ILLINOIS STATE BAR ASSOCIATION

NOVEMBER 2020 VOL 7 NO. 2

Law Related Education

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

Life as a Rural Public Defender

BY CHRISTINE ZEMAN

TV programs like *Law & Order* provide dramatic introductions to defending those charged with offenses in our court system. Having been appointed a public defender in a rural central Illinois county soon after graduating law school, I discovered that my cases sometimes mirrored the drama of these serious crime shows. Other times, my work took on aspects of TV's *Night Court*, though being charged with a criminal offense is never humorous or to be taken lightly.

What Is a 'Public Defender' System of Representation?

The public defender system in Illinois is established in the Counties Code to ensure that indigent persons charged with a criminal offense may be represented by counsel, to better ensure due process, without cost to the indigent defendant. The Counties Code states that in Illinois, a person has a "fundamental right" to quality

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Executive Orders and Their Challenges During COVID-19

BY LESLEY GOOL

Governors across the United States have issued executive orders as the country responds to the unending coronavirus pandemic (COVID-19) in hopes of slowing the virus's spread and thus helping to safeguard the health and well-being of our communities. Here in Illinois, Governor Pritzker has used his executive authority to require residents to maintain social distancing, stay in their homes or residences, prohibit particular outdoor activities, restrict the operation of non-essential businesses, and limit the number of people gathered together outside a single household, to name a few.

For a number of constituents, this was the first time an Executive Order noticeably affected their normal ways of life, and after the first 30-day stay-at-home Order was issued, civilians began to wonder what the function of an executive order is and where did Governor Pritzker's authority to make these seemingly unilateral decisions

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Life as a Rural Public Defender

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legal representation in criminal and related proceedings without regard to his or her ability to pay. 55 ILCS 5/3-4000. Similarly, the Illinois Criminal Code states that an indigent person is entitled to have a public defender appointed to represent him or her in all criminal cases, except where the penalty is only a fine. 725 ILCS 5/113-3.

The public defender in Illinois is generally compensated by or an employee of the county in which he or she is appointed to serve, with the appointment process and salaries adjusted by the population of the county. In my case, the rural county seat where I was appointed and where the courthouse is located had the same population as my suburban Chicago high school (approximately 4,000). The aging courthouse on the hill had richly detailed architecture that contrasted with a neon sign on one side of the courthouse reading *The World Needs God*. The county later relocated the sign to a privately-owned building on the square, after the American Civil Liberties Union (ACLU) successfully sued the county on behalf of a county resident for violating the Establishment Clause of the U.S. Constitution, sometimes known commonly as requiring the separation of church and state.

How Are Members of a Jury Selected?

TV series like *Bull* offer a glimpse of *voir dire*, the system whose goal is the selection of an unbiased impartial jury of one's peers. *Voir dire* in Illinois is governed by Supreme Court Rule 431. *Voir dire* allows the prosecuting attorney and defense counsel to learn basic background information of each prospective juror on the panel from which the jury members are selected to serve. My indigent clients did not have the luxury of hiring a paid jury consultant like *Bull*. But the basic background information on each potential juror provided by the clerk, and the answers each potential juror additionally provided to questions from each attorney or the presiding judge, offer an opportunity to learn of the potential juror's bias or impartiality. *Voir dire* helps both the prosecution and the defense decide whether a particular juror might remain on the jury. For any case that mandates a right to a jury trial, jurors are drawn from the county.

Both the assistant state's attorney who prosecuted misdemeanors and I moved to this rural county to serve in our respective positions; neither of us initially knew many of the potential jurors beyond the basic information the clerk provided and the additional questions asked in *voir dire*. Two of my first DUI clients were found not guilty and a third DUI trial resulted in a hung jury, perhaps in part because two of the jurors in each of these three cases owned local taverns, likely viewing DUI charges less seriously than other offenses and maybe convincing the other jurors to view DUIs similarly. Not surprisingly, these two tavern owners were not retained by the prosecution the next time they appeared as potential jurors in subsequent DUI trials.

My First Defense of a 'Disorderly Conduct' Case

One of my first cases where disorderly conduct was charged (720 ILCS 5/26-1(a)(1)) was a young high school athlete and lifeguard who admitted climbing onto the roof of the dressing room of the local beach to observe his female classmates changing into and out of their bathing suits. Rather than being sentenced, he received supervision, a unique disposition in many misdemeanor offenses under the Criminal Code that allows the same result as dismissal of the offense. 730 ILCS 5/5-6-3. Supervision carries conditions which must be met by the defendant, the main one being not to violate any law within a specific time period, generally one year. At the conclusion of the specified period, if the conditions of supervision have been met, then there is no adjudication of guilt. In most cases, a defendant can then also seek to "expunge" the charge, removing that charge from one's record. 20 ILCS 2630/5.2.

I could count on new clients receiving

Law Related Education

Published at least four times per year.

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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

a disposition of supervision after admitting charges of disorderly conduct or criminal damage to property (under $500) after shooting out lights or engaging in other youthful havoc following homecoming parades and Main Street parties in each town of the county in which I served. Sadly, I also recall being appointed to represent one young man who intentionally busted a display window in a local retail store, not doing any other damage nor injury to any person; but it was a repeated offense. When asked why he broke a window but took nothing from the shop, he advised the court that he committed the offense because he wanted to be sentenced to the local medium security prison in the county, where he would have opportunities that he would not otherwise have—regular meals, medical care, eyeglasses, haircuts, and an education. One other young client did not seem to benefit from the education he received when first sentenced, when he admitted driving for a second time the same unlocked car he stole from the same driveway that still had the same key in the ignition as the last time this client committed the exact same offense. This automobile's owner apparently did not learn to either lock or to keep the key out of this unlocked car, either.

A Different Perspective on a Drug Possession Charge

Peyote, found in lockers at the local railroad, was at the heart of one my cases in which the First Amendment of the U.S Constitution's freedom of religion protected my card-carrying Native American Indians from conviction of drug-possession offenses. It was then well-established that card-carrying members of certain Native American Indian tribes like my clients, utilize peyote in their religious services. These clients provided me, and then also the prosecution, the necessary proof to help establish their sacred use of the drug during the exercise of their religion so as to warrant dismissal of the drug possession charges. While as a public defender I could represent them on the criminal charges, they did not have free representation when their employer, the railroad, invoked the company's safety rules to fire them. Well after the drug possession charges were dismissed, these clients later appeared on my doorstep seeking return of the peyote for use in their sacred services, but the state's attorney reported that the peyote, confiscated to be used as evidence at trial, had been turned over to the State Police and burned.

State Route I-55 and one of its rest stops runs mid-way through the county in which I worked. I-55 then served and likely still serves as a pipeline for drugs from Mexico to Chicago. At the arraignment of one Spanish-speaking client, the stage when a defendant is informed of the charges against him or her per 725 ILCS 3/113-1, the judge asked in a very loud voice, speaking very slowly in English, whether the defendant understood his rights. I tried to explain that speaking loudly and slowly in English would not help my Spanish-speaking client understand his rights spoken in a language he did not speak nor understand. During another arraignment on a charge of DUI on I-55, the judge asked my client if his attorney had explained the charges and sentence that could be imposed, while I stood alongside. When the client told the judge he didn't have an attorney, the judge smiled and explained that I was appointed his attorney and asked him if I had explained the charges or if he would like the charges read to him in open court. The client advised that he now understood that I was his attorney and that I had explained the DUI charge and potential penalty and sentence.

Back at the rest stop, I learned prostitution was occurring when a trucker called the police to report a prostitute had stolen his wallet, and later the prostitute (my client) was charged. Another client charged with prostitution reported for her arraignment with her mother, appearing in court in casts which she explained were the result of her pimp having beaten her up for getting caught and arrested. Her mother reported that sadly, this was the education her daughter needed to end her prostitution.

Charges Arising From a Murder Can Include Charges 'By Accountability' for Someone Who 'Aids and Abets' the Killer

Near Christmas, I was in the Chicago suburbs with family when the TV news reported a killing on I-55 in the county I served, when young men in one car had reportedly rammed another car, after which both cars pulled over. The news reported that the victim killed was a member of the Hmong tribe, travelling home with other tribal members to a Midwest state where the Hmong tribe had located after the war in Southeast Asia. Interestingly, drivers from across the country who had heard of the killing and contacted local law enforcement to report that they had either seen the victims' car being rammed, or that they, too, had their vehicle rammed but had not pulled over, became witnesses for the prosecution at trial. I was appointed to represent only one of the men in the car that had reportedly rammed the other, due to a potential conflict between the defendants and the defense each would present. Upon my client's arrest, he was found with a ring belonging to the victim of a similar crime in Missouri, in which a similar ***modus operandi*** (a particular way or method of operating) had been used. Arrest reports mentioned that the men charged reported using a drug not then well-known in the rural county in which I worked, one writing it as "whack" and another as "crack."

My client in this killing was not accused of the actual shooting, but instead was charged by accountability with the same offense as the shooter. A person can be held legally accountable under the Criminal Code for the conduct of another, for example, even if he did not do the actual shooting, where he aids or abets or is otherwise complicit in the other's offense. 720 ILCS 5/5-2(c). After local media reported that I had attended this client's arraignment when he pleaded not guilty before trial, friends asked me sincerely how I could allow my client to plead not guilty, perhaps not truly understanding what it means that a person is innocent unless his guilt is proven beyond a reasonable doubt. 720 ILCS 5/3-1. My client was later found guilty by accountability for the killing of the young Hmong tribe member, and after sentencing, was transferred to Missouri to stand trial for the charge related to the murder of the victim who owned the ring found on my client during his arrest in Illinois.

What I Learned From My Life as a Rural Public Defender

About this same time, I decided to practice a less-emotionally charged area of law in a slightly larger city. But I continue to appreciate and benefit from the wide range of legal issues addressed, the wide range of clients and friends made and the numerous jury and bench trials I experienced serving as public defender for approximately two years in a rural Illinois county.■

Executive Orders and Their Challenges During COVID-19

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originate. It is the purpose of this article to provide a brief historical background of a proclamation or executive order and to examine the governor's authority to issue such orders, with an emphasis on recent lawsuits challenging Governor Pritzker's COVID-19 Orders.

Executive orders and proclamations originated with the English king. The monarch enjoyed specific entitlements and rights which belonged only to him by virtue of his preeminent position. Certain direct prerogatives, including the power to make war and the right to send ambassadors to other countries, were considered a part of the king's sovereignty. Other incidental entitlements were attached to the Crown, including that no costs could be recovered against the king and his debt was preferred to the debt of anyone else. These exceptions were established from the general rules applicable to the entire kingdom.

Unlike the king, whose authority to issue a proclamation or an executive order is rooted in his position, the office of governor was created by state constitutions to head the executive department of the state. Reacting to the arbitrary and powerful colonial governors preceding the American Revolution, the legislatures of the newly established states expressed their fear of the governor's office by constitutionally limiting the authority of the executive branch. In contrast to the king, a governor possessed only those powers delegated to him by the state constitution or by state statute, and such powers were limited in that they could be exercised only in the manner provided. Most state constitutions place the supreme executive power, the chief executive power, or the executive power in the office of the governor, and frequently cloak their chief executive with the responsibility to "take care that the laws be carefully executed."

Particularly in Illinois, the governor's implied power to promulgate an executive order or proclamation in response to the coronavirus pandemic is centered within Article V, Section 8 of the Illinois Constitution and explicitly stated in the Illinois Emergency Management Agency Act. See 20 ILCS 3305 *et seq*. which is hereinafter referred to as the "IEMAA."

Article V, Section 8 of the Illinois Constitution states: "The Governor shall have the supreme executive power and shall be responsible for the faithful execution of the laws."

The IEMMA states: "In the event of a disaster, as defined in Section 4, the governor may by proclamation declare that a disaster exists. Upon such proclamation, the governor shall have and may exercise for a period not to exceed 30 days the following emergency powers." See 20 ILCS 3305/7.

Section 4 of the IEMMA defines a disaster as the following: "Disaster" means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, public health emergencies, or acts of domestic terrorism. See 20 ILCS 3305/4.

Pursuant to his authority, explicit and implicit, Governor Pritzker proclaimed that a disaster existed within the State of Illinois after determining that the circumstances surrounding COVID-19 constituted a public health emergency, and he declared all counties in the State as a disaster area on March 9, 2020 (Gubernatorial Disaster Proclamation). Thereafter, Governor Pritzker issued a number of executive orders, the first being Executive Order 2020-10 on March 20, 2020, which required Illinois residents to maintain social distancing and stay in their homes, except to engage in "Essential Activities, Essential Government Functions, or to operate Essential Businesses and Operations." The Executive Order became effective on March 21, 2020 at 5:00 p.m. and continued until April 7, 2020. On April 1, 2020, Governor Pritzker issued a second proclamation declaring the COVID-19 pandemic to be a continuing public health emergency and extended the duration of the March 20 Executive Order twice with the last extension until May 30, 2020.

While residents and leaders from both parties had given Governor Pritzker high marks for his handling of the crisis, especially after his early stay-at-home order was widely credited for helping control the spread of infection in Illinois, there were a handful of lawsuits filed challenging the constitutional and statutory authority of those executive orders.

Lawsuits Challenging the Governor's Exercise of Executive Power

The first lawsuit was filed in Clay County by Darren Bailey on April 23, 2020, alleging the governor overstepped his power by declaring more than one state of emergency and shutting down non-essential businesses to address the COVID-19 pandemic. The Clay County Circuit Court judge presiding over the matter ruled that the 30-days of emergency powers provided under the IEMAA lapsed on April 8, 2020 and any executive orders in effect after that date relating to COVID-19 were void. Particularly, this ruling did not apply statewide and only applied to the individual Bailey. The Illinois Attorney General's Office, which represents the governor, appealed the ruling to the Illinois Supreme Court.

Governor Pritzker then had to defend against other lawsuits, including six that were filed in July 2020 in six downstate counties, that also alleged the governor overstepped his legal authority in issuing executive orders in response to the COVID-19 pandemic, and that the Pandemic did not fit the criteria under state law as a public health emergency in their respective counties. While the plaintiffs concede the COVID-19 pandemic

satisfied section (a) of the definition, because COVID-19 is "an illness or health condition that (a) is believed to be caused by the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin", the plaintiffs insist the COVID-19 pandemic is not a public health emergency because it does not satisfy any of the three disjunctive requirements set forth in section (b). Specifically, the lawsuits plead only three factual allegations in support of their theory: 1) the total number of people who have been tested for, 2) contracted, and 3) died from COVID-19 in each of their counties, which did not demonstrate that COVID-19 was a public health emergency within the meaning of the IEMAA.

Governor Pritzker, through representation by the Illinois Attorney General, filed to dismiss the six lawsuits, collectively, before a Sangamon County Circuit Court judge, who granted the governor's motion to dismiss. The court stated in its ruling that the complaints fell short on facts needed to support their claims. The judge explained that "Illinois is a fact pleading state, which means that plaintiffs must allege facts, not conclusions to establish a viable cause of action."

Additionally, the initial lawsuit filed by Bailey was redirected by the Illinois Supreme Court to the same above-mentioned Sangamon County Circuit Court judge, and the court also dismissed Bailey's complaint on the grounds that his amended complaint failed to state a cause of action and therefore any amendment would be futile.

Similarly, on October 30, 2020, McHenry County Circuit Court Judge Michael Chmiel ruled against a group of restaurant owners who had filed suit against the governor arguing he exceeded his authority in restricting indoor dining at restaurants and drinking at bars, which would permanently imperil their businesses. Judge Chmiel found that the governor has authority to impose restrictions on businesses because the IEMAA gives the governor the authority to continue to issue new disaster declarations and reassert emergency powers every 30 days. Notably, Judge Chmiel factored in the role of the legislative branch by drawing attention to the fact that lawmakers could have taken the time to insert language in the IEMAA explicitly granting the governor such extended emergency powers.

As recent as November 6, 2020, the Illinois second district appellate court struck down an order from a Kane County Circuit Court judge that had allowed a restaurant in Geneva, IL to continue operating legally despite the executive orders issued by Governor Pritzker that had otherwise shut down indoor restaurant dining this fall in order to reduce the spread of COVID-19. The court explicitly declared Governor Pritzker has the authority under state law to claim emergency powers by executive order for as long as he believes the disaster that caused the emergency continues.

While only the Clay County judge has declared Governor Pritzker's orders unconstitutional, these rolling controversies spotlight the need to explicitly clarify the governor's authority and boundaries involving the use of executive orders in relation to the COVID-19 Pandemic. Without any federal mandates, an executive order or proclamation is the only tool available to Governor Pritzker to implement various restrictions and guidelines in order to protect Illinois residents and prevent the spread of COVID-19. And given recent data regarding the increased spread of the virus in Illinois, it is possible we will see new and different, or renewed executive orders issued by the governor—and thus more challenges to those orders. ■

What Is the Electoral College and What Does It Do?

BY NANCY EASUM

FOLLOWING THE NOVEMBER 3, 2020 ELECTION, everyone across the country seemed to be glued to one or another TV News channel listening to reporters update, almost by the minute, the popular vote counts as ballots were being processed state by state—and the potential number of Electoral College votes to which those counts would translate. Due to the relevance of the Electoral College votes ascribed to each of the two presidential candidates, we decided some—if not all—of our readers might be interested in this refresher course from Nancy Easum on what the Electoral College is, how it functions, and what those votes mean for any given presidential election. It was published in our LRE Committee newsletter a few months ago and deserves another read…SO HERE IT IS!

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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 poplar 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.■

Recognizing the Past and Present Challenges Faced by Asian/Pacific Americans This Asian/Pacific American Heritage Month

BY MARYAM ARFEEN & SHARON EISEMAN

To Our Readership: This article originally appeared in the newsletter of the ISBA's Racial and Ethnic Minorities Committee in May 2020, which, of course, was an appropriate time because its subject matter was prompted by that month being designated as Asian/Pacific American History Month, as well as by the anti-Asian discrimination being expressed due to others blaming Asians for the coronavirus. Our Committee on Law Related Education for the Public, however, believes that any month, and day, any moment is a good time to share valuable information and perspectives about diverse ethnic, racial, cultural, religious, and gender groups and their histories, as well as challenges any and all of these and other self-identified groups face from time to time because of their/our differences and the sad reality that other groups and individuals choose to discriminate against them. We hope that you find the history, observations, and commentary in this piece both interesting and eye-opening.

Part 1: The Significance of Asian/Pacific American History Month: A History Lesson and an Opportunity to Honor this Community

By Maryam Arfeen

Asian/Pacific American Heritage Month ("APAHM") falls each year in the month of May. This past May, we celebrated the achievements and contributions of Americans who originate from the Asian continent, as well as from the Pacific Islands of Melanesia, Micronesia, and Polynesia.[1]

In this two-part article, we wish to highlight a few of the legal challenges faced by this diverse community over the course of American history, as well as the unfortunately steep increase in discriminatory conduct and harassment against members of this community during the coronavirus pandemic.

APAHM was designated as a month-long celebration in 1990 by President George H.W. Bush. The month of May was chosen in particular, as it corresponds with the arrival of the first Japanese immigrants to the United States in May of 1843, and, as it marks the anniversary of the completion (by mainly Chinese immigrant workers) of the American transcontinental railroad in May of 1869.[2]

Like other racial and ethnic minority groups, Asian/Pacific Americans have faced a long history of judicial and legislative inequity in this country.[3] For instance, in its 1854 ruling in *People v. Hall*, the California Supreme Court held that Chinese immigrants and their children, like "Indians" and "Negros" had no rights to testify against white citizens.[4] That case, which arose out of the murder of Chinese miner Ling Sing by George Hall, a white man in Nevada County, resulted in Mr. Hall walking free from a murder conviction. That result set a dangerous precedent for years to come.[5]

Then, from the 1850s through 1870, California passed a number of acts to discourage and prevent immigration of Chinese persons to the state and levied excessive taxes on persons of Chinese descent.[6] The anti-Chinese sentiment culminated with the passage of the Chinese Exclusion Act by Congress in 1882, the first U.S. Law to prevent immigration and naturalization solely on the basis of race.[7]

Subsequent court decisions were similarly injurious to Asian/Pacific Americans. In *Tazkao Ozawa v. United States*, which was decided in 1922, the Supreme Court held that Japanese persons were racially ineligible for citizenship, as they did not qualify as belonging to the "Caucasian" race.[8] A year later, in *United States v. Bhagat Singh*, the Supreme Court similarly ruled that people of Indian descent were not white and hence were ineligible for naturalization.[9]

Several decades later, in *Korematsu v. United States*, the Supreme Court held that President Roosevelt's executive order leading to the internment of Japanese Americans at concentration camps during World War II was not unconstitutional.[10]

Notably, *Korematsu* has not yet been officially overturned, though the Opinion was recently criticized by the Supreme Court in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018). In *Trump*, as readers may recall, the Supreme Court upheld Presidential Proclamation 9645, which had been signed by President Donald Trump, and which restricted travel into the country by people from several countries, including but not limited to, North Korea, as well as the West Asian, predominantly Muslim countries of Iran, Iraq, Syria, and Yemen.[11]

In the Opinion, the Court ruled that Presidential Proclamation 9645 did not exceed the textual limit on the President's authority, as afforded to the executive branch under the Immigration and Nationality Act, 8. U.S.C. § 1182 (f).[12] Justice Sotomayor, in her dissent, noted parallels between the case and *Korematsu*.[13] And though Justice Roberts wrote that he recognized that the forcible relocation of U.S. citizens to concentration camps on the basis of race

was objectively unlawful, he did not write that the *Trump* decision officially overruled *Korematsu*.[14]

While this summary of case law and legislative history is not exhaustive, we hope that it encourages readers to learn more about the legal history of the Asian/Pacific American community in this country.

Part 2: How Asian/Pacific Americans Are Being Dishonored Today

By Sharon Eiseman

Surely you have seen and perhaps even communicated to your loved ones, as well as colleagues and friends, the new "Mantra" that has taken hold of us as we've been in quarantine: "WE'RE ALL IN THIS TOGETHER". That statement is intended to be positive and make us feel better about our continuing isolation and the daily pronouncements of increasing deaths and new positive Coronavirus diagnoses, and to believe we are not "weathering this storm" alone. But for some, that concept is the polar opposite of what they have experienced and now routinely fear—and this is especially true of members of the Asian/Pacific American community who have become subjects of both physical and verbal assaults in cities across the nation and right here in Illinois.

The demonizing of individuals perceived to be from Asia (which covers a number of countries and cultures as noted in the first part of this article), is disturbing and disheartening. It is also frequently unlawful, though not always prosecuted. Such conduct in the form of verbal threats and slights, or even physical attacks, seems irrational. But it is happening. Given the fact that most white Americans are in this country because their ancestors migrated here from different countries for a better life, it is unacceptable that Asian/Pacific Americans are not only being treated as an undesirable "other" kind of immigrant, but also accused of being responsible for infecting the rest of the world with the COVID-19.

The stories of lawless assaults against Asian/Pacific Americans have been prolific, ranging from physical assaults in the form of spitting, to throwing liquids in faces, to shoving them, and even to yelling harassing epithets, such as "go home" or "go back where you belong." Some Asian/Pacific Americans have been loudly ridiculed as diseased. It is especially sad when the victim is a child. According to one of the reports, a male passenger on a train ordered an Asian child off the train and then pulled the child out of his seat. In some parts of the country, people appearing to be of Asian/Pacific American descent are not allowed to check into hotels, a Super 8 being one of the chains.

Closer to home, a Chinese-American man jogging on a trail in Naperville in early March was attacked by two women who spit on and threw sticks at him, telling him to "go back to China."[15] On April 22, the Naperville Sun reported a troubling incident at a Naperville City Council meeting where a resident described a group opposed to recreational cannabis sales as consisting of "Asian (mainly Chinese)" members whose motivations were questionable. That resident, during her remarks, also referred to Asian/Pacific Americans as "carpetbaggers."[16] The good news is that, this time, others at the meeting publicly condemned those words as "disparaging and insulting" and after being called upon to condemn such attacks, the City Council expressed support for an action plan to address the City's numerous racial incidents.

What can you do to oppose such conduct if you witness it directed toward an Asian/Pacific American—or other person of minority status—or hear or learn of such an incident in your community?

"If you see something, say something." If you are inclined to "do something," first assess whether you are in an otherwise safe environment and can identify an easy escape route if the situation escalates. Some suggest standing close to the victim to show your support. You can also make a report at your exit station to reflect the occurrence of such an incident, and recommend increasing police presence, or report harassing conduct you've witnessed to the manager at Customer Service if you are in a grocery store or a drugstore or a restaurant.

Also consider submitting a complaint, either in writing or by phone, to your ward or county official and ask that official to request that the Mayor or Board President or Chairman/Chairwoman, speak out against such hate conduct. *Sometimes*, people who feel inclined to spew hate may alter their public face when a strong leader calls for basic human tolerance, and respect and compassion for others. For certain, we must be all in this together to help combat this new and rising form of discrimination during the Pandemic and beyond and show our fellow residents they have our support.

REM hopes to be able to work with the leadership of the AABA (Asian American Bar Association of Chicago) to explore with them what means we can jointly pursue to keep this important issue front and center for our legal community, and to address and implement meaningful ways to disrupt the kinds of hurtful and hateful harassing conduct directed at the Asian/Pacific American community. ■

1. https://asianpacificheritage.gov/about/.
2. https://apaics.org/events/asian-pacific-american-heritage-month/.
3. https://asiasociety.org/education/asian-americans-then-and-now.
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