in Wood Dale and is a member of the Elmhurst College Alumni Association’s Board of Directors.
News & Events

Big Dreams Pay Off with Success of Judges’ Nite’s “Narcolepsy the Musical”

By Michael R. Sitrick

The hams and spotlight-seekers were out in full force the evening of Friday, March 4, to entertain a record-breaking crowd of supporters for the DuPage County Bar Association’s 41st Annual Judges’ Nite. Held at the McAninch Arts Center’s Belushi Performance Hall at College of DuPage, this Legal Aid fundraising event did not disappoint. Guests who attended enjoyed a stellar reception, the opportunity to bid on a host of fabulous live and silent auction items, and were then treated to a rousing pre-show set by the Judges’ Nite Band and a brilliantly-written musical performance titled Narcolepsy the Musical: CLE Will Never Be the Same.

Choosing to poke a little fun at one of the DCBA’s signature annual events, Mega Meeting, Judges’ Nite Producer Christina Morrison, Director Nick Nelson, Assistant Director Brent Christensen and Stage Manager Pam Trojan, along with their brilliant committee of writers, performers, musicians and stage crew members, turned our sleepy CLE symposium into comedy gold.

The story opened on the start of the Mega Meeting where DCBA Executive Director Leslie Monahan (artfully impersonated by Sooha Ahmad) welcomes everyone to an exciting weekend of continuing education. However, as the first CLE begins, something out of the ordinary is afoot as participants mysteriously start to nod off one by one and bring some of their most lucid dreams (and nightmares!) to life on the stage.

While there are too many highlights to share within the space constraints of this column, kudos for memorable performances to the following folks:

- **Jennifer Burdette** for her portrayal of DuPage County Chief Judge Kathryn Creswell who brought the house down with her song, “She’s Running Them” a parody of The Weather Girls’ “It’s Raining Men” in the scene “Washington Goes to Mrs. Creswell,” which featured “cameos” from justices of the U.S. Supreme Court, including Ruth Bader Ginsburg/Yoda (Lindsay Jurgensen), Antonin Scalia (Art Rummler), Elena Kagan (Denise Erlich), Sonia Sotomayor (Mary Gaertner), and Clarence Thomas/Harro Marx (Annette Corrigan).

- **Kevin Millon** for a spot-on impersonation of everyone’s favorite billionaire and Republican presidential candidate, Donald Trump, who in addition to helping “Save the Pensions” for our needy retired and soon-to-be-retiring county judges and other state officials, boldly pledged to build a wall to keep Cook County lawyers out of DuPage, relying upon the sage counsel of campaign consigliere Jim McCluskey (played by Kendall Hartsfield) – the man “everybody wants” when they need to get elected.

- **George Ford** and **Mark Schmidt** for their respective hilarious impressions of DCBA President-elect Ted Donner, which included a narcolepsy-inducing “TED Talk” (Ford) and absurdly disturbing time travel trip between Donner (Schmidt) and DCBA President James Laraia titled “Jay and Ted’s Excellent Adventure,” a spoof on the 1989 film Bill and Ted’s Excellent Adventure, in which the perks of serving as DCBA president are extolled to a parody of Billy Joel’s “Uptown Girl.”
• **Art Rummler** and **Jeff Jacobson** for their comical portrayals of ever-bickering DuPage County Judges **Robert Kleeman** and **Neal Cerne**, respectively, in a hilarious match of Jeopardy which also featured Judge **O’Hallaren Walsh** (Clarkissa Myers), Judge **French Mal len** (Lindsay Jurgensen) and attorney **Angel Traub** (Kate Guensburg), hosted by Naperville attorney **Gerry Cassioppi** (Dexter Evans).

• And a word of congratulation to fellow Editorial Board member **John Pcolinski** on his stage debut in the show.

**Nick Nelson** stated about the show:

“This year’s show was a success across the board. We increased attendance, had an amazing cast, band and crew, and appear to have greatly increased the amount given to legal aid. I also think we reached a new high for the production value of the show itself. We elevated the look and staging of the show with spacing and story-telling devices. I am especially proud of the very funny and topical script and songs this year. We were able to have fun with the people familiar to the courthouse, while also expanding the comedy to statewide and national figures, which makes the show more inclusive to family and courthouse outsiders. Another year of very positive momentum for this incredible group to build on.”

Many thanks to everyone who devoted their time, talents and resources in support of Judges’ Nite. Thanks to your efforts, we’re thrilled to report that more than $15,000 was raised in support of Legal Aid, a new record. ☐
Judges’ Nite Prizes – Everyone Was a Winner
By Christine McTigue

There were some big prizes and big winners at Judges’ Nite. The silent and live auction raised over $13,000 in bids. New this year was a 50/50 raffle. Robin Slattery accepted the check on behalf of her parents, who received over $1800. Sean Lazzari won the second chance raffle liquor basket. Also new this year was a live auction, held at intermission. Jim Reichardt served as the auctioneer for some brisk bidding. Tom Boundas won the pig roast which will serve 150 of his closest friends. In addition to leading the Judges’ Nite Band in a rousing performance, Steve Armamentos successfully bid on the four Blackhawks tickets. Matt Pfeiffer won the one-week condominium stay in Siesta Key.

There were over 50 prizes to bid on in the silent auction. Among the winners were John Pcolinski and his wife, who now have use of a party bus. Sharon Mulyk successfully bid on several prizes, including a week in Fort Myers. Rebecca Laho and Lisa Giese also won multiple items, including weekend stays. Katie Haskins Becker was the successful bidder for knitting lessons. Jim Reichardt and Lucy Vazquez were top bidders for the photographs taken and donated by Bernie Kleina. The tickets to Hamilton went to Jackie Day. Sean McCumber will be going to a Bulls game and eating at various restaurants around DuPage, using the gift cards he won. □
Downers Grove 11’ x 12’ Office Space for Rent
Three-attorney general practice law firm has two 2nd story private offices available with window overlooking McCollum Park. Includes reception/phone answering, two conference rooms, internet, copier/scanner/fax, kitchen and utilities. Possible referrals. Contact Connie at 630-969-3903.

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Office in prestigious Danada area of Wheaton; Office suite has 4 offices, 3 of which are occupied by other lawyers; Secretary, Space, conference room, kitchen, reception area, copier; available immediately. Office- $650.00; Secretary - $75. Furnished or unfurnished. Call (630) 260-9647.

Professional Offices For Rent On 22nd in Oakbrook Terrace
1-3 furnished or unfurnished offices & 1-2 support staff cubicles are now available in newly remodeled and expanded 4th floor suite in The Oakbrook Terrace Atrium office building at 17W220 22nd Street in Oakbrook Terrace. The Atrium is near Oakbrook Shopping Center, I-88, I-294 and about 2 miles from I-355. Lower garage (covered) and upper parking is provided at no expense. Tenant and guest access to 2 conference rooms, reception area, kitchen/cafe, outdoor balcony/patio and wired phone/data jacks are all provided at no expense. Internet connection and 3 copy machines are available. Inquiries: email Laura Koran at lkoran@ditommasolaw.com or call (331) 225-2121.

Know Your Website
www.dcba.org has lots to offer.
Did you know?
The website has a complete, up to date Member Directory. Login and go to Legal Community/Programs & Resources. Search by Name, Law Concentration, State Licensing and more!

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Derby Day at Arlington International Racecourse

Enjoy watching live racing and a simulcast of the Kentucky Derby! DCBA is sponsoring Derby Day at Arlington International Racecourse, along with the Northwest Suburban Bar and ISBA, on Saturday May 7, 2016, from noon to 6:30 p.m. The ticket price is $100 per person, which includes admission to the racetrack, a reserved seat in the Governors Room, access to balcony overlooking the finish line, chef’s table buffet for three hours, an open bar for four hours, and a daily racing guide. Purchase your tickets now on the DCBA website.

Arlington International Racecourse is located at 2200 West Euclid Avenue in Arlington Heights.

11th Hour CLE Is Set for May 20

Is your reporting period this year (A – M)? Are you short a few CLE credits? DCBA is again putting on its 11th Hour CLE event. Four one-hour presentations will be running from noon until 4:45 pm, and it is planned that all will be for PRMCLE credits. If you attend all the events, you can earn four credit hours.

The 11th Hour CLE event will be held in the Attorney Resource Center on the third floor of the courthouse on Friday, May 20. At the time this issue went to press, topics and speakers were yet to be confirmed. Please refer to the DCBA Docket and e-mail alerts for further details, or contact Janine Komornick at jkomornick@dcba.org.

By Christine McTigue
Looking for a title underwriter that offers ease of use, superior service, and a 50-year history of supporting lawyers?

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