MILWAUKEE BAR ASSOCIATION, INC. 1858

MBA Messenger

MILWAUKEE BAR ASSOCIATION, INC. Est. 1858

Spring 2010 Volume 1

The Milwaukee Justice Center's Brain Trust: Attorneys Adrienne Olson, Amy Wochos, and Dawn Caldart

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Regular Features

Be Part of the *Messenger*

Please send your articles, editorials, or anecdotes to editor@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 on the *Messenger* Committee, we have seats available. Please contact James Temmer, jtemmer@milwbar.org.

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Letter from the Editor

Charles Barr, Editor

The Milwaukee Bar Association hosts four major annual events, which happen to be seasonal: the Annual Meeting in late spring (the only kind of spring we have), the summer Golf Outing, the autumnal State of the Courts Luncheon, and—smack in the dead of the Wisconsin winter—Judge's Night. These are all fine events, expertly put together by our practiced MBA staff, but year after year the most popular of these shindigs is Judge's Night.

Why is that? Well, let's start with why Judge's Night is different from all other nights (or days). Judge's Night features no awards, no speeches, not even so much as an announcement. There are no microphones, at least not for talking. No agenda, no ceremony. *No applause*—honest to Pete, nary a hand clapping the whole evening. Not that there's anything intrinsically evil about awards, speeches, announcements, microphones, agendas, ceremonies, or applause, of course, but the absence of all these things may just provide a clue to the popularity of Judge's Night.

The ostensible purpose of Judge's Night is to honor the judiciary, but in point of fact a Justice of the Wisconsin Supreme Court can and does make the rounds with no more fanfare than a first-year associate. And despite the fact that the room is packed to the rafters with wily courtroom and boardroom combatants, and sprinkled with the actual *deciders* of their intricate, high-stakes brouhahas, there doesn't seem to be a lot going on behind the scenes. Not many deals going down, little or no influence being peddled. (Or am I missing something? I know, I know: wouldn't be the first time. But this time I think not.)

What Judge's Night offers is simply an evening of camaraderie among professional colleagues, complemented by excellent food and drink in the grandeur and warmth of the second floor ballroom in the Grain Exchange Building. Nothing more than that. Yet, at 5:31, in the midst of a raging February snowstorm, you can barely elbow your way into the joint. The only logical conclusion is that what we enjoy most about our bar association functions is the chance to connect with each other as human beings in a relaxed social atmosphere. (When all other hypotheses have been eliminated, whatever remains, however improbable, must be the truth.—S. Holmes.) In other words, as astonishing as this might be to the general public (including ourselves), *we're just regular folks!*

On that uplifting if somewhat dumbfounding note, let's see what's in the *Messenger*. Our cover features the movers and shakers of the Milwaukee Justice Center, including the MBA's indefatigable Dawn Caldart, Director of the Milwaukee Justice Center and a deserving winner of a 2010 "Leader in the Law" award from the *Wisconsin Law Journal*. Dawn has conveniently provided us a list of open dates and times for volunteers at the Justice Center, one of the community's most dynamic *pro bono* opportunities (p. 22). You can congratulate her on her award and at the same time volunteer to fill one or more of those slots. Also on the *pro bono* front, we survey Milwaukee's largest firms about their contributions to the burgeoning *pro bono* movement.

In the first of a two-part series, we have a preview of Eckstein Hall, the jewel that will house Marquette Law School beginning this fall. In the category of "hard law" articles, we explore the ramifications of a recent U.S. Supreme Court decision on race-based peremptory challenges and look into the growing number of collective action wage claims in Wisconsin courts. Our practice-oriented articles review the evolving use of collaborative practice techniques in family law and extol the virtues of professional mentoring. And, of course, Judge Sankovitz, constant as the North Star, is here to update us on the latest tweaks to the family court local rules as they near completion.

We have a report from the front lines of the County budget war and its impact on our courts. We have photos from the aforementioned Judge's Night. On the lighter side, we offer a tale about the legal gyrations involved in collecting a Wisconsin judgment—in Tegucigalpa.

We hope you enjoy this issue of the *Messenger*. As always, we thank those who have generously contributed their literary talents to our humble publication, and beg for more. Finally, take heart: somewhere, a thousand miles away, pitchers and catchers have reported.

—C.B.

CLE Calendar

March 2010

March 2, 2010
Estate and Trust and Real Property, Co-Sponsors

The Gift that Keeps on Giving: Effective Strategies for Charitable Giving

This presentation will review effective charitable gifting strategies from an income, gift, and estate tax perspective, and summarize recent developments in the area.
Speaker: Jennifer Olk, Godfrey & Kahn
Noon – 12:30 p.m. (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE Credit

March 3, 2010
MBA/WESTLAW

Ethics & Professional Responsibility on Westlaw

Speaker: David Schavee, Thomson West
11:30 - Noon (Registration/Lunch)
Noon - 1:00 (Presentation)
1.0 Pre-approved CLE Ethics Credit

March 4, 2010
MBA/LexisNexis

Search Engine Marketing for Law Firms Seminar & Lunch

An opportunity to make a difference for your firm in 2010!
Speaker: Stephanie Fraley, Internet Marketing Consultant, LexisNexis
11:30 - Noon (Registration/Lunch)
Noon - 1:00 (Presentation)
1.0 CLE Credit

March 9, 2010
Health

Hot Topics for Hospital In-House Counsel: What's Keeping Us up at Night

The panel discussion will involve a wide-ranging discussion of hospital in-house counsel's pressing needs and practical approaches regarding legal issues they face on a daily basis, how they help themselves, and perhaps how they may need some help.
Speakers: Lorna Granger (Chief Legal Officer & Chief Compliance Officer, ProHealth Care), Carrie Killoran (Vice President & Chief Compliance/Integrity Officer, Aurora Health Care), and Jonathan Wertz (Director of Risk Management, Medical College of Wisconsin).
11:30 - Noon (Registration/Lunch)
Noon - 1:00 (Presentation)
1.0 CLE Credit

March 10, 2010
Environmental

The Wisconsin Plant Recovery Initiative: a New Take on Brownfields

The Wisconsin DNR is launching a new program focusing on industrial and commercial facilities that are closing. The goal of the initiative is to help businesses—and the municipalities in which they are located—jumpstart the cleanup and revitalization of plants that have shut their doors. Learn how this new DNR initiative seeks to avoid the creation of brownfields in the first instance, as well as assist in redeveloping existing brownfields.
Speaker: George Marek, Quarles & Brady
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE Credit

March 15, 2010
Real Property

Contamination and Condemnation

The intersection of environmental law and eminent domain, or how does contamination impact valuation in condemnation?
Speaker: John M. Van Lieshout, Reinhart Boerner Van Deuren
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE Credit

March 16, 2010
Intellectual Property

Assignment of IP Licenses in Corporate Transactions

This presentation will provide an introduction to the applicable law on the assignment of intellectual property licenses in asset sales, mergers, and stock sales, and will provide practice tips on various IP license provisions.
Speaker: Richard T. Roche, Quarles & Brady
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE Credit

March 26, 2010
MBA Presents

Milwaukee Family Court Judges - Live and in Concert! PART IV!

The Milwaukee Family Court Judges discuss areas of family law practice, including advice on how best to present these issues before the court.
Moderator: Gregg Herman, Loeb & Herman
Panelists: Hon. Michael D. Guolee, Hon. Francis T. Wasielewski, Hon. Elsa C. Lamelas, Hon. Michael J. Dwyer, Comm. Sandra K. Grady
1:00 – 4:00 (Presentation)
4:00 – 5:00 (Reception - hors d'oeuvres & wine)
3.0 CLE Credits

March 29, 2010
MBA Presents

Electronic Discovery: the Duty to Preserve ESI and Responding to Preservation Demands

Speaker: Jonathan R. Ingrisano, Godfrey & Kahn
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE Credit

April 23, 2010
MBA Presents

Drafting Effective Wills and Trusts

Speakers: Sarah N. Ehrhardt, Michael Best & Friedrich; Perry H. Friesler, Law Offices of Perry H. Friesler; Elizabeth Ruthmansdorfer, Moertl, Wilkins & Campbell
8:30 – 9:00 (Continental Breakfast & Registration)
9:00 – Noon (Presentation)
Noon – 1:00 (Lunch will be provided)
1:00 – 4:30 (Presentation)
7.0 including 1.0 Ethics Pre-approved CLE Credits
To review agenda, please visit the MBA website at www.milwbar.org/Continuing Legal Education

May 14, 2010
MBA Bench/Bar Probate Committee and the Milwaukee County Probate Division

2nd Annual MBA Probate Court Seminar

Panelists: Milwaukee County Probate Judges & Commissioners
Marquette Law School (corner of 11th & Wisconsin), Room 307
Noon - 12:30 (Registration/Lunch)
12:30 - 4:00 (Presentation)
3.5 CLE Credits

May 21, 2010
Family Law Section and Guardian *ad Litem* Subcommittee of the MBA Bench/Bar Family Law Committee

9th Annual Guardian *ad Litem* Update

Panelists: Milwaukee County Family Court Judges & Commissioners
Marquette Law School (corner of 11th & Wisconsin), Room 307
Noon - 12:30 (Registration/Lunch)
12:30 - 4:00 (Presentation)
3.5 CLE/GAL Credits

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Mediation and Collaborative Practice Evolve to Meet Challenges and Changes in Family Law and Beyond

Attorney Sue Hansen, Hansen & Hildebrand

The practice of family law has changed dramatically in recent years. The rate of *pro se* (self-represented) cases has grown exponentially in Milwaukee—and now exceeds 80% (and is estimated at nearly 70% statewide). The growing number of self-represented individuals has overwhelmed the courts and too often has resulted in many ill-informed agreements and post-judgment returns to court. The *pro se* increase is attributable to a number of factors, including inability to afford representation, a mistaken belief that divorce is a simple check-the-box process, and fear that lawyers will exacerbate conflict and drive up costs.

As a profession, we can't ignore the fact that the rapidly expanding rate of *pro se* cases speaks to the dissatisfaction many people have with the traditional process. Even people who can afford to hire lawyers are electing to proceed without representation. This phenomenon has compelled lawyers and courts to explore ways to address alternatives to the traditional litigation system.

Bench/bar efforts are currently underway to improve the mandatory custody/placement mediation system in Milwaukee and to encourage expanded use of mediation beyond those issues. Family courts, like other civil courts, are looking to mediation as an option to facilitate settlement. It is clear that those unrepresented parties who want assistance, but not conflict or adversarial advocacy, are also looking to private mediators to assist as guides and facilitators to help navigate the divorce process.

Collaborative Practice is another option for parties who wish to minimize conflict and retain privacy and control in their divorce process. Collaborative Practice is a relatively new way to resolve separation and divorce for a growing number of families in the United States, Canada, Europe, Australia, and Asia.

The concept of Collaborative Practice is simple: the parties and professionals pledge not to go to court, agree to an honest exchange of information, and commit to work toward a solution that takes into account the needs and interests of both spouses and their children. Each party has a lawyer, and the lawyers act as information resources, advisors, and advocates for the interests of their clients, as well as problem-solvers and resources to assist in creating a range of resolutions, while also assuring the integrity of the process. Collaborative Practice is a purely voluntary process; either party is free to choose to leave the process and proceed to court litigation, but the collaborative lawyers are discharged if the process terminates. The concept is similar to that of in-house counsel, who advise, advocate, negotiate, and problem-solve on behalf of a business, but if court action becomes necessary, litigation counsel is retained.

The underpinning of the collaborative process is the Collaborative Law Stipulation and Order that limits the scope of representation and states that the collaborative lawyers are retained solely to facilitate the negotiation of a mutually acceptable agreement. If either party decides to go to court, both lawyers are disqualified from further representation. Just as communications during mediation are protected by statute to facilitate the free flow of information and to encourage focus on interests and problem-solving, the collaborative agreement accomplishes the same kind of protection—allowing the parties to proceed in a protected and private process with their lawyers so as to encourage open communication and realistic, family-focused negotiations.

If experts are needed in Collaborative Practice, they are brought in jointly to avoid the cost and polarizing effect of dueling experts. In many cases, interdisciplinary professionals are brought in as part of the collaborative team. Mental health and financial professionals can be valuable resources in the collaborative process, as well as in mediation. Mental health professionals with a specialty in divorce, children, and family systems function as divorce coaches and child specialists. They help the parties manage their emotional dynamics and improve their capacity to communicate, provide information about the children's needs during the separation process, bring the children's concerns to the table, and assist the parties in creating their own parenting plans. They can also be an ongoing resource even after the divorce is completed.

Neutral financial professionals with training in the financial aspects of divorce can also be involved to help assure informed decision-making on financial and tax issues. They help the parties collect and understand their financial information; prepare budgets and net worth statements; and contribute to the development of creative, tax-efficient options for various support and property division arrangements. Financial professionals can prepare calculations and projections to allow parties to assess how well settlement options meet both their immediate and long-term financial goals.

Although Collaborative Practice originated in the context of family law, including divorce, cohabitation, and prenuptial agreements, its application is expanding in other civil law areas. Internationally, lawyers are exploring the use of collaborative practice in civil law areas such as employment, trusts and estates, medical errors, and business law. The core elements of Collaborative Practice remain the same in all areas of law and are particularly beneficial in cases involving the need for a continuing relationship between the clients. For international information, go to: www.collaborativepractice.com.

A testament to the widespread acceptance of Collaborative Practice is the recent Uniform Collaborative Law Act. This Act is the result of over two years of work by the Uniform Law Commission. The model act has already been introduced in some states and will help promote consistency and growth of Collaborative Practice.

The Collaborative Family Law Council of Wisconsin is a statewide non-profit organization of lawyers, mental health professionals, and financial specialists committed to learn, practice, and promote a collaborative process for problem solving and peaceful resolution of family law issues. For more information and a list of practitioners, go to the CFLCW website: www.collabdivorce.com.

Member News

Davis & Kuelthau announced that **Kathy Nusslock,** shareholder and chair of the firm's Litigation Group, has received the Brennan Award from the National Trial Advocacy College at the University of Virginia School of Law. Nusslock has participated as a member of the faculty of the College for many years.


Erin Murphy

Grzeca Law Group, a full-service immigration law firm, announced the addition of **Erin Murphy,** a 2006 graduate of Marquette University Law School. Murphy, who is fluent in Spanish, was previously an immigration attorney with Catholic Charities Legal Services for Immigrants.


Scott W. Hansen

Scott W. Hansen, chair of the Litigation Practice at Reinhart Boerner Van Deuren, has been named as one of the *Wisconsin Law Journal's* 2010 Leaders in the Law. The Leaders in the Law program recognizes leading practitioners and judges throughout Wisconsin based on a wide variety of achievement criteria, including outstanding leadership, vision, and legal expertise.


David O. Krier


Christopher E. Rechlicz

Reinhart announced that attorneys **David O. Krier** and **Christopher E. Rechlicz** have been named shareholders in the firm. Krier, a member of the firm's Litigation Practice, received his law degree *cum laude* from Northwestern University School of Law. Rechlicz, a member of the firm's Business Law and Banking and Finance Practices, received his law degree from the University of Wisconsin Law School, and is a member of the Order of the Coif.

Reinhart also announced that two experienced attorneys—**Debra S. Bursinger** and **Caitlyn A. Beaudry**—have joined the firm. Bursinger, an attorney in the Health Care Practice, comes to Reinhart after practicing law for the State of Wisconsin for more than ten years. Bursinger will be based in Reinhart's Madison office. She earned her law degree from Marquette University Law School. Beaudry, an associate in the Trusts and Estates Practice, joins Reinhart from Weiss Berzowski Brady. Based in Reinhart's Milwaukee office, Beaudry received her law degree from DePaul University College of Law.


Debra S. Bursinger


Caitlyn A. Beaudry


John F. Gaebler

DeWitt Ross & Stevens announced the addition of **John F. Gaebler** to the Business Group. Gaebler joins the firm as a partner in its Brookfield office. Gaebler concentrates his practice on corporate and international law. He is a frequent advisor on international and domestic merger and acquisition transactions.


Molly Hall

Molly Hall of DeWitt Ross & Stevens was selectedby the Robert Bosch Foundation to participate as an environmental expert for a roundtable on climate change, trade, and economics in January 2010 in Berlin, Hamburg, and Copenhagen. Hall and other participants met with representatives of the German federal government and the German federal parliament in Berlin; with corporate representatives of BMW, Bosch, Körber, and other companies in Hamburg; and with members of the European Union and the Danish Ministry for Climate and Energy in Copenhagen. Hall has been with DeWitt since April of 2008, where she handles environmental law, elder care law, and general litigation.

Andrus, Sceales, Starke & Sawall, specializing in intellectual property law, has named **M. Scott McBride, Ph.D.** as a partner in the firm. McBride focuses his practice on domestic and international patent prosecution and enforcement. He also provides counseling and opinion work related to patent non-infringement and patent invalidity.

Karl Vandehey has been named a shareholder with the firm of Otjen, Van Ert & Weir. Vandehey is a 2000 graduate of UW Law School with honors. He worked as a law clerk at the First Judicial District in Milwaukee until joining the Otjen firm in 2002.


Matthew R. Robbins

The firm of Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman is pleased to announce that **Matthew R. Robbins** (Wayne State '77) has been elected as its President.

Boyle Fredrickson, Wisconsin's largest intellectual property firm, celebrated its tenth anniversary in December 2009. The firm, which has more than tripled in size since its inception, handles all aspects of IP law, including patent, trademark, and copyright prosecution; foreign IP; trade secret and unfair competition protection; IT and e-commerce law; and all related licensing and litigation.

Attorney **Michael Ryan** joined the firm Davis & Gelshenen as an Associate. Ryan, who received his law degree from Marquette University, had worked with the firm for two years as a law clerk.

Correction: In the last issue under member news, we "welcomed" **Kevin Moran** as a partner and **Aaron Nodolf** to Michael Best's IP group. Kevin has actually been with Michael Best for 15 years and Aaron Nudolf for 5 years.

Calendar continued from page 5

May 28, 2010

Bankruptcy

Nuts and Bolts of Bankruptcy Law

Speakers: Judge James Shapiro, U.S. Bankruptcy Court; Kenneth J. Doran, Doran Law Offices, Madison; Benjamin P. Payne, Hanson & Payne; Robert W. Stack, Stack, Fahl & Bagley; other U.S. Bankruptcy Judges

8:30 - 9:00 (Registration/Continental Breakfast)

9:00 - Noon (Presentation)

Noon - 1:00 (Lunch will be provided)

Noon - 4:30 (Presentation)

7.0 Pre-approved CLE Credits including 1.0 Ethics Credit

Message from the President

Fran Deisinger

Three things to talk about this month:

First, in the week of writing this, we held another hugely successful MBA Judges' Night. For several days before the event, reports were that a major snowstorm would engulf the city—and what do you know, this time the weather folks were right. As I trudged through the snow and slush, I confess I feared I would find a small gathering trying to get warm. Instead, once again the Grain Exchange was filled with judges, lawyers, and the conviviality of our profession. This is the only event of its kind and scale in Wisconsin, and I should have known few hardy Milwaukeeans would miss it. Thanks especially to our great MBA staff for all their efforts and to all the judges who attended.

Second, the Milwaukee Justice Center is gaining momentum. Under the on-site leadership of the MBA's Dawn Caldart and with the immense help of our partners at the Marquette Law School and Milwaukee County, we are serving hundreds of people each week. This month, however, I want to give special recognition to one of our city's preeminent firms, Foley & Lardner. Not only have more than 30 Foley lawyers volunteered to help, but the firm itself just made a first annual contribution toward our goal of having all Milwaukee law firms contribute $150 per Milwaukee lawyer, per year, for three years, to the Milwaukee Justice Center. Foley & Lardner made its pledge before we all saw how deeply the recession would impact our firms, and it is keeping that pledge notwithstanding the tough times.

Finally, this morning I read with dismay an article about the professional differences of opinion among Justices of the Wisconsin Supreme Court regarding motions that have been filed to prevent Justice Gableman from hearing certain criminal appeals. I am not going to express any opinion on the propriety or persuasiveness of such motions. Like most Wisconsin lawyers, I am sorry it has come to this, whatever the resolution. But what really disturbs me is that so much of the rancor in this matter arises from underlying comments in campaign speeches; in political ads; and even, in this case, by advocates who demean the role and motivations of honest, ethical attorneys in our criminal justice system with distortions and half truths. And the criminal defense bar is not alone in weathering these distortions; yesterday at a luncheon one of the finest plaintiff's lawyers (and one of the very fine people) in our community told me, with humor but also with obvious pain, that he had just read in a national newspaper that he (i.e., his kind) is the biggest threat to our economy.

These pronouncements of bunkum populism have a corrosive effect on the public understanding of the role of lawyers in our society. We lawyers know it is our moral responsibility to advocate vigorously, honestly, and creatively for our clients, and we know we must do so because the lawyers opposite us have the same obligation. From such advocacy, our adversarial system derives its essential fairness. Sloganeers, however, twist this responsibility into lowest-common-denominator sound bites. Any lawyer, judge, or candidate who engages in or endorses such tactics risks debasing not only him or herself, but all of us.

Words to the Wise: Local Rule Developments

Judge Mel Flanagan, Chief of the Civil Division in the Milwaukee County Circuit Court, has advised that courts will begin to enforce more rigorously the requirement of color-coded proof-of-service forms to support default judgments under Local Rule 3.16. In a January 22 memorandum to MBA members, Judge Flanagan advised as follows:

> The forms should be submitted to the court, in the colors indicated. A form with the SAME content on the correct paper will also be acceptable. Compliance has been very lax in this area. Starting March 1, 2010, forms filed that do not conform to this rule will not be accepted.

Across the river, the Local Rules for the U.S. District Court for the Eastern District of Wisconsin have undergone comprehensive revision. The changes reflect statutory changes since the local rules were last revised. In particular, time periods have been modified to be consistent with amendments to the Federal Rules of Civil Procedure effective December 1, 2009. The revisions reflect numerous other changes and clarifications, as well.

The local rule revisions became effective February 1, 2010. The local rules, as revised, are available at www.wied.uscourts.gov.

MBA Memorial Service

The MBA will host its annual Memorial Service on Friday, April 30, at 10:45 a.m. in Room 500 of the Milwaukee County Courthouse. Chief Judge Jeffrey A. Kremers will preside. Below is a list of attorneys and judges who will be honored at the service. If you know of others who should be included on the list, please contact Katy Borowski at 414-276-5933 or kborowski@milwbar.org.

Theodore G. "Ted" Alevizos
Patricia J. "Pat" Bashaw
James Patrick Brennan
Joseph Killorin Brennan
Richard Paul Buellesbach
Isadore Engle
Raymond French
John F. Friedl
Jack L. Goodsitt
Myron L. Gordon
Gerald Thomas Hayes
Michael C. Hurt
Russell P. Kolb
Charles L. Larson
Joseph T. Lex
Bernard J. Lutzke
Wallace Alexander "Wally" MacBain III
Terry E. Mitchell
Roger P. Murphy
Charles J. O'Neill, Jr.
Ray G. Olander
Robert Laine Otte
William H. Pagels
Roger P. "RP" Paulsen
Alfred I. Rozan
Paul D. Runkel
Jerome Safer
Robert F. Schneider
George Selaiden
Richard F. "Dick" Shields
Frederick James "Rick" Smith, Jr.
G. Brian Smith
Burton A. Strnad
George R. Terris
Donald J. Tikalsky
George T. Weber
Richard W. White
Elmer L. Winter

Milwaukee County Circuit Court Tackles New Set of Budget Challenges

In recent years, operating the Milwaukee County Circuit Court has required constant vigilance and creativity to dodge, or at least mitigate, the effects of severe County budget constraints. 2010 will be no exception, with the courts facing about $1.3 million in budget shortfalls.

Chief Judge Jeffrey A. Kremers described the court's latest budgetary challenges at a February 16 meeting of the MBA's Courts Committee. County Supervisor Patricia Jursik, an attorney, also attended that meeting.

The courts are dealing with not one, but two budgetary elephants in the room. The first arises from the requirement that County employees take 12 furlough days in 2010—four fixed or "shutdown" dates, and eight floating dates, which for the courts would cut between $500,000 and $600,000 in operating costs. Mindful of the operational disruption these furloughs (particularly "shutdown" dates) would cause the judicial system, not to mention the hardship to court staff, the courts will propose an alternative plan. Under that plan, there will be one "limited operation" day on Friday, May 28 (a County "shutdown" day) and one floating furlough day by June 30, but the courts will attempt to avoid as many of the additional furlough days as possible through a combination of revenue increases and costs savings in other areas. On the limited operation day, limited staff will be available to process filings and to handle TRO and injunction hearings, and jail and juvenile detention intake facilities will be open. (Circuit judges are state employees and therefore are not subject to the furlough requirement.)

The second challenge involves a separate budget shortfall that the County hopes to offset with wage and benefit concessions from unions that represent County employees. For the courts, this budgetary hole is $775,000 deep; for the County as a whole, it is approximately $8 million. To the extent concessions do not materialize, the County will turn to layoffs to balance the budget, which may begin as soon as March 1. While the initial layoffs would not affect the court staff population, "bumping rights" may result in changes of court personnel at the staff level.

Welcome New MBA Members!

Adam Ethan Witkov, *Michael Best & Friedrich*
Polina Engel, *Engel Law Offices*
Stacy J. Schlemmer, *Davison Law Offices*
Patricia Foley
Timothy W. Schmidt
James A. Walcheske, *Heins Law Office*
Laurna Anne Jozwiak, *La Fleur Law Office*
Benjamin R. Prinsen, *Kravit, Hovel & Krawczyk*
Bridget J. Krause, *Kim & LaVoy*
Antonique C. Williams, *Cross Law Firm*
Viola Hazley-Williams, *VP Hazley-Williams Law Offices*
Margaret Kurlinski, *Godfrey & Kahn*
Megan E. Bern, *Godfrey & Kahn*
Lindsay B. Fathallah, *Godfrey & Kahn*
Jessica A. Franklin, *Godfrey & Kahn*
Peggy L. Heyrman, *Godfrey & Kahn*
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Richard W. Donner, *Reinhart Boerner Van Deuren*
Jackie Sestito, *Mallery & Zimmerman*
Nidhi Kashyap, *Nonprofit Legal Services of Southeastern Wisconsin*

Collecting a Wisconsin Judgment Abroad: a Case Study

by Attorney Douglas H. Frazer

A Crawford County client stiffed me. Mid-representation, he packed up his truck, and without so much as a goodbye to his wife, moved to the Mosquito coast in Honduras, and opened up what turned out to be a rather successful boutique resort. (Certain details in this account have been changed.) Eventually, I took judgment against both clients. The former wife, a stand-up person, was uncollectible. After sitting on the matter for several years, I decided to go after the husband in Honduras.

The first task was to find a reputable law firm in Tegucigalpa that might take the matter on a contingent fee basis. (The second task was to figure out how to pronounce "Tegucigalpa.") This took time and diligence. We were aided by email and the internet. We checked references.

We negotiated a contingent fee arrangement, taking into account the apportionment of that fee between our Wisconsin collection attorney and the Honduran firm. The Honduran firm (which, by the way, had quite a few U.S. clients) required $2,500 up-front for expenses. We signed an engagement agreement.

We then began the process of obtaining and authenticating documents. From the Crawford County clerk of court we obtained a certified copy of the judgment. Then, consistent with international legal requirements, we delivered the certified judgment to the Wisconsin Secretary of State for an apostille authentication. One nice touch: despite being a busy guy, Secretary of State Doug La Follette sometimes answers the phone himself. Next, we delivered the certified judgment, now affixed with the apostille authentication, to the Honduran consulate in Washington for Honduran certification. The consulate did not charge us for this service. We then mailed the documents to Tegucigalpa.

More time passed. Our firm in Tegucigalpa informed us that it would need additional certified documents from the case. The process began again. We ordered certified copies of the other documents we had filed in the Crawford County action. These included a Proof of Publication, Affidavit of Mailing, Certificate of Non-Service, Affidavit of Default and Non-Military Service, and the Default Judgment. Again, we forwarded these documents to the Wisconsin Secretary of State for apostille authentication. This time we added a Tegucigalpa-prepared Power of Attorney in favor of our Honduran counterparts, and a copy of my passport page. (One of our former legal assistants, fluent in Spanish, translated the document into English.) Then back to the Honduran consulate for its seal. This time, the consulate informed us of a fee structure for this service. We finally figured out that we could save on the fees by batching the documents. After a few more delays, the consulate returned all the documents with the seals affixed. We forwarded the package to our Honduran firm by registered mail.

We'll see what happens. My fantasy is that the judgment debtor is summoned to the Honduran Immigration Office and given a certain choice. The former client decides that the path of least resistance is simply to write the check. It will be a cashier's check.

My legal assistant and I will then fly down to Tegucigalpa to pick it up. Just to show we're good sports, we'll book several days at the client's resort. We will, of course, inquire about the "pay later" plan.

Calendar of Events

April 30
Memorial Service

May 1
Law Day

June 8
152nd Annual Meeting

August 4
Golf Outing

October 13
State of the Court Luncheon

October 28th-30th
2010 WI Solo & Small Firm Conference

The Family Division Rules Just Keep Getting Better

Honorable Richard J. Sankovitz, Milwaukee County Circuit Court

A complete overhaul of the Milwaukee County Circuit Court Family Division Rules has been underway now for two years. Just when we seem close to finalizing the project, along come some new observers with some new suggestions.

New suggestions in the late stages of a project can be vexing, but not so with this project. Those who are rewriting the rules– including Presiding Judge Michael Dwyer, Family Court Commissioners Michael Bruch and Sandy Grady, and Deputy Court Clerk Lisa Tietz–are tickled. For years, it seems, hardly anyone even knew there were rules. But that's changing. Now even judges are reading them.

Revised rule proposals have been submitted to the Chief Judge for approval, which could come quickly. For a preview, visit the Chief Judge's page on the Milwaukee County website: http://www.county.milwaukee.gov/ChiefJudgeCircuitCou10519.htm.

Here are some of the highlights:

- The rules are much more concise– in fact, they have been trimmed by about 6,000 words (about 40%).

- One drafting goal was to build the rules around checklists of the documents that must be on file before the court will take action. For example, proposed Rule 5.20.C. contains an 11-item list of the documents that must be on file before a final hearing. Proposed Rule 5.22.C. contains a six-item list of the documents that must be filed with the pretrial report. Proposed Rule 5.25.B. lists the three documents that must be filed before trial.

- A related goal of the new rules is to get parties to have their documents on file before the final hearing or trial, so that clerks won't have to spend time after the proceeding trying to chase down documents that have been promised. Proposed Rule 5.20.G., for example, authorizes a judge to decline to proceed with the final hearing if the required forms are not on file before the hearing. Proposed Rule 5.26.D. authorizes the court to hold in contempt a party or lawyer who fails to submit the required findings of fact and conclusions of law after a trial.

- Many of the rules require the parties to submit information on Wisconsin Supreme Court or Milwaukee County forms—for example, financial disclosure; marital settlement agreement; findings of fact, conclusions of law and judgment; and the like. An appendix of all the Milwaukee County forms will be published alongside the rules, and proposed Rule 5.2. provides the link to the Wisconsin Supreme Court website where supreme court forms may be found.

- At the same time, the rules recognize that many practitioners have developed their own forms. Under proposed Rule 5.2., these forms will be accepted as long as they are "substantial equivalents." If the form enables the judge to find what he or she needs to find as readily as the judge can find it in a supreme court or Milwaukee County form, the form should be acceptable.

- The court's experiment with scheduling conferences proved unsuccessful. The court conducted a pilot project to test whether family cases might be better managed if the court conducted a scheduling conference at the outset, as in the Civil Division. The experiment demonstrated that we lack the capacity to bring so many parties up to speed during such a brief conference. Too many parties are unrepresented, too many are unschooled in court procedures, too many are unprepared to make strategic decisions about their cases, and too many are unrealistic about what they stand to gain or lose. Given a large number of cases and a small number of commissioners, we found that there is simply too much to cover at a scheduling hearing. An earlier draft of the rules offered the option of a scheduling conference in all cases, but that provision has been deleted.

- Proposed Rule 5.31. codifies the existing deadlines for seeking *de novo* review of a court commissioner's decision – 15 business days if the decision is delivered in person, 18 business days if delivered by mail. The rule also requires that a copy of the order to be reviewed be attached to the motion.

Look for more Family Division Local Rules highlights in the next issue of the *Messenger.*

The MBA *thanks* all of our 2010 100% club members.

If you have not renewed or to join, contact Margaret Porco at 414.276.5930

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Milwaukee Bar Association 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:

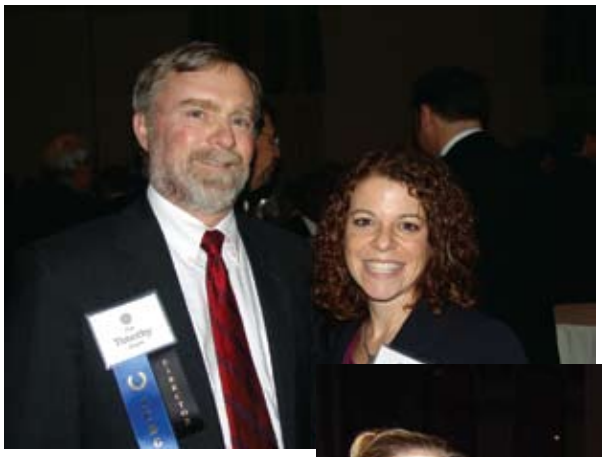
- Promote the professional interests of the local bench and bar;
- Encourage collegiality, public service and professionalism on the part of the lawyers of Southeastern Wisconsin;
- Improve access to justice for those living and working in Milwaukee County;
- Support the courts of Milwaukee County in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

Judges Night 2010

Milwaukee Circuit Court Judges Carl Ashley and David Borowski

Court of Appeals Judge Kitty Brennan and Attorney Jane Appleby

Attorneys Gregory Rothstein and David Gruber



Judge Timothy Dugan and Judge Rebecca Dallet

Judge Richard Sankovitz and Attorney Victor Harding

Attorneys Julia Ruff, Staci Flinchbaugh, Angela McKenzie, and Frederick Strampe

Judges Night 2010

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$51 Million Eckstein Donation Key to "Best Law School Building in the Country" at Marquette

Christopher Placek

When Joseph Kearney became Dean of Marquette University Law School in the summer of 2003, one of the furthest things from his mind was that the school needed a new facility.

Sure, the school's longtime home, Sensenbrenner Hall on the east side of Marquette's campus, already had two additions, and was becoming more cramped year by year.

But a completely brand new building?

"[Kearney] said, 'Let's make modest changes,'" recalls Tom Ganey, Marquette's university architect. "I said, 'No, I disagree strongly. I think we should build bigger.'"

Indeed, Kearney says today he became convinced that "we needed to do something fundamental."

What resulted from those conversations was a January 21, 2005 memo, penned by Kearney, on "The Physical Future of the Law School." The memo, circulated among key university officials, would lead to the 200,000-square-foot glass and brick structure now in the final stages of construction on Marquette's Tory Hill, behind Sensenbrenner Hall.

The $85 million facility, named Eckstein Hall, is set to open for classes this fall after a two-year construction process.

After program and feasibility studies were completed – and had received a stamp of approval from university administrators – the project's size and cost became clear. It also was evident that a major donor would be needed to fund a large part of the construction costs.

That's when Ray Eckstein, a 1949 Law School graduate, placed a phone call to Marquette's president Fr. Robert A. Wild—in May 2007.

"He called and said to me, 'Well [my wife] Kay and I would like to make a significant gift to Marquette University,'" Wild said. "Like any president of a school, you wonder, 'What is significant?' We knew the Ecksteins and I thought, 'Oh, $3 to 5 million – that would really be a significant gift.'"

In fact, the Ecksteins' donation was $51 million – the largest in the university's history.

Wild called Kearney to tell him to come to his office.

"He came over knowing he was in big trouble or he was going to hear good news," Wild said. "Suddenly we realized what we had talked and dreamed about was in fact going to become a reality."

Indeed, if the Eckstein gift – or a comparable donation – had not been made at that time, a new building for the Law School wouldn't currently be nearing completion, Kearney said.

Other donations have included $5 million from developer and alumnus Joseph Zilber (in addition to a $25 million gift for student scholarships), $2 million from California attorney and alumnus Wylie Aitken and wife Bette, and $1 million each from the Bradley and Northwestern Mutual Foundations.

Kearney said less than $14 million remains to be raised. While most of the donations have come from alumni, Marquette Law has reached out to the broader legal community in the region. For instance, former Milwaukee Bar Association President David Erne, a Harvard Law graduate, gave $50,000 for the building's construction.

Eckstein, who retired after operating a successful marine transportation company (named, naturally, Marquette Transportation), decided to make the donation after speaking with his granddaughter Kelly Erickson, a 2006 Marquette Law graduate.

He says Erickson told him about the deficiencies of the Law Library – which is why the gift is $50 million plus $1 million "to make sure the library was good," Eckstein said.

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Mentoring: It's Like Déjà Vu All Over Again

Michael Moore, President, Moore's Law

When the Greek hero Ulysses went off to fight the Trojan War, he left his trusted friend Mentor in charge of his household and his son's education. "Mentoring" came to be known as the passing on of skills, knowledge, and wisdom from one person to another. Research has shown that people are more likely to succeed when they learn in the presence and with the help of others who have gone before them. For these reasons and others, the Milwaukee Bar Association has recently launched a mentoring program.

Mentoring for lawyers

Mentoring has played a prominent role in the legal profession for as long as lawyers and law firms have been around. For lawyers, mentors do more than simply pass on knowledge and information. They pass on the true art and science of the practice of law. They help other lawyers acquire vital knowledge and skills more quickly and more effectively than if acquired from the "school of hard knocks." Without a mentor, such knowledge may only be acquired by often painful and costly trial and error. Individualized mentoring and support can therefore be critical to any lawyer's professional development.

The new style of mentoring

Today the often conflicting demands of work and external commitments mean there is less opportunity for colleagues to have a leisurely lunch, share a table at trial strictly for educational purposes, or spend several hours after work at the local bar talking shop. Today mentoring is much more about active and focused learning. In such a relationship the mentor becomes more of a facilitator. The mentee must be more proactive, helping direct the relationship and set its goals. Mentor and mentee may not even be geographically close, but with improved methods of communicating, via the Web, e-mail, and other new technologies, long-distance mentoring is also possible.

Why be a mentee?

If you're a new lawyer, much of what you learn about the practice of law no longer occurs through books, but rather through real world experience. Having a mentor will "jump-start" your practice and contribute enormously to a successful and satisfying career in law. Experienced lawyers also often find mentors can shorten the learning curve when acquiring either new skills or the operative knowledge critical to having a profitable law practice. A mentor/mentee relationship adds to your personal network, and may lead to introductions to other individuals. Your mentor may also refer work to you once he or she knows and trusts your abilities.

Why be a mentor?

Many lawyers gain great personal satisfaction from passing on and sharing knowledge. In addition, even experienced lawyers often find that mentees may have skills or experiences from which they can learn. This is especially true when it comes to the use of technology in the practice of law. Mentoring a younger lawyer ensures you stay current with issues and developments in the next generation of professionals. A mentor/mentee relationship adds to your personal network, and may lead to introductions to other individuals. Your mentee may even refer clients to you when he or she is uncomfortable with or unable to handle a case.

The role of the mentee

As a young lawyer, your future success will be dependent upon your ability to make connections with those around you and gain their trust and respect. There is nothing wrong with admitting that you need help developing your practice. You'll probably find that any prospective mentor will respond to your request in a positive way. Many mentors are flattered at being approached, and welcome an opportunity to "give back" to other lawyers. A mentee must remember, however, that ultimately he or she is responsible for his or her own career development. Before commencing the mentoring relationship, a mentee should create goals that are specific, attainable, and measurable.

The role of the mentor

The mentor should take the initiative and make the time required to create a successful mentoring relationship. Each mentor should have strong interpersonal skills, a wide range of appropriate experience and knowledge to pass on, and personal enthusiasm. The mentor will need to develop an understanding of the mentee's goals and can help the mentee set "stretch goals" that push the mentee outside of his or her comfort zone. This will help determine how the mentor can make the highest-value contribution. The focus should be on how the mentor will assist the mentee in attaining the goals that he or she has established.

Creating a successful mentoring relationship

At the initial face-to-face meeting there should be an open and honest discussion of backgrounds and experiences. This first meeting will help build trust and rapport. Frequently, five-to-ten-year lawyers have more current experience handling the issues that a young lawyer may be struggling with than a much more experienced lawyer. Mentors and mentees need to understand from the start that mentoring involves a commitment of time, and should deal up front with any time concerns they may have. Confidentiality and conflicts of interest are also important issues within a mentoring relationship. When the lawyers are from different firms, they must maintain a high level of confidentiality in all dealings with each other.

Mentoring is good for the legal profession

The pressures of today's rapidly changing practice climate require that lawyers quickly gain the skills critical for creating a successful law practice. Mentoring is an excellent way to accomplish that. Young lawyers just starting out, sole practitioners, and experienced lawyers moving into a new area of practice can all benefit from learning through a mentor. Whether you are the mentor or mentee, you'll discover that engaging in this experience will pay you generous personal dividends, while benefiting the legal profession as a whole.

Contact Margaret Porco at 414.276.5930 or mporco@milwbar.org at the Milwaukee Bar Association, and find out how you can get involved and benefit from the mentor program. *Once the mentors and mentees are confirmed, a kick-off event will be held at the Milwaukee Bar Association. We look forward to seeing you there!*

Thank you to our Lawyer Hotline volunteers:

James Guckenberg
Fred Tabak
Benita Anderson
Jacques Mann

Special Thanks:

Victor Harding,
the top earner of 2009

Wave of Collective Action Wage Claims Crashes into Wisconsin

Attorney Mitchell W. Quick, Michael Best & Friedrich

The Fair Labor Standards Act ("FLSA"), enacted in 1938, is the federal law governing the payment of minimum wages and overtime to covered employees.[1] Under the FLSA, covered employers are currently required to pay employees a minimum wage of $7.25 per hour for all hours worked.[2] In addition, employers must pay all "non-exempt" employees "overtime" calculated at one and one-half times their "regular rate of pay" for all hours worked over 40 in a week.[3]

Under the FLSA, there is a general presumption that all employees are entitled to overtime for hours worked over 40 unless the duties they perform and the compensation they receive satisfy a statutorily defined "exemption" from overtime. Although a complete discussion of this exemption is beyond the scope of this article, common exempt positions include executives (supervisors), professionals, certain administrative personnel, outside sales representatives, and highly skilled computer professionals.[4]

In the last decade or so, plaintiffs' "class action" lawyers have discovered the lucrative nature of FLSA claims. Claims known under the FLSA as "collective actions"[5] have a minimum two year period of liability,[6] and provide for the recovery of back wages, double damages, attorney's fees, interest, costs, and civil monetary penalties.[7] Spurred by the difficulty in defending against such claims due to a frequent absence of proper time records, employees and ex-employees have been filing FLSA collective actions at a blistering pace across the country.

Several of these collective actions have resulted in staggering judgments and settlements. Allstate Insurance paid $120 million to settle overtime claims of insurance claims adjusters, IBM paid $65 million to settle nationwide overtime claims brought by information technology employees, and Starbucks paid $18 million to settle claims of "store managers" improperly classified as exempt from overtime.

In what is probably the biggest action to date, two collective actions were filed in December of 2009 against AT&T seeking ***one billion dollars*** in back wages for 5,000 employees and former employees. Given that these claims are often *not* covered by insurance, employers defending them face potentially catastrophic consequences.

Interestingly, however, until very recently Wisconsin courts saw few such collective actions being filed, despite numerous actions being prosecuted in Minnesota and Illinois. That changed dramatically in 2009.

A review of court filings in the federal Eastern and Western Districts of Wisconsin reveals that 20 FLSA collective actions were filed against employers in 2009. In addition, there were 13 individual wage complaints filed. In contrast, there were only seven FLSA collective actions filed in the Eastern and Western Districts in 2008. Given the

continued next page

Volunteer Spotlight

Eric Knobloch

Eric Knobloch, a volunteer with the MBA's Teenage Alcohol Prevention Program (TAPP), has earned a place in this edition of the Volunteer Spotlight. He answered a few questions from the *Messenger* about his participation in the program:

How long have you been involved with TAPP? Three years and counting.

How do you feel your work with this program ties in with law and benefits the community? The program is an opportunity to educate students on the law and their legal rights. Our goal is to empower the students to make better choices to not only get themselves out of a bad situation, but prevent themselves from winding up in the situation, as well. I believe the community as a whole is stronger when each individual has a better understanding of his or her civil rights.

What challenges have you faced while participating in this program? The program serves students belonging to a wide range of racial and socio-economic backgrounds. Thus, sometimes it is difficult to engage the students who perceive an attorney as someone who does not understand their daily challenges.

What is the accomplishment in TAPP of which you are most proud? The most rewarding aspect of my volunteer work is watching the students learn about the law and how it relates to their daily activities. Its encouraging to get phone calls from inquiring students who need legal assistance but don't have the means to hire an attorney.

What specifically do you do as a TAPP presenter, and how much time you put in? The goal of the TAPP program is to educate high school students on the legal consequences of drugs and alcohol using role-play scenarios that relate to their daily activities. Along with a UW-Milwaukee Police Officer, I lecture to groups of students four or five times a year during the students' legal education course. The class concludes with a brief Q & A session to address students' more specific legal questions related to the topics most relevant to their neighborhoods.

Eric M. Knobloch is an associate attorney at Warshafsky, Rotter, Tarnoff & Bloch in Milwaukee. He graduated from Marquette Law School and received his undergraduate degree from Illinois State University, in Normal, Illinois. He practices exclusively in the area of personal injury and civil rights litigation. He is admitted to practice in Wisconsin, Illinois, and the United States District Court for the Eastern District of Wisconsin. He is a member of the State Bar of Wisconsin, State Bar of Illinois, Milwaukee Bar Association, Wisconsin Association for Justice, Illinois Trials Lawyers Association, and the American Bar Association.

Wave continued from p. 16

high unemployment rate, a further increase in the filing of FLSA collective actions in Wisconsin is expected.

An examination of the nature of the claims asserted in the 2009 Wisconsin FLSA collective actions reveals they generally fall into one of four categories:

1 **Improper classification of employees as exempt.** Employees in a variety of positions, such as service technicians, call center employees, administrative assistants, and drivers claimed they were improperly classified as salaried exempt employees and denied overtime.

2 **Claims for "off the clock work."** Employees filed actions asserting they were entitled to, among other things, compensation for the time it took them to boot up and log onto their computer, or check e-mails on their Blackberrys.

3 **Claims for the "donning and doffing" of uniforms and personal protective equipment.** Several actions were filed against foundries and meat processors seeking pay for the time spent putting on ("donning") or taking off ("doffing") company uniforms, shoes, hard hats, safety glasses, and ear plugs before punching in or after punching out.

4 **Claims for work during unpaid lunch breaks.** Employees filed actions claiming that they either worked over their unpaid lunch breaks or their lunch breaks were frequently interrupted by work demands, entitling them to compensation for their entire lunch break.

Companies should be cognizant of the potential for these types of claims. Companies can potentially avoid large exposures from FLSA collective actions by conducting internal wage and hour audits to determine their level of FLSA compliance. The audit should analyze whether those employees currently classified as salaried exempt are properly classified, and whether the company is actually paying for all hours worked (including "off the clock" work).

Attorney Mitchell W. Quick, a labor and employment partner in the Milwaukee office of Michael Best & Friedrich, can be reached at 414-225-2755, or via e-mail at mwquick@michaelbest.com.

[1] 29 U.S.C. § 201, et seq.
[2] 29 U.S.C. § 206.
[3] 29 U.S.C. § 207.
[4] 29 U.S.C. § 213.
[5] One can think of a "collective action" like a "class action." One significant difference is that under the FLSA an individual must "opt in" to the action in writing, unlike a conventional class action where a putative class member is presumed to be part of the class unless he or she affirmatively "opts out." 29 U.S.C. § 216(b).
[6] There is a three-year period of liability for "willful" violations of the FLSA. 29 U.S.C. § 255(a).
[7] 29 U.S.C. § 216.

Heightened Judicial Scrutiny of the Use of Peremptory Challenges After *Snyder v. Louisiana*

*Victor J. Allen**

I. INTRODUCTION

Until recently, the role of trial court judges in the jury selection process was limited and unremarkable. Unquestionably, jury selection has always been an attorney's show, in which the advocates submit questionnaires to prospective jurors, ask them a variety of questions, and exercise their challenges for cause and peremptory challenges. Although trial court judges rule on some of those challenges, historically they have not gotten too involved in the process. Things may be changing, however, after a recent 7-2 decision, *Snyder v. Louisiana,*[1] in which the United States Supreme Court demanded a higher level of scrutiny from trial court judges when they determine the presence or absence of racially discriminatory intent during jury selection.

In 1986, the Supreme Court decided *Batson v. Kentucky,*[2] which became a leading decision in regulating use of peremptory challenges based on race. In *Batson,* the Court established a three-pronged test to determine whether a peremptory challenge is impermissibly based on race:

> First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race. Second, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question. Third, in light of the parties' submissions, the trial court must determine whether the defendant has shown purposeful discrimination.[3]

Normally, appellate courts defer to trial courts with respect to the third prong of the *Batson* test because trial judges are in a better position to make that determination.[4] Such deferral makes sense because trial court judges can make "first-hand observations" by scrutinizing the demeanor of attorneys who exercise peremptory challenges, as well as jurors' demeanor during such challenges.[5] In *Snyder,* the Supreme Court nonetheless demanded a higher level of scrutiny from trial court judges when they rule on the presence of racially discriminatory intent during *voir dire.*[6] More specifically, the highest court of the land mandated that trial court judges employ a more critical analysis of neutral explanations proffered by attorneys using peremptory challenges.[7] After *Snyder,* the trial judge's role is likely to change, as he or she is now required to take an active role in the jury selection process by documenting on the record the use of peremptory challenges, especially if they even remotely appear as though they are based on race.

II. SNYDER V. LOUISIANA

In *Snyder,* an all-white Louisiana jury found Allen Snyder, an African-American man, guilty of murder and sentenced him to death.[8] At the trial, the prosecution used peremptory challenges to strike all black prospective jurors from the jury.[9] The trial judge rejected the defense's *Batson* objections and accepted the prosecution's race-neutral explanations.[10] Snyder appealed his conviction, asserting that the prosecution violated the *Batson* test by employing impermissible challenges based on race and striking all African-American prospective jurors.[11]

The dispute primarily related to the striking of Jeffrey Brooks, an African-American prospective juror.[12] The prosecution argued that it moved to strike Brooks because he appeared to be nervous when the prosecution questioned him.[13] Another reason offered by the prosecution was that Brooks was a student teacher whose duty as a juror would cause him to miss a class.[14] In rejecting the prosecution's arguments, the Supreme Court held that the trial judge improperly accepted the prosecution's reasons for striking Brooks without the requisite explanation.[15]

First of all, the Court pointed out that the record revealed that the trial judge made no finding on a nervousness concern.[16] The Court stated that the trial judge "may not have recalled Mr. Brooks' demeanor," because the prosecution's challenge of Brooks occurred no earlier than the next day after Brooks' *voir dire,* and by that time dozens of other jurors had been questioned.[17] The Court, therefore, doubted the trial court judge's credibility as a "first-hand observer."[18]

Secondly, the Court rejected the prosecution's argument that it struck Brooks not based on race but, rather, due to his position as a student teacher.[19] The Court observed that the trial judge's law clerk contacted the prospective juror's university and the college dean informed the clerk that Brooks' student teaching could be satisfied even if he missed one week serving on the jury.[20] Moreover, as the Court noted, the record revealed that the prosecutor did not strike prospective white jurors who voiced similar concerns about missing work due to jury service. [21]

In *Snyder,* the Supreme Court focused particularly on the trial judge's conduct. At oral argument, Justice Scalia made the customary point that trial judges are "in a much better position" than an appellate court to judge the process of jury selection.[22] Justice Ginsburg, however, later observed that that the trial judge in *Snyder* "was quite passive" throughout the jury selection process.[23] Justice Souter echoed Justice Ginsburg's position by stating that there is nothing in the record to suggest that the trial court was very critical of the prosecutors.[24]

Writing in dissent, Justice Thomas criticized the majority for second-guessing the trial court's determinations.[25] Thomas stated that although the state court did not make specific findings regarding each race-neutral reason proffered by the prosecution to explain its peremptory strikes, the Supreme Court should nonetheless have deferred to state-court factual findings.[26]

III. PRACTICAL CONSIDERATIONS OF *SNYDER*

As a result of *Snyder,* attorneys and trial judges may want to change their approaches in handling third-prong *Batson* issues. First, a prosecutor who desires to strike a prospective juror based on demeanor should not only make a record of the demeanor at the first opportunity, but should also seek an express ruling on that explanation.[27] Second, trial judges may want to make specific findings relating to each race-neutral reason offered for a peremptory challenge.[28] Third, trial judges should not be passive throughout the jury selection process and must be more critical of the race-neutral reasons offered by prosecutors for the use of peremptory challenges.[29]

Additionally, the *Snyder* decision may affect how appellate courts review trial courts'

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Milwaukee Firms and Companies Step up to the *Pro Bono* Plate

Pro bono service is a not only a noble tradition of the legal profession, but also a moral responsibility. Those who engage in *pro bono* work in Milwaukee can attest to the invaluable experience this work provides for both the attorney and the client. Many firms and companies have made strong commitments to give back to those in need, which are evident from the diverse *pro bono* projects being undertaken in our community.

The *Messenger* wants to highlight the *pro bono* efforts of individual firms and corporate legal departments. Beginning this survey with large firms, we invited Milwaukee firms with 100 or more attorneys to describe their *pro bono* programs.

In future issues, we'll highlight the *pro bono* contributions of smaller firms, sole practitioners, and corporate legal departments. Send us your story, and we'll make sure it gets told.

Foley & Lardner

Foley & Lardner executes a wide range of *pro bono* services, from providing assistance to individuals, legal aid societies, and civil rights organizations to representing nonprofit organizations. In recent years, we have provided significant representation in matters referred to us by such public interest firms as the National Immigrant Justice Center, Political Asylum/Immigration Representation (PAIR) Project, and Public Counsel.

Foley performs work in nearly every area of public interest law. Attorneys have dedicated their time to immigration and asylum matters, freedom of expression cases, child custody proceedings, domestic battery injunctions, patent and copyright cases, veterans' benefits applications, death penalty appeals, the formation and operation of grass roots charitable organizations, and transactional matters. For example, since 1999, Foley partner **Bruce A. Keyes** has championed the cause of a state trail that heralds the rebirth of the Menomonee Valley. Named for baseball legend Henry Aaron, the trail connects Miller Park with Milwaukee's lakefront and provides a spectacular thoroughfare for outdoor enthusiasts. Foley senior counsel **Kristine Havlik,** together with many other Foley attorneys, Thrivent Financial for Lutherans, and LexisNexis, worked with the State Bar of Wisconsin to create "Wills for Heroes." This program offers free estate planning clinics to first responders throughout the state.

Godfrey & Kahn

Godfrey & Kahn encourages its attorneys to devote a minimum of 50 hours each year to *pro bono* services, and will give full billable hour credit for up to 50 hours of firm-approved *pro bono* services per year, with the potential for more depending on the case.

Our attorneys have been actively involved in *pro bono* work through the firm's partnership with several organizations, including the Legal Aid Society and its Tax Clinic, Eastern District Bar Association, Baird Creek Preservation Foundation, Ice Age Park and Trail Foundation, Izaak Walton League, Modjeska Theatre, Wisconsin Humane Society, and many more. Additionally, Godfrey & Kahn offers the Indian Small Business *Pro Bono* Assistance Program, which provides free legal services to members of tribes wishing to start their own businesses.

For more information on Godfrey & Kahn's *pro bono* programs, visit www.gklaw.com.

Michael Best & Friedrich

This year, Michael Best is a sponsor of the recently opened Milwaukee Justice Center (MJC). The MJC is a self-help legal clinic located in the Milwaukee Courthouse, where individuals seeking help can find the information and people they need to navigate the legal system. Michael Best lawyers, among others, will impart legal knowledge and provide *pro bono* services to those in need.

Michael Best provides a variety of legal services to those in need, such as representation in guardianship cases, handling *pro bono* project referrals from the Volunteer Lawyers Project, and performing legal services for civic organizations such as the Milwaukee Ballet. Michael Best also represents non-profits such as the Affordable Community Housing Development, which provides housing to low-income and elderly people in the Milwaukee area.

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For Michael Best, justice begins with education. Therefore, Michael Best attorneys teach and coach elementary school through high school students, as well as law students at Marquette University Law School.

To learn more about Michael Best's *pro bono* efforts, go to http://www.michaelbest.com/pro-bono/.

Quarles & Brady

Quarles & Brady's Milwaukee office logged 14,000 hours of *pro bono* work in 2009. All were hours that satisfied the definition of *pro bono* set forth in the *Pro Bono* Institute's *Pro Bono* Challenge, which requires a firm to record *pro bono* hours in an amount equal to at least 3% of billable hours.

The firm, in association with the Marquette Volunteer Legal Clinic, staffs a Wednesday night walk-in clinic at the Spanish Center's Hillview Building. Quarles & Brady lawyers also work at the Family Justice Clinic in the Milwaukee County Courthouse, and as part of a task force securing temporary restraining orders for domestic abuse victims.

Associates are "loaned out" to work on a quarter- to half-time basis, and incoming associates to work on a full-time basis (during the summer before their first year at the firm), to the Justice Center, Centro Legal, the Legal Aid Society, Kids Matter, Legal Action of Wisconsin, the State Public Defender, and Catholic Charities.

Quarles & Brady attorneys, in partnership with Children's Hospital, staff a guardianship clinic at Children's Hospital. Also, in partnership with Children's Hospital, the Medical College of Wisconsin, and Marquette University, Quarles & Brady attorneys staff a legal-medical clinic at the Downtown Health Center.

In 2009, Quarles & Brady provided transactional *pro bono* work for 39 non-profits or small corporations whose missions are to serve the poor and underprivileged, and did the corporate organizational work for the Access to Justice Commission created by order of the Wisconsin Supreme Court.

Reinhart Boerner Van Deuren

In 1916, Reinhart's William Kaumheimer founded the Legal Aid Society of Wisconsin, and he later played a significant role in state and national legal aid committees and associations. Since that time, Reinhart has continued that tradition of public service, with its legal professionals directly serving *pro bono* clients referred through the Legal Aid Society of Wisconsin, Legal Action of Wisconsin, Marquette Volunteer Legal Clinic, and the new Milwaukee Justice Center, among other referral agencies. Reinhart's involvement with local, state, and national *pro bono* agencies and committees has also extended to service on boards of directors and as a significant donor.

In 2009, Legal Action of Wisconsin's Volunteer Lawyer Project awarded a Reinhart team of 12 lawyers its Exceptional *Pro Bono* Partnership Award for participation in a referral program involving domestic abuse injunction hearings for low-income victim clients. The same team has been nominated for statewide recognition at the State Bar Annual Meeting in May 2010.

Reinhart's lawyers have also accepted appointments from Wisconsin state courts, the Seventh Circuit Court of Appeals, and the United States District Courts in Wisconsin. Such representations have included several civil rights lawsuits and appeals in federal courts, and a landmark victory in the Wisconsin Supreme Court on behalf of an incarcerated woman securing her parental rights.

In addition to Reinhart's service to *pro bono* clients through litigation representation and legal aid agency board work, Reinhart attorneys serve the community through *pro bono* legal work for several non-profit organizations such as the Wauwatosa Historical Society, Hometown Heroes, the Southeastern Wisconsin Bioterrorism Preparedness Group, and the Brussels Union Emergency Responders. Reinhart is also a founding member and significant supporter of the UWM Low Income Taxpayer Clinic, offering tax assistance to low-income Wisconsin residents.

Reinhart's *pro bono* efforts are administered by shareholders **Mark Cameli** and **Colleen Fielkow.**

Whyte Hirschboeck Dudek

Whyte Hirschboeck Dudek joined with Children's Hospital of Wisconsin, Inc. (CHW) to create the *pro bono* Children's Hospital of Wisconsin, Inc. Guardianship Clinic. The clinic's mission is to assist qualifying families of CHW patients who have special needs and who have reached, or soon will reach, age 18 to make informed and responsible medical decisions. WHD and CHW have been working together through the clinic since December 2005 to assist these families.

In May 2009, attorney **Richard Lewandowski** received the 2009 "Leaders in the Law" award from the *Wisconsin Law Journal.* The award recognizes lawyers and judges who have given their time and talent to improve the practice of law, the justice system, and the communities in which they live. **Lewandowski** was recognized for successfully representing a 17-year-old Tibetan seeking political asylum in the United States. He had been tortured and persecuted for his religious beliefs. The *Wisconsin Law Journal* article can be found at:

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determinations of *Batson's* third prong. Consistently with *Snyder,* appellate courts should no longer accept demeanor-based explanations unless the trial court expressly ruled on the explanation. Accordingly, if a trial judge fails to make a specific finding on the proffered explanation, an appellate attorney who challenges a third-stage *Batson* determination should argue that "the absence of specific findings as to each excuse precludes deference."[30]

Some legal commentators criticize the *Snyder* Court for overlooking the likelihood that often it is not possible for a trial judge to recognize the real reason behind the prosecution's use of a peremptory challenge.[31] While a peremptory challenge is unconstitutional if made on the basis of a prospective juror's race,[32] *Batson* allows attorneys to exercise peremptory challenges for even silly and superstitious reasons.[33] The reality, however, is that it is extremely difficult to establish when a silly and superstitious reasons is, in actuality, impermissibly based on race. In fact, an attorney's own stereotypes and biases often impact his or her instinctual decisions that a prospective juror would not be favorable for his or her client.[34] Moreover, attorneys are often unaware that they exercise peremptory challenges based on such unconscious discrimination.[35] Therefore, asking the trial judge to rule expressly on every reason proffered by the attorney and to be more active in inquiring about proffered explanations may destroy the value of peremptory challenges, the means for attorneys to strike whomever they want for whatever reason.

IV. CONCLUSION

After *Snyder,* some trial court judges are likely to change their approaches in scrutinizing *Batson* third-stage determinations by documenting on the record the use of peremptory challenges, which is exactly what U.S. Supreme Court now requires them to do.[36] At the same time, it is still unclear whether appellate courts are ready to abandon their high degree of deference to trial courts on proffered race-neutral explanations. As in the case many decisions by the U.S. Supreme Court, the full impact of *Snyder* can only be evaluated with the passage of time.

*Juris Doctor Candidate, Loyola University Chicago School of Law, Class of 2010.

[1]*Snyder v. Louisiana,* 552 U.S. 472, 128 S. Ct. 1203, 170 L. Ed. 2d 175 (2008).
[2]*Batson v. Kentucky,* 476 U.S. 79 (1986).
[3]*Miller-El v. Dretke,* 545 U.S. 231, 277 (Thomas, J., dissenting) (quoting *Miller-El v. Cockrell,* 537 U.S. 322, 328–29 (2003)).
[4]*Snyder,* 128 S. Ct. at 1208.
[5]*Id.; Hernandez v. New York,* 500 U.S. 352, 365 (1991) (plurality opinion).
[6]*Snyder,* 128 S. Ct. 1203.
[7]*Id.* at 1209.
[8]*Id.* at 1207.
[9]*Id.*
[10]*Id.* at 1208.
[11]*Id.* at 1207.
[12]*Id.* at 1208.
[13]*Id.*
[14]*Id.*
[15]*Id.* at 1209-11.
[16]*Id.* at 1209.
[17]*Id.*
[18]*Id.* at 1209.
[19]*Id.*
[20]*Id.* at 1210.
[21]*Id.* at 1211-12.
[22]Transcript of Oral Argument at 9, *Snyder,* 128 S. Ct. 1203 (No. 06-10119).
[23]*Id.* at 23.
[24]*Id.* at 36.
[25]*Snyder,* 128 S. Ct. at 1212-13 (Thomas, J., dissenting).
[26]*Id.* at 1213.
[27]John M. Castellano, *The Significance of Snyder v. Louisiana, 128 S. Ct. 1203, 170 L. Ed. 2d 175 (2008), for Review of Batson* Claims, LexisNexis Expert Commentary (last visited Oct. 10, 2009).
[28]*Id.*
[29]*Id.*
[30]*Id.*
[31]Jennifer Ross, *Snyder v. Louisiana: Demand for Judicial Scrutiny of the Use of Peremptory Challenges,* 4 DUKE J. CONST. L. & PUB. POL'Y SIDEBAR 305, 313 (2009).
[32]*Batson,* 476 U.S. at 79.
[33]Ted A. Donner & Richard K. Gabriel, Jury Selection: Strategy & Science § 21:2 (3d. ed. 2000), *available at* Westlaw.
[34]*See* Ross, *supra* note 31, at 313.
[35]Antony Page, *Batson's Blind Spot: Unconscious Stereotyping and the Peremptory Challenge,* 85 B.U. L. REV. 155, 156 (2005).
[36]Actually, some courts have already followed the principle laid down in *Snyder. See United States v. McMath,* 559 F.3d 657, 666 (7th Cir. 2009) (holding "that the district court clearly erred in denying the *Batson* challenge without making findings regarding the credibility of the proffered race-neutral justification for the strike"); *see also Haynes v. Quarterman,* 526 F.3d 189, 199 (5th Cir. 2008).

MBA-Sponsored State Bar President-Elect Candidate Forum

Wednesday, March 24, 2010
Noon-1:00
Milwaukee Bar Association
424 East Wells Street,
Milwaukee

Moderated by D. Michael Guerin, Gimbel, Reilly, Guerin & Brown

Candidates:

James M. Brennan,
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The Milwaukee Bar Association is starting a mentoring program that pairs new attorneys with more experienced attorneys. If you are interested in becoming a mentor, willing to commit one year to the program, and meet the qualifications, please contact Margaret Porco: mporco@milwbar.org or (414) 276-5930.

Mentor Qualifications:

- 5+ years experience
- MBA Membership
- Good standing with the Office of Lawyer Regulation

Milwaukee Justice Center

Call for Family Law volunteers to staff brief legal advice clinic on Thursdays from 2:00-4:00 beginning April 1st.

Volunteers commit to one regularly scheduled 2-hour shift per month.

Milwaukee Justice Center

Furniture Wish List

Small rectangular table

8 conference chairs

Desk

Contact Dawn Caldart at dcaldart@milwbar.org if you would like to help.

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But the new library won't be a distinct facility at all. Planners call it a "library without borders," a resource contained on all four floors of the building. Students will be able to use library materials, which are increasingly digital, throughout the building, Ganey said.

Eckstein Hall will also contain an appellate courtroom and a trial courtroom – complete with jury and witness boxes. Compared to the current Marquette Law facility, the new building will have increased classroom and study spaces. Other features include a conference center, cafe, fitness center, and two-story underground parking garage with 170 spaces.

In an effort to encourage sustainability, designers used U.S. Green Building Council benchmarks to guide blueprints. The building is positioned for the council's Leadership in Energy and Environmental Design (LEED) certification – a process that is completed a year after initial occupancy.

Kearney still stands by a statement he made nearly three years ago – when much planning had been done, but before a groundbreaking had even occurred – that Eckstein Hall would be the best law school building in the country.

Marquette Law will not only grow physically, but the new building will also allow the school to progress in general, Kearney said. He thinks it will put Marquette on a more equal footing with schools in cities like Chicago and the Twin Cities, and help with student and faculty recruitment.

"We wouldn't have a chance at being a great law school if we didn't build a new building," Kearney said.

The writer is a senior majoring in journalism at Marquette.

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http://www.wislawjournal.com/article.cfm/2009/05/25/Richard-j-Lewandowski-Attorney-helps-Tibetan-teen-find-asylum.

WHD shareholder **Daryl Diesing** is dedicated to serving the Next Door Foundation, a central city charity devoted to helping children succeed by strengthening academics, emphasizing relationships to family, building peer support, and encouraging service to the community. **Mr. Diesing** served as President of the Board from 1999-2004, and has been a volunteer since 1985. Among his many contributions to the charity, he negotiated and led an early childhood education project with the Buffet Family Foundations to establish an "Educate Center," developing a national curriculum for children from birth to age 5.

Elect Bill Gleisner to the Wisconsin Judicial Council

It is a high honor to be nominated to represent my fellow Wisconsin Bar members on the Judicial Council. While my fellow nominees to the Judicial Council are all excellent lawyers, I respectfully ask that you vote for me in the April, 2010 State Bar election. The Council is very important to every lawyer in Wisconsin. Pursuant to Wis. Stats. §758.13(2) the Council shall "observe and study the rules of pleading, practice and procedure and advise the Supreme Court [and the Legislature] as to changes which will in the Council's judgment simplify procedure and promote the speedy determination of litigation ...[The Council shall also] receive, consider and in its discretion investigate suggestions from any source pertaining to the administration of justice ..." I served on the Judicial Council last year and I am currently an ad hoc member of the Judicial Council's Evidence and Civil Procedure Subcommittee which drafted the proposed e-discovery rules that are currently under review by the Supreme Court.

➢ **The Council's work should be transparent.** The Council is a public body. If elected I will seek to have all the Agenda and Minutes of the Council published in the *Wisconsin Lawyer*. As one of the three State Bar representatives on the Council, I will work hard to respond to questions and suggestions from you.

➢ **The Council's work must address 21st Century issues.** My background will equip me to provide important guidance to the Council concerning the realities of the electronic practice of law, e-discovery and digital evidence. With Professor Jay Grenig of the Marquette University Law School I co-authored a 1400 page treatise entitled *e-Discovery & Digital Evidence*. This treatise is a nationally recognized resource on electronic litigation and is the flagship treatise of the Thomson-Reuters company concerning electronic litigation.

➢ **The Council's work is research intensive.** I have a very extensive background in legal writing, legal scholarship and appellate advocacy. Besides co-authoring a major legal treatise, I was one of the recipients in 2000 of the Charles Dunn Author Award for Writing Excellence in the *Wisconsin Lawyer* from the State Bar of Wisconsin. I have also researched, authored or co-authored numerous appellate briefs in appellate courts in Wisconsin and throughout the United States.

➢ **The Council's work affects civil and criminal trial practice.** I am also in a unique position to understand and address criminal law issues. For many years I served as General Counsel for the National Federation of the Blind. In that capacity, I litigated civil rights cases throughout the United States. Civil rights litigation often involves the interpretation and application of state and federal Constitutional Law, which is at the heart of many criminal prosecutions. I have also litigated civil rights cases involving police training, supervision and procedure.

Again, I respectfully ask for your vote. You can contact me at wgleisner@sbcglobal.net.

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