

Law Related Education

The newsletter of the Illinois State Bar Association's Committee on Law Related Education

The Illinois State Bar Association's Law-Related Education Newsletter is provided free of charge on a quarterly basis during the school year. We are dedicated to promoting law-related education resources and discussion topics appropriate for use in classroom or community settings. If you do NOT wish to receive this complimentary newsletter, please reply and indicate in the message line that you wish to be removed from our mailing list. Statements, expressions of opinion or comments appearing herein are those of the editors or contributors, and not necessarily those of the Association or the Committee.

Chair's Note

BY STEPHEN IDEN

In these days of COVID-19 and civil unrest, law related education, especially civics education, is needed now more than ever. Questions have arisen about civil rights, criminal prosecution, and the extent of executive office power, both statewide and at the national level. The ISBA's Law Related Education Committee stands as a resource for issues about civics education for students and for the public at large. We look to continue to provide educational

materials online and speakers in schools and for special events, however those talks end up happening under current conditions. We welcome the new normal and hope we can contribute to what that looks like and how it will serve our mission to bring meaningful topics to the schools for presentation, discussion and debate. In sum, we hope that we can help you process and understand the issues at hand, and we hope you and your families and colleagues stay safe. ■

Expungement Summits Provide a Free Path to Erase or Seal One's Criminal Record

BY CHRISTINE ZEMAN

Imagine you haven't been able to get hired or to find a decent place to rent or to enroll in an education program due to some event or events well in your past that resulted in your arrest, or

landed you in criminal court or even jail or prison. Your record has become a burden impacting major aspects of your life or 'keeping you back'. Last fall, attorneys in

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Expungement Summits Provide a Free Path to Erase or Seal One's Criminal Record

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Springfield, Alton, Rockford and other Illinois cities, some volunteering *pro bono*, assisted clients (free of charge) in completing and filing petitions seeking to expunge or to seal their records. These petitions sought to erase certain arrests of record or seal certain convictions, potentially unburdening hundreds from public access to their criminal past. But only certain arrests and crimes can be expunged or sealed and only after certain criteria are met.

According to Black's Law Dictionary: "[E]xpunge' means 'to destroy; blot out; obliterate; erase; strike out wholly.'" In Illinois, expungement is the process of physically destroying the records of, or returning those records to a petitioner, and obliterating that petitioner's name in any official public index or public record. 20 ILCS 2630/5.2(a)(1)(E). Sealing under Illinois law means a record is to be physically or electronically maintained which means the record is generally unavailable to the public without a court order. 20 ILCS 2630/5.2(a)(1)(K).

Eligibility to petition a court to expunge or to seal one's criminal record has recently been expanded as part of Illinois' criminal justice reform under Public Act 100-284 signed into law in 2017. More felony convictions are now eligible to be sealed and more arrests and crimes may be deemed in the nature of a "non-conviction," making them eligible to be expunged, depending upon the relief, disposition or sentence imposed. For example, arrests that were not prosecuted, not guilty verdicts, supervision and certain probations that were successfully terminated are generally eligible for expungement. While many misdemeanor and felony convictions are now eligible to be sealed, examples of those that still are not eligible include: domestic battery, violations of orders of protection, DUIs, reckless driving, most sex crimes and those for

animal cruelty. In some cases, waiting periods apply and a clean drug test taken within thirty days before filing is required. The Illinois Supreme Court, through its Commission on Access to Justice, even provides the forms to complete or to file with one's request for expungement, as well as line-by-line directions and guidance. Search: Illinois Supreme Court Standardized State Forms/ Expungement and Sealing.

After the petition or request is filed, notice is provided to the law enforcement agency that made the arrest, to the State's Attorney or other prosecuting attorney and to the Illinois State Police to allow objections to the petition to be filed. A hearing is scheduled and often, if there is no objection, the hearing is *pro forma*. However, whether to grant the request, that is, whether to allow the sealing of one's record, is discretionary with the court. In that respect, the trial court judge decides the petitioner's fate.

In Springfield, an Expungement and Record Sealing Summit was held on October 19, 2019, sponsored by several organizations, including Land of Lincoln Legal Assistance, the Sangamon County Bar Association, the Goodwill Career Center, and the Sangamon County Circuit Court Clerk. Cabrini Green Legal Aid provided invaluable training and assistance. Staff of the Sangamon County Circuit Clerk was present, enabling the client or petitioner to file his or her petition at the courthouse to do so. Filing fees and attorney fees were waived, meaning that the Summit enabled a client to complete and to file a petition for free—not only saving clients substantial money, but also enabling many to participate who might otherwise be precluded due to the cost of attorney and filing fees.

At that Springfield Summit, 125 clients who were predetermined to be eligible had their petitions prepared

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OFFICE

ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITORS

Sharon L. Eiseman
Hon. Edward J. Schoenbaum

PUBLICATIONS MANAGER

Sara Anderson
✉ sanderson@isba.org

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and filed. This author, who participated in assisting clients in completing petitions, learned the heavy impact of even a dated and relatively minor criminal record. But my reward was also learning the value in the possibility of having one's past arrests and convictions either erased or sealed. Moreover, clients voiced hope, relief, and appreciation for the opportunity for a second chance. David Blanchette of the *Illinois Times* interviewed several at the Springfield Summit who explained both the impact of an arrest or criminal record and the hope and opportunity the summit

offers, in "A Second Chance in Life," [www.illinoistimes.com/October 31-November 6, 2019](http://www.illinoistimes.com/October-31-November-6-2019). A similar summit held in Rockford called "Second Chance Summit" resulted in an even larger number of clients seeking assistance and similar expressions of hope as reported by the Rockford press.

These summits were held before, and are distinguishable from, the types of expungements available under Illinois' new Cannabis Regulation and Tax Act effective January 1, 2020. This recent law, among other provisions, makes possession and sale of under 30 grams of cannabis

legal in certain circumstances and allows for the expungement of convictions for possession and sale of under 30 grams. It has been estimated that some 770,000 pot convictions are now "automatically" eligible for expungement. See, "Make It Go Away: A Practical and Realistic Guide to Expungement, Sealing and Other Criminal Record Reforms" in the September 2019 *Illinois Bar Journal*, Vol. 107, No. 9 at page 30, footnote 26. Imagine the second chances likely to result from Illinois' new recreational marijuana law and the thousands of expungements this new law affords. ■

An Informed Public Is Essential: How Lawyers Can Contribute to that Outcome

BY REX GRADELESS

None of us have ever lived through a pandemic before but the last few months has shown us that there has never been a greater need for accurate factual information during these uncertain times. For a variety of reasons, those in the legal profession are uniquely trained to provide the public with reliable factual information and have the professional responsibility to do so.

As our country shut down in early 2020, the isolation, coupled with a virus that we do not fully understand, caused widespread uncertainty throughout our country. As shelter-in-place measures swept the nation, an anxious public began searching for answers using social media.

Social media as a source for information, however, proved to be problematic during these uncertain times. On these platforms, information may not undergo much fact-checking and is sometimes akin to filling up a room with stacks of pages with random unconnected facts written on them and hoping the readers can sort out the mess. Along with sometimes useful and relevant information, many websites quickly spread disinformation and misinformation to

the public. For example, some theories proclaimed that COVID-19 is just a bad flu, was launched as a bioweapon, is a population control method, that bleach could be the cure, or that the virus would just vanish over the summer.¹

As weeks went by and uncertainty grew, instances of confirmation bias began to rise. Confirmation bias happens when people search for, interpret, favor, and recall information in a way that confirms or strengthens their prior personal beliefs or values.² As people remained in their homes, conspiracy theories arouse claiming that mandated social distancing measures were an affront to personal freedoms and violated the Constitution³.

As scientist and writer Isaac Asimov state in a 1980 essay published in *Newsweek* and entitled 'A Cult of Ignorance': "there is a cult of ignorance in the United States, and there has always been. The strain of anti-intellectualism has been a constant thread winding its way through our political and cultural life, nurtured by the false notion that democracy means that 'my ignorance is just as good as your knowledge.'" To the extent

there's truth in what Asimov wrote, recent months have shown that the uncertainty of a pandemic can proliferate these untruths and even perpetuate harmful results.⁴

In times of crisis, the antidote to the proliferation of falsehoods must be an informed public - and that's where the trained legal professional comes in. As legal professionals, we are both officers of the Court and truth seekers for the public. We have unique training and education that enables us to quickly decipher facts from fiction and use that knowledge for good. Our rules of professional conduct provide that as members of this learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education.⁵ In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.⁶

One tool we have for furthering the public's understanding of the world

around them is our training that a claim be supported by EVIDENCE. We know, as lawyers, that the evidence to support a claim must generally be both relevant and reliable.

Relevant evidence to support a claim means evidence having any tendency to make the existence of any fact more probable or less probable than it would be without the evidence.⁷ In other words, relevant evidence points towards the truth and makes a claim more or less likely. Irrelevant evidence can, *inter alia*, mislead, prejudice, confuse the issues, or waste our time.⁸

Further, we know that reliable evidence to support a claim generally means the information is sufficiently trustworthy for consideration. For example, we know that Illinois law precludes hearsay statements.⁹ Hearsay statements, being used to prove the truth of the matter asserted within those statements, have historically been found unreliable in our judicial system because these statements can be difficult, or impossible, to verify veracity. Additionally, and for example, we know that Illinois law distinguishes between lay and expert witness testimony because the testimony of an expert witness is more reliable when testifying on scientific, technical, or other specialized knowledge.¹⁰

As members of this noble profession we rely on truth and facts. We believe in this concept so greatly, that entire cases can be won when there are no genuine issues of material facts in dispute.¹¹ In times of a global pandemic, we are uniquely trained and qualified to educate, question, and provide reliable information to the public.

The mission of the Standing Committee on Law Related Education for the Public is to develop, implement, and administer law-related programs that enhance an understanding of the legal system; to educate the public about the work of lawyers and judges, and the importance of an independent judiciary for the proper administration of justice; to promote students' interest in our justice system and encourage their consideration of careers in the law; and to advocate for the expansion of civics education in all appropriate environments.

For more information on how you can become involved to use your skills to further educate the public sign up with the Illinois State Bar Association's ("ISBA") Speakers Bureau at <https://www.isba.org/civics/speakersbureau>; or sign up for ISBA lawyers in classrooms program at <https://www.isba.org/lawyersinclassrooms>. If you are already

familiar with these opportunities to give back, there has never been a better time to share them with a colleague. We may not be the cure, but we can continue to be an essential part of the solution. ■

1. Erick Erickson, *Conspiracy theories about COVID-19 deaths lack credibility*, OMAHA WORLD HERALD, May 10, 2020, https://www.omaha.com/opinion/erick-erickson-conspiracy-theories-about-covid-19-deaths-lack-credibility/article_cce4caa8-dbf9-5437-ba1e-f6d38fdce591.html.

2. See *People v. Little*, 2018 IL App (1st) 151954 (Ill. 2018); and "Confirmation bias"—"the well-documented tendency, once one has made up one's mind, to search harder for evidence that confirms rather than contradicts one's initial judgment," Richard Posner, How Judges Think, 111 (2008) cited in *HCP of Illinois, Inc. v. Farman Group I, Inc.*, 991 F. Supp. 2d 999, 1000 (N.D. Ill. 2013).

3. "A community has the right to protect itself against an epidemic of disease which threatens the safety of its members." *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11, 27 (1905); see *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944) ("The right to practice religion freely does not include liberty to expose the community...to communicable disease.").

4. NBCChicago.com, 'Significant Increase' in Calls to Illinois Poison Control After Trump Disinfectant Remarks (April 25, 2020), <https://www.nbcchicago.com/news/coronavirus/significant-increase-in-calls-to-illinois-poison-control-after-trump-disinfectant-remarks/2261914/>.

5. Illinois Rules of Professional Conduct of 2010, Preamble paragraph 6.

6. *Id.*

7. IL R EVID Rule 401.

8. IL R EVID Rule 403.

9. IL R EVID Rule 801.

10. IL R EVID Rule 702.

11. 735 ILCS 5/2-1005.

Someone You Should Know: Judge Michael Chmiel

BY MARYLOU KENT

Hundreds of student participants in the Mock Trial Program over the last 15 years have had the considerable fortune to be in the 'courtroom' of Judge Michael Chmiel. Judge Chmiel is an ardent supporter of law-related and civics education programs sponsored by the Illinois State Bar Association and its Committee on Law Related Education for the Public (LRE), and he has volunteered countless hours toward educating the public—both at the youth and adult level—

about the legal system, especially the judicial branch of government.

Judge Chmiel grew up on the southwest side of Chicago and received a Bachelor of Arts in Economics from the University of Notre Dame. He attended the University of Illinois College of Law, thinking that a legal education could provide him with a valuable perspective within the business world. After law school, he practiced law in the Chicago and Rockford areas with an emphasis on commercial law, including bankruptcy and

local government law.

In 2006, he was appointed by the Illinois Supreme Court to fill a judicial vacancy in the Circuit Court of McHenry County. Today he serves as presiding judge of the civil division in the 22nd judicial circuit and presides over arbitration, probate and chancery cases. Most of his day is spent hearing cases and contested matters but he also devotes many of his lunch hours, coffee breaks and evenings to meetings and volunteer activities.

It was after his appointment to the bench that Judge Chmiel first became involved with the LRE Committee. Although he had been an ISBA member since 1991, he was looking for something bar related that would pose minimal judicial conflicts. He is currently in his second appointment cycle with the LRE Committee and served as its Chair for two years during turbulent times when budgetary concerns were threatening the continuation of the Mock Trial Invitational. Judge Chmiel's leadership at the time significantly contributed to the ISBA's decision to continue investing in this important program.

For the last several years, Judge Chmiel has served as Chair of the LRE's Civics Education Subcommittee and was the driving force behind the initiation of the ISBA Speakers Bureau. He believes that, through participation in the classroom

and the boardroom, the ISBA and the LRE Committee, along with many volunteers, are helping the community become better informed as to what attorneys and judges do and the important role which the legal system plays in governance and in the resolution of disputes and dispensing of justice for those who appear before the many courts throughout the State.

When asked what about the mock trial program has kept him volunteering for so long, Judge Chmiel believes it provides a great opportunity to show how trials are run and to stimulate interest in the legal profession through interaction with students and constructive comments from legal professionals. He says the most satisfying aspect of his involvement has been the chance to witness several students develop over the years as participants. "I feel the mock trial program impacts

the lives of students who participate by providing them with a challenging, though nurturing, environment in which they can test their skills and develop their interests. I believe students can draw a true sense of what trial work involves which helps them better appreciate it as a possible career choice," he expressed.

In his leisure time, Judge Chmiel enjoys coaching youth sports, working out, traveling, and 'hanging' with family and friends. But he also feels fortunate to be a lawyer and a judge and feels a responsibility to give back. As he articulated, "I feel blessed, by chance, to work in the legal profession and as a judge and desire to pay back my blessings by doing what I can for the legal profession through my work in the courtroom and through my volunteerism." The ISBA and LRE Committee are blessed to have you, Judge Chmiel! ■

What Is the Electoral College and What Does It Do?

BY NANCY EASUM

The November 3, 2020, presidential election will soon be here. The candidate with the most popular votes will be the winner and be inaugurated as president in January 2021, right? Not necessarily! The Electoral College must be considered—but what exactly is the Electoral College?

The Electoral College was established by the United States Constitution and is comprised of 538 members in total from all of the states across the Country. Each state has the same number of electors as it has members of Congress. So how does the Electoral College function and what is its purpose?

Each time voters go to the polls to elect the president of the United States, they are not really voting for a presidential candidate, but rather are voting for 'electors' each of whom pledges to vote for a particular candidate when the Electoral College in their state convenes on the first Monday

after the second Wednesday in December. Following this vote, the report of the state electors across the country is prepared and incorporated into a certificate of vote and presented to Congress on January 6 following the election. A candidate must receive 270 electoral votes to be elected. If no candidate receives 270 votes, the election is then decided by the United States House of Representatives with each state having one vote. This situation has happened two times in the history of the Electoral College.

Excepting Maine and Nebraska, the votes cast in each state go to one candidate. So how is that candidate chosen? The votes are not prorated based upon the percentage of votes earned by each presidential candidate. All of the electoral votes of a state go to the candidate who won the popular vote in that state. Consequently, it is possible for a candidate to earn the most popular votes nationwide but still not be elected as

president.

When the founding fathers of our country were working on the United States Constitution, they wanted to develop a system that gave each state an equal voice but did not create a monarchy. While at that time the state legislatures elected their own governors, the Constitutional Convention delegates did not favor having Congress elect the president. They were instead seeking a method that did not promote favoritism or create a system of royalty. The potential for control by the large states was also a concern.

While some delegates favored a direct election by all voters of the states, others were concerned the voters would not be well informed about the candidates. Of course, communication with and among the public then was much different than now. The founding fathers were also trying to avoid election re-counts or run-offs. They were worried large states would control the

election which could result in not giving everyone an equal voice. The purpose of the Electoral College was to combat tyranny and support the federalism doctrine—both outcomes believed to be good alternatives and a compromise to allowing Congress to elect the president or for a popular vote to decide the outcome.

As a result of the Electoral College method, battleground states have developed. These are states with a large number of electoral votes. Consequently, candidates focus on these states, as winning their votes will help ensure one's election as president. Focusing on states with a large number of electoral votes and spending less time campaigning in or ignoring smaller states with only a few electoral votes has been one of the major criticisms of the Electoral College method and its influence. Only 20 percent of voters nationwide live in battleground states. Therefore, 80 percent

of voters are being ignored or not taken seriously by the presidential candidates. Often the candidates do not even visit these states or only travel there on a limited basis. If the president were elected by popular vote, a candidate would need to campaign in every state, not just those with a high number of electoral college votes.

Another observation regarding "battleground states" is that the percentage of voters who go to the polls in these states is higher than those voters in non battleground states. One theory is that more people would vote if the president were elected by a purely a popular vote, without the use of the Electoral College. Proponents of this theory argue that its adoption as a means for voting would result in the election of a president by a truly nationwide popular vote. Some of these same individuals also argue that "battleground states" get more attention from federal programs and funding and thus have

an unfair advantage over other states.

Are battleground states receiving too much attention from the presidential candidates? Does the current communication system allow for well-informed voters? Has the time come to revisit and perhaps even revise the Electoral College system developed by our founding fathers? What do **YOU** think?

If you do have a view about whether or not the Electoral College is serving a meaningful purpose in our national elections, we suggest that you recommend the scheduling of a discussion or debate about the topic in your classroom—whether you are a student in that classroom or the teacher. If you do further research beyond this piece about that system, you will find it is actually a hot topic across the country as residents/voters struggle with finding the best way for voters to truly have a voice in the election of the president. ■

ISBA Civics Education Awards 2020

BY JUDGE MICHAEL CHMIEL

In 2018, the Standing Committee for the Law Related Education for the Public of the Illinois State Bar Association ("LRE") developed and proposed an award to "annually honor up to three individuals who have helped educate the public about civics, especially our legal system." Then in 2019, the first round of ISBA Civics Education Awards was presented.

In 2020, awardees in the second round of awards have been named, and include:

Hon. Justin M. Hansen is being recognized with an ISBA Civics Education Award in 2020 for his work with ISBA Lawyers in Classrooms and the ISBA Speakers Bureau. Judge Hansen sits as a Circuit Court Judge in the Twenty-Second Judicial Circuit of the State of Illinois, which is located in McHenry County in *Upstate* Illinois. Judge Hansen spent years in private practice before being appointed to his new 'calling' by the Supreme Court of Illinois in June of 2019. Over the past year, Judge Hansen has made numerous presentations

to students at the elementary, middle, and high school levels, and to various community groups.

Kathleen ("Katy") Karayannis is also being recognized with an ISBA Civics Education Award in 2020 for her work with the ISBA High School Mock Trial Invitational. A graduate of the University of Illinois College of Law, Katy practices law in the Western Suburbs of Chicago. While at the College of Law, Katy volunteered to help the Invitational as a Member of the Illinois Trial Team and as a Law Student, and has continued in the 'real world' as an assistant state's attorney, devoting literally countless hours to insure the mock trials happen.

Kelsey Chetosky will also receive a 2020 ISBA Civics Education Award for her work with the ISBA High School Mock Trial Invitational. Kelsey also graduated from the University of Illinois College of Law, and is an Associate with Kirkland and Ellis, one of the largest law firms in Chicago (*and the world!*). While at the College of Law, Kelsey

volunteered to participate in the Invitational as a Member of the Illinois Trial Team and as a Law Student. She has worked with hundreds of high school students through the Law Test which is administered annually in conjunction with the Invitational.

Congratulations to these three civics educators!

Through March of each fiscal year of the ISBA, nominations for the ISBA Civics Education Award are received through www.ISBA.org so if you know someone who fits this special category of dedicated volunteers, don't hesitate to submit a nomination. While self-nomination is allowed, it has yet to be utilized, with most nominations coming from those who have worked with or experienced another's work in the civics education arena. ■

Judge Michael Chmiel serves as a circuit judge in the Twenty-Second Judicial Circuit of the State of Illinois, which is located in McHenry County, Illinois. He is a past chair of Law Related Education for the Public and serves as chair of its Civic Education Subcommittee.