



Summer 2014 • Volume 2

Messenger

**Milwaukee
All Stars:**
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Brewers VP & General
Counsel Marti Wronski,
and MVP (Most Valuable
Pooch) Hank



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Be Part of the Messenger

Please send your articles, editorials, or anecdotes to bwegner@milwbar.org or mail them to Editor, Milwaukee Bar Association, 424 East Wells Street, Milwaukee, WI 53202. We look forward to hearing from you!

If you would like to participate, we have seats available on the *Messenger* Committee. Please contact James Temmer, jtemmer@milwbar.org.



The *MBA Messenger* is published quarterly by the Milwaukee Bar Association, Inc., 424 East Wells Street, Milwaukee, Wisconsin 53202. Telephone: 414-274-6760
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Letter From the Editor



Charles Barr, Editor

At the 156th Annual Meeting in June, both our new and outgoing presidents highlighted the MBA's mission statement, the last bullet point of which reads: "Increase public awareness of the crucial role that the law plays in the lives of the people of Milwaukee County." That the law—as explicated by our courts—does indeed play such a role, not only locally but also nationally, should be obvious to anyone conversant in current events.

Consider first Judge Barbara Crabb's newly-minted decision finding the state's ban on same-sex marriage unconstitutional, and thereby joining the overwhelming majority of courts to address that issue in the past few years. Doctrinally, if discrimination against same-sex couples in issuing marriage licenses is unconstitutional, it must have been so since adoption of the Fourteenth Amendment in 1868. Of course, anyone suggesting as much in 1868, 1968, or even 1998 would have been declared a lunatic, or worse. Public opinion, however, has swung to support a right to same-sex marriage simultaneously with the wave of court decisions declaring that right. So while we hear plenty of grumbling about "unelected" (i.e., federal) judges subverting the democratic process, in this instance the courts, not elected legislatures, reflect the popular will, as the contours of equal protection conform to the evolution of societal mores. This should dispel any lingering doubt that the Constitution is indeed a "living, breathing document." Whether and to what extent it should be—either on the gay marriage issue or more generally—are subjects still open to debate, not to mention appellate review.

Another dimension of the role law, as pronounced by the courts, plays in public life is evident in Judge Lynn Adelman's recent decision striking down Wisconsin's voter ID law. Here the decision bucks rather than rides the tide of public opinion; a solid majority of the public supports the voter ID law based on the perception that voter fraud is widespread. That perceived fact, however, was subjected to trial in Judge Adelman's court, and he dramatically concluded that it is a public myth. Whether he judged the evidence correctly, and whether that evidence accurately reflects electoral reality, are questions remaining open to debate and judicial review. The decision, however, illustrates the crucial function of law

and the courts as bulwarks against popular opinion based on myth rather than fact. Those who doubt the power of mythology to influence and even transform a society should consult—to cite the most extreme example—*The Rise and Fall of the Third Reich*.

This issue of the *Messenger* features an update on Wisconsin voter ID litigation from Richard Saks, an attorney on the front line of the attack against that law. Our "hard law" article from Michael Best profiles the novel issue of whether college athletes should have the right to unionize and collectively bargain with the schools they attend.

Moving to the nuts and bolts of law practice, Judge Richard Sankovitz reports on the increasing popularity and flexibility of e-filing in Milwaukee County Circuit Court. Robert Greenstreet, Dean of the UWM School of Architecture and a former *Messenger* award winner, explores the use of architects as arbitrators and mediators in construction disputes.

Beth Hanan writes on the resolution by the MBA Board of Directors urging prompt action by county government to consolidate and improve county judicial facilities. MBA Board member Tom Reed details the Milwaukee County Community Justice Council's continued promotion of evidence-based approaches to critical decision points in criminal cases.

On the lighter side, regular contributor Doug Frazer delves into the law of library fines, which can take on a surprisingly penal aura. Resident film critic Fran Deisinger asks and answers what makes *To Kill a Mockingbird* not only a legal classic but one of the great cinematic efforts of all time. We disclose the winner of the third annual *Messenger* award. We have photos from the Annual Meeting, Law Day, and the MBA Memorial Service; previews of upcoming MBA events; and updates from the Milwaukee Justice Center.

We hope you enjoy this edition of the *Messenger*, and that the winter responsible for overuse of the term "harsh" is by now but a distant memory. If the longer daylight hours should happen to awaken that dormant creative impulse, by all means drop us a line. The fourth annual *Messenger* award is out there, waiting for a home.

—C.B.

Member News



Danielle Bergner was appointed Deputy City Attorney for the City of Milwaukee. She is responsible for managing the legal aspects of the city's foreclosure, housing, and neighborhood revitalization initiatives.



Danielle Bergner



Laurna A. Jozwiak

Fox, O'Neill & Shannon promoted **Laurna A. Jozwiak** to shareholder. She concentrates her practice in the areas of business, trademark, and family law.

Goldstein Law Group announced that **Sean M. McNulty** has joined the firm as an associate.

Hupy and Abraham promoted **Todd M. Korb** to shareholder. The firm also announced that **Jennifer Canavan** has been promoted to Director of Operations.



Carina R. Garcia

Petrie & Stocking announced the addition of **Carina R. Garcia** to the firm. She focuses her practice on business law and estate planning.



Jennifer Canavan



Todd M. Korb

Quarles & Brady announced its selection of **Kathryn M. Buono** as the new Milwaukee office managing partner. She is a partner in the firm's Corporate Service Practice Group. The firm also welcomed **James M. Schleicher, Ph.D.**, as an associate in the Intellectual Property Practice Group.



Kathryn M. Buono



James M. Schleicher, Ph.D.



Troy E. Giles

Reinhart Boerner Van Deuren welcomed shareholder **Troy E. Giles** to its Environmental and Real Estate Practice Areas.

von Briesen & Roper announced that **Daniel T. Dennehy** was elected as chairperson of the Milwaukee County Personnel Review Board. He is a shareholder in the firm and focuses his practice on employment,



Laurie J. McLeRoy



Geoffrey S. Trotier

personnel, and labor matters.

The firm also added two attorneys to its Milwaukee office. **Laurie J. McLeRoy** is a shareholder in the Litigation and Risk Management Practice Group, and **Geoffrey S. Trotier** is a shareholder in the Labor and Employment Law Section.



Daniel T. Dennehy

Volunteer Spotlight



David Karp



David Karp

Attorney David Karp is a 1982 Marquette University Law School graduate who practices in Wauwatosa. He owns a law firm with two associates, and practices primarily family and personal injury law.

David has been doing *pro bono* work for many years. He has served as a volunteer helping *pro se* litigants at an organization

originally known as Family Law *Pro Se*, which has changed its name to Women *Pro Se*. David has taken cases with the Volunteer Lawyer Project through Legal Action of Wisconsin, and has volunteered for the Milwaukee Justice Center's family law clinics during the past year. David and his associates also accept several *pro se* cases a year. David considers it extremely important to serve people who are unable to afford an attorney, thereby helping to solve their legal problems and increasing access to the justice system.

Apart from all of his volunteer legal work, David plays in the Mission River Band. The band plays charitable events to raise money locally and nationally for a wide variety of charitable causes, such as Make a Wish, Special Olympics, Guitars 4 Vets, and ABCD (after breast cancer diagnosis). The band is in its ninth year, and has helped raise over \$250,000 for charitable causes. Foley & Lardner Attorney Bernard "Bud" Bobber is also a member of the band.

For his indefatigable charitable work on several fronts, David Karp has earned his moment in the Volunteer Spotlight.

Mission Statement

Established in 1858, the mission of the Milwaukee Bar Association is to serve the interests of the lawyers, judges and the people of Milwaukee County by working to:

- Promote the professional interests of the local bench and bar
- Encourage collegiality, public service and professionalism on the part of the lawyers of Southeastern Wisconsin
- Improve access to justice for those living and working in Milwaukee County
- Support the courts of Milwaukee County in the administration of justice
- Increase public awareness of the crucial role that the law plays in the lives of the people of Milwaukee County.

Erratum Notice

In the Spring 2014 issue of the *Messenger*, the Letter from the Editor erroneously identified the author of the Gettysburg Address article as "Professor John Skilton." The author is late Robert H. Skilton, Professor of Law, Emeritus, at the University of Wisconsin Law School from 1953 to 1981. John Skilton is his son, the Madison attorney and former State Bar President who brought us his father's article—winner of the third annual *Messenger* award for the best article of the year.

Message From the President



Attorney David G. Peterson, Reinhart Boerner Van Deuren



I am pleased to have the opportunity to serve as your MBA President. I follow a very long line of extraordinary attorneys and judges who have served our association in this office. Our immediate past president, Beth Hanan, did a wonderful job and I hope to live up to the high standard she has set. Thank you, Beth, for all of your hard work over the past year.

I always like to say that we in the Milwaukee area have one of the most collegial and professional bars in the country. Frankly, I boast about it to lawyers from other parts of the country. As a legal community, we treat each other with respect and courtesy. We rally behind efforts to help each other out, and we step forward to serve our community. My firm belief is that the MBA, in existence now for more than 156 years, is one of the primary reasons the Milwaukee legal community has achieved this stature.

So what will the MBA focus on in the coming year? We will focus on continuing to deliver high quality events and programs that help us achieve our core mission. Our mission is worth repeating here. It is to serve the interests of the lawyers, judges, and people of Milwaukee County by working to:

- Promote the professional interests of the local bench and bar;
- Encourage collegiality, public service and professionalism on the part of the lawyers of Southeastern Wisconsin;
- Improve access to justice for those living and working in Milwaukee County;
- Support the courts of Milwaukee County in the administration of justice; and
- Increase public awareness of the crucial role that the law plays in the lives of the people of Milwaukee County.

Each of the many events and programs that we sponsor, such as Judges Night, the legal clinics at the Milwaukee Justice Center, and our attorney mentoring program, to name just a few, directly promotes our mission. If you have any ideas on what you would like to see us do as an association to further our mission, please do not hesitate to let me know.

One exciting new event that we are putting together this year, in conjunction with Marquette University Law School, will address our future as lawyers and as a profession. The “Future of the Legal Profession” will address some of the dynamic changes that are occurring in legal markets around the country and in our community, as well. Watch for announcements as we get closer to the September 17 date for the event at Marquette.

A second exciting event we are bringing back this fall will provide an inside view and orientation for newer attorneys at the Milwaukee County Courthouse. The “Day at the Courthouse” is scheduled for October 9 and will be followed by a reception at the Wisconsin Club. The event will feature tours of the courthouse and will provide an excellent opportunity to learn where and how things get done there.

These events are just some of the great benefits offered by your membership in the MBA. We also have top-notch CLE programs (more than 100 each year!) and great facilities for meetings at the MBA headquarters. Our Lawyer Referral Service annually refers over 8,000 clients to attorneys who have signed up for the program, and generates fees for those attorneys that collectively total in the seven figures. We offer *pro bono* opportunities for our members at the Milwaukee Justice Center and through events promoting Law Day. The annual golf outing on August 6 provides a fun occasion to network and support the operations of the Milwaukee Justice Center.

There are too many benefits and opportunities to list all of them here. I urge you to check out our new website, which just went live in June, to learn all of what is happening at your MBA, and to sign up for our upcoming events. I hope to see you at as many events as possible!

Upcoming Events

August 6

Milwaukee Bar Association
Foundation Golf Outing

December 3

Law & Technology
Conference

October 22

State of the Court Luncheon

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Milwaukee Justice Center Update

Executive Director Dawn Caldart Earns Two Alumni Honors



The MJC congratulates Dawn Caldart, MJC Executive Director, on two outstanding honors received in April 2014. First, Dawn was named to her high school's "Hall of Fame." Crown Point High School in Crown Point, Indiana named her as an example of courage for her personal and professional achievements.

Second, Dawn received the prestigious Howard B. Eisenberg Alumni Award for Public Service from Marquette University Law School. This award honors a graduate's dedication to public interest law; service to the community; and commitment to Marquette's mission of faith, service, leadership, and excellence.

Dawn was recognized for her commitment and dedication to public service in her career; the development of the Milwaukee Justice Center; and her efforts to develop a local chapter of Hope by Twelve, an international organization promoting educational opportunities for girls in Ethiopia.

We are proud of all that Dawn has accomplished and are happy to celebrate these well-deserved recognitions!

MJC Welcomes Omar Mallick as Attorney Supervisor



Attorney Omar Mallick joined the MJC in March 2014 as the new Attorney Supervisor. Omar assists part-time with clinic supervision, volunteer training, and other administrative duties.

A Milwaukee native, Omar completed his undergraduate studies at Marquette University, receiving a bachelor's degree in English and philosophy. He earned his J.D. from Hamline University School of Law, where he received the Thurgood Marshall Scholarship. Omar previously worked on civil rights issues in Minnesota and corporate law in Milwaukee. In addition to his work at the MJC, Omar has his own law practice focusing on criminal defense.

MJC Adds Summer Fellows

The MJC welcomed four full-time summer law fellows, all students at Marquette University Law School, to the volunteer staff in May 2014.

Brian T. Kane is from Minneapolis and will be a third-year student this fall. Brian attended the University of Denver and received his bachelor's degree in international studies, graduating *magna cum laude* and earning membership in the Phi Beta Kappa honor society. Brian applied for the summer position at the MJC because participating in *pro bono* work is very important to him. Brian believes that all members of a community should have access to legal information and assistance, regardless of ability to pay. He notes the diversity of legal claims and situations with which clients seek assistance from the MJC, as well as the clients' patience and understanding while the volunteers work through the legal issues. When Brian is not studying or working at the MJC, he enjoys golfing, basketball, and running on the lakefront trails.

Matt Ackmann is from Burlington, Illinois, and will be a second-year student this fall. Matt graduated from Loyola University Chicago with a degree in political science and international studies. He is the first in his family to study law, and his desire to help those most in need is the foundation for his interest in doing so. Matt observes that few individuals are comfortable navigating the legal system, and that the MJC is working to lower the barriers to justice. He was surprised how many people are referred to the MJC and how much they rely on it for assistance. He has been inspired by the range of clients and many dedicated volunteers during his time with the MJC, and he is proud to be a part of an organization that has such a large impact on the community. In his free time, Matt enjoys hunting whitetail deer, pheasant, and turkey. He also enjoys studying the Revolutionary War.

Dawid "Dave" Szymanski is originally from Tarnow, Poland and now makes his home in Oak Creek. He arrived in the U.S. without being able to speak English, and has since graduated from Cardinal Stritch University and is entering his second year of law school. During his undergraduate career, Dave was a student-athlete in soccer and holds school records for most minutes played, most starts, and most consecutive games played. In addition to being a successful athlete, Dave earned a place on the Dean's List for six semesters and was named as an NAIA Scholar Athlete. Dave chose to attend law school to help support and educate those

who are unaware of their options and rights under the law. He finds all aspects of family law interesting, and is struck by how difficult it is for families who are dealing with serious problems to navigate the legal system alone. Away from academics, Dave is passionate about FIFA soccer and Brewers baseball, and enjoys spending time at Summerfest and Bradford Beach.

Morgan Wilz will be a second-year student this fall and is active in a number of student organizations, including the Association of Women Lawyers, Family Law Society, Dispute Resolution Society, and the Association of Law Students with Families. A graduate of UW-Oshkosh, she is a Thomas More Scholarship recipient and was inducted into the *Pro Bono* Honor Society in April. Morgan decided on law school because she saw that most societal issues can be traced back to the development of law. To facilitate social change, she felt the need to earn her law degree. She finds interacting with clients and hearing their perspectives the most interesting aspects of her role as an MJC volunteer, and is happy to play a part in providing clients self-sufficiency and knowledge about their legal concerns. In her free time, Morgan enjoys traveling and spending time with her two boys.

Thanks to Julie Darnieder Upon Her Retirement as MVLC Director

The Marquette Volunteer Legal Clinic (MVLC) took time in May to recognize its director, Julie Darnieder. After more than a decade leading the charge, Julie retired from her position to spend time with her family, particularly her grandchildren. Under Julie's direction, the MVLC thrived—expanding services from the House of Peace to Centro Hispano, the County Veterans Service Office, the Milwaukee Justice Center, and now the Mobile Legal Clinic. Over 20,000 clients have been served by a cadre of hundreds of volunteer law students and attorneys. In her endless commitment to *pro bono* work, Julie has already signed up to volunteer at the clinics as she enters retirement. Thank you, Julie, for the years of service and commitment to improve access to justice for Milwaukee's low-income residents.

Welcome New MBA Members!

Jennifer Allen, *Alan C. Olson & Associates*
Samantha Amore, *Deloitte Tax*
James Anderson
April Barker, *Schott, Bublitz & Engel*
Derek Becker
Myriem Bennani
Kelsey Berns, *Reinhart Boerner Van Deuren*
Jacob Bibis, *von Briesen & Roper*
Patricia Borger, *University of Wisconsin - Milwaukee*
Erin Boyd
Stephanie Brown, *State of Wisconsin - Equal Rights Division*
Rachel Bryers, *Quarles & Brady*
Kate Cartier, *Marquette University Law School student*
Jonathan Cattey, *Law Offices of Robert A. Levine*
Lafayette Crump, *Crump Law Firm*
Andrea Davenport, *Reinhart Boerner Van Deuren*
Jack Davila, *The Previant Law Firm*
Christian Deme
Tristan Dollinger, *Marquette University Law School student*
Hon. Joseph Donald, *Milwaukee County Circuit Court*
Peter Donohue, *Law Offices of Peter M. Donohue*
Dale Egan, *American Appraisal Associates*
Alex Eichhorn, *Tabak Law*
Mark Eldridge, *Ademi & O'Reilly*
Joelle Espinosa
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Dan Fahey
Kirk Fedewa
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Hon. Clare Fiorenza, *Milwaukee County Circuit Court*
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Christopher Flowers, *Godfrey & Kahn*
Kristina Frew
Solomon Gattton, *Marquette University Law School student*
Charles Gordon, *Godfrey & Kahn*
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David Herring, *La Fleur Law Office*
Stephanie Horner
Emily Hutchens, *Whyte Hirschboeck Dudek*
Larry Johnson, *Hawks Quindel*
Marisa Kasriel, *Buelow Vetter Buikema Olson & Vliet*
David Kennedy, *Northwestern Mutual*
Michael Kilkenny, *Laux Law*

Carl Knepel, *Marquette University Law School student*
Joshua Kopp
Albina Korotkiy, *Foley & Lardner*
Mary Kotleski, *University of Wisconsin Law School student*
Sumeeta Krishnaney, *Walny Legal Group*
Glen Kulkoski, *Carr, Kulkoski & Stuller*
Katherine Legel, *Marquette University Law School student*
Jaime Levine, *von Briesen & Roper*
Elise Libbey
Patricia Limbach
Catherine Loew, *Marquette University Law School student*
Kathryn Lomasney, *Hildebrand Law Firm*
John Loring, *Wilson, Elser, Moskowitz, Edelman & Dicker*
James Lowe, *Godfrey & Kahn*
Thomas Ludan
Raymond Luk, Jr., *Foley & Lardner*
Steven MacDonald
Lauren Maddente, *Marquette University Law School student*
Samuel Magnuson, *Marquette University Law School student*
Laura Malugade, *Whyte Hirschboeck Dudek*
Timothy Maynard, *Hawks Quindel*
Nicholas McLeod, *Alan C. Olson & Associates*
Laurie McLeRoy, *von Briesen & Roper*
Naomi Michel, *Quarles & Brady*
Lance Mueller, *Mueller, S.C.*
Tea Norfolk, *Murphy & Prachthauser*
Katherine O'Malley, *Reinhart Boerner Van Deuren*
Carmen Ortiz-Babilonia, *Legal Aid Society of Milwaukee - Guardian ad Litem Division*
Emil Ovbiagele
Angela Pagel, *American Appraisal Associates*
R. Lynn Parins, *von Briesen & Roper*
Bryant Park
Chris Rexroat, *American Appraisal Associates*
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Jared Widseth, *Groth Law Firm*
Antonique Williams, *Law Office of Antonique C. Williams*
Edward Wright, Jr., *The Wright Law Office*

CLE Calendar

Summer 2014

Fall Preview

Continuing legal education at the MBA discontinues in the summertime—a message to the workaholics among us to power down and catch some rays, take in a ball game, go on a picnic. No, don't thank us; just, you know, get a life. But only temporarily—we are, after all, still lawyers.

Here is one lonesome CLE on tap for the fall, but fear not: many others will join it by the time this summer craziness comes to a screeching halt, and the MBA will once again be your go-to CLE source. Keep checking the MBA's new website for updates to the CLE calendar.

September 25, 2014

MBA Presents

How to Start and Then Grow a Highly Professional, Ethical, and Profitable Law Firm

Presenter: Rjon Robins, Owner, How to Manage a Small Law Firm
8:30 - 9:00 (Breakfast/Registration)
9:00 - Noon (Presentation)
Noon - 1:00 (Lunch)
1:00 - 4:30 (Presentation)
6 CLE credits



MBA Mentoring Program

We pair new and experienced attorneys. The match includes areas of practice, size of firm, interests, etc. and strives for insight and guidance on the legal profession.
MENTORS: 5+ years of legal experience, members of the MBA, and in good standing with the Office of Lawyer Regulation.
MENTEES: Less than 5 years of legal experience, members of the MBA, and in good standing with the Office of Lawyer Regulation.

For more information or for an application please contact Britt Wegner at bwegner@milwbar.org

Architects in Dispute Resolution:

Do They Make Good Arbitrators and Mediators?

Robert Greenstreet, Dean, University of Wisconsin-Milwaukee School of Architecture

Arbitration established a solid foothold in the resolution of construction disputes several decades ago, largely due to the high volume of cases, which was causing a significant backlog in the traditional system of litigation. The alleged advantages of arbitration—speed, cost, efficiency, convenience, privacy, and expertise—were well recognized at the time, and it became a successful alternative to the existing court system.

Regardless of the much vaunted (although, it must be said, occasionally debatable) benefits of arbitration in speed and cost, the biggest shift in dispute resolution was arguably the introduction of a legion of new professionals into the process, drawn from architecture, engineering, and the construction fields. These individuals brought their specific expertise and experience to complex disputes, providing insights into construction issues that legally trained personnel—attorneys and judges—might lack. They could also, it was argued, demystify the legal complexities and jargon of a hearing, cut through the traditional jurisprudential requirements and strategies of the courtroom (such as summary judgment proceedings and extensive depositions), and generally simplify the whole matter.

In the construction realm, arbitration developed into a legitimate alternative to the courts, becoming a requirement in standard forms of contract (such as the series produced by the American Institute of Architects), and was eventually supplemented by the addition of mediation as another viable means of alternative construction dispute resolution. Once again, mediators were drawn from diverse professional fields to infuse the resolution of disputes with non-legally trained individuals.

By all accounts, arbitration and mediation are still viable forms of alternative dispute resolution within the construction industry, but to what degree has the infusion of design professionals into the process been sustainable?

Statistical evidence suggests that, despite the initial encouragement of architects to join the arbitration ranks, the field has become largely the province of the legal profession. A recent article¹ estimates that 63% of arbitrators on the American Arbitration Association Construction Panel are attorneys, while only seven percent are architects. At an observational level, it is also obvious at continuing education seminars and workshops that the great majority of attendees are lawyers, and only a handful of practicing arbitrators represent alternative fields.

While disappointing for non-attorneys, the domination of the alternative dispute resolution process by the legal profession is perhaps not entirely surprising. As many arbitrators are chosen based on the advice of attorneys, it should not be surprising that they would demonstrate a preference for being judged by others within their own discipline. Fellow attorneys (or former judges) presumably understand disputes from a legal perspective, and are more attuned to the language and the legal strategies employed by the attorneys at each hearing. They are well versed in the rules of evidence, which, while not necessarily

applicable in arbitrations, provide well-tested parameters of engagement for the participants and are less likely to be ignored or misunderstood. Perhaps most pertinently, attorneys and legally trained arbitrators share a common approach to dispute resolution based on their education, training, and experience, and such arbitrators are therefore more likely to be predictable in their deliberations and decision-making.

By contrast, architects (notoriously right-brained, kinetic types) may be less predictable in what they allow in the informal hearing proceedings of an arbitration, what they understand of the jurisprudential crafting of an argument, and ultimately how they formulate their final decisions. Given the considerable costs of dispute resolution, even in arbitration, the stakes are high and some level of predictability in the outcome is inevitably a priority.

In some cases (such as when the parties cannot agree on an appointment and arbitrators are selected by the AAA), attorneys may be faced with an architecturally trained arbitrator regardless of their preference. In such instances, it is advisable to avoid subtle legal maneuverings, courtroom procedures, and complex jargon. These are likely to confuse rather than persuade, and to risk alienating the arbitrator. It is prudent to develop a strong, narrative style that provides an overall “story” of the dispute, complete with timelines, to give the arbitrator a clear overview of the dispute. Keeping the argument short and clear with an easily followed structure is also recommended. Architects are not known for their long attention spans or, frankly, their focus on minutiae, and are better suited to ‘big picture’ approaches.

While a reasonable argument can be made from the legal profession’s perspective to prefer legally trained arbitrators over design-based ones (at least from the attorney’s point of view), there is still a very good rationale for including architects in three-person arbitration panels

continued page 22

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* National Bar Association (Reading Committee) & January Professional Liability (PIL) Profile of Legal Disputes (June, 2004) (Chicago, IL: Nat. Insure. Underw. Exch. Easton, Wash.)

The Law of Library Fines

Attorney Douglas H. Frazer, DeWitt Ross & Stevens



Douglas H. Frazer

The Milwaukee County Federated Library System (MCFLS) recently suspended my library card, and I was mortified. True, I had offended. I had returned *Lonely Planet Sydney* without the pocket map. The North Shore Library staff had flagged the missing map as effortlessly as a server denies access for a password off by a digit.

But, I said, I had replaced the map with another even better map I had picked up while touring. It's not the *Lonely Planet* map, was the reply.

I mentioned that I had called *Lonely Planet* but was told I could not buy a replacement map without purchasing a whole new book. The librarian advised me to wait and see if the staff at the Mill Road branch, the book's "home" library, would care. Sometimes, she said, they don't.

Several weeks went by and I thought I was in the clear, until one late evening, when I attempted to renew *Great Expectations* (CD audio book) online. I couldn't. MCFLS had suspended my card pending payment of a fine of \$29.99—major credit cards accepted—for the replacement of the *Lonely Planet Sydney* book.

I contacted a friend who had worked for many years in state and local library administration. Could I replace the book myself? Could I reduce the fine by buying a new replacement book for \$17.99 on Amazon? Could I buy a used book and simply turn over to the library the cannibalized map? If I paid for a new book, could I get the old book back?

Take a deep breath, my friend responded. Each library has its own policies on these questions. Her advice: call the branch that owns the book and throw yourself at its mercy.

I did just that. The library branch manager took pity on me. We can circulate the book without the *Lonely Planet* pocket map, she said. I'm going to cancel the charge and reinstate your card. You are free to move about the library system.

I had escaped with only a blemish in my dossier, but how had others navigated this minefield? I could find no articles, treatises, or discussions. Not even a CLE opportunity. The academy, it appears, has wholly ignored—nay, eschewed—the law of library fines.

This is largely contract law. In the MCFLS, for instance, individuals eligible to obtain a library card sign a library user agreement. This agreement outlines the terms and conditions of library use. While each library branch may adopt its own policies, these policies usually conform to one another within MCFLS. They include provisions concerning responsibility and cost for loss or damage to materials, as well as for overdue materials.

Circulation periods and fines are set out under the authority of the particular library board. For instance, the Greendale Public Library circulation period for library material is three weeks. Greendale allows a grace period of three days and imposes a fine of \$0.10 per day for overdue materials. When a borrower loses any library item, the borrower is charged the replacement price as listed in the price field in the item record. In the event of missing material (like the pocket map), the sanction is at the discretion of the library director or branch manager.

Failure to abide by the rules can result in the suspension or revocation of a borrower's privileges.

Depending on the jurisdiction, library patrons can be and sometimes are arrested and jailed for unpaid library fines. This has happened in Wisconsin. The enforcement authority can be summed up in two words: police power. Wis. Stat. § 43.52(1) states that a municipality establishing a municipal library "may enact and enforce police regulations to govern the use, management and preservation of the public library."¹ Grafton and Beloit, among others, have exercised this authority.

A March 1, 2008 article in the *Beloit Daily News* reported that library patron Keely Givhan had served six days in the Rock County Jail on this account. Beloit had issued a municipal citation to Givhan for fines arising from unreturned library materials.² She failed to appear in court and the judge issued a warrant for her arrest. The police flagged the warrant during a traffic violation and hauled her in. Neither Givhan nor her family had the money to pay her fine, so she remained in jail. Beloit Police Chief Captain Bill Tyler stated that although his force rarely made sweeps of people who didn't pay their library fines, with thousands and thousands of warrants to serve arising from unpaid fines, "whether you've got dope or library books it can happen."

Also in 2008, according to an ABC News special report, a former Grafton resident, Heidi Dalibor, was picked up by the Grafton police, cuffed in front of her mother's home, and jailed for failing to return two books, and then ignoring subsequent notices, the municipal citation, and the court date.³ Grafton Police Chief Wenten said Dalibor was arrested on contempt of court charges. It's a service we provide, the chief stated.

Jerry Seinfeld learned his lost-library-book lesson, too, the hard way. In "The Library" (season 3, episode 5), Jerry discovers he has a library fine for an unreturned book (*Tropic of Cancer*) he checked out in 1971. The case has been assigned to the NYC public library detective, Lt. Bookman (Phillip Baker Hall), which occasions a scene in Jerry's apartment—accessible on *YouTube*—throughout which Jerry can barely keep a straight face. In the end, Jerry pays the fine, George takes the blame, and Kramer gets the girl (Marion, the beautiful librarian).

What do we take away from all this? Keep in mind the concluding thought of my advisor concerning the missing *Lonely Planet* pocket map situation. NEVER mess with a librarian.

Douglas H. Frazer, Northwestern 1985, is a shareholder in the Metro Milwaukee office of DeWitt Ross & Stevens. He focuses his practice on tax litigation and controversy.

¹Wisconsin explicitly criminalizes the theft of library material. Depending on the value of the items stolen, the crime is classified a class A misdemeanor or a class H felony. Wis. Stat. § 943.61.

²Beloit, Wis., Ordinances §§ 18.03 (public libraries) and 25.04 (penalty provisions).

³See Grafton, Wis., Ordinances §§ 2.22.030 (returning library materials) and 1.12.030 (schedule of deposits).



The Reel Law



Attorney Fran Deisinger, Reinhart Boerner Van Deuren

To Kill a Mockingbird

Directed by Robert Mulligan
1962; 129 minutes

Surely there is little need to retell the story of *To Kill a Mockingbird*, Harper Lee's famous novel so poetically adapted to the screen by Robert Mulligan. For those of us who read the book first, its characters were vivid before we ever saw the movie: young siblings Scout and Jem and their summer neighbor Dill; Tom Robinson and Mayella Ewell and her loathsome father Bob; Maudie and Calpurnia and Sheriff Tate and Boo Radley and all the others. Yet of all the memorable characters of this story, one always stands apart. In 2003 the American Film Institute produced a list of the 50 greatest heroes of the first 100 years of the movies. The list includes such characters as Rick Blaine of *Casablanca* fame; Han Solo and Obi-Wan Kenobi from a galaxy far far away; and a poor Italian boxer from Philly named Rocky. But at the top of the list there is a southern lawyer and father named Atticus Finch.

Just as there is no need to retell the story, there is no need for me to argue that *To Kill a Mockingbird* is a great film. That also has long been acknowledged. The film itself is consistently ranked in the top 50 on the AFI's list of greatest films. What makes it great? Obviously it benefits from a great story and characters, and from the very fine screenplay of Horton Foote. The actors truly seem born to their roles, from Gregory Peck's Atticus to Mary Badham's Scout to Robert Duvall's brief, haunting film debut as Boo Radley. But perhaps more than any other film I can think of, *Mockingbird* is memorable for flawlessly capturing the atmosphere of its progenitor novel's setting and story. Shot in black and white, with a lyrical, sparsely instrumented score by Elmer Bernstein, the film evokes the feel and pace of small-town, depression-era southern life from its opening moments. This evocation is so strong that I was astounded when I learned, after many years and many viewings, that it had been shot entirely on a Hollywood film lot. It seemed impossible that it was not shot on location.

That languid pace imposed on the story under Mulligan's direction may be the defining characteristic of the film's presentation of a racially charged rape trial and its effects on Atticus and his children. Nothing happens fast. Nobody talks fast. There are no quick cuts. Even the most jarring moments of this film—such as when Bob Ewell spits in Atticus' face—are played out with excruciating deliberateness. In this film, the southern summer passes slow and hot and wonderfully and tragically. Like caterpillars struggling in tree resin, even the moments of youthful discovery for Scout, Jem, and Dill are caught in the humid tension of the atavistic fatalism infusing the town.

You are wondering, of course, when I will get around to the “legal” side of this great film. How can it be that among the wartime leading men and cowboy gunslingers of the greatest heroes list, this small-town lawyer stands as the greatest film hero of all? Especially—*most* especially—since he fails so spectacularly as a trial lawyer. After all, there is no real doubt, much less any reasonable doubt, that Tom did *not* rape Mayella. Indeed, to give Atticus his due as an advocate, in trial he sets up a convincing proof that Tom could not have done so. But just when he appears to have all the facts on his side, the case goes sideways on him, starting with his seemingly blundering final question of Mayella: “Why don't you tell us what *really* happened?” Mayella's hysterical, sobbing retort to Atticus' open-ended question sets the trial on an immutable path notwithstanding Atticus' memorable summation.

As powerful and moral as that summation is, does Atticus' focus on the higher principles of law and justice really have any chance of persuading his all-white, all-male jury in this time and place, especially when he viscerally displays his disgust for the victim and her father and “the minds of their caliber”?

And yet, after the jury has returned its verdict holding Tom Robinson guilty, as the courthouse clears and Atticus assembles his papers in the harsh failure of his appeal to higher principles, the assembly of black townspeople consigned to watching the trial from the balcony slowly and silently begins to rise. Scout, peering through the balcony railing in a child's crouch, is admonished by the minister sitting next to her to “stand up—your father's passing.” In the quiet courtroom as Atticus passes under the balcony, head bowed, his audience knows that he could not win a case made hopeless by the time and place and its rules and manners. But his willingness to state the truth, to make the case fearlessly that those rules and manners are wrong, deserves their respect.

To Kill a Mockingbird burned its place in our cultural memory—it became iconic—in very large part due to its timing. The book was published in 1960; the film appeared two years later. They were riding a powerful wave that had not yet crested. Atticus' failure to save Tom Robinson, but his willingness and ability to make the case for how desperately we needed the law and the courts to excise the racial

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156th Annual Meeting



Judge Charles Clevert and his wife Leslie ▲
Clevert at the MBA Annual Meeting.



▲ President-Elect Marcia Drame, Vice President Andrew Wronski, and returning MBA Board members Maria Kreiter and Judge Maxine White are sworn in by Chief Judge Jeffrey Kremers.



Justice Janine Geske (ret.) ▲
proudly displays the MBA
Lifetime Achievement Award.



▲ Mary Wolverton accepts the
Distinguished Service Award on behalf
of the Limited Scope Representation
Subcommittee of the Supreme Court's
Planning and Policy Advisory Committee.



Immediate Past President Beth Hanan addresses the crowd. ▲

Attorney John Skilton
displays the MBA
Messenger award he
accepted on behalf
of his father, the late
Professor Robert
H. Skilton. ▶





MBA President David Peterson takes the oath of office.



Attorney E. Michael McCann introduces the Honorable Charles N. Clevert, Jr. winner of the McCann Distinguished Public Service Award.



Judge Charles Clevert addresses the membership.



Past State Bar President Diane Diel introduces Mary Wolverton of PPAC's Limited Scope Representation Subcommittee.

MBA Honors Deceased Judges and Lawyers at Annual Memorial Service

On Friday, May 9, the Milwaukee Bar Association held its annual memorial service at the Milwaukee County Courthouse. The memorial service honors and remembers those attorneys and judges who passed away in the last year. Deputy Chief Judge Maxine Aldridge

White presided at the service, which began with a processional into the ceremonial courtroom of participating Milwaukee County Circuit Court judges, along with Wisconsin Supreme Court Justice David Prosser. After Judge White called the service to order, Fr. Timothy L. Kitzke, archdiocesan pastor, delivered an invocation, followed by introductory remarks from MBA President Beth Ermatinger Hanan to welcome guests, including family members of the honorees. Three speakers—Judge John J. DiMotto and Attorneys Christian G. Steinmetz and Marcia Facey Drame—reflected on the contributions the honored attorneys and judges made to the Milwaukee legal community and the community at large. The service closed with Judge White and President Hanan reading the 53 names of those being honored and a closing prayer by Fr. Kitzke. Judge Neal Nettesheim (ret.) provided the music. A reception followed the service.



A large crowd of MBA members, family members of the honorees, and judges gathered in Room 500 for the annual memorial service.



Judges Sankovitz, Kuhnmuensch, Kahn (ret.), and Donald talk at the conclusion of the service.



Memorial service speakers included Marcia Drame, Beth Hanan, Judge Maxine White, Christian Steinmetz, Fr. Timothy Kitzke, and Judge John DiMotto.

MJC Campaign Affirms MBA Membership's Commitment to Justice

MBA members once again demonstrated their support of the Milwaukee Justice Center, the organization's signature public service project, by donating \$41,415 during the third annual Milwaukee Justice Center Campaign in March.

The MBA Board of Directors gratefully acknowledges donations from the following individuals and firms:

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Dawn Caldart and Hon. Michael J. Skiewerawski gladly accept the final installment of Michael F. Hupy's generous \$100,000 pledge to the MJC.

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There Goes My Retirement Job

Honorable Richard J. Sankovitz, Milwaukee County Circuit Court

Envoy the bike messenger. Wheeling gracefully up the avenue, breezing into our offices bearing documents and a whiff of freedom, cavaliers in toe clips.

What a second career that might make, once retirement is secure and all one might be looking for is a little extra spending money and a low-stress excuse to keep fit.

Admittedly, delivering paper by hand in the age of broadband might seem a career in eclipse. But isn't there still hope for preretirees in Milwaukee? Aren't lawyers here still sending messengers to the county courthouse and serving hard copy on opposing counsel?

Yes, but not for long. Electronic filing has been up and running in the circuit court for more than a year now, and continues to gain popularity. The same ease, efficiency, and economy of doing business in federal district and bankruptcy courts and in the Wisconsin Court of Appeals is now available to practitioners handling cases here at the county courthouse.

Currently there are more than 1,100 e-filed cases pending in the civil and family divisions. The largest number consist of large claims civil cases—over 600, more than enough to fill the docket of an entire civil branch. In the past year, the court has successfully closed almost 800 e-filed civil, small claims, and family cases.

Attorneys who have mastered the new system sing its praises. Charles Kramer speaks for himself and his team at Weiss Law Office: "We love it . . . We haven't filed any paper [in Milwaukee] since 2012." He likes how e-filing accelerates the resolution of the case, from immediately putting the papers in the hands of the process server to getting the order for judgment signed. He appreciates the convenience of e-filing. "I don't even have to get out of my desk chair," he says. He also mentions the relief of not having to worry about nagging logistics, like the last pick-up at the post office. "We really wish Dane County had it," he adds.

Frank Liska is one of our former colleagues at the courthouse and a 1972 law school graduate who still maintains a robust practice. He is proud to be called an old dog who is still learning new tricks. "If I can figure this out," he boasts, "there's no reason why anyone junior to me can't." He handles multiple cases on any given day in small claims court, but all he brings to court is his iPad, on which he can show everything the clerk and the commissioners need to process his clients' cases smoothly. And, he points out, "we e-filers get first priority in small claims court." His devotion to e-filing began modestly enough—"I didn't want to have to pay ten bucks to park for every stinkin' filing I needed to make"—but now, he says, due to the efficiencies of the system he can handle many more cases than he ever imagined he would.

My personal experience with e-filing continues to be entirely positive. No matter how many times we've been through the file, the documents are never out of order. And because the court record is word-searchable, I can lay my eyes on the pertinent pleadings almost instantly. E-filing truly enhances decision preparation. Uploaded documents are searchable, which means I can zero in on just what I need. And cutting-and-pasting that killer argument or that on-point decision could hardly be easier.

Counsel tell me that they like having their documents, and those of their opponents, in one place and easy to find. Moreover, they receive instantaneous notice when anything is filed and when orders are entered.

No system is perfect, of course, and improvements to the system to make it more comprehensive and more seamless are still in

the works. But in the meantime, we are not at the mercy of the machine. We are fortunate to have talented, helpful, and friendly humans running the system and ready to make things work for lawyers and their assistants who are willing to give e-filing a try. Frank Liska sums up the success of e-filing "in two words: Anna Hodges [the Administrator of the Civil Division]. When I call her up—or screw up—Anna is right on top of it." He also credits Judge Pedro Colon, the presiding judge in the small claims division, for his computer savvy.

The advantages of having electronic access to the file are so appealing that counsel have even asked the court to convert cases that were initiated in hard copy. John Barrett, the always helpful Clerk of Court, will arrange to have hard copy pleadings scanned and treated as if they were filed electronically from the get-go. Almost fifty large claims cases, some with pleadings that fill boxes, have been converted.

This customized scanning effort is part of a much larger effort to liberate the clerk's office from its immense paper burden. More than 250,000 civil, small claims, and paternity files have been scanned and removed from the courthouse, freeing up the space that is currently being renovated into the expanded Milwaukee Justice Center and relocated Legal Resource Center. Accessing closed files, which used to require a special request and a day's wait, is now immediate.

In addition, significant portions of all probate, small claims, criminal, and family files (including all family court orders signed by a judge) are scanned as they come through the door, a sizeable first step toward the paperless era that lies over the horizon.

How far over the horizon? Discussions are underway at CCAP and in the Director of State Courts Office to petition the Wisconsin Supreme Court to mandate e-filing in all circuit court cases as early as 2016, which would put the circuit courts on par with federal courts.

Interested in getting a head start on the inevitable? Check out the ten-minute tutorial on the Wisconsin Supreme Court's website, wicourts.gov/services/attorney/electronicfile, and see how easy it is to e-file.

.....
Reel Law continued from p. 11

injustice welded into our culture and our political systems, was in perfect accord with what was happening in the real world. In the early 1960s there was no certainty of outcome in the civil rights struggle, just a certainty of need. There were many tragedies to come: that they were the casualties of a just war made them no less painful.

Early in the story, after Mayella has accused Tom Robinson, the town's judge comes to visit Atticus at his home. They sit on the porch on the warm night, and eventually the judge gets around to the obvious purpose of his visit—asking Atticus if he will take the defense. The peril to Atticus is clear, the likelihood of failure just as clear. What makes someone a hero? The willingness to do the right thing against all odds, come what may.



Collegiate Student-Athlete Union Seeks NLRB Recognition

Attorneys Eric Rumbaugh and Carlos Pastrana, Michael Best & Friedrich

On January 28, 2014, Northwestern University football players took a historic first step by filing a petition with the National Labor Relations Board seeking to be certified as a union. If the NLRB certifies this union, it would be called the College Athletes Players Association, and Northwestern University would have to bargain collectively with CAPA. The petition is backed by the United Steelworkers union, which will pay CAPA's legal fees and provide technical support, but will not receive union dues from players.

Northwestern University stated that, while the issues raised by the players' group "deserve further consideration," the school does not consider its student-athletes as employees, and does not believe collective bargaining is the appropriate method to address those issues. The National Collegiate Athletic Association's immediate reaction was that "there is no right to organize student-athletes" because they are not "employees" within any definition of the National Labor Relations Act, and their participation in college sports is voluntary. The NCAA pointed out that student-athletes are provided scholarships and many other benefits for their participation.

Collegiate athletics are an extremely profitable enterprise. Last year, Big Ten football schools received \$25.7 million, the vast majority of which came from TV rights. Currently, playing in a Bowl Championship Series game brings each athletic conference \$23.6 million, and that number should rise significantly when the new College Football Playoff System goes into effect next season. *Forbes* has reported that ESPN is expected to pay about \$500 million for playoff games.

For the time being, CAPA has chosen to avoid the hot-button issue of whether student-athletes should be paid. It is, instead, demanding limited contact at practices; additional independent concussion experts at games; that schools pay medical expenses for sports-related injuries; and that athletic scholarships be extended to cover the full costs of attending college, including expenses such as laundry and going home for vacation. Additionally, CAPA is seeking to have a small percentage of the revenue generated by college sports invested in a continuing education trust fund for athletes who turn professional before graduating.

If the NLRB ultimately certifies this group of players as a union, however, CAPA might then target more aggressively the massive revenue generated by collegiate athletics. The NCAA is already fighting efforts by student-athletes to lay claim to a share of that revenue. Former UCLA basketball star Ed O'Bannon filed suit against the NCAA, its licensing company, and videogame giant EA Sports five years ago, alleging that they had profited from the use of his and other players' likenesses in EA sports video games after they graduated.

In considering the merits of the CAPA petition, the NLRB will consider whether the student-athletes who receive scholarships fit the definition of "employees" under the National Labor Relations Act. In a line of NLRB cases that considers the issue of whether graduate student assistants are employees under the NLRA and thus eligible to vote in a union representation election, the NLRB has held that the applicable standard is whether the student assistants' main duties are in furtherance of the economic interests

of the university, as opposed to being in furtherance of their studies. Because the NLRB, as presently constituted, has been receptive to the claims of labor organizations, it is foreseeable that it could determine that Northwestern football players are "employees" under the NLRA. The Board might find that their participation in intercollegiate sports heightens the university's public standing and generates revenue, and therefore that the student-athletes' main duties are in furtherance of the economic interests of Northwestern and the NCAA.

It remains to be seen what the scope and practical effect of such a decision would be, particularly if the NLRB's rationale focuses on the revenue generated by the athletes' activity. Could participants in sports that do not generate massive revenue, such as wrestling, lacrosse, or women's sports, likewise be considered "employees"? How about students who receive non-athletic scholarships? Another question that would probably arise is how, if at all, student-athletes at public institutions would be affected. The NLRA does not cover public-sector employees.

The NLRB could take years to resolve this issue, so do not expect any immediate changes. Higher education institutions and their student-athletes, however, will certainly be monitoring this case.

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Editor's note: as the *Messenger* went to press, the O'Bannon case was in trial in Oakland, California.

The Wisconsin 4-H Foundation enthusiastically invites all members of the Milwaukee Bar Association to attend and participate in the Governor's Blue Ribbon Meat Products Auction at the Wisconsin State Fair on Tuesday, August 5, at 7 pm in the Case IH Coliseum at the State Fairgrounds in West Allis. Join us as we raise funds to benefit the Wisconsin 4-H Foundation, which generates resources to invest in the positive development of 4-H youth.

4-H is the largest youth-serving organization in Wisconsin, serving more than 350,000 of our kids, with more than 60% coming from Wisconsin urban areas. 4-H youth are 25% more likely to positively contribute to their communities and 41% less likely to engage in risky behavior. By supporting the 4-H Foundation, we can help 4-H create cutting-edge, relevant programs that help kids learn real-world skills that will prepare them for the challenges of today ... and tomorrow.

For ticket information, email lisa@wis4hfoundation.org. Please join us!

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Judge Adelman Finds Wisconsin Photo ID Law Unlawful Under Section 2 of Voting Rights Act and U.S. Constitution

Wisconsin Supreme Court Decision Imminent

Attorney Richard Saks, Hawks Quindel

Litigation challenging various states' photo ID requirements for voting continued to gain momentum in Wisconsin and across the country during the spring of 2014. Four cases challenging the validity of Wisconsin's photo ID law, 2011 Wisconsin Act 23, reached critical stages in state and federal courts, and it appears certain that photo ID will remain enjoined for both the August 12 partisan primary and the November 4 general and gubernatorial election.

Voting rights advocates contend that photo ID laws needlessly suppress the votes of certain vulnerable constituencies, including minority, elderly, and disabled voters.

On February 25, 2014, the Wisconsin Supreme Court heard oral arguments in two state cases—*Milwaukee Branch of the NAACP, et al. v. Walker*, and *League of Women Voters of Wisconsin v. Walker*. A high court ruling in these cases is imminent. And on April 28, following a two-week trial in November 2013, U.S. District Court Judge Lynn Adelman issued a sweeping, 90-page Decision and Order in two cases, *Frank v. Walker* and *LULAC v. Deininger*, declaring Act 23 violative of the right to vote under both the federal constitution and the Voting Rights Act. Civil rights groups claim historic significance in Judge Adelman's decision because it is the first time a federal court has enjoined a state's photo ID law under Section 2 of the Voting Rights Act. That provision, 42 U.S.C. 1973(b), prohibits electoral procedures anywhere in the country that result in reduced opportunities for minority voters to "participate in the political process and elect representatives of their choice." Because Section 2 is unaffected by *Shelby County v. Holder*, 570 U.S. ___, 133 S.Ct. 2612, 186 L.Ed.2d 651 (2013) (invalidating preclearance provisions of the Voting Rights Act applicable primarily to southern states), it now becomes a key basis to challenge photo ID laws that reduce the opportunities of minority voters to participate in elections.

Prior to Judge Adelman's ruling, Wisconsin's photo ID law was enjoined when Dane County Circuit Judge David Flanagan issued a March 6, 2012 preliminary injunction in the *NAACP* case, finding that the photo ID requirement probably violates Art. III, Sec. 1 of the Wisconsin Constitution by unreasonably burdening the right to vote of hundreds of thousands of qualified electors—including disproportionate numbers of minority, elderly, and disabled persons—who lack the requisite forms of government photo ID. Following a weeklong trial in April of 2012, Judge Flanagan imposed a permanent injunction, finding that over 300,000 voters lack photo ID and could be disenfranchised by the requirement.

The current bottom line for Wisconsin photo ID survival is that *both* the Wisconsin Supreme Court and a federal appeals court must now reverse these respective well-reasoned decisions, each of which is based upon comprehensive trial testimony from highly regarded political scientists, election administrators, and scores of voters. Judge Flanagan's and Judge Adelman's decisions, while construing separate constitutional and statutory provisions, are remarkably similar in their determinative factual foundations. Relying on different experts and witnesses, both jurists independently arrived at the following conclusions:

- Over 300,000 qualified Wisconsin voters—roughly 9% of the electorate—lack an Act 23-compliant photo ID.

- Among these 300,000 electors, the non-possession rates of minority voters and other disadvantaged voting constituencies (e.g., low-income, elderly, and disabled) are disproportionately high by significant margins. For example, Judge Adelman found that black voters are 1.7 times less likely than whites to have photo ID acceptable under Act 23, and Latinos 2.6 times as likely as whites to lack such ID. Judge Flanagan found that 25% of voters over the age of 80 lack Act 23-compliant photo ID.

- Obtaining a state-issued photo ID can be a challenging, time-consuming, and complex task involving significant expenditures of money. In particular, the \$20 fee for a birth certificate is a material pecuniary burden, especially for indigent voters.

- Photo ID does not prevent or deter vote fraud. Voter impersonation is the only type of vote fraud prevented by photo ID, and no person in Wisconsin has ever been convicted or even prosecuted for impersonating another voter.

- The *Crawford* decision by the U.S. Supreme Court (*Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008)), which upheld Indiana's photo ID requirement, does not control the outcome in cases challenging Wisconsin's photo ID law. The decision in *Crawford* was predicated upon what the Court called a flawed and scanty factual record (as the author of the Seventh Circuit decision below, Judge Richard Posner, noted in his recent book *Reflections on Judging*, at p. 85: "I plead guilty to having written the majority opinion (affirmed by the Supreme Court) upholding . . . photo ID—a type of law now widely regarded as a means of voter suppression rather than of fraud prevention."). The correct test to determine the validity of election regulations such as photo ID is the U.S. Supreme Court's *Anderson/Burdick* balancing or sliding scale test, which invalidates a voting law when the state's interests do not justify the burden the law imposes on voters, including discrete subgroups.

Wisconsin in the National Context

Legal battles over the validity of photo ID are playing out in at least a dozen other states. In Pennsylvania, the state's photo ID law passed in 2012 is now dead. After a trial judge permanently enjoined it on April 29, Governor Tom Corbett announced on May 8 that he will not appeal the decision. And on April 24, an Arkansas state trial judge enjoined that state's photo ID law, declaring it a violation of voters' rights under the state constitution. Judge Adelman's decision now provides impetus for current and future challenges, such as those being waged by U.S. Attorney General Eric Holder in two critical cases challenging the photo ID laws of Texas and North Carolina under Section 2 of the Voting Rights Act. If strong trial records in these cases demonstrate significant discriminatory impact of photo ID by diminishing the opportunities for minority voters to participate in the political process, they may herald great changes, including a possible post-*Crawford* revisiting of the photo ID issue by the U.S. Supreme Court.

Richard Saks of Hawks Quindel represents the plaintiffs in one of the pending state cases, Milwaukee Branch of NAACP, et al. v. Walker, 2012 AP 1652, and argued the case on February 25 before the Wisconsin Supreme Court.

MBA Resolution Urges Upgrades to Milwaukee County Court Facilities

Attorney Beth E. Hanan, Gass Weber Mullins

On March 19, 2014, the MBA Board of Directors unanimously adopted a resolution supporting the consolidation and improvement of county judicial system facilities as soon as reasonably possible. The resolution (printed below) was proposed by the MBA Courts Committee, which started discussing the subject following Chief Judge Kremers' State of the Court address in October 2013.

Improving the court facilities, and in particular moving children's court to a central location, has been on the county radar for the last 20 years. The MBA board approved the resolution as a means of encouraging county government to act now. Since presenting the resolution to County Board Chairwoman Dimitrijevic and County Executive Abele in April, I have participated in several meetings with the chairwoman or her staff to discuss how this initiative would benefit children and families in our justice system, and facilitate progress in adult criminal justice. The chief judge also has had multiple meetings with the county executive and other county staff about these needs.

At this point, more community engagement is called for, particularly to let the decision-makers in county government know that these improvements—recognized as necessary twenty years ago when studies were first conducted—are critically important now. While our understanding of many issues affecting children and families in our justice system has advanced significantly, and stakeholders at children's

court have been working collaboratively for years to implement evidence-based approaches to decision-making, implementation of such programs often is hampered by the remote, inefficient, and inadequate facilities at the Watertown Plank location.

Likewise, groups such as the Community Justice Council have studied and are implementing initiatives such as evidence-based decision-making (EBDM) and a 24-hour jail screening program. EBDM enables our community to hold offenders accountable, reduce the overall crime rate and recidivism, and give taxpayers a better return on the dollars they invest in the criminal justice system. But the physical facilities housing our criminal justice system also are greatly aged, have obsolete technology, and offer inefficient logistics for the safe transport of accused and offenders between incarceration and court facilities.

It is hard to miss the public discussion over the last several months about upgrading and expanding the Milwaukee sports and entertainment district. Shouldn't there be an equally vibrant, and even more urgent, public discussion now about how the county meets its core responsibility to provide and house a justice system that, when given the right tools and facilities, can measurably improve public life and individual outcomes for generations? Be part of that discussion, and tie it to the upcoming county budget cycle. We can't wait another 20 years.

Resolution

WHEREAS, the mission of the Milwaukee Bar Association includes improving access to justice for those living and working in Milwaukee County, and supporting the courts of Milwaukee County in the administration of justice; and therefore the MBA has a strong interest in advocating for the most efficient and effective use of County land and buildings for operation of its judicial system;

WHEREAS, numerous studies conducted by and for Milwaukee County over the past 15 years have concluded that the Safety Building in downtown Milwaukee and the Children's Court Building in Wauwatosa are both in need of either replacement or major rehabilitation;

WHEREAS, a strong consensus in agreement with those conclusions exists among those who maintain, work in, and use those two buildings;

WHEREAS, the Children's Court Building is neither in a central Milwaukee County location, nor in a location well served by public transportation, and therefore is difficult for many Milwaukee County families, particularly those who reside in the City of Milwaukee, to access; and

WHEREAS, the parcel of land containing the current Children's Court complex in Wauwatosa is of substantial value, including but not limited to value for retail development, and such value is likely to increase in the near future with improvements to the nearby Zoo Interchange;

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Directors of the Milwaukee Bar Association:

That the Milwaukee Bar Association encourages and supports the consolidation and improvement of facilities housing the County judicial system as soon as reasonably possible under a plan that may include (1) selling the parcel of land that contains the Children's Court Building; (2) razing or rehabilitating the Safety Building; and (3) reorganizing the Milwaukee County Courthouse complex (including but not limited to the present location of the Safety Building, and use of the County's other downtown property) with new construction so as to accommodate all County judicial functions, as well as non-judicial County offices now housed in the Courthouse, while preserving a safe physical separation of juvenile court participants in order to maximize court effectiveness; and

That the MBA urges the Milwaukee County Board of Supervisors and County Executive to expeditiously consider, approve, and implement a plan to accomplish such consolidation and improvement.

Dated at Milwaukee, Wisconsin, this 19th day of March, 2014.

/s/

Beth Ermatinger Hanan, *President, Milwaukee Bar Association*

Law Day 2014



The MJC Mobile Legal Clinic parks at Forest Home Library to assist the public for Law Day.



Attorney Ili Subhan volunteers for the Central Library free walk-in legal clinic in honor of National Law Day.

Thank you to our Law Day Volunteers!

Shannon Allen
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Melissa Kleine
Leticia Morales
Brian Harper

MBA's Law & Technology Conference Returns December 3

The Milwaukee Bar Association will present its annual Law & Technology Conference December 3. The conference is moving to the Italian Conference Center to make room for additional sessions and vendors.

This year's conference will feature two plenary topics and twelve additional presentations with three tracks. The "how to" track features sessions about getting things done and how to make the best use of technology. The ethics track focuses on the ethics of technology in the practice of law. Finally, the practice management track presents ways to practice more efficiently, effectively, and profitably.

The cost to attend this year's conference is \$149 for Milwaukee Bar Association members, \$169 for non-members, and \$99 for law office staff.

Please look for registration details coming soon at www.milwbar.org.

SAVE THE DATE

Wisconsin LAW & TECHNOLOGY Conference 2014

Wednesday, December 3rd
Italian Community Center

Two plenary topics

Three tracks:
"How To"
Ethics
Practice Management

\$149 for Milwaukee Bar Association members
\$169 for non-members
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The Right Tools: Milwaukee County Community Justice Council Promotes Evidence-Based Approaches to Risk and Need Assessments

Attorney Thomas H. Reed, State Public Defender, Milwaukee Criminal Trial Office

The core responsibility of the Milwaukee County Community Justice Council is to ensure that through coordinated action, public safety in Milwaukee County is improved and protected. A relatively small number of notorious and dangerous acts require an aggressive response by law enforcement agencies, prosecutors, and courts. Certainly the health of our communities would be compromised without this effort. It is clear, however, that the many behaviors leading to law enforcement or court intervention are driven by problems such as addiction, trauma, and mental illness, which can be addressed more effectively by use of “Early Interventions,” diversion and deferred prosecution agreements, or more structured programs such as Drug Treatment Court or the Veterans Court Initiative.

Certain types of offenders seem to be cycled unproductively through several unrelated systems—for example, an individual with an addiction who has had several medical emergencies related to the health effects of substance abuse, has had an arrest and prosecution for related behaviors, and has perhaps received other social services. A similar pattern exists for some individuals with significant mental health symptoms, who are cycled from our behavioral health system to the criminal justice system. These patterns are costly in terms of human suffering, economics, and public safety.

The Community Justice Council has created a Mental Health Subcommittee to use data-driven strategies to identify individuals

subject to the destructive patterns outlined above. The Milwaukee County courts have received several federal grants from the National Institute of Corrections, which have facilitated development of rigorous, evidence-based tools to correctly assess the risk and needs of individuals entering our court system. This information is systematically used to make better decisions for both those individuals and public safety. By ensuring a prompt intervention aimed at addressing root problems leading to arrest and prosecution whenever appropriate, it is now clear that the Early Intervention program is reducing recidivism and helping individuals to become healthier and more productive.

The systematic use of validated risk and need assessments and the reliance on Early Interventions, where appropriate, has led to a rethinking of the relationship between criminal justice systems, public health efforts, and medical treatment for mental health illness and addiction. It is now possible to develop coordinated strategies between law enforcement, prosecution, courts, the behavioral health system, and community organizations to assist individuals to live in a healthier way. This important work has a long way to go before achieving its ends, but with modern evidence-based tools and sustained cooperation from the Community Justice Council, significant progress has already occurred.

Gettysburg Address Article Garneres Third Annual Messenger Award

“Lincoln’s Gettysburg Address in Perspective,” by the late Robert H. Skilton, captured the award for the best article in the MBA *Messenger* in the past year. The article was published in two parts, in the Winter 2013 and Spring 2014 editions of the *Messenger*.

Robert Skilton was Professor of Law, Emeritus, at the University of Wisconsin Law School from 1953 to 1981. He wrote this article shortly before his death in 1992. The panel of judges for the award—the Honorable Margaret Dee McGarity, Kelly Centofanti, and Beth Hanan—issued the following statement to explain its selection:

“Professor Skilton’s study breaks down the philosophical and political underpinnings of the Gettysburg Address. It traces the development of Lincoln’s thought process on the meaning of the proposition that all

men are created equal in their inalienable rights to life, liberty, and the pursuit of happiness; and his effort to succinctly honor and grieve the immeasurable cost of securing those rights.

“Today we recognize Professor Skilton’s article primarily because of the depth of its scholarship. But the article also is timely, not only because our country just observed the sesquicentennial of Lincoln’s battlefield speech, but because it is perpetually the right time to remind ourselves of both the fragility and the power of a representative democratic government.

“On a more practical note, Professor Skilton’s article also is a study in the construction of a persuasive argument—whether oral or written. In this sense, the article’s dissection of Lincoln’s structure and sourcing is a model for any lawyer who writes a brief or argues a motion.

“For all these reasons, we bestow the 2014 *Messenger* Award on the late Professor Robert H. Skilton.”

The award was presented at the MBA’s June 10 annual meeting. The author’s son, Madison attorney John Skilton, who brought the article to the *Messenger*, accepted the award on behalf of his father.



The late Robert H. Skilton

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Pro Bono Corner



The Pro Bono Corner is a regular feature spotlighting organizations throughout the Milwaukee area that need pro bono attorneys. More organizations looking for attorney volunteers are listed in the MBA's Pro Bono Opportunities Guide, at www.milwbar.org.

State Bar Assistance for Pro Bono Efforts

Contact: Jeff Brown
Pro Bono Coordinator
State Bar of Wisconsin
Phone: 608-250-6177
E-mail: jbrown@wisbar.org
Website: www.wisbar.org/probono

Many lawyers who are enthusiastic about donating their time to *pro bono* clients find themselves slowed by a common roadblock: fees and out-of-pocket expenses their indigent clients are unable to pay and their small or solo practices are unable to absorb. While some of these fees can be waived by courts and service providers, others remain an obstacle to effective representation. Fortunately, the State Bar of Wisconsin has a program to cover many of these costs for *pro bono* volunteers.

"The State Bar's reimbursement fund for *pro bono* expenses was developed to make it easier for lawyers to volunteer their time," said Jeff Brown, State Bar Pro Bono Coordinator. "It has been a particularly meaningful benefit for lawyers who are retired or working in smaller offices."

The fund can help cover the cost of transcripts, expert witnesses, office supplies, and mileage,

among other expenses. Reimbursement is available for State Bar members handling any eligible civil *pro bono* case on behalf of a low-income client. Moreover, the State Bar awards a limited number of grants of up to \$5,000 each year toward the expenses of establishing or expanding *pro bono* projects, including training materials, outreach, space rental, technology, books, forms, and office supplies.

"I had a case involving a domestic abuse injunction that was very contentious . . . and there was no way my firm could pay the hundreds and hundreds of dollars involved in getting transcripts, and for mileage for my trips to court six or eight times," said Karyn Youso with the Jacobson Legal Group in Brookfield. "I can always make up my time, but for me or my firm to eat the cost would be very burdensome . . . The reimbursement program through the State Bar has really been invaluable."

Other volunteer attorneys find research assistance to be a significant hurdle in taking on new *pro bono* matters. Happily, all State Bar members have free access to the Fastcase legal research service. In addition, the State Bar Pro Bono Coordinator often can connect attorneys with volunteer law students at UW

and Marquette who are eager to help with *pro bono* legal research.

Finally, some retired lawyers, or lawyers employed in public service or non-legal endeavors, may find themselves without malpractice coverage for their *pro bono* cases. For those lawyers, the State Bar pays the premiums for professional liability insurance coverage through the NLADA Insurance Program. That insurance provides coverage for the legal services that volunteer lawyers provide in State Bar sponsored *pro bono* programs and projects, at no cost to the member.

Members seeking reimbursement for expenses should send a signed State Bar member expense reimbursement form with supporting documentation to the State Bar Pro Bono Coordinator for approval. A copy of the reimbursement form, as well as more information on the myriad forms of assistance available to *pro bono* volunteers through the State Bar, is available at www.wisbar.org/probono. Pro Bono Coordinator Jeff Brown welcomes your inquiry, noting: "It's a small thing we can do to show our appreciation for the time that lawyers are donating to provide legal services to low-income Wisconsin residents."

2014 MBA Golf Outing Tees Up

The 26th Annual Milwaukee Bar Association Foundation Golf Outing will be in full swing Wednesday, August 6, at Fire Ridge Golf Club in Grafton. Everyone is invited to participate. Space fills up quickly, and registration is first-come, first-served. Details are at www.milwbar.org.

Proceeds from the golf outing benefit the Milwaukee Justice Center. Last year, the event raised over \$30,000, and the planning committee hopes to raise even more funds this year. So, how can you help?

- Round up a foursome and register today.
- Sponsor a hole or tee.
- Donate an item for the silent auction or raffle.
- Buy a raffle ticket.

That's right—the Green Bay Packers package raffle is back! Tickets are \$25 and anyone can purchase them. Only 300 tickets will be sold. They may be purchased at the Milwaukee Bar Association until the golf outing, and while tickets are still available. The drawing will occur at the golf outing, but the winner does not have to be present. The prize package includes: four 50-yard-line tickets to the Green Bay Packers vs. Atlanta Falcons game on Monday, December 8; limo transportation to Lambeau Field and back; and a \$100 Sendik's gift card for tailgating needs.

James McNeilly, last year's winner of this same package, had this to say about his experience: "My family and I would like to express our gratitude to the Milwaukee Bar Association Foundation Golf Committee for such a FUN event! In spite of the fact that the Pack didn't win the game (they tied the Vikings) we had a WONDERFUL time. Bob from LuxShuttle was FABULOUS! He accommodated us in every way possible (he allowed us two stowaways for the trip—relatives of my wife who had snared tickets to the game), and was a very pleasant companion on the ride up and back. I would heartily recommend the event to anyone, even those who aren't football fans—it is quite an experience!"

For questions regarding the golf outing, please contact Katy Borowski at 414-276-5933 or kborowski@milwbar.org.





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