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ILLINOIS STATE BAR ASSOCIATION

STANDING COMMITTEE ON GOVERNMENT LAWYERS

The newsletter of the ISBA's Standing Committee on Government Lawyers

From the chair

By Marc Christopher Loro, Springfield

For my last column, I would like to take up one of President Lavin's themes for this year and pay tribute to my mentors. First and foremost, whatever integrity and ethical standards I have I owe to my parents, **Anthony and Frances Loro.** Their example was one of faith, devotion, commitment, sacrifice, fairness and honesty. I have always believed that we do not learn ethics and integrity from law books and professors. If you went into law school as an honest person, then you came out an honest lawyer. The decision by the Committee on Character and Fitness that you have the requisite integrity to practice law is an accident (or, perhaps better said, a blessing) of birth, and you should give the credit to your parents.

I am the product of two large, close, and loud families, both of whom are very proud of their full-blooded, working-class Italian heritage. Mostly grouped in the Chicago area, we spent time with aunts, uncles and cousins. This was both a blessing and, at times, a curse. But the benefits far outweighed the disadvantages. Mostly, I saw honest people doing the best that they could for their families with the gifts that God gave them. Indeed, I felt blessed that my siblings and I grew up with essentially two sets of parents, so close were we to one of my mother's sisters and her husband, **Ralph and Julia Hudson**. Their two sons and I were the first lawyers in the family. We since have been followed by at least two more cousins. I cannot help but think that our grandparents, who did not enjoy the benefits of a formal education, are very proud of us.

I am also the product of a very good public education. I remember many of my grade and high school teachers with great fondness and respect. I distinctly remember one of my best teachers, **Mr. Arthur Murphy**, a health and physical education teacher, telling us one day in health class that, by the time a child started kindergarten at age 5, "he's made." In other words, his or her character and personality had been formed. From Mr. Murphy I also learned the importance of discipline and hard work in achieving what were for me, at that time, mostly athletic goals. I went to high school wanting most of all to succeed at basketball. I never came close to achieving that goal, but what I learned from Mr. Murphy has served me well to this very day. My other favorite teacher in grade school was **Mr. Ernest Neokos**, a civics and social studies teacher. It was in his classes that I discovered my interest in things political, historical, and constitutional. One of the things that Mr. Neokos taught us was that if we did not know the answer to a question, then we should "look it up." I think of this wise advice at least once every day.

I had several fine teachers in high school, whom I think of often: **Ms. Armer, Mr. Berti, Mr. Woll, Mr. Landy, Mr. Severson**. Some of them have passed on, I'm certain, but Elmwood Park High School celebrates its 50th anniversary this year, and I hope to see some of them at the festivities planned for this October and thank them properly for their time and commitment.

When I left high school I knew that I wanted to be a lawyer, so one of the first things that I did when I arrived on the campus of the Illinois State University was to go to the Department of Political Science to find out if there was a pre-law program or advisor. I was directed to **Dr. Thomas Eimermann**. It was years later that I learned that my first week on campus was also Dr. Eimermann's first week on campus, as he was fresh out of the University of Illinois graduate school. From Dr. Eimermann I learned about judicial process, constitutional law, and how to brief a case. We became friends and remain so to this day.

I thought that Dr. Eimermann had prepared me well for the grind of law school, but nothing really prepares you for law school. I had several fine professors at Washington University, but what I remember most fondly are the friends that I made while I was at Wash U. I caught a break during my second year when I was hired as a summer intern in the McLean County State's Attorney's Office by State's Attorney **Paul R. Welch**, a Wash U graduate. The 711 Program was one of the greatest learning

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experiences of my life. It was made possible by the generosity and patience of Assistant State's Attorneys like **Danny Leifel, Charles Reynard, and Richard Wagner**. When the new State's Attorney of McLean County, **Ronald C. Dozier**, hired me as an ASA in November 1977 (at the awesome salary of $12,000 per year), I was able to take over the Traffic Division (a one-person job back then) by the end of my first full week in the office.

While I felt comfortable in the courtroom, so long as I was not in front of a jury, I was by no means competent. I depended on Messrs. Leifel, Reynard, and Wagner to get me through the day. I would stop them in the hallways of the courthouse between court appearances, or over the lunch hour, or at the end of the day, to solicit their advice. They never hesitated to help. My good friend Richard Wagner says that it took him five years of being in a courtroom every day before he knew that he could handle any situation that might confront him. Unfortunately, I left the State's Attorney Office before reaching that milestone.

When I was hired by the General Counsel to the Secretary of State, **Philip S. Howe**, to help out with Secretary Jim Edgar's fledgling DUI Program, I knew absolutely no one else in Springfield. I knew even less about the Secretary of State's Office and administrative hearings. But once again I caught a break, because I landed in an office that was staffed by two excellent and experienced lawyers, **Jay L. Mesi** and **Frank Shaw**, and ably assisted by their administrative assistant, **Ms. Cathy O'Hara**. Even though I replaced their good friend, they took me in, taught me the Vehicle Code and how to conduct a hearing, and always answered any question that I had. I came to believe that I was meant to be here. The first day on the job I found out that Mr. Mesi and I both grew up in Elmwood Park. Mr. Mesi, Ms. O'Hara (now Ms. Milby) and I are still together. Most important and most appreciated is not that they made my job easier, but they also made me part of their families.

Whatever value and credibility that I have as a lawyer is not only the result of my years of study and hard work, but also the shared knowledge, patience, and generosity of time and spirit of all of these good people. For this, and for making life's journey a worthwhile and interesting adventure, I will always be grateful.

So, take the time to thank your mentors and be one to another lawyer.

Open Meetings Act—A convenient place lies somewhere between a broom closet and a football stadium

By John H. Brechin, Addison, IL

Gerwin v. Livingston County Board, 280 Ill. Dec. 485 (2003)

Gerwin involved an action by a citizen alleging that a meeting held by the defendant was in violation of the Open Meetings Act because it held a meeting at a location that was not convenient to the public. The Open Meetings Act requires that all meetings "shall be held at specified times and places which are convenient and open to the public." The trial court granted motions to dismiss the Complaint, which upon appeal was reversed since plaintiff stated a cause of action.

The room where the meeting was held apparently had a capacity of 49 persons under the fire code. The Complaint alleged that more than 150 people attempted to attend the meeting. In addition, it was alleged that the defendant knew at least seven (7) days in advance of the meeting that large numbers of the public would like to attend and yet defendant made no arrangements to accommodate prospective attendees.

The appellate court held that plaintiffs have pleaded that the meeting was not entirely open, at least to the extent of plaintiff's allegation that the defendant gave preferential admission to supporters of the landfill expansion under discussion. The trial court further held that nullification of the vote taken at that meeting is a remedy discretionary with the trial court. The court found no cases to assist it in determining the definition of "convenient," but noted that the dictionary definition of "convenient" means "suited to personal comfort or to easy performance or affording accommodation or advantage." It further noted that the concept of public convenience seems to imply a rule of reasonableness, not absolute accessibility but reasonable accessibility. "In the present case a convenient meeting place lies somewhere between the extremes of a broom closet and a football stadium. Just where it lay on that spectrum was an issue of fact that the trial court should not have resolved on the pleadings." The appellate court thus reversed the trial court.

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Open Meetings Act—Right to participate

By John H. Brechin, Addison, IL

Rowe v. The City of Cocoa, FL, 11th Cir.(1-28-04)

The City of Cocoa enacted regulations limiting the right of nonresidents to speak during its city council meetings. The regulations in part stated:

> In its discretion, the Council may set aside up to 30 minutes of each regular meeting for delegations. The purpose of such delegation is for any resident or taxpayer of the city to make his/her views known to the city council upon any subject of general or public interest.
>
> The council recognizes the

delegation is for the purpose of legitimate inquiries and discussion by the public and not for the purpose of advancing arguments or repetitious questions concerning matters which the Council believes to be closed or are not a general public concern. The Councils shall have the right at any delegation to decline to hear any person or any subject matter upon proper motion and majority vote of the Council.

The regulations further provided that the Council by majority vote could decline to hear any person who is not a resident or taxpayer of the City subject to certain exceptions such as if the person was a user of the City's water or sewer system. Plaintiff Rowe was not a resident of the City of Cocoa but regularly attended their city council meetings, speaking several times on matters of general interest and public concern. At two particular meetings the mayor invoked and applied the residency rule limiting Rowe's comments during the public comment portion (the delegations) to matters on the city council's agenda that evening.

Rowe brought suit against the City and the mayor under 42 USC § 1983 for declaratory, injunctive and compensatory relief alleging violation of his First Amendment rights to freedom of speech and expression, as well as a violation of his Fourteenth Amendment right to equal protection. A District Court granted summary judgment to the mayor on all claims and subsequently entered judgment in favor of all defendants.

On appeal Rowe argued that the City's residency requirements for speakers violates his First and Fourteenth rights by making an impermissible distinction between resident and non-resident classes. *Jones v. Heyman*, 888 F.2d/1328 (11th Cir., 1989). The 11th Circuit Court of Appeals noted that a City commission meeting is one forum where speech may be restricted to specified subject matter. It noted that such meetings are a limited public forum and as such government may restrict access by content-neutral conditions for the time, place and manner of access, which are narrowly tailored to serve a significant government interest.

The Court noted that there is a significant governmental interest in conducting orderly and efficient meetings of public bodies and that restriction during public debate may be said to have served a significant governmental interest in conserving time and ensuring that others have the oppportunity to speak. *Wright v. Anthony*, 733 F.2d 575 (8th Cir., 1984). Illinois' Open Meetings Act insures the right of the public to attend but does not grant any right of participation. Persons may only attend and witness the proceeding. *People v. Thompson*, 56 Ill. App. 3d 557 (1978). The Rowe Court further noted that as a limited public forum a city council meeting is "not open for endless public commentary speech but instead a limited platform to discuss the topic at hand." Addressing the equal protection claim, the Court noted that it is reasonable for a City to restict the individuals who may speak at meetings to those individuals who have a direct stake in the business of the City, including citizens of the City or those who receive utility service from the City so long as that restriction is not based on the speaker's view point. The grant of summary judgment to the City was therefore affirmed on appeal.

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Attorney General issues opinions

By Lynn Patton, Springfield

Under section 4 of the Attorney General Act (15 ILCS 205/4 (West 2002)), the Attorney General is authorized, upon request, to give written legal opinions to State officers and State's Attorneys on matters relating to their official duties. The following is a summary of official opinions 03-001 through 03-008 and informal opinions I-03-001 through I-03-015 that may be of interest to the government bar.

Copies of an opinion may be requested by contacting the Opinions Bureau in the Attorney General's Springfield office at (217) 782-9070. Copies of official opinions may also be found on the Internet at <http://www.illinoisattorneygeneral.gov/opinions/index.html>.

Opinion No. 03-001, issued January 7, 2003

Brush pickup in unincorporated areas

Townships are expressly authorized to provide branch and yard trimming removal, upon referendum approval, as set out in article 210 of the Township Code. It is neither necessary nor appropriate to imply the power to provide such services in some other manner. A township road district has no express authority to provide free brush removal for private land owners. No such authority can be implied from any provision of the Highway Code. 60 ILCS 1/210-5 *et seq.* (West 2000); 605 ILCS 5/9-111.1, 9-117, 6-802 (West 2000).

Editors' Note: Subsequent to the issuance of opinion No. 03-001, the pertinent provisions of the Township Code and of the Illinois Highway Code were amended to allow townships and township highway commissioners to provide branch and leaf collection services. Public Act 93-109, effective July 8, 2003, amended the Township Code and the Illinois Vehicle Code to provide that the township electors may authorize general road and bridge funds or town funds be used for the disposal of brush and leaves from property contiguous to roadways and for disaster relief services approved by the township board. The township electors may also grant the highway commissioner the authority to provide for the disposal of brush and leaves and for necessary disaster relief.

Opinion No. 03-002, issued January 7, 2003

Restrictions on public access to meetings of the Prisoner Review Board

(1) Subsection 2(c)(18) of the Open Meetings Act and section 15 of the Open Parole Hearings Act authorize the Prisoner Review Board to go into closed session to deliberate on petitions for parole. (2) Section 15 of the Open Parole Hearings Act authorizes the Board to limit the number of persons attending a parole hearing where security and safety so require. (3) Section 2.05 of the Open Meetings Act authorizes the use of recording devices in the

open meetings of public bodies. (4) Use of a live audio or video feed, in the circumstances described in the opinion, is consistent with the Open Meetings Act. 5 ILCS 120/2(c)(18), 2.05 (West 2000); 730 ILCS 105/15 (West 2000).

Opinion No. 03-004, issued May 30, 2003

Funding of elementary and secondary schools

(1) Article X, section 1 of the Illinois Constitution does not require the State to contribute any specific level of funding to support the public school system. (2) The General Assembly must determine what constitutes a "minimally adequate education" and whether the current system of school funding is sufficient to meet the standard that the General Assembly has set. Ill. Const. 1970, art. X, § 1.

Opinion No. 03-006, issued August 18, 2003

Assignment of Board Members to Committees

The appointment of county board members and other persons to county board committees is not the "selection of a person to fill a public office" as that phrase is defined in subsection 2(c)(3) of the Open Meetings Act, and, therefore, such action cannot properly be considered in a closed meeting. The county board, or a committee thereof, may hold a closed meeting for the purpose of considering the appointment of persons to public offices. 5 ILCS 120/2 (West 2000).

Opinion No. 03-007, issued September 8, 2003

DNA database

Defendants placed on felony first offender probation pursuant to section 10 of the Cannabis Control Act or section 410 of the Illinois Controlled Substances Act are subject to DNA sampling pursuant to section 5-4-3 of the Unified Code of Corrections. 720 ILCS 550/10 (West 2002); 720 ILCS 570/410 (West 2002); 730 ILCS 5/5-4-3 (West 2002).

Opinion No. 03-008, issued September 8, 2003

At-large election of County Board Chairman

In counties having fewer than 450,000 inhabitants wherein the chairman of the county board is elected at-large and is not required to be a member of the county board, one person may run for and hold the two offices simultaneously.

Opinion No. 03-008, issued September 8, 2003

Filling of vacancy in office of County Board Chairman

Section 25-11 of the Election Code governs the filling of a vacancy in the office of county board chairman who is elected at-large, which occurs with more than 28 months remaining in the term. Subsection 2-3009(c) of the Counties Code does not govern the filling of such vacancies. 10 ILCS 5/25-11 (West 2002); 55 ILCS 5/2-3007, 2-3009(c) (West 2002).

Informal Opinion No. I-03-002, issued May 1, 2003

Compatibility of offices—County Board Member and School Board Member

Section 1.2 of the Public Officer Prohibited Activities Act permits a county board member in a county with fewer than 40,000 inhabitants to serve a "term of office" simultaneously on a board of education, regional board of school trustees, board of school directors or board of school inspectors. Although the General Assembly used the singular tense "term" of office in section 1.2, that language does not prevent a county board member in a county with fewer than 40,000 inhabitants from simultaneously serving as a school board member for more than one term of office. Section 1.2 does not contain language which limits the duration of the authorized simultaneous tenure in both offices. 50 ILCS 105/1.2 (West 2000).

Informal Opinion No. I-03-005, issued October 9, 2003

Provision of ambulance service by Fire Protection District without referendum

A fire protection district which has not passed an ambulance service referendum may use its general corporate funds to contract with a neighboring fire protection district that operates an ambulance service for the provision of ambulance services. The district purchasing the services cannot, however, limit the number of ambulance services within its territory or regulate such services. 70 ILCS 705/22 (West 2002).

Informal Opinion No. I-03-006, issued October 9, 2003

Compensation of County Board Vice Chairman

Sections 2-3008 and 4-10001 of the Counties Code authorize a county board to provide for additional compensation to be paid to the chairman of the county board. Neither section, however, contains any reference to the payment of additional compensation for service in any other organizational position on the board, including that of vice-chairman. Therefore, a county board does not have the authority to fix the compensation of the vice-chairman of the board at a rate in excess of that provided for county board members generally. 55 ILCS 5/2-3008, 4-10001 (West 2002).

Informal Opinion No. I-03-007, issued October 22, 2003

Sheriff's enforcement of motor vehicle laws in private subdivision

The sheriff is neither obligated nor authorized to enforce provisions of the Illinois Vehicle Code, other than articles IV and V, on private roadways, unless the homeowner's association and the county have entered into an agreement as required by section 11-209.1 of the Vehicle Code. The sheriff has discretion regarding the use of resources, such that he is not "obligated" to enforce trespassing laws in preference to his other duties. 625 ILCS 5/11-209.1 (West 2002); 55 ILCS 5/3-6021 (West 2002).

Informal Opinion No. I-03-008, issued October 30, 2003

Use of tort liability tax levy to fund employee medical insurance

Tort liability tax funds raised pursuant to section 9-107 of the Local Governmental and Governmental Employees Tort Immunity Act cannot be used to pay for contractual obligations such as the costs associated with the provision of medical insurance and prescription drug coverage to county or municipal employees. 745 ILCS 10/9-107 (West 2002).

Informal Opinion No. I-03-010, issued November 26, 2003

Public employee's attendance at

county board meetings during normal state/municipal business hours

Under the provisions of the Time Off For Official Meetings Act, a county board member is entitled to absent himself from his employment to attend a county board meeting. However, an adjustment in the compensation of an official government employee is required for time spent attending meetings as an official of another governmental body. The form of the adjustment, whether by a reduction in the government employee's salary, by the required use of the government employee's vacation or personal leave time, or by some other means, is a matter that must be addressed by the government employer. A policy requiring a reduction in the salary of or the use of personal leave by a public employee will not convert that person from an "exempt" employee to that of a "non-exempt" employee, for purposes of the Fair Labor Standards Act. 50 ILCS 115/1 (West 2002); 29 U.S.C. § 201 *et seq.* (2002); 29 C.F.R. § 541.5d (2002).

Informal Opinion No. I-03-011, issued November 26, 2003

Authority of County Board to change addresses to conform with emergency telephone system street address database

Section 5-1067 of the Counties Code grants county boards the authority to change street names and addresses in privately-owned, unincorporated portions of the county in order to create a master street address database to be used by the county's emergency telephone system board. The fact that certain properties have National Landmark status under the National Historic Preservation Act does not prevent the county board from making address changes, since the address changes do not violate Federal preservation laws and standards. 55 ILCS 5/5-1067 (West 2002); 16 U.S.C. § 470-1 *et seq.*

Informal Opinion No. I-03-012, issued December 19, 2003

Compatibility of offices—County board member and Port District board member

A county board member and a county board chairman selected from the membership of the county board are prohibited by section 1 of the Public Officer Prohibited Activities Act from being appointed to a position on a port district board. A county board chairman elected by the voters of the county may not serve simultaneously as a port district board member because of a common law conflict. 50 ILCS 105/1 (West 2002).

Informal Opinion No. I-03-014, issued December 30, 2003

Transfer into a County General Revenue Fund excess monies from a separately established Workers' Compensation Fund

The provisions of section 9-107 of the Local Governmental and Governmental Employees Tort Immunity Act expressly prohibit the use of special tax funds for unrelated purposes. Therefore, a county does not have the authority to transfer excess funds from a separately established workers' compensation fund account funded by section 9-107 of the Tort Immunity Act into the county's general corporate fund. 55 ILCS 5/5-1011 (West 2002); 745 ILCS 10/9-107 (West 2002).

Informal Opinion No. I-03-015, issued December 30, 2003

Verbatim record requirement of Open Meetings Act—Use of stenographic transcription

The amendments to section 2.06 of the Open Meetings Act made by Public Act 93-523, effective January 1, 2004, require a verbatim record of all closed meetings and require that the record be made using an audio or a video recording format. The amendments to section 2.06 do not authorize the use of stenographic transcription. 5 ILCS 120/2.06 (West 2002), as amended by Public Act 93-523, effective January 1, 2004.

Someone you should know: Edwin R. Parkinson

By Kelly Wingard, Decatur*

Ed Parkinson is someone you should know. The affable Irishman with smiling eyes and a "never-known-a-stranger" personality, is also a no-nonsense prosecutor with an appetite for death penalty cases. As one of four Special Prosecutors for the Illinois State's Attorneys Appellate Prosecutor's Prosecution Division (SAAP), Parkinson is often called upon to assist other prosecutors throughout the state when funds are scarce, special skills are needed, or a conflict of interest arises. With more than 30 murder trials to his credit, Parkinson's expertise is often sought on complex cases or in sensitive trials where the death penalty is under consideration. Recently (February 26, 2004), he played an instrumental role in obtaining the first death penalty verdict in Illinois since former Governor George Ryan emptied death row. Following Parkinson's closing argument, a Coles County jury deliberated only 2 1/2 hours before sentencing Anthony Mertz to death for the 2001 murder of Eastern Illinois University coed Shannon McNamara.

Parkinson was born in Macomb, Illinois, the lone son in a family of five children. He grew up and graduated from high school in Kewanee, Illinois. His parents divorced when he was young and he credits his mother with having the greatest impact on his life. She worked as a nurse to support her large family, always stressing the importance of education to her children. Parkinson took his mother's encouragement to heart; he was the first in his family to graduate from college, earning an English degree from Bradley University while on a full scholarship as an Illinois State Scholar. He then attended law school at John Marshall, marrying and having his first child while still a One L. For the next three years, Parkinson worked as a polygraph examiner by day and attended law school at night. He received his J.D. from John Marshall in 1971.

With the luck of the Irish, the 26-

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year-old Parkinson landed a job fresh out of law school as the Morgan County State's Attorney. In the fall of 1971 he was appointed to fill a vacancy in that office and was subsequently elected to serve three additional terms. Tempted into private practice during his last term, he went to work for a law firm before eventually going solo. But, since he seldom believed his clients were innocent, Parkinson could not put his heart into criminal defense work. When presented with an offer to join the Illinois Department of Conservation as Chief Legal Counsel in 1987, he gladly returned to public service. Parkinson remained with the conservation department until he was asked to join SAAP as a Special Prosecutor in December of 1994.

Parkinson relishes his current role of "going after the bad guys." As a prosecutor, he has the power to bring criminals to justice, as well as to exercise the authority to dismiss cases. He likes assisting young professionals and having State's Attorneys throughout Illinois call on him personally for support on difficult cases. But Parkinson finds the most satisfactory part of his job is putting murderers in prison for life. He thrives on presenting evidence in the courtroom, likening the experience to the thrill of a theatrical performance. Parkinson does acknowledge a downside to his job, however. He dreads seeing the suffering families of victims must endure when forced to relive their traumas during trial, especially in cases involving murder or sexual assault on children. But he perseveres through these unpleasant duties by focusing on the end result of obtaining justice for the victims in order to ease their families' pain.

Since Parkinson is often involved in high-profile murder cases, he was intimately acquainted with many of those granted clemency when former Governor Ryan emptied Illinois' Death Row. When asked his opinion on Ryan's mass commutation of death penalty sentences to life terms in prison, Parkinson summed up his feelings in one word: "Wrong." When pressed further, he elaborated that Ryan's actions were wide of the mark because the blanket clemency did not take into consideration the individual facts of each case. But Parkinson has not let Ryan's actions deter him from continuing to seek the death penalty; his recent success in obtaining a death sentence for Mertz is only the first of his efforts to repopulate Death Row. Parkinson intends to return serial killer Andrew Urdiales to his cell there by seeking the death penalty when he prosecutes him for additional murders.

Parkinson's cases often place him in the media's eye. He is currently working on the prosecution of Amanda Hamm and Maurice Lagrone Jr. for the drowning deaths of Hamm's three children at Clinton Lake. Parkinson was called in as a Special Prosecutor since Hamm's mother works for the DeWitt County State's Attorney's office, creating a conflict of interest. The case has drawn nationwide attention due to the nature of the crime, as well as local scrutiny over the estimated $1 million tab the county will have to pick up for expenses involved in both prosecuting and defending Hamm and Lagrone. Despite working on difficult cases involving violent criminals, Parkinson shrugs off the dangers of his job. Although he routinely prosecutes murderers and drug dealers, he feels that his job is much safer than that of a divorce attorney. For the most part, he believes that criminals expect to be brought to justice and therefore do not hold any personal grudges against him for doing his job. When he was the Morgan County State's Attorney, he often encountered offenders he had prosecuted in the community without incident. Occasionally, he has even had released offenders buy him a beer.

Parkinson has three grown children, a son and two daughters, and four grandchildren (with two more expected soon). Belying his stern prosecutorial persona, his eyes light up at the mention of his grandchildren and he proudly shows off their pictures which are sprinkled throughout his office. When he can spare time away from his job, he enjoys traveling and "eating well." He and his wife Paula enjoy vacationing at the ocean and touring local mansions on their domestic excursions. They also play golf together, although he admits to being too competitive on the greens, and says she only plays occasionally to appease him. Parkinson also likes to read, but he confesses a dislike for the tedium of reading the fine print in law books, instead preferring an eclectic mix of recreational reading ranging from murder mysteries to Shakespeare. His taste in television reflects his profession; he likes watching true-to-life legal dramas such as "Law and Order."

When asked what path he would have chosen had he not entered the legal profession, Parkinson revealed a passion for sports. He would have liked to have been either a coach or a sportscaster, calling basketball play-by-play. But perhaps his true calling in life should have been the stage. Parkinson once took his daughter to audition for a part in Annie with the Jacksonville Theatre Guild and, to bolster her courage, he also decided to try out. With no prior acting experience and no preparation for the audition, Parkinson walked away with the male lead as Daddy Warbucks! In addition to acting, the part also called for him to sing six songs. Although he protests there will not be any more curtain calls in his future, you never can tell. I wouldn't bet my bottom dollar you couldn't get another "Tomorrow" out of Ed Parkinson.

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*Kelly Wingard is a graduate student in the Legal Studies program at the University of Illinois at Springfield.

Legislative update

The Illinois General Assembly has introduced numerous bills to be reviewed this spring. The following is a list of those bills that are still being considered and that may be of general interest to government lawyers:

HB 4000—Creates the Small Business Regulatory Flexibility Act. Provides that if a State agency proposes a rule that may affect small businesses, then the agency must consider certain methods for reducing the impact of the rule on small business, and the Act provides an opportunity for small businesses to participate in the rulemaking process.

HB 4171—Amends the Illinois Procurement Code. Requires that electronic mail service providers take measures reasonably designed to provide service free of spam.

HB 2633—Amends the Counties Code and the Illinois Municipal Code. Provides that requests for the refund of cash contributions paid in lieu of land donations must be filed with the county or the municipality within one year after the date of payment or one year after the date the funds are last used for any unauthorized purpose, whichever is later.

HB 3890—Amends the Counties Code and the Illinois Municipal Code. Authorizes certain municipal plan commissions and planning departments to implement a comprehensive plan by ordinance for the provision of public grounds for public libraries.

HB 4109—Amends the Illinois Municipal Article of the Illinois Pension Code. Provides that any person who is actively employed by a certain municipality on the municipality's effective date of participation in the Fund shall not be considered a participating employee under the Fund, unless the person files with the board within 90 days of the municipality's effective date of participation an irrevocable election to participate.

HB 4132—Amends the Plat Act. Provides that counties that are authorized by law to exercise land use control through a building/improvement permit process many deny the issuance of a building permit for building or other improvement to be constructed on a parcel of land subdivided contrary to the provisions of the Act.

HB 4247—Amends the Open Meetings Act. Requires public bodies to keep written minutes of closed, as well as open, meetings. Removes verbatim recordings of closed meetings from the requirement that the public body regularly review them to determine whether the need for non-disclosure continues. With respect to a civil action to enforce the Open Meetings Act, conditions the court's *in camera* review of verbatim recordings to determine whether a violation occurred upon the judge's belief as to the necessity of the examination.

HB 4280—Amends the Illinois Municipal Code. Provides that, in addition to any other method authorized by law, if (i) a property owner is cited with a Code violation, (ii) non-compliance is found upon reinspection of the property after the due date for compliance with an order to correct the ordinance violation, and (iii) fines and costs for the non-compliance and reinspection remain unpaid at the point in time that they would become a debt due and owing the municipality, then those fines and costs may be collected as a special assessment on the property.

HB 4351—Amends the Property Tax Code. Requires the county clerks of each county in which there was an under extension to proportionately increase the levy of that taxing district pursuant to a court order if a court, at any time, enters a final judgment that there was an over extension or under extension of taxes for an overlapping taxing district.

HB 4705—Amends the Counties Code and the Illinois Municipal Code. Provides that a unit of local government denied retailers' occupation tax revenue because of an agreement to share or rebate any portion of retailers' occupation taxes may file an action in circuit court against "only" the municipality or "only" the county that has entered into such an agreement.

HB 4929—Amends the Illinois Municipal Code. Authorizes a municipality carrying out a business district development or redevelopment plan to impose a retailers' occupation tax, a service occupation tax, and a hotel operators' occupation tax.

HB 5067—Amends the Counties Code. Provides that if a county owns a parcel of real property located in the county that (i) is vacant, (ii) is less than 2,000 square feet, (iii) has been exclusively maintained by an adjoining owner and his or her predecessors in the title continuously for at least 30 years, and (iv) has a fair market value of less than $1,000, then upon request of the adjoining owner and satisfactory proof of the status of the property, the county must quit claim its right, title and interest in the property to the adjoining owner for $1 in consideration. Further provides that the parcel must have been incorrectly recorded or omitted from the county tax rolls before the county must transfer the parcel of property to the adjoining owner. Provides that the county is not required to transfer the parcel if the adjoining owner is in violation of any county ordinance or is delinquent in the payment of any property taxes upon the adjoining property.

HB 6683—Amends the Liquor Control Act of 1934. Provides that in any township that has voted to prohibit the retail sale of alcoholic liquor, the township board may authorize the local liquor control commissioner to issue a special event retailer's license authorizing the sale of beer for up to seven days per year for up to 30 years at an agricultural show that is held on privately-owned property that is within the township, but is not within the corporate limits of a city, village, or incorporated town.

SB 2151—Amends the Illinois Municipal Code. Provides that any contiguous territory not exceeding two square miles in a county with a population of not less than 187,000 (now, 300,000) and not more than 190,000 (now, 350,000) that meets certain requirements may be incorporated as a village if (i) any part of the territory is situated within 13 (now, two) miles of a county with a population of less than 38,000 and more than 36,000 (now, less than 150,000) and (ii) a petition is filed before January 1, 2005 (now, July 1, 2001).

SB 2175—Amends the Illinois Municipal Code. Provides that the owner or owners of a split lot that is located in and governed by two municipalities or that is governed by a municipality and a county may disconnect a portion of the lot so that a single municipality or county governs the entire lot.

SB 2277—Amends the Counties Code and the Illinois Municipal Code. Provides that, on and after June 1, 2004, neither a county board nor the corporate authorities of a municipality may enter into any agreement to share or rebate any portion of retailers' occupation taxes generated by retail sales of tangible personal property if: (1) the tax on those retail sales, absent the agreement, would have been paid to another unit of local government; and (2) the retailer maintains, within that other unit of local government, a retail location or a warehouse from which the tangible personal property is delivered to purchasers.

SB 2278—Amends the Illinois Municipal Code. Provides that, if suit is filed for violation of certain municipal ordinances and the court finds that the defendant has engaged in certain prohibited activities, the court shall allow the plaintiff to recover a reasonable sum of money for the costs of litigation, including the services of the plaintiff's attorney.

SB 2442—Amends the Illinois Municipal Code. Provides that an ordinance to vacate a street or alley shall (now, may) reserve to a municipality or to a public utility owning any public facilities on the parcel to be vacated, any property, rights of way, and easements that the corporate authorities of the municipality judge to be necessary or desirable for continuing public service and for the maintenance, renewal, and reconstruction of those public facilities.

SB 2659—Amends the Illinois Municipal Code. Provides that (i) if a municipality annexes part or all of the territory in which a township operates a sewerage system that includes a sewage treatment plant or plants, the township is responsible for that portion of the sewerage system within the annexed territory and any user fees attributable to the annexed territory shall remain with the township and (ii) if a municipality annexes part or all of the territory in which a township operates a sewerage system that does not include a sewage treatment plant or plants, the corporate authorities of the municipality are responsible for that portion of the sewerage system within the annexed territory and, beginning upon the date of annexation, any user fees attributable to the maintenance and operation of the sewerage system shall be collected by the corporate authorities of the municipality.

SB 2683—Amends the Illinois Governmental Ethics Act. Adds to the list of State employees who must file statements of economic interest those who negotiate, assign, authorize, or grant naming or sponsorship rights to State property or assets.

SB 2820—Creates the Illinois Residential Building Code Act. Provides that a contract to build a home in any municipality or unincorporated portion of a county that does not have a residential building code in effect must include, as part of the construction contract, the applicability of a residential building code that is agreed to by the home builder and the home purchaser. If a residential code is not stated then the plumbing code promulgated by the Department of Public Health and the International Residential Code shall be adopted, by law, as part of the contract.

SB 2968—Amends the Neighborhood Redevelopment Corporation Law. Provides that, upon approval of the governing body of a city, village, or incorporated town, after it complies with notice, hearing, and other requirements, the general real estate taxes on the improvements on real property of a neighborhood redevelopment corporation or its immediate successor in that city, village, or incorporated town shall be abated for a period not in excess of 10 years after the date upon which the corporation becomes owner of that real property. The tax on that property, however, exclusive of improvements, may continue to be imposed and collected but shall be frozen at the amount of taxes owed, or that would have been owed, for the property as unimproved in the year prior to the year it was acquired by the neighborhood redevelopment corporation. For the next ensuing period not in excess of 15 years, general real estate taxes on the property shall be abated in an amount not to exceed 50 percent of the taxes imposed by each taxing district.

The full text of these bills may be found on the General Assembly's Web site at <http://www.legis.state.il.us/>.

News you can use

University of Illinois student loan assistance

As we have been reporting, the ISBA's Committee on Government Lawyers has been following closely federal legislation aimed at assisting new attorneys working in public interest with their school loan debt. In a related matter, it was recently reported that 93 percent of the University of Illinois College of Law student body approved a referendum to financially support a Loan Repayment Assistance Program. Students would contribute $12.50 per semester to a trust that would help graduates repay educational loans. The program, known as the Loan Repayment Assistance Program (or LRAP), would aid students who accept public interest jobs upon graduation. Apparently, a key factor for student votes was that the average starting

salary for public interest lawyers, according to the American Bar Association, is approximately $33,000. With skyrocketing tuition increases, the ABA has recommended that law schools prioritize the creation of LRAPs to make public service work financially feasible for graduates. The proposal is now before the dean.

Department of Justice student loan assistance

The Department of Justice offers a program called the Attorney Student Loan Repayment Program (ASLRP). DOJ Attorneys compete for up to $6,000 in loan repayments for qualifying student loans. Established in 2003, the ASLRP is an incentive program designed to recruit and retain highly qualified attorneys. To determine if you qualify, review 5 U.S.C. §5379, as implemented by the regulations of the United States Office of Personnel Management (5 C.F.R. Part 537). Forms for applying for repayment assistance may be found at: <http://www.usdoj.gov/oarm/aslrp/aslrpforms/fy04Service%20Agreement%20_Case-by-case%20basis_.pdf>.

Electronic communication by public bodies

The Virginia Supreme Court recently held, *inter alia*, that ordinary e-mail messages between members of a public body do not violate the open meetings provisions of the Virginia Freedom of Information Act (FOIA). *Beck v. Shelton*, 593 S.E.2d 195 (March 5, 2004). The mayor of Fredericksburg, Virginia, and several members of that city's council exchanged e-mails concerning their official business. The plaintiff alleged that the e-mails were to avoid public scrutiny and circumvent the law. The supreme court held that the e-mails "did not involve virtually simultaneous interaction, . . . [but] were more like traditional letters sent by ordinary mail, courier, or facsimile." The court also held that the e-mails were public records under FOIA, but that no "meeting" had occurred under the open meetings provisions of the FOIA. The court noted a similar conclusion reached by the Virginia Attorney General in a non-binding opinion that indicated that "transmitting messages through an electronic mail system is essentially a form of communication," but not a meeting.

Case law update

By Lee Ann Schoeffel, Springfield

Administrative law

Clark v. White, 343 Ill. App. 3d 689 (4th District, September 25, 2003). Hearing officer's decision to deny applicant a restricted driving permit is against the manifest weight of the evidence because applicant proved by clear and convincing evidence both that lack of driving privileges caused him an undue hardship, requiring that either he miss work or that his wife turn down overtime pay in order to transport him to work, and that he had resolved his alcohol problem. Lack of sufficient detail regarding previous arrests on a form is insufficient basis to deny request, particularly since applicant admitted that he was Level III high-risk dependent alcoholic.

Schulz v. Forest Preserve District, 344 Ill. App. 3d 658 (1st District, November 19, 2003). The Illinois Industrial Commission properly held that it lacked jurisdiction to consider an appeal from the decision of an arbitrator filed within 30 days of original decision when corrected decision (correcting clerical error with regards to claimant's name) was filed after notice of review had been filed and no petition for review of corrected decision was filed within 30 days thereof. Section 19(f) of the Workers' Compensation Act (820 ILCS 305/19(f) (West 2000)) requires strict compliance.

Gunther v. Civil Service Comm'n, 344 Ill. App. 3d 912 (1st District, December 9, 2003). Trial court properly dismissed plaintiff's complaint for administrative review of decision of Civil Service Commission upholding termination of his employment with the Illinois Department of Transportation (IDOT) because plaintiff failed to timely request summons be served on IDOT, as required by Administrative Review Law (735 ILCS 5/3-103, 3-105 (West 2002)). Further, service on the Attorney General, the attorney for IDOT, does not suffice.

Radaszewski v. Garner, 346 Ill. App. 3d 696 (2nd District, December 10, 2003). Trial court erred when it dismissed plaintiff's complaint seeking to enjoin enforcement of certain regulations of the Illinois Department of Public Aid (IDPA) that reduced the level of benefits for nursing care, to which plaintiff's son was entitled prior to turning 21 based on "unwritten policy" of IDPA, which IDPA adopted as formal regulation while plaintiff's complaint in Federal court was pending. (89 Ill. Adm. Code §140.435(b) (2000)). Because IDPA used proposed amendment to regulations to induce dismissal of plaintiff's challenge to defendant's denial of benefits to plaintiff's son, there is sufficient evidence in the record to show bias in the rulemaking process to withstand a motion to dismiss under section 2-615 of the Civil Practice Law (735 ILCS 5/2-615 (West 2002)).

Emerald Casino, Inc. v. Illinois Gaming Board, 346 Ill. App. 3d 18 (1st District, December 30, 2003). Complaint for *mandamus* and declaratory judgment by owner of riverboat casino seeking to compel the Illinois Gaming Board to move its gambling license to the Village of Rosemont is not subject to ripeness or exhaustion of administrative remedy defense because it is not a review of administrative decision, but is a review of statutory interpretation. Further, when the General Assembly passed section 11.2 of the Riverboat Gambling Act (230 ILCS 10/11.2 (West 2002)) providing that "the Board shall grant the application and approval upon receipt by the licensee of approval from the new municipality or county, as the case may be, in which the licensee wishes to relocate pursuant to section 7(j)," it intended for the term "shall" to be mandatory, not directory. Therefore, trial court erred when it granted summary judgment in favor of the Gaming Board instead of the casino and the village.

Highsmith v. Department of Public Aid, 345 Ill. App. 3d 774 (2nd District, January 21, 2004). Trial court correctly concluded that administrative decision by the Illinois Department of Public Aid (IDPA), denying plaintiff's claim of

ownership in joint tenancy investment account held with his adult son, and that, therefore, all funds in account were subject to lien for child support owed by plaintiff's son, was clearly erroneous. Plaintiff met his burden of proving that funds belonged to him through documentary evidence, consisting of his tax returns and those of his son, coupled with his testimony regarding the source and purpose of the funds. Furthermore, IDPA rule requiring that proof of ownership be established though documentary evidence alone violates plaintiff's right to due process.

Constitutional law

People ex rel. Madigan v. Snyder, 208 Ill. 2d 457 (January 23, 2004). Governor has constitutional authority (Ill. Const. 1970, art. 5, §12) to commute death penalty sentences of inmates who failed to sign or otherwise authorize commutation petitions, as well as those inmates who had been found guilty but were not under sentence at the time of commutation. In addition, the Governor has the authority to order that the range of sentence for certain inmates be limited to natural life or a term of years by exercising power to issue partial pardon.

Counties

DMS Pharmaceutical Group v. County of Cook, 345 Ill. App. 3d 430 (1st District, December 29, 2003). Trial court properly dismissed complaint for declaratory judgment by unsuccessful supplier of pharmaceuticals, challenging contract by county with competitor to supply all pharmaceuticals to county-owned facilities for three years. Home rule county could create exception to competitive bidding process. In doing so, it would be acting legislatively rather than administratively. Further, county did not impermissibly delegate authority to comptroller by authorizing periodic payment for product supplied pursuant to the contract. The authorization of the comptroller to pay invoices upon receipt of a contract that the county has approved and for which a budget appropriation has been made is not a transfer of power from one branch of government to another. In addition, trial court did not abuse its discretion when it ruled that equity favored refusal to enjoin county's alleged violation of its own mandatory ordinance for paying for invoices over $10,000 because the requested relief would impose great hardship on the county and little benefit on the plaintiff.

Criminal law

Criminal appeals

People v. Flowers, 208 Ill. 2d 291 (January 26, 2004). Appellate court lacked jurisdiction to consider the merits of defendant's appeal from sentence imposed by trial court in excess of that contemplated by plea agreement because defendant failed to file the proper postjudgment motion required by Supreme Court Rule 604(d). Further, the appellate court lacked the authority to vacate the withholding order which the appellate court found to be void.

Criminal general

People v. Carter, 208 Ill. 2d 309 (November 20, 2003). Appellate court erred when it held that trial court had a duty to issue, *sua sponte*, involuntary manslaughter instruction in defendant's murder trial, particularly when evidence supported either mental state and defendant objected to issuance of instruction at trial.

In re Nicholas K., 345 Ill. App. 3d 333 (2nd District, November 14, 2003). In light of Supreme Court decision in *In re J.W.*, 204 Ill. 2d 50 (2003), previous opinion of appellate court is vacated and trial court's order that juvenile delinquent must register as a sex offender pursuant to the Sex Offender Registration Act (730 ILCS 150/1 *et seq.* (West 2000)) is affirmed.

In re Detention of Bolton, 343 Ill. App. 3d 1223 (4th District, November 13, 2003). Jury verdict finding defendant subject to commitment under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 through 99 (West 2000)) must be vacated. The trial court erred when it allowed the State to introduce findings of psychologists based on actuarial tests that had not been properly validated by means of a *Frye* hearing (see *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)).

People v. Williams, 344 Ill. App. 3d 334 (3rd District, November 14, 2003). Defendant failed to establish jury intimidation when juror, who had received phone call from the county jail was excused, and she testified at hearing that she did not discuss phone call with other jurors, but stated that other jurors reported feeling uncomfortable when they were required to leave courthouse by walking through spectators who lined up and were staring at them. Further, defendant has not been denied real justice or prejudiced by trial court's failure to provide admonition required pursuant to Supreme Court Rule 605(a). Defendant did not attempt to challenge his sentence on appeal.

In re Detention of Erbe, 344 Ill. App. 3d 350 (4th District, November 13, 2003). Trial court properly admitted results of actuarial based evaluation techniques in commitment trial pursuant to Sexually Violent Persons Commitment Act (725 ILCS 207/1 through 99 (West 2000)) without *Frye* hearing (*see Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)), the actuarial risk-assessment instruments used in this case do not purport to involve a scientific principle, method, or test to which *Frye* applies. Moreover, even assuming that the actuarial instruments were subject to *Frye*, the use of actuarial risk-assessment instruments is generally accepted by professionals who assess sex offenders for risk of reoffending. Further, defendant was not denied effective assistance of counsel by attorney moving to continue and failing to appear at probable cause hearing. In addition, evidence was sufficient for jury to find defendant qualified for commitment as a sexually violent person; trial court did not abuse its discretion when it ordered defendant committed to secure facility.

People v. Ramirez, 344 Ill. App. 3d 296 (2nd District, December 1, 2003). Trial court erred when it conducted unlawful possession of cocaine with intent to deliver trial *in abstentia* of defendant who had not been served with notice of trial date by certified mail as required by section 115-4.1(a) of Code of Criminal Procedure of 1963 (725 ILCS 5/115-4.1(a) (West 1992)). Although defendant was represented by counsel, defect in notice was not harmless error.

People v. Jones, 344 Ill. App. 3d 684 (2nd District, December 5, 2003). Because the language of section 11-501.2(c)(2) of the Illinois Vehicle Code (625 ILCS 5/11-501.2(c)(2) (West 2002)) explicitly authorizes nonconsensual administration of chemical tests in driving-under-the-influence cases where the suspected impaired driver causes death or bodily injury to another, it implicitly forbids involuntary collection when no such injury occurs. Therefore, trial court properly excluded the results of blood and urine tests conducted on samples involuntarily drawn from defendant while he was treated in the emergency room.

People v. Price, 345 Ill. App. 3d 129 (2nd District, December 18, 2003). Trial court erred when it denied defendant's motion for forensic testing, pursuant to section 116-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-3 (West 2000)), of swabs from victims' anus admitted in defendant's trial for aggravated sexual assault of fellow inmates based on limitations violation. Limitations period for post-trial motions does not apply to section 116-3 motions. Further, despite pervasive eyewitness testimony, DNA testing of swabs could materially advance defendant's claim of innocence. On remand, court must ascertain whether testing requested by defendant was generally available at time of trial.

Criminal counsel

People v. Broughton, 344 Ill. App. 3d 232 (1st District, October 31, 2003). Trial court did not err when it dismissed defendant's post-conviction petition after appointing counsel and allowing amendment thereto but without evidentiary hearing. Affidavits of accomplice in murder trial that defendant did not kick or punch victim in course of robbing victim's trailer, and of other witnesses, were not sufficient to conclude a substantial likelihood of a different outcome at trial had their testimony been available. Further, no ineffective assistance of post-conviction counsel was established.

People v. Rish, 344 Ill. App. 3d 1105 (3rd District, November 10, 2003). Trial court erred when it dismissed post-conviction petition of murder defendant without an evidentiary hearing. Petition and affidavits sufficiently allege violation of defendant's due process rights under Illinois Constitution (Ill. Const. 1970, art. I, §§2, 10), which entitles those subject to custodial interrogation the right to conflict-free counsel, when attorney representing defendant allowed her to make series of inconsistent statements during two days of interrogation without informing her that he was close personal friend of victim and attorney for police officer involved in the investigation.

People v. Eghan, 344 Ill. App. 3d 301 (2nd District, November 13, 2003). Cumulative effect of State's comments in closing argument about evidence that court had previously ruled inadmissible and the introduction of testimony that defendant refused to take drug test to ascertain whether drugs were in his system and that defendant had previous encounters with police was to deprive defendant of a fair trial for possession of cocaine. Justice and fundamental fairness require defendant's conviction and sentence be reversed, even though counsel failed to object to much of testimony.

People v. Davis, 344 Ill. App. 3d 400 (4th District, November 13, 2003). Defendant may not challenge alleged improper condition of probation for the first time on appeal from probation violation finding, because those conditions are voidable, not void *ab initio*. Further, trial court did not abuse its discretion when it allowed introduction of one of two prior convictions, at request of prosecutor, for impeachment. In addition, prosecutor could properly comment on failure of defendant's sister to testify in response to defense argument that cocaine could belong to other persons occupying defendant's dwelling.

People v. Probst, 344 Ill. App. 3d 378 (4th District, November 21, 2003). Defense counsel, who had previously represented State's confidential informant in a criminal matter, was not operating under *per se* conflict of interest, and record does not demonstrate any actual conflict of interest. Further, there was insufficient evidence to compel trial court to tender mistake of fact instruction to jury. In addition, defense counsel's failure to object to admission of lab report and accompanying affidavit did not constitute ineffective assistance of counsel.

People v. Taylor, 344 Ill. App. 3d 929 (1st District, December 3, 2003). Although presumption of intent contained in section 16A-4 of the Criminal Code of 1961 (retail theft statute) (720 ILCS 5/16A-4 (West 2000)) is unconstitutional, it can be severed from the rest of the statute. There is no evidence that trial court relied on presumption in record. Further, claim of ineffective assistance of trial counsel for conceding that defendant stole something fails because defendant failed to demonstrate how concession prejudiced defendant in light of overwhelming evidence of defendant's guilt and rigorous defense provided by trial counsel throughout trial.

People v. Parker, 344 Ill. App. 3d 728 (3rd District, December 5, 2003). Defendant was not deprived of right to counsel when he made inculpatory statements in response to police officer reading him his arrest warrant, as officer perceived was required under Iowa law. Police officer did not reasonably expect that his conduct was likely to elicit a response from defendant, and defendant knowingly and intelligently waived right to counsel. In addition, record is insufficient to resolve claim of ineffective assistance of counsel, making it more appropriate for court to address it through post-conviction petition. Finally, the trial court failed to properly admonish defendant of his need to file a motion for reconsideration if he wished to challenge his sentence. Because of the inadequate Supreme Court Rule 605(a)(3) admonition, case must be remanded to trial court.

People v. Moore, 345 Ill. App. 3d 1043 (4th District, December 18, 2003). Defendant was not denied due process or equal protection when State's Attorney communicated policy of refusing to plea bargain with defendant because defendant demanded to know the identify of the State's confidential informant. There is no constitutional right to plea bargain, and it was not misconduct for State's Attorney to make plea negotiations contingent on defendant waiving right to know identity of confidential informant.

People v. Mena, 345 Ill. App. 3d 418 (1st District, December 22, 2003). Trial court did not abuse its discretion when it refused second degree murder jury instruction in trial for murder of driver of vehicle which rammed defendant's vehicle because, although there was evidence of provocation, the defendant's conduct of smashing unconscious victim's head with a jack hammer was disproportionate to provocation. Further, improper closing arguments of prosecutor did not constitute plain error and could have been remedied by prompt objection. However, imposition of extended term sentence for exceptionally brutal conduct by defendant without commensurate jury finding is not harmless error and the sentence must be vacated.

People v. Jennings, 345 Ill. App. 3d 265 (4th District, December 31, 2003). Trial court erred when it summarily dismissed defendant's post-conviction petition challenging 60-year sentence for open plea of murder because appointed counsel failed to file proper Supreme Court Rule 651(c) certificate, failed to properly examine trial court record, failed to amend petition to properly state claim of ineffective assistance, and failed to make proper record of disparate sentence that trial counsel could have raised in timely

filed motion challenging sentence.

People v. Rials, 345 Ill. App. 3d 636 (1st District, December 31, 2003). Defendant in post-conviction petition was not deprived of effective assistance of counsel for failure to raise issue in amended petition. Counsel is required to provide a reasonable level of assistance at post-conviction hearing. Appointed counsel is not required to comb the record for issues not raised in the defendant's *pro se* post-conviction petition. Counsel provided reasonable assistance to defendant by effectively investigating and presenting issues brought to her attention by defendant.

People v. Bartimo, 345 Ill. App. 3d 1100 (4th District, January 15, 2004). Evidence was sufficient to convict defendant of unlawful use of weapon (UUW) and unlawful possession of cannabis based on testimony of police officer. Although defendant had valid temporary sticker, police officer observed an expired registration on defendant's vehicle. Police officer had probable cause to stop vehicle to further investigate. Upon observing rifle in defendant's trunk and unzipped soft sided gun case on back floor of vehicle, officer could properly order defendant to exit vehicle and conduct search of defendant and his vehicle. Further, officer's testimony that weapon could be reached by driver was sufficient to find weapon placed at bottom of laundry basket was accessible to driver and support conviction for UUW. In addition, defense counsel was not ineffective for failure to point out that temporary sticker was valid for 120 days. Claims of ineffective assistance of counsel are evaluated under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984), which requires a showing that counsel's performance was deficient and resulted in prejudice. Additional objection by counsel would not have changed result of trial or motion to suppress.

People v. Brooks, 345 Ill. App. 3d 945 (1st District, January 16, 2004). Prosecutors misstatement of law, that the "presumption, that the cloak of innocence is gone," was not part of pervasive pattern of misconduct during trial, was harmless error and was waived by defense counsel's failure to object. Further, failure to procure alibi witness by invoking Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act (725 ILCS 235/6 (West 2000)) after extensive search revealed that he was convicted felon incarcerated in California, did not constitute ineffective assistance of counsel because outcome of trial would not likely have changed. Defendant suffered no prejudice. There was no showing that defense counsel was less than diligent or that court would have likely continued trial.

People v. Hart, 345 Ill. App. 3d 822 (4th District, January 21, 2004). Prosecutor's violation of Supreme Court Rule 402(f) by eliciting testimony that defendant solicited plea negotiation and by arguing that defendant's guilt can be inferred from his request for plea negotiation in exchange for full disclosure, constituted plain error in defendant's trial for armed robbery and aggravated fleeing or attempting to elude a police officer.

People v. Rucker, No. 1-01-3617 (1st District, February 2, 2004). Defendant's *pro se* motion to reduce sentence at time that he was represented by counsel did not deprive appellate court of jurisdiction even though it contained a claim of ineffective assistance of counsel because ineffective assistance claim is nothing more than bald assertion without any specifics for court to investigate. Further, defense counsel's failure to file motion to suppress contraband evidence, seized in warrantless search of defendant incident to arrest was legitimate trial strategy decision because motion would not have likely succeeded, the police having witnessed several purchase transactions prior to defendant's arrest. Further, defendant's sentence as Class X offender after being convicted of possession with intent to deliver pursuant to section 5-5-3(c)(8) of the Unified Code of Corrections (730 ILCS 5/5-5-3(c)(8) (West 2002)) does not violate *Apprendi*.

People v. Bloomingburg, 346 Ill. App. 3d 308 (1st District, February 3, 2004). In defendant's trial for murder, with overwhelming evidence of defendant's guilt, it was not ineffective assistance of counsel for defense attorney to concede that defendant's conduct caused death of victim while arguing unavailable theory of self-defense. Further, the firearm enhancement provision of section 5-8-1(a)(1)(d) of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(d) (West 2000)) does not violate proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, §11) or constitute impermissible double enhancement.

People v. Lamon, No. 3-02-0754 (3rd District, February 13, 2004). Evidence was sufficient to support conviction of defendant for aggravated criminal sexual assault of victim who recanted her statement in the form of a notarized letter but testified consistent with her original statement. Inconsistencies between victim's earlier statements and direct testimony do not establish prosecutorial misconduct for presenting known perjured testimony. Further, although trial court erred when it failed to admonish jury about avoiding media accounts and failed to make proper investigation into impact of newspaper article read by several jurors, its error was harmless.

Double jeopardy

People v. Blue, 207 Ill. 2d 542 (November 20, 2003). Principles of collateral estoppel and double jeopardy do not preclude the State from seeking the death penalty for first degree murder upon remand after reversal for prosecutorial misconduct.

People v. Sienkiewicz, 208 Ill. 2d 1 (December 4, 2003). Defendant, having pled guilty of reckless driving, could not subsequently be charged with reckless homicide for operating his motor vehicle at excessive rate of speed and leaving roadway resulting in death of passenger without unconstitutionally subjecting him to double jeopardy. Both charges are based on the same physical act and reckless driving is a lesser-included offense of the reckless homicide charge.

Sentencing

People v. Sanchez Jr., 344 Ill. App. 3d 74 (1st District, November 4, 2003). Defendant's mandatory sentence of life imprisonment after having been previously convicted of criminal sexual assault pursuant to section 12-14(d)(2) of the Criminal Code of 1961 (720 ILCS 5/12-14(a)(2) (West 2000)) violates neither proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, §11) nor his right to a jury trial guaranteed by article I, section 13 of the Illinois Constitution. Further, finding of previous conviction for criminal sexual assault need not be made by jury but could be made by judge.

People v. Elizalde, 344 Ill. App. 3d 678 (2nd District, December 3, 2003). Because defendant has not yet completed his period of mandatory supervised release, his appeal from sentence upon revocation of probation for conviction of third DUI is not moot. Further, since judgment incorrectly refers to conviction of third DUI as Class 2, rather than Class 3 felony, it

must be remanded for resentencing. However, imposition of $100 assessment, pursuant to section 5-1101(d) of the Counties Code (55 ILCS 5/5-1101(d) (West 2002)), is not subject to $5 per day credit for time served, it being a "fee" and not a fine.

People v. Sawczenko-Dub, 345 Ill. App. 3d 522 (1st District, December 16, 2003). Defendant's 45-year sentence for murder of her husband plus the mandatory 25-year enhancement for having personally discharged a firearm during the course of the offense violates neither the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, §11) or the double jeopardy or double enhancement prohibitions of the constitution either on its face or as applied to this defendant.

Election law

Du Page County Election Comm'n v. State Board of Elections, 345 Ill. App. 3d 200 (2nd District, December 11, 2003). The State Board of Elections has discretion to issue amended certification pursuant to section 7-14 of the Election Code (10 ILCS 5/7-14 (West 2002)), to correct certification issued "in error" after candidate served request to withdraw from primary election for Governor, even though request was made after primary deadline for certification had passed. Local election authorities are required to exhaust all reasonable efforts to comply with amended certification.

Cardona v. Board of Election Commissioners, 346 Ill. App. 3d 342 (1st District, February 26, 2004). Decision by Board of Election Commissioners of the City of Chicago to overrule objection to nominating papers of candidate for state representative, asserting that they were defective because receipt from Secretary of State filed by candidate failed to identify office which he was seeking, was not clearly erroneous. Nothing in the Election Code requires the receipt filed with the nominating petitions identify the office the candidate is seeking.

Labor law

Metzger v. DaRosa, 209 Ill. 2d 30 (February 20, 2004). Section 19c.1 of the Personnel Code (20 ILCS 415/19c.1 (West 2002)), which prohibits retaliation against an employee who reports wrongdoing by other State employees, does not create an implied private right of action for damages against the State for its violation.

City of Calumet City v. Illinois Fraternal Order of Police Labor Council, 344 Ill. App. 3d 1000 (1st District, November 26, 2003). Home rule municipality failed to demonstrate that arbitral award in favor of union on three economic collective bargaining issues: (1) lifting residency requirement; (2) providing the officers with the option of grievance arbitration for discipline in excess of five days; and (3) granting authority to wear official uniforms while engaged in secondary employment, was arbitrary or beyond authority of arbitration panel.

County of Vermilion v. Illinois Labor Relations Board, 345 Ill. App. 3d 1126 (4th District, December 5, 2003). Illinois Labor Relations Board (ILRB), State Panel's determination that full-time corrections sergeants represent an appropriate unit for collective bargaining because they do not qualify as "supervisors" within meaning of section 3(r) of the Illinois Public Labor Relations Act (5 ILCS 315/3(r) (West 2000)), was properly based on its conclusion that sergeants do not spend the preponderance of their time in supervisory functions.

Mental health law

In re Marriage of Peters-Farrell, 345 Ill. App. 3d 603 (1st District, December 31, 2003). Because pharmacies qualify as an "agency," as that term is used in the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/1 *et seq.* (West 2000)), prescription records of a pharmacy for mental health treatment are protected and are not subject to subpoena absent specific order of court following criteria set forth in the Act.

Municipal law

Village of Lake Villa v. Stokovich, No. 95118 (February 20, 2004). Appellate court erred when it held that section 11-31-1 of the Illinois Municipal Code (65 ILCS 5/11-31-1(a) (West 1996)) violates due process. Because the statute requires that a city give a property owner 15 days notice of need to put building in safe condition before it files complaint for demolition and because it is reasonably related to legitimate state interest of protecting public health and safety, it does not violate due process. Further, because use of state power in this case is for the purpose of preventing public nuisance, it is not an impermissible "taking." However, although trial court's holding that building was unsafe was supported by the evidence, its determination of value was not. Therefore, case must be remanded for trial court to reconsider demolition order.

Village of Algonquin v. Tiedel, 345 Ill. App. 3d 229 (2nd District, December 31, 2003). Trial court properly found defendants guilty of violating ordinance by failing to obtain permit to hook up their homes to municipal water system after water main was extended to within 300 feet of their homes. Mandatory connection to a municipal water supply is a valid exercise of police power and is consistent with authority granted by the Illinois Municipal Code.

People v. Lee, 345 Ill App. 3d 782 (3rd District, January 16, 2004). Municipal ordinance prohibiting loitering for drug-related activity is unconstitutionally vague by containing insufficient guidelines for average person to understand what conduct is being prohibited and being so broad that it could potentially punish innocent conduct. Therefore, the trial court erred when it denied motion to suppress evidence seized from defendant's person after search incident to arrest revealed container with illegal drugs in defendant's pants leg.

Unterschuetz v. City of Chicago, 346 Ill. App. 3d 65 (1st District, January 22, 2004). Because there is a presumption that city ordinances are statements of policy and not contractual provisions and because plaintiff's complaint fails to allege the existence of a promise by the city and an acceptance by plaintiff, trial court properly dismissed plaintiff's breach of contract complaint, seeking attorney fees and compensation for diminution of pension fund, for period of time he was successfully appealing his discharge.

City of Chicago v. Latronica Asphalt & Grading, Inc., 346 Ill. App. 3d 264 (1st District, February 17, 2004). City, which sued for cleanup cost of a lot on which defendant allegedly illegally dumped construction debris, is not subject to five-year limitations period of section 13-205 of the Code of Civil Procedure (735 ILCS 5/13-205 (West 2000)) because it is asserting a public right and is therefore immune from limitations defense.

Open Meetings Act

University Professionals v. Stukel, 344 Ill. App. 3d 856 (1st District, December 8, 2003). The Council of Presidents, an organization consisting of the presidents or chancellors of the various State universities in Illinois and which gives advise to and makes recommendations to the Illinois Board of Higher Education, is not a "public body," as that term is defined in the Open Meetings Act. Therefore, the Council is not required to comply with the provisions of the Act.

Gerwin v. Livingston County Board, 345 Ill. App. 3d 352 (4th District, December 31, 2003). Complaint challenging vote taken by county board to expand landfill because board allegedly violated section 2.01 of the Open Meetings Act (5 ILCS 120/2.01 (West 2002)) by holding a meeting to consider expansion of landfill at an "inconvenient" place, the county board room, when board knew that meeting would draw large crowds and there were alternate venues available, presents question of fact which should not have been disposed of through motion to dismiss. Therefore, trial court erred when it granted sections 2-615 and 2-619 motions to dismiss.

Taxation

Quad Cities Open, Inc. v. City of Silvis, 208 Ill 2d 498 (January 23, 2004). Non-home-rule municipality may not tax gross receipts from admission tickets for a charitable golf tournament designed to make a profit with revenues to be distributed to charities in the Quad Cities area. Fact that charitable event is designed to make money does not necessarily mean that it is event engaged in "for gain" within meaning of section 11-54-1 of the Illinois Municipal Code (65 ILCS 5/11-54-1 (West 2002)).

Cook County Board of Review v. Property Tax Appeal Board, 345 Ill. App. 3d 539 (1st District, December 16, 2003). The Property Tax Appeal Board (PTAB) lacks the authority, under either the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2000)) or PTAB's own rules, to review issues and to grant relief beyond that raised by taxpayer before county board of review. Thus, PTAB erred when it changed level of assessment for retail property from 38 percent mandated by county assessment ordinance to 25 percent.

Cook Communications Ministries v. Department of Revenue, 345 Ill. App. 3d 753 (2nd District, January 8, 2004). Trial court erred when it reversed decision of the Illinois Department of Revenue denying taxpayer religious exemption for property owned by it to produce greeting cards and religious materials in 1999, because decision of Department is not against manifest weight of the evidence. Building during part of year was used to run for-profit greeting card company and, therefore, was not "used exclusively for religious purpose" within section 15-40 of the Property Tax Code (35 ILCS 200/15-40 (West 1998)).

Eden Retirement Center, Inc. v. Department of Revenue, 346 Ill. App. 3d 252 (5th District, January 21, 2004). The Illinois Department of Revenue erred as a matter of law when it denied a charitable-use exemption to parcel of property containing senior citizen independent living units owned by corporation qualified as a not-for-profit corporation by the Internal Revenue Code and containing provision in by-laws authorizing waiver in full or part of rent based on resources of resident and resources of corporation. As held by trial court, section 15-65 of the Property Tax Code (35 ILCS 200/15-65 (West 2000)) does not require additional proof of actual and exclusive charitable use of property in order to qualify for exemption.

Lake Point Tower Garage Ass'n v. Property Tax Appeal Board, 346 Ill. App. 3d 389 (1st District, February 11, 2004). The Property Tax Appeal Board (PTAB) correctly concluded that the subject level of a parking garage that was owned by a condominium association, but was operated as a commercial garage by a contracted management company, was not entitled to a special $1 assessment for common areas of condominium used for recreational purposes under either section 10-35(a) of the Illinois Property Tax Code (35 ILCS 200/10-35(a) (West 1996)) or section 10(a) of the Condominium Property Act (765 ILCS 605/10(a) (West 1996)).

Tort immunity and liability

Ozik v. Gramins, 345 Ill. App. 3d 502 (1st District, October 27, 2003). Evidence that police officers stopped severely intoxicated 19-year-old driver and issued traffic citations to him, but allowed him to continue driving vehicle, was sufficient for jury to award damages for wrongful death of passenger of intoxicated driver's car, subsequently killed in motor vehicle accident, based on officers' willful and wanton negligence. Further, there is no immunity under sections 4-102 and 4-107 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/4-102, 4-107 (West 1994)). In addition, defendants waived issue of contribution from driver by failing to tender jury instruction on that issue at trial.

Hill v. Galesburg Community Unit School District 205, 346 Ill. App. 3d 515 (3rd District, February 19, 2004). Although counts of complaint alleging ordinary negligence for violation of the Eye Protection in School Act (105 ILCS 115/1 (West 2002)) are subject to 2-619 dismissal based on sections 2-201 and 3-108 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/2-201, 3-108 (West 2002)), the counts alleging willful and wanton negligence are not. The plaintiff sufficiently alleges acts from which reckless disregard for safety of plaintiff can be inferred.

Zoning

Inland Land Appreciation Fund, L.P. v. County of Kane, 344 Ill. App. 3d 720 (2nd District, December 5, 2003). County ordinance authorizing county to contract with outside consultant for review of plats and contract with subdivision applicant to reimburse county for consultant's expenses in order to expedite review of subdivision plat is authorized by sections 5-1005(3) and 5-1018 of the Counties Code (55 ILCS 5/5-1005(3), 5-1018, (West 2000)). Therefore, trial court properly denied plaintiff's complaint for declaration that assessment of consultant's fee is *ultra vires.*

Shipp v. County of Kankakee, 345 Ill. App. 3d 250 (3rd District, December 16, 2003). Trial court erred when it ordered county to issue special use permit for manufactured home park based on application that was incomplete under ordinance because it did not contain specific dimensions of any buildings or structures, the location of sewer lines or water supply lines, or a description of the internal lighting and electrical systems. County is entitled to specify requirements for application for special use permit. Further, ruling that village had improperly denied sewage services when no application had been made and that county was required to issue variance are premature.

JOBS, NETWORKING AND "WHY DO I WORK FOR THE GOVERNMENT?"

INVITING ALL GOVERNMENT ATTORNEYS TO A BROWN BAG LUNCH

Sponsored by the Standing Committee on Government Lawyers

Tuesday, June 22, 2004 Noon – 1:30 p.m.

Bilandic Building, 160 N. LaSalle, Room N-502

Moderator: Donna DelPrincipe, Office of the University of Illinois Counsel, Chicago

JAMES M. REILLY, Chief Administrative Law Officer, Department of Administrative Hearings, City of Chicago will speak about job opportunities for attorneys—What's available, How to get the job you want and the Benefits of working in Government.

THOMAS H. ALLEN, Administrator, Formal Hearings Division, Department of Administrative Hearings, Office of the Secretary of State, Chicago will speak about the pros and cons of working in government in comparison to the private sector.

Join us for this opportunity to meet other government attorneys who may be able to help you find a new job or who can provide support to you in your current job.

Please RSVP to Phyllis Lester, ISBA Chicago Office, 312-726-8775, plester@isba.org, or by fax 312-726-9071 no later than June 17.

This program is complimentary.

Box lunches may pre-ordered for $10.00 or you may bring your own lunch. Complimentary beverages will be provided.

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STANDING COMMITTEE ON GOVERNMENT LAWYERS
Recognition Form for Senior Government Lawyers

The ISBA Standing Committee on Government Lawyers is in the process of identifying and recognizing Senior Government Lawyers. A Senior Government Lawyer is a government lawyer with a minimum of 20 years of continuous employment by a municipal, county, state or federal agency or any combination thereof or who has retired following 20 years of such service **and** who has continuous active membership in the ISBA or an affiliated bar association for a minimum of the past five years.

Please Print or Type:

1. **Full Name of Senior Government awyer:**____
2. **Current Business ddress:**____
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3. **Daytime Telephone:**____
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5. **History of Public Service, beginning with current or most recent position and extending back for at least 20 consecutive years, including name of office or agency, address, job title, years worked (or attach a current resume that includes this information). Attach additional sheets if necessary:** _____________
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6. **For ISBA members: Dates of membership:**____
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The undersigned hereby certifies that the foregoing information is true and correct, and that the above-named individual meets the criteria for recognition as a Senior Government Lawyer.

Signature____________________________________ Dated_______________________________________

Return form to: Janet Sosin, Director of Bar Services, Illinois State Bar Association, 20 S. Clark St., Suite 900, Chicago, Illinois 60603, Fax-312-726-9071 or email: **jsosin@isba.org**.

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