

# Senior Lawyers

The newsletter of the Illinois State Bar Association's Senior Lawyers Section

## A few words from the Chair

BY FRANK V. ARIANO

**A very happy, healthy and prosperous New Year to all Senior Lawyer Section members!**

Since we last talked, the Senior Lawyers Section Council, through its CLE & Technology committees, presented two excellent CLE programs targeting senior lawyers. Both were well received and, in fact, the Computer Workshop earned all 5 out of 5 evaluations on all speakers and the program. Recollecting back to my CLE committee days, I don't remember any program so well accepted. That said, however, because of small attendance and the apparent computer knowledge of the attendees, the Technology Committee will

begin work on a more advanced revision of the workshop for future presentations.

At our Mid-year meeting, the Council heard committee reports, reviewed and voted on ABA Model Rule 8.4, discussed newsletter articles for this and the remaining issue this year and heard more about a social event for the Council at the Annual Meeting. The next Council meeting is currently set for February 17, 2017, as a conference call only meeting. If you would like to "attend," please let me know and I will make the call-in instructions available. We value your interest and input.

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## Book review: *Lights Out*

BY GARY T. RAFOOL

In the October, 2016 issue of our Senior Lawyers' Section Council newsletter, Leonard F. Amari, a member of this Section Council, wrote an article entitled "Cyber Fraud and Cyber Security-What's this all about?" This article presented some of the concerns we should have about cyber fraud and its consequences in our law offices.

About the time I read Leonard's article, I was reading a book, which had recently been loaned to me by a friend, concerning cyber attacks on a much larger scale than

in our offices. This book, which will be the subject of this book review, and the newsletter article were, I am sure, meant to act as wake up calls for all of us about today's internet and how tragic events are now overshadowing many of the good things it was meant to bring to us.

While we do not like to reflect much, if at all, on "gloom and doom" theories or examples, I have nevertheless chosen Ted Koppel's 2015 book, *Lights Out*, for this book review.

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If you're getting this newsletter by postal mail and would prefer electronic delivery, just send an e-mail to Ann Boucher at [aboucher@isba.org](mailto:aboucher@isba.org)



## A few words from the Chair

CONTINUED FROM PAGE 1

We hope you will enjoy, and find useful, the following articles in this issue: Gary Rafool's review of "Lights Out" by Ted Koppel, Ed Schoenbaum's review of "The Anxious Lawyer" by Jean Cho and Karen Gifford, Leonard Amari's "Is there a "crisis" of law schools in America?" and Mike Maslanka's "Settling Parties (with Attorneys) Beware!" If you have any suggestions/requests for future articles that would be of interest to you, please let us know.

Normally, I would/should stop here, but you will hopefully forgive a brief return to my Technology Committee days. If any of you have followed our newsletters for the past few years, you know that I have attempted to give an (admittedly biased) review of each new Apple product, which I invariably purchase, upon release. Fortunately, Apple has a buy-back program which allows acquisition of Apple Store Credits for future "must haves"! It also allows you to free up a lot of storage space in your office/home!

This time it's the Apple Airpods. After a delayed release, I got my pair before Christmas but those ordering now have to wait for a few more weeks. The AirPods are bluetooth ear pods which fit comfortably in your ears with no wires—not even between them. They can be used one at a time (for phone calls or monaural recordings), or together for stereo. They come in a small case, about the size of an old cigarette lighter, which is also their charger. The batteries last about 5 hours on a charge. The case/charger holds up to 24 hours of charging for the AirPods, which can be done in as little as 15 minutes for a 3 hour charge. The case can be charged every few days, using the standard Apple charger cord.

The AirPods sync with one tap when you put them into your ears and can be used with your iPhone, iPad, Apple Watch and/or Mac (as well as other blue tooth devices). They "know" when they are in your ears and whether you are using one

or both. Phone calls come in automatically with very good sound quality, along with music or any other recording. Siri (Apple's "assistant") is accessed on the pods by a simple double tap. Siri will then make calls, turn up/down volume, give map directions or play music, etc. Because it has its own (W1) chip, the AirPods know when you are talking or listening, and pause when you take them out to extend the battery life. And did I mention, they stay in your ears, even when running (or as I can attest, downhill skiing, cross-country skiing, snowshoeing, bike riding or taking your dog for a walk)?! I could go on about the true greatness of this technology, but you need to get on to the other (and more valuable) articles in this newsletter.

Resuming the chair role, be sure to avail yourselves of our ListServ. Please don't feel limited to substantive inquiries or comments. We, as seasoned members of the Bar, are always happy to give you the benefit of our experiences in the Practice, or any other area of interest to our Section members. Enjoy the new year! ■



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## Senior Lawyers

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## Book review: *Lights Out*

CONTINUED FROM PAGE 1

Koppel, as you might remember, hosted the television program “Nightline” on ABC television from 1980 to 2005. The book is available in hard cover (249 pages), paper back, electronic and audio versions.

The book points out our interdependency on three major electrical grids for generating and distributing electricity throughout the continental United States. In other words, electrical power is generated in one location and sent over a managed transmission network and then passed on to yet another company for final distribution to us, as consumers.

As you might expect, there is large scale competition for our business up and down these lines, which in turn encourages many hands to become involved. Of course each hand involved is very much dependent on several computers. All of this tends to make these grids vulnerable because, within any one of our three grids, almost all operational phases of thousands of power companies are interconnected. This makes any one of these three grids vulnerable to cyber attacks not only by countries such as North Korea, China, Russia and Iran, but also by individual hackers using the internet as a weapons system to disrupt our way of life.

The author delves into the almost unimaginable scenario of not having electricity for our homes, businesses, gas pumps, travel, machinery, military, purification of water, collecting garbage, and communications, just to mention a few of our necessities dependent on electrical power. He also predicts that, after any electrical cyber attack, such calamities will continue not for just hours, but for days, weeks and even months. This will basically bring our country to a standstill, making us very vulnerable to sabotage and invasion without firing a single shot or dropping any bombs. This complete blackout would also encourage looting and crimes from within.

A couple of examples were given of similar, but smaller, cyber attacks. The United States and Israel cyber attacked

Iran’s nuclear program in 2008, and North Korea cyber attacked Sony Pictures because of the satirical portrayal of its President, Kim Jong Un, in Sony’s movie “The Interview.”

Koppel, after interviewing several government officials, particularly in Homeland Security and FEMA, theorizes that there is very little the federal government can do to prevent such attacks and/or to deal with their aftermath, pointing to the delays and lack of assistance given the victims of Hurricane Katrina.

Because of the government’s perceived inability to deal with national tragedies and perhaps to emphasize the so called ants and grasshopper fable, Koppel devotes three chapters in this book to people who are called “Preppers”. These people have been preparing for years for just such catastrophic events by storing food, water, heating fuel, generators, clothing, bedding, gasoline, and even building lakes stocked with fish.

The Preppers have also accumulated firearms and ammunition, not only for hunting, but also for protecting themselves from invading enemies and looters, as well as those who failed to prepare for disasters. This is reminiscent of the bomb shelter building in the 1950s and 1960s, and the question of whether one was justified in killing someone trying to break into their well-stocked bomb shelter during a crisis.

The author also devotes another three chapters to detailing and admiring the preparations of the Church of Jesus Christ of Latter-Day Saints and how the Mormons could help their members throughout the world. This church’s ability to obtain and distribute necessities is comparable to that of Wal Mart and Costco.

Obviously, this book has become quite controversial among power company executives and employees, who claim to have security in place to prevent such cyber attacks. Some also claim not to have been interviewed as part of Mr. Koppel’s research before writing and publishing the book.

Personally, I would not be too prone to share or disclose what means I had in place for protecting against cyber attacks, even if I were contacted for an interview for this book.

Because of the hacking and disclosures that took place during the last presidential election by Wiki Leaks, Russia and whoever, I think this book reveals many concerns, even if some of it has to be taken with a grain of salt, about our vulnerability to cyber attacks and what, if anything, we or the government can do for us during and after any such attack(s). Hopefully, we will never have to experience any of this to find out for sure. ■

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# Book review of *The Anxious Lawyer*

BY HON. EDWARD J. SCHOENBAUM

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**This book, subtitled “An 8-Week Guide to a Joyful and Satisfying Law Practice Through Mindfulness and Meditation,”** was authored by Jeena Cho and Karen Gifford. This is an excellent book by two attorneys who have firsthand knowledge of the problems facing us and the fantastic possible rewards of practice.

Each chapter is to be read and practiced for one week; each ends with a way to cultivate or implement what was read, instructions on how to practice, and a Meditation Log to keep track of how and how much time you practiced that week.

The 8 weeks are broken down as follows: 1. Beginning to Meditate 2. Mindfulness 3. Clarity 4. Compassion Toward Others 5. Self-Compassion 6. Mantra Repetition 7. Heartfulness 8. Gratitude

“Meditation and its related practices can be part of an approach to a life and career that includes achievement, constructive engagement, expanding self-knowledge, and personal fulfillment.”

Common reasons for meditation are: “coping with stress or anxiety management, increasing focus and productivity, letting go of unwanted habits, dealing with difficult events, and seeking meaning and self-knowledge.”

The focus is on three basic meditative practices: Mindfulness-bringing our attention to what is happening in the moment; Metta-offering good wishes or “loving-kindness” to ourselves and others; and Mantra-focusing our attention by repeating a word or phrase.

The authors provide a general overview of the concepts behind meditation and related practices, the science behind them, and the nuts and bolts of cultivating a meditation practice through an eight-week self-guided program. It is a workbook so you must do the work as you read.

The key is “spending quality time with your own mind.” Start with “a simple breathing technique.” “The breath is: always in the present. . . a physical reminder and

practical example of how all are connected . . . reminds us we don’t have to do everything.”

“Virtually every religion includes a practice that involves sitting quietly with the eyes closed or softly focused . . . may be called prayer, meditation, or some other type of contemplation, but all are designed to quiet the mind.”

A meditation log is at the end of each chapter where you record each time you meditate, the date, time of day and for how long, and record a few reflections on your meditation.

“Meditation is a way of getting to know yourself better and any transformation that meditation brings comes from that self-knowledge.”

Meditation puts you in better touch with what you want for your life.

“Anything you decide to do as a result of that knowledge will be the result of your judgment and will reflect your values, temperament and preferences.”

A common introductory mindfulness practice is a simple body scan where you direct your attention to the physical sensations of various parts of your body, moving your tension slowly over your whole body-it is very relaxing.

Mindfulness describes the fundamental skill of meditation, which is paying attention to what is happening in the moment.

During mindfulness, you get a chance to see more clearly because you are not distracted by other things. The last moment is when your mind returns to awareness and is known as “the moment of choice” when you are simply aware of yourself and ask yourself to focus right here and now, known as “a moment of clarity.”

Mindfulness has also been described as “spirituality, commonness, or being nice, being a thoughtful person.” In this book, it means something very specific: “mindfulness is a particular state of mind, a way of being, a way to engage with the

world. Present moment without judgment or preference.”

“Mindfulness is the practice of being fully engaged in being in our life instead of escaping to the past or the future or the future mindfulness.”

“Establishing a meditation practice brings with it a wide range of physical benefits including ability to lower blood pressure and improve heart health.” Its effect is well known by the American Heart Association. “Meditation has been used effectively to treat a variety of other disorders, including insomnia, social anxiety disorder, depression, chronic pain, eating disorders, and addiction.”

Choosing a mantra or deciding what mantra to use can be as simple or as complex as you like. The purpose of helping your mind settle by giving your mind something to do is not affected by the word or phrase you use. Just pick a word or phrase that is pleasant for you to work with.

Heartfulness is short for many attributes: “courage, strength, compassion, kindness, gratitude, and generosity.”

“In many Asian languages the word for mind and the word for heart are the same, so mindfulness could easily be called heartfulness.”

Many people finish an introductory course in meditation such as in this book feeling absolutely great. They have mastered basic techniques by practicing every day for 8 weeks. The first taste of clarity from using this practice can be intoxicating.

I could have pulled many other great quotes from this book, but my review would have run 25 pages.

This book focuses on lawyers engaging in meditation. It also helps us as human beings outside of any particular role we may play.

Some additional research links:

<<https://www.mindandlife.org>>

<<http://www.gratefulness.org>>

<<http://contemplativeoutreach.org>>  
<<http://dharma.org>>

The book concludes with 5 pages of notes which refer to articles in journals that contain a link to go to the entire article.

Author's note: After reading this excellent book and practicing the exercises suggested, I received an email from Jenna Cho suggesting that I form or join a book club to work with other people through this unbelievably great book. As I was trying

to find a book club, I received another email from her inviting me to sign up for a webcast CLE program. Yesterday was my first webcast and it was fantastic.

I highly recommend this book and its program. ■

## Upcoming CLE programs

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### March

**Wednesday, 3-1-27 – Webcast—**A New Summary Judgment Standard for Discrimination Cases: *Ortiz v Werner Enterprises, Inc.* Presented by the Labor & Employment Section. 1:00 – 2:00 pm.

**Thursday, 3-2-17 – Webinar—**Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00 – 1:00 pm.

**Thursday, 03-02-17—Chicago, ISBA Regional Office—**Family Law Table Clinic Series—Session 4. Presented by Family Law.

**Friday, 03-03-17- Chicago, ISBA Regional Office & Webcast—**8th Annual Animal Law Conference. Presented by Animal Law. 9:00 a.m. – 5:00 p.m.

**Wednesday, 03-08 – Live Webcast—**Life After High School: Post-Secondary Transition Options and Education Protections for Young Adults with Disabilities. Presented by the Standing Committee for Disability Law; Co-sponsored by the Education Law Section. 10:00 am – 12:00 pm.

**Wednesday, 03-08 – Webinar—**Engagement Letters, Timesheets & Billing Tips. Presented by the Committee on Law Office Management and Economics. 12:00 pm – 1:00 pm.

**Thursday, 03-09-17 – Webinar—**Advanced Tips for Enhanced Legal

Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00 – 1:00 pm

**Thursday, 03-09 and Friday, 03-10—New Orleans—**Family Law Update 2017: A French Quarter Festival. Presented by Family Law. Thursday: 12:00 pm – 5:45 pm; Reception 5:45- 7:00 pm. Friday: 9:00 am – 5:00 pm.

**Tuesday, 03-14-17- Webinar—**Matter Management Software- Why Outlook Isn't Good Enough. Practice Toolbox Series. 12:00 -1:00 p.m.

**Wednesday, 03-15-17- Live Webcast—**Economic Development in Your Community: Learn from the Leaders. Presented by Local Government Law Section. 1:00 pm – 3:00 pm.

**Thursday, 3-16-17 – Webinar—**Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00 – 1:00 pm.

**Wednesday, 03-22-17- Live Webcast—**Housing Justice v. Housing Injustice: How Unfair Housing Practices Keep Segregation Intact. Part 3: Mortgage Fraud, Subprime Lenders, and Foreclosure Crisis. Presented by Committee on Racial and Ethnic Minorities; multiple cosponsors (see agenda). 1:00 – 3:00 p.m.

**Thursday, 03-23-17 – Live Webcast—**Immigration Hearings: How to Get the Job

Done. Presented by the Administrative Law Section; Co-sponsored by the International and Immigration Law Section. 1:00 – 2:00 pm.

**Friday, 03-24-17- Chicago, ISBA Regional Office—**Jury Selection Techniques and the Use of Jury Focus Groups. Presented by Labor and Employment. TIME TBD—full day.

**Tuesday, 03-28-17- Webinar—**Access Your Documents from Anywhere and Share Them with Others. Practice Toolbox Series. 12:00 -1:00 p.m.

**Wednesday, 03-29-17- Chicago, ISBA Regional Office & Live Webcast—**Professional Responsibility and Ethics—Spring 2017. Presented by General Practice. 12:50 p.m. – 5:00 p.m.

**Friday, 03-31-2016 – iWireless Center, Moline—**Solo and Small Firm Practice Institute Series: A Balancing Act: Technology Tips and Maximizing Your Profit. ALL DAY.

### April

**Thursday, 04-06-17- Chicago, ISBA Regional Office—**Housing Justice v. Housing Injustice: How Unfair Housing Practices Keep Segregation Intact. Part 4: Resources for Rebuilding. Presented by REM; multiple cosponsors (see agenda). 1:00 – 5:00 p.m. (program). 5:00 – 6:00 p.m. (reception).

**Friday, 04-07-17—NIU, Hoffman Estates—**DUI and Traffic Law Updates—

Spring 2017. Presented by Traffic Law and Courts. 8:55 – 4:00.

**Tuesday, 04-11-17- Webinar**—TBD.  
Practice Toolbox Series. 12:00 -1:00 p.m.

**Wednesday, 04-12-17 – Chicago Regional Office**—Nuts and Bolts of Illinois Administrative Hearings. Presented by the Administrative Law Section. 12:45 – 4:00 pm.

**Wednesday, 04-12-17 – Live Webcast**—Nuts and Bolts of Illinois Administrative Hearings. Presented by the Administrative Law Section. 12:45 – 4:00 pm.

**Wednesday, 04-12-17 – Chicago Regional Office**—Nuts and Bolts of Illinois Administrative Hearings. Presented by the Administrative Law Section. 12:45 – 4:00 pm.

**Wednesday, 04-12-17 – Live Webcast**—Nuts and Bolts of Illinois Administrative Hearings. Presented by the Administrative Law Section. 12:45 – 4:00 pm.

**Thursday, 04-13-17 – Chicago Regional Office** —2017 Amendments to the Illinois Limited Liability Company Act: What You Need to Know. Presented by the Business & Securities Section; co-sponsored by the Institute of Illinois Business Law. 12:45 – 5:00 pm.

**Thursday, 04-13-17 – Live Webcast**—2017 Amendments to the Illinois Limited Liability Company Act: What You Need to Know. Presented by the Business & Securities Section; co-sponsored by the Institute of Illinois Business Law. 12:45 – 5:00 pm.

**Thursday, 04-13-17 – Chicago Regional Office**—IJC/ISBA/CCBA Joint CLE Program. 5:30-7:00 p.m.

**Wednesday, 04-19 to Friday, 04-21—Starved Rock State Park**—Allerton Conference—Title TBD. Presented by Civil Practice and Procedure. Wednesday: 12:00 p.m. – TBD. Thursday: TBD. Friday: TBD- 12:00 p.m.

**Tuesday, 04-25-17- Webinar.** TBD.  
Practice Toolbox Series. 12:00 -1:00 p.m.

**Thursday – Friday, 04-27-28 – Chicago, ISBA Regional Office**—4th Annual Elder Law Bootcamp: Basics and Beyond. Presented by the Elder Law Section, Co-sponsored by the Employee Benefits Section, the General Practice Section, the International & Immigration Law Section, the Labor & Employment Section, the Legal Technology Committee, the Military Affairs Committee, the Real Estate Law Section and the Senior Lawyers Section. 8:45 a.m. – 4:45 p.m. each day.

## May

**Wednesday, 05-03-17 Chicago, ISBA Regional Office Live Webcast**—The First Hundred Days and Beyond: Labor & Employment Law Developments Under Trump. Presented by Corporate Law. 12 – 1 p.m.

**Thursday –Friday, 05-04-17 and 05-05-17 – Chicago, ISBA Regional Office**—16th Annual Environmental Law Conference. Presented by the Environmental Law Section. 8:00 – 4:45 Thursday with reception until 6:00. 8 :00 – 1:00 pm Friday.

**Tuesday, 05-09-17- Webinar**—TBD.  
Practice Toolbox Series. 12:00 -1:00 p.m.

**Wednesday, 05-10-17- Chicago, ISBA Regional Office** —Settlement in Federal Court Cases. Presented by the Federal Civil Practice Section. 1:00 pm – 5:00 pm.

**Friday, 05-12-17— Chicago, ISBA Regional Office**—Civil Practice & Procedure: Trial Practice 2017. Presented by the Civil Practice & Procedure Section. 8:50 am – 5:00 pm.

**Friday, 05-12-17— Live Webcast**— Civil Practice & Procedure: Trial Practice 2017. Presented by the Civil Practice & Procedure Section. 8:50 am – 5:00 pm.

**Wednesday, 05-17-17 – Chicago, ISBA Regional Office (Room C only)**—

Innovations in Mental Health Law. Presented by the Mental Health Section. 9:00 a.m. – 12:30 p.m.

**Wednesday, 05-17-17 – Chicago, ISBA Regional Office WEBCAST**—Innovations in Mental Health Law. Presented by the Mental Health Section. 9:00 a.m. – 12:30 p.m.

**Thursday, 05-18-17**— Lombard, Lindner Conference Center—Litigation and the Real Estate Practitioner. Presented by the Real Estate Law Section. 8:30 am - 4:30 pm.

**Friday, 05-19-17 – Chicago, ISBA Regional Office**—How Not To Throw Away Your Shot at Appeal – Protecting and Preserving the Record for Review. Presented by Administrative Law. Co-Sponsored by the Illinois Association of Administrative Law Judges. 12:00 pm – 1:30 pm.

**Wednesday, 05-31-17 – Chicago Regional Office**—Master Series - Ethics. All Day.

## June

**Friday, 06-02-2016—NIU Conference Center, Naperville**—Solo and Small Firm. Title TBD. ALL DAY.

**Tuesday, 06-13-17- Webinar**—TBD.  
Practice Toolbox Series. 12:00 -1:00 p.m.

**Wednesday, 06-14-17 – Live Webcast**— Implicit Bias: How it Impacts the Legal Workplace and Courtroom Dynamics. Presented by the ISBA Committee on Racial and Ethnic Minorities and the Law. 12:00 -2:00 pm.

**Wednesday, 06-21-2017—Chicago, ISBA Regional Office**—Title TBD- Marty Latz Negotiations. Master Series Presented by the ISBA.

**Wednesday, 06-21-2017—Live Webcast**—Title TBD- Marty Latz Negotiations. Master Series Presented by the ISBA. Time TBD. ■

# Settling parties (with attorneys) beware!

BY MICHAEL J. MASLANKA

A recent opinion by the U. S. Seventh Circuit Court of Appeals, in *Williams v. Office of the Chief Judge of Cook County, Illinois and Michael Rohan*, Nos. 15-2325 and 15-2554, decided on October 11, 2016, contains a portion which I, and I believe others, would find disturbing.

Here, an attorney for a former Cook County probation officer agreed with an attorney for the Office of the Chief Judge of Cook County that the probation officer's return to work would be on a date certain. When the employee returned to work on that date, she was told that her employment had been terminated. She sued the Office of the Chief Judge of Cook County on various theories. She lost on all her claims. Summary judgment was affirmed.

In part, the employee argued that the attorney bound the Office of the Chief Judge to the specific, agreed upon employment return date. The Seventh Circuit reviewed the question of whether the attorney was actually authorized to bind the Office of the Chief Judge to such a promise. One would think that the attorney would and should have such authority. The Court stated that "When settlements are made out of court, Illinois law does not presume that an attorney has authority to bind his client and assigns the burden of proof to that party alleging the authority." The Court went on, stating that "In the absence of proof of express authority, an attorney's representations are not binding when they are later invoked against his client." These statements are disturbing to a degree, inasmuch as one would think that the attorney would not be settling a case unless he or she first had the authority to do so. The Court decided that the employee could not succeed on her breach of contract or breach of promise theory.

The employee also raised an estoppel theory and argued that she reasonably relied on the attorney's promise that she could return to work on a date certain

and was detrimentally impacted as a result of the employer denying her the employment. The Seventh Circuit said that various factors must be demonstrated in order to obtain equitable estoppel against a municipality, and that equitable estoppel is generally disfavored against municipalities, "unless it is necessary to prevent fraud and injustice." The Court cited an Illinois Appellate Court case and said that "Representations by an attorney have been held insufficient to bind a municipality under the doctrine of estoppel." The court stated that there are some exceptions if the circumstances are unjust enough to warrant estoppel. It admitted that it is hard to draw a clear line to delineate when injustice is severe enough to warrant estoppel and felt that, here, the circumstances were not to that level. The court felt that the plaintiff presented no evidence that the attorney's misrepresentation was ratified

by his client, the Office of the Chief Judge. The Court also said that the attorney's promises regarding the employee's return date needed to be seen as *ultra vires*, meaning, beyond his authority. The court found that the plaintiff was misled by the defendant's attorney, but not by the defendant. Further, it empathized that this case presented a close question, but that estoppel was not appropriate under the factual circumstances before it.

The case may be reheard, or its decision modified or appealed. However, based on the various statements in the opinion, all attorneys must be very wary of entering into settlement negotiations with the other party's attorney and expecting any resulting agreement to be a binding contract if there is a chance that the other attorney does not have authority to negotiate certain terms on behalf of his or her client. ■




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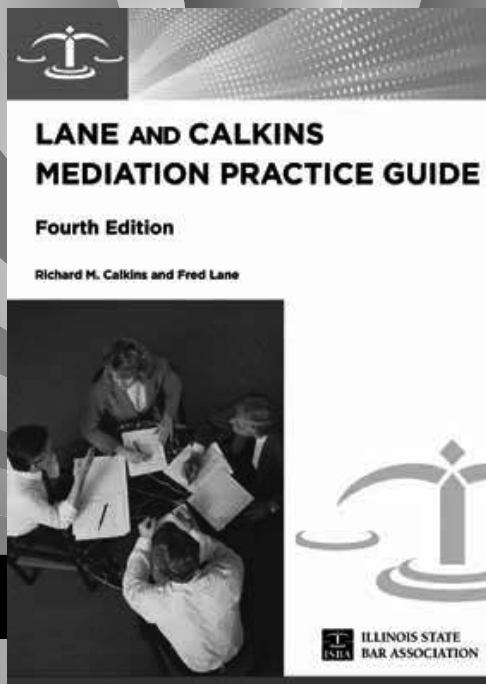
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## Is there a 'crisis' of law schools in America?

CONTINUED FROM PAGE 12

### Costs

Since approximately 1985, tuition in private law schools has increased by 161.5%, in real inflation adjusted terms, and resident tuition has increased by 396.8% for public law schools.

Here are some examples: The cost of attending the University of Illinois Law School increased from about \$7,000 annually to about \$45,000 during this period. Texas increased from about \$5,000 to about \$28,000. Minnesota increased from about \$12,000 annually to about \$35,000. Looking at it in a different statistical way, at John Marshall, the increase was from \$220 per credit hour in 1985 to \$1,540 per credit hour presently.

Professor Campos indicates, in his treatise, that the estimated total cost of attendance for most law schools is now more than \$150,000, and tops \$200,000 at many schools. That cost is barely manageable. For example, my present law clerk owes \$250,000 for her combined college and law school education. In choosing the two annually awarded \$10,000 John Marshall scholarship recipients (given to 2L students) of the Lupel & Amari scholarships, most of the applicants owe upwards of \$80,000 – and these are second year/third semester students.

Thus the perception of high costs for a law school education is accurate. Coupled with a terrible employment market, there is a crisis. The crisis has been a hot topic in legal publications and the news media.<sup>2</sup> Why has law school become so expensive? The following are the generally accepted reasons:

- Declines in student-faculty ratios – demanded by the ABA in its accreditation process, now dictated to be 20 to 1 or less, student to teacher;
- inflationary and rising costs of faculty, and especially tenured faculty;
- the creation and cost of clinics in the legal education process;
- the expansion and rising costs

of competent and experienced administrative personnel;

- advances and high cost of 21<sup>st</sup> century technology; and
- experienced administrative professionals and expensive capital construction projects.

As for this declining faculty-student ratios, John Marshall is a good example. In the later 1960s/early 1970s, the faculty consisted of prominent and respected Chicago practitioners, leaders in their fields of tort, labor, immigration, IP and the rest. For the most part, they were adjunct. And those wishing to teach in a Chicago law school were many. I was an adjunct at my *alma mater* from 1968 to 1974, paid about \$1,500 per course, and with no other benefits. Many practitioners call me today about adjunct faculty opportunities at John Marshall. There is no shortage of competent attorneys who are anxious to teach a class or two as a complement to their practice.

When I became a trustee at John Marshall, in 2000, enrollments and applications were the highest ever and the school had to comply with the ABA ratio demand of 20 to 1 student to faculty. In a few years, the school finally reached that ratio. Of course, over the next ten years, many, probably most, of these new “ratioed” teachers became tenured, fixing higher teacher costs well into the future. We probably all know what job security and other tenure benefits are involved with being tenured.

Before the bubble “burst,” and to accommodate the increasing number of students, and to be competitive in order to attract them, schools had to increase their facilities, not only larger but also better. In addition, schools offered much greater scholarship opportunities. All of this at substantial cost. In addition, there was the cost of improving and expanding the schools’ IT capabilities, with attendant equipment, software and on-premises IT professionals.

Starting in 2000, to satisfy these higher enrollment opportunity demands, John Marshall invested more than 150 million dollars in capital improvements. On campus students totaled almost 1,800, the 14<sup>th</sup> largest law school in the country. The school created a state of the art facility, occupying almost a full block of lien-free real estate in downtown Chicago. The facilities and location compared favorably with any of the other eight law schools in Illinois.

### Diminishing employment opportunities

Lawrence E. Mitchell, the Dean of Case Western Reserve’s Law School, observed about the job market for new lawyers: “it’s bad.” “Bad” means that most students will have trouble finding a first job, especially in law firms. Historically, until the beginning of the crisis, about 80% of law graduates found employment as a lawyer within nine months of graduation. Dean Mitchell points out that, in 1998, 55% of law graduates started a job in law. He says that, in 2011, that number was 50% and it has been a weak market ever since. Professor Campos argues in his treatise that the more realistic figure for 2011 is 40%. And he points out that 26% of all jobs taken by these graduates (including non-legal jobs) were temporary positions.

### Summary

Consider the quote from Professor Campos again:

The ongoing contraction in the employment market for new lawyers has combined with the continuing increase in the cost of legal education to produce what many now recognize as a genuine crisis for both law schools and the legal profession.

So yes, these are difficult times for American law schools. Is it a crisis? It depends on how draconian one defines crisis. Are there countermeasures? John

Marshall, with its great board (with all due modesty), made up for the most part of alumni who are practicing lawyers and judges, downsized and righted its ship. It got lean and mean. Since 2007, John Marshall has decreased from a 1,700+ student body to just over 900. It bought out, at considerable cost, many of its tenured faculty, mostly older teachers. It leased out much of its now unnecessary space and examined its budget, eliminating as much fat and surplus as possible. Keep in mind that John Marshall is a totally tuition driven

institution. Its annual budget is zero-sum (even with a little surplus), having no debt, almost a full block of lien-free downtown Chicago real estate, state of the art facilities, an energetic administration and faculty, and a recently hired dynamic new dean, Darby Dickerson. She understands what the realities are in law school education today.

Some law schools are closing; some are at risk of losing accreditation; and there are some who are merging. It will be interesting to follow these developments in

the years ahead. ■

[The author wishes to thank Anthony Pontillo, 2L at John Marshall, for his research assistance in the production of this article.]

1. The Crisis of the American Law School, Paul Campos, University of Colorado.

2. For example, see: "Is Law School a Losing Game?" New York Times, January 8, 2011; "Law School Loses its Allure, Jobs at Firms are Scarce" Wall Street Journal, March 7, 2011; "Even lawyers Struggle to Find Jobs These Days" CBS Evening News, March 8, 2012.



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# Is there a 'crisis' of law schools in America?

BY LEONARD F. AMARI

## Crisis

We've heard, generally, in the hallways of our courthouses, at bar or alumni association meetings or casually among lawyers at lunch, that law schools today are in trouble. It has been mentioned so often and so casually that it has become a "given." This article asks whether there is a true crisis of law schools in America and, if so, to what degree and why.

Much of this article relies upon an article by Paul Campos, of the University of Colorado, for facts, insight and perspectives.<sup>1</sup> He states, succinctly:

The ongoing contraction in the employment market for new lawyers has combined with the

continuing increase in the cost of legal education to produce what many now recognize as a genuine crisis for both law schools and the legal profession.

Also, please be aware that this article is written by someone with a modicum of involvement and experience with this issue. The author is a 17-year board trustee of the John Marshall Law School, the last ten as its President. John Marshall is one of only approximately six totally independent, stand-alone law schools of the approximate 226 or so law schools in America.

## Diminishing enrollments

In a study by Robert Zemsky, Professor of Education at the University

of Pennsylvania, mapping a contracting market, the author analyzed 171 law schools and found that enrollment dropped by 21% at private law schools between 2011 and 2015. At public law schools, enrollment dropped by 18%. In the academic year 2009-2010, total law school enrollment at the 206 or so ABA accredited law schools was 154,549. 44,004 JDs and LLBs were awarded. Between 2010 and 2012, the number of applicants to ABA accredited schools fell from 87,900 to approximately 66,500. Of course, the reasons for such significant declines in the applicant pool are consumer generated, i.e. the high cost of a legal education and the diminishing job market for new lawyers.

*Continued on page 10*