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ILLINOIS STATE BAR ASSOCIATION

Standing Committee on Government Lawyers

The newsletter of the Illinois State Bar Association's Standing Committee on Government Lawyers

From the Chair

By Lisle Stalter

It is that time again. Time for the old leadership to fade into the sunset or, more aptly phrased, step aside for the new leadership to take the reins. It has been a wonderful experience serving as the chair of the Standing Committee on Government Lawyers. The group of individuals who make up the committee is dedicated to both becoming better attorneys and to the collegiality of the ISBA and the Committee. Speaking of, did you read the President's Page in the May *Illinois Bar Journal*? John O'Brien focused on government lawyers and why they are ISBA members. Prominently featured in the article is a very thoughtful explanation by our own committee member Mary Milano. Mary, well said. I hope that if you have not already seen the article that you take a couple of minutes to locate it and read it.

As I am sure you are all aware, we had a busy year. Thank you to everyone on the Committee who put in the effort to make this year a successful one.

At time of printing, we are in the midst of presenting a CLE program with the ISBA's Local Government Law Section Council. The first session was held in Springfield. It is my understanding that the program went well with 57 attendees. The second session, set for Chicago, is to be presented at the end of April. In addition the Committee is cosponsoring an ethics program with ISBA's State and Local Tax Section Council. This

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In Memoriam: Roz Kaplan

By Kate Kelly and Lynn Patton

Our esteemed friend and a stalwart of the ISBA's Committee on Government Lawyers, Rosalyn B. Kaplan, passed away recently after a battle with cancer. While this committee mourns her passing, we also remember and celebrate her life. Roz was a guiding light to this committee from its early days, an advocate for government lawyers, and a proponent of our ethical approach to the law.

Roz's varied career was impressive. She began in public service as a high school French teacher. Changing careers, Roz graduated from the John Marshall Law School in 1981. For 14 years, Roz worked in the Civil Appeals Division of the Illinois Attorney General's Office, becoming chief in 1987 and the Illinois Solicitor General in 1991. Many who knew her and worked with her relate accounts of her frequent and exemplary appearances before the Illinois Supreme and Appellate Courts. They also appreciatively recall her extraordinary efforts as a mentor—leading by example and pure smarts.

Roz made the last stop of her career at the Attorney Registration and Disciplinary Commission—where she continued to flourish and shine in her appellate work—serving as Chief of Civil Appeals and Ancillary Litigation.

Her brilliant career was only enhanced by her dedication to the profession. Roz served as President of the Appellate Lawyers Association and actively supported their interests. Her dedication to the ISBA was career-long. A continuous member of the ISBA since her bar admission in 1981, Roz served on the Administrative Law Section

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program is set for June 2nd and is to run in conjunction with ISBA's CLE Fest.

Speaking of CLEs, the new ethics scenarios are well on the way to being ready to present during the next committee year. (This statement does not present a binding commitment, just an excited utterance.) I think that for all involved the process of writing new scenarios has been an eye opening one. And, at least for me, it has been somewhat enjoyable. If you have not been able to attend one of our ethics programs, I strongly recommend making an effort to attend the next one. These CLEs really do make earning professionalism credit fun, interesting and informative. If you have attended one in the past, you know how valuable they are. So, keep your eyes open for details on the New Ethics Extravaganza!

Admittedly, we did not get as far as I had hoped with the membership identification campaign. This issue does not have to end with my term. I still believe it is a worthwhile effort to identify all ISBA members who are government attorneys and hope that the Committee will continue in this effort. Along this line, I am hoping to find an easy and visible way for government attorneys to self-identify. Having this information can only benefit the Committee as it will make it more effective in meeting the needs of ISBA member government attorneys.

In closing, as you know, we lost a very dear and invaluable friend and member of our Committee, Rosalyn Kaplan. Kate and Lynn do a great job of recognizing her in the newsletter, but I just wanted to take one last opportunity to remember Roz, as she was an active participant in the Committee work and believed in the Committee's goals and purposes. ■

In Memoriam: Roz Kaplan

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Council, the Special Committee on Appellate Practice, and the Membership Campaign Subcommittee. She served on the Committee on Government Lawyers from 2000-2007 and was serving on the committee again at the time of her death.

We remember Roz for her untiring commitment to our committee. Among other contributions, Roz single-handedly represented government attorneys before the ISBA Board of Governors, arguing that this committee's CLE programs should be discounted for the government lawyer.

This committee's Ethics for Government Lawyers Program is a popular and repeated CLE. While Roz enjoyed her colleagues' portrayal of fictional attorneys and characters with questionable morals, she remained out of the spotlight. Rather, she worked behind the scenes authoring new vignettes and serving as our expert on the Rules of Professional Conduct. As we develop new scenarios for upcoming CLEs, her absence is acutely felt.

The Committee on Government Lawyers is a small, close-knit, collegial group. Roz was truly one of us. She spoke her mind and spoke up for others. She demanded the best of herself and her colleagues. We will always remember Roz as an exceptional lawyer, a wonderful advocate, and a dear friend. ■

Drug asset forfeiture: Will the courts quiet the critics?

By Adam W. Ghrist[1]

On October 14, 2009, the United States Supreme Court (USSC) heard arguments in *Alvarez v. Smith*, 130 S.Ct. 576 (2009), a case deemed by all to be an important review of Illinois' drug forfeiture law and the application of procedural due process. In the days surrounding the arguments, the media and blogosphere attention produced titles such as: *A Plea for Procedural Due Process* (Forbes, Oct. 20, 2009); *Police for Profit* (Wall Street Journal, Oct. 24, 2009); *Need Your Car Back from the Feds? Maybe Sotomayor Can Help* (*Wall Street Journal Law Blog,* Oct. 14, 2009); *Drug Fighting or Highway Robbery?* (*The Pantagraph,* Nov. 10, 2009); and *Forfeiture Case Before High Court is About Government Bullying* (ABA Journal: Law Prof., Oct. 14, 2009). The content of those articles and the comments following, in large part, carried with them the same theme as the titles above: drug forfeiture is bad and the law enforcement officials enforcing drug forfeiture are corrupt. Many observers believed or hoped the USSC would tighten the requirements of Illinois forfeiture laws. However, that was not the case.

Alvarez arose from six owners of personal property seized by the Chicago Police under the Illinois Drug Asset Forfeiture Procedure Act (DAFPA).[2] They filed an action, under 42 U.S.C § 1983, against the Cook County State's Attorney, the City of Chicago, and its police superintendent claiming that when property is seized "due process requires… a prompt, postseizure, probable cause hearing," not present in the DAFPA.[3] The district court, bound by the Seventh Circuit's decision in *Jones v. Takaki*,[4] granted the City's motion to dismiss.[5] On appeal, the Seventh Circuit departed from earlier precedent and held that Illinois' drug forfeiture procedure laws "show insufficient concern for the due

process rights" of the claimants.[6] The court found that the issue was not how quickly the civil forfeiture proceeding began, but rather whether an intermediate mechanism should be in place to test the validity of the seizure soon after the property was seized.[7] The case was remanded with instructions requiring the creation of some mechanism to review retention of seized property by law enforcement pending forfeiture proceedings.[8] The USSC thereafter granted certiorari and upon oral arguments became aware that the case was moot because final dispositions, either through settlement or default judgments, had been reached on all of the property previously seized.[9] The Court held that the case was moot and vacated the lower court's decision.[10] While this decision may have left critics deflated in their hopes to change Illinois' drug forfeiture laws, it likely will not silence them.

Critics of drug asset forfeiture often argue that individuals' due process rights are not adequately protected by the Illinois law, which allows police to seize personal property without a warrant and hold that property while the forfeiture is pending. The USSC in *Alvarez* noted that under Illinois law it could be 142 days before the State is required to begin a judicial forfeiture proceeding. In fact, it can be 187 days before a judicial forfeiture proceeding begins with the filing of a civil complaint. Once property is seized, law enforcement has 52 days to submit the seizure to the proper State's Attorney for review. [11] This time frame allows law enforcement to investigate the property further prior to determining if they will submit it to the appropriate State's Attorney's office for forfeiture. In the case of an automobile, law enforcement must investigate the title to determine if any liens exist on the property and who the lien holders are. Also, a determination must be made if the property is worth pursuing based on the status of any liens. Once it is sent to the State's Attorney's office, a review is undertaken of the facts and circumstances leading to the seizure and any related interest in the property before approving or denying the seizure. If the seizure is approved for forfeiture proceedings and the property is non-real with a value not exceeding $20,000, then non-judicial forfeiture procedures are initiated.[12] If the property is non-real with a value exceeding $20,000, then a judicial in rem proceeding is initiated.[13] The DAFPA excludes the value of any conveyance seized in determining if the value exceeds $20,000.[14] So, if law enforcement seizes $20,000 and an automobile valued at $50,000, then non-judicial forfeiture procedures would be initiated.

Non-judicial forfeiture procedures are just that non-judicial. The DAFPA requires the State's Attorney to send notice to all known interest holders within 45 days of receiving the notice of seizure from law enforcement.[15] This notice must include "a description of the property" and "the conduct giving rise to the forfeiture or the violation of the law alleged," among other things.[16] Thereafter, any person wishing to claim an interest in the property has to file a verified claim[17] and a cost bond in the sum of 10% of the value of the property or $100, whichever is greater.[18] Claimants may also file an affidavit of indigency.[19] If a proper claim is filed, the State has 45 days to file a verified complaint for forfeiture.[20] This is one of two ways forfeited property goes before a judge in a judicial in rem proceeding. The other is non-real property valued over $20,000. The vast majority of drug forfeitures are resolved as non-judicial forfeitures under the procedure just described largely because claims are never filed on the seized property. If a judicial in rem proceeding is required, the State has 45 days to file a complaint for forfeiture.[21] A property owner must file an answer within 45 days, and if an answer is filed, a hearing must be held within 60 days.[22]

Once a hearing is held, the DAFPA allows for several presumptions in favor of the State.[23] It is the State's initial burden to show the existence of probable cause for forfeiture. [24] If the court determines probable cause exists, the burden shifts to the property owner to show by a preponderance of the evidence that his or her property interest is not subject to forfeiture.[25]

This procedure and the time allowed for filing claims spurred not only the law suit that eventually went before the USSC but also the numerous articles questioning the methods used in seizing and forfeiting personal property. Only a quick review of the DAFPA is needed to see that the act protects the rights of property owners. Setting aside for a moment the initial 52 days law enforcement has to submit the seizure, each stage of the procedure gives an equal amount of time to the State and the property owner to make any filings. The process could be accelerated to ensure the property owner's day in court arrives more quickly. However, to whose advantage would that be? The State's Attorney who has training and experience in these matters, or John Q. Property Owner

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with no legal training? When a typical property owner receives the initial notice of pending forfeiture he or she must first interpret the legal document received and then determine how to make a claim. Most will be unable to make a sufficient pro se claim as there are several requirements.[26] So, the property owner must seek out a competent attorney willing to enter into this rarely-practiced area of law. All of this takes far more time than it does for the State's Attorney to submit the required notice and filings. So again, why do those arguing for property owners want to shorten the process? It seems obvious that abbreviating the process would only lead to more cries of "State sponsored theft"—to quote an attorney I often have this debate with—because property owners would be left with an inadequate time frame to defend their interests in the property. Now, addressing the time frame given to law enforcement; although they are given 52 days to submit the seizure, most law enforcement agencies have internal policies that require notice to the State's Attorney within a shorter time frame. Many law enforcement agencies, including the Illinois State Police, require that notice be sent within 35 days. However, notice is often given to the State's Attorney in far less than 35 days.

Those who argue against drug forfeiture need to answer this question: Do you want to rid your community of the illegal sale of drugs and the crime that comes with it? If you do, you must be willing to give law enforcement the tools to protect you from the drug trade and the contiguous crime. On June 29, 1990, Thomas Homer, then a member of the Illinois legislature, while speaking on the floor of the House of Representatives said, "It's a good Bill that attacks drug dealing at the source, by taking profits away and the assets away from those who profit by drug dealing. It gives law enforcement a significant tool in combating the ever increasing drug trafficing [sic] problem[.]"[27] Minutes after Representative Homer (and now the former Presiding Justice of Illinois' Third District Appellate Court) gave this recommendation, Illinois' drug forfeiture laws were passed with 106 voting 'yes', 7 voting 'no' and 3 voting 'present'.

Obviously our elected leaders did not see deficient due process protections in the DAFPA. However, an honest evaluation of the process does allow for one debate: Should there be a prompt post-seizure hearing to determine if probable cause exists? This was precisely the mandate that the Seventh Circuit gave in *Smith v. Chicago*. Such a hearing would require the State to give a showing of probable cause before a judge who would determine if the property in question could be held while the forfeiture was pending. This would ensure that law enforcement is not abusing the power given to them under the DAFPA. Florida law, for example, requires a preliminary hearing be held, but only at the request of the property owner.[28]

A preliminary hearing could serve a dual purpose in that it could allow a bond to be set for the release of the property during the pendency of a claim. This would address arguments that allowing the State to hold the property can present an extreme hardship on the property owner. Clearly, posting a percentage bond would not work in the case of seized currency; however, there is a better argument for such a procedure with seized automobiles. Many people rely on their vehicle to support themselves and their family. A judge could determine an appropriate bond to be posted based on the value of the property, the alleged forfeitable acts, the property's relationship to the acts, the property owner's role in any wrong doing, and the likelihood the property will be diminished in value if returned to the owner. The issue will be whether the value of the property can be maintained. If the property value is diminished, the State will lose the value of its interest. Whether a bond is issued or not, a preliminary hearing would allow for a neutral judge to make a probable cause determination and thereby validate the seizure of the property.

This preliminary hearing is the "mechanism" the Seventh Circuit mandated in *Smith*. While the USSC remanded the case with instructions to dismiss, there is no question that there will be no shortage of potential future plaintiffs. Drug forfeiture of property will continue to be the primary tool in the fight to ensure the drug trade is not a profitable enterprise in Illinois. And while the fight will not change, if the DAFPA is challenged again, the process may very well be required to change. The Seventh Circuit has shown in their opinion what "mechanism" they feel is a necessary addition to Illinois' drug forfeiture laws. If in place, a preliminary hearing may give critics of drug forfeiture the process they feel is due. ■

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1. Adam W. Ghrist is an Assistant State's Attorney in the McLean County State's Attorney's Office. Any opinions expressed in this article are solely those of the author and not those of the McLean County State's Attorney's Office.

2. 725 ILCS 150/1 *et seq*.

3. *Smith v. Chicago*, 524 F.3d 834, 835 (2008).

4. *Jones v. Takaki,* 38 F.3d 321 (1994).

5. *Jones* was decided under *United States v. Eight Thousand Eight Hundred and Fifty Dollars ($8,850) in United States Currency*, 461 U.S. 555 (1983), which applied the speedy trial test when determining if a delay in forfeiture proceeding violated due process.

6. *Smith*, 524 F.3d 834. The Seventh Circuit applied the three part test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), thereby rejecting its pervious holding in *Jones* declining to follow the due process analysis of *$8,850*.

7. 524 F.3d 834.

8. Upon notice of certiorari, the Seventh Circuit vacated their mandate requiring an intermediate hearing to test the validity of the questioned seizure.

9. *Alvarez v. Smith*, 130 S.Ct. 576, 580 (2009).

10. *Alvarez,* 130 S.Ct. 576.

11. 725 ILCS 150/5

12. 725 ILCS 150/6

13. *Id*.

14. *Id*.

15. 725 ILCS 150/6(A)

16. 725 ILCS 150/6(B)

17. 725 ILCS 150/6(C)(1)

18. 725 ILCS 150/6(C)(2)

19. *Id*.

20. *Id*.

21. 725 ILCS 150/9(A)

22. 725 ILCS 150/9(E)

23. See 725 ILCS 150/7

24. 725 ILCS 150/9(G)

25. *Id*.

26. See 725 ILCS 150/6(C)(1)

27. Remarks of Rep. Homer, June 29, 1990, House Debate on House Bill No. 3610 (which, as Public Act 86-1382, effective September 10, 1990, enacted the provisions in question) at 110.

28. Fla. Stat. 932.703(2)(a) (requires a preliminary notice of forfeiture to go out within 5 days after which time the property owner may request a preliminary hearing within 15 days).

Someone you should know—Tom Ioppolo, Assistant Attorney General

*By Ron Rascia and Anne Hagerty**

If you have kept up with pressing legal issues in Illinois over the past three decades, chances are you have come across Tom Ioppolo's name time and time again. As the supervising attorney for the Illinois Attorney General's Civil Rights Unit, Tom has handled numerous headline cases regarding our State and federal constitutions.

Tom has been an Illinoisan his entire life. He grew up in Cicero, graduated from St. Ignatius High School, and completed his undergraduate degree at Washington University in St. Louis, Missouri. Tom returned to Chicago to attend Loyola University School of Law and graduated in 1977. As a law student, Tom developed an interest in constitutional theory, focusing on interpreting the constitution and evaluating relationships between individual rights and government power.

Fresh out of law school, however, Tom accepted as his first job an offer at a small law firm that specialized in personal injury and workers' compensation cases. Although Tom gained valuable experience and had his first jury trial with the firm, he decided to return to what he fell in love with in law school–constitutional law.

Tom's love for constitutional law, coupled with his desire to work in public service, landed him a career at the Office of the Illinois Attorney General in 1979. As a young Assistant Attorney General, Tom started out in the Illinois Department of Corrections Unit. It was there that Tom worked on cases involving prisoners' rights and constitutional issues. Tom later joined the Civil Rights Unit, which handles a broader range of cases involving various constitutional matters. Today, Tom is the supervising attorney for the Civil Rights Unit, overseeing eight Assistant Attorneys General and dozens of cases every year.

The cases that we read about it in the daily newspapers are the same cases that come across Tom's desk on a regular basis. Tom handled the "moment of silence" case in Illinois that raised the issue of whether offering public school students a mandatory moment of silence to pray or otherwise reflect on their lives violates the Establishment Clause of the Constitution. Tom has also worked on several abortion rights cases, including a lawsuit that challenged the State's abortion notification law, claiming that the law violates Illinois' constitutional guarantees of privacy and due process. Tom feels very fortunate for having the opportunity to represent State officials in constitutional cases in State and federal courts. He also believes that if he had continued in private practice, he would not have worked on the same types of cases that continue to challenge him daily.

Tom's dedication to public service, however, does not end with his position with the Illinois Attorney General's Office. Tom also donates his time and experience to several community organizations. Perhaps the one service that Tom dedicates most of his extra time to is the Black Star Project, an organization that provides services to elementary and high school students in Chicago. The Black Star Project is a student motivation and mentoring program where volunteer "motivators" from business, government, and other professions talk to students about their jobs, the preparation necessary for their jobs, and what a student needs to do in school to be successful in the working world. As a Black Star Project Motivator, Tom takes the task one step further by performing a mock trial of a civil rights case involving a prisoner of Stateville Prison. After giving the closing arguments for both sides of the case, Tom lets the students act as the jury and deliberate the case. By doing so, the students not only remain entertained, they also get a glimpse into what it would be like to be an attorney. Tom thoroughly enjoys the reactions from the students and hopes that the program will inspire and motivate students to perform well in school. Tom is also involved in tutoring adult students in basic English at the Aquinas Literacy Center in the McKinley Park neighborhood of Chicago.

Tom's dedication to his community, combined with his 30 years of working on headline cases, makes him not only someone whom you should know, but someone whose name you probably already do know. ■

*Anne Hagerty is a Law Clerk at the Illinois Attorney General's Office. She is a law student at The John Marshall Law School.

The Illinois Supreme Court says: "Ryan gets nothing." Illinois taxpayers under no obligation to fund his retirement

*By Sharon Eiseman**

In April 2006, a federal jury convicted former Governor George Ryan of multiple felonies, including racketeering, conspiracy, mail fraud, making false statements to the FBI, and income tax violations, all related to his conduct during the times he served as Secretary of State and Governor. These verdicts resulted in a 78-month prison term for Ryan and, in a second blow, a letter from the acting executive director of the Illinois State Retirement System advising Ryan that his pension benefits had been suspended pursuant to Section 2-156 of the Illinois Pension Code (Code) (40 ILCS 5/2-156 (West 2006)). This action was deemed retroactive to Ryan's sentencing, covered benefits that had accrued from all of his government employment, and included loss of insurance coverage for Ryan and his wife.

Convinced that the retirement benefits he earned serving as a county board supervisor, a legislator, and Lieutenant Governor should not be subject to forfeiture, Ryan began his quest to reclaim those benefits, first in an appeal to the System's Board of Trustees, and then through the administrative review process. Although the Board and the circuit court agreed with the termination of all of Ryan's retirement benefits, the Illinois Appellate Court reversed, concluding that Ryan was entitled to receive the benefits that accrued during his terms as Lieutenant Governor and in the General Assembly. That victory for Ryan was short lived, as an appeal to the Illinois Supreme Court followed, and this State's highest court ruled in February 2010 in a 6-1 vote with Justice Burke dissenting, that, because of Ryan's bad acts, the forfeiture of his retirement benefits "is total. Ryan gets nothing." *Ryan v. Board of Trustees of the General Assembly Retirement System*, 236 Ill. 2d 315 (2010).

In reaching this conclusion, the Court relied on the "plain language" in two sections of the Code. Its first reference is to the definition of "member" in Section 2-105 (40 ILCS 5/2-105 (West 2006)), which covers persons serving as Governor, Lieutenant Governor, Secretary of State, Treasurer, Comptroller, Attorney General, and members of the General Assembly. 40 ILCS 5/2-105. Next, the Court focused on Section 2-156 of the Code. According to that Section, "*[n]one of the benefits* herein provided for shall be paid to any person who is convicted of *any felony* relating to or arising out of or in connection with his or her service as a member." (Emphasis supplied in opinion.) The Court then reads these two provisions together and reasons that, because Ryan is indeed a member of the System, and his crimes related to or arose out of or in connection with his service as a member, he cannot receive *any of the benefits* available under the System, no matter in what particular offices he served when he committed those criminal acts.

The Court concluded that a total forfeiture in Ryan's situation was consistent with its pension forfeiture decision in *Taddeo v. Board of Trustees of the Illinois Municipal Retirement Fund*, 216 Ill. 2d 590 (2005), even though a different result was reached regarding the pension claims of the former mayor of Melrose Park, and even though pension forfeiture statutes should be liberally construed in favor of the pensioner. In the underlying facts of that case, C. August Taddeo was convicted of felony offenses after pleading guilty to extortion and other crimes he committed during his tenure as mayor of Melrose Park. Thereafter, the Illinois Municipal Retirement Fund denied him all pension benefits he had accrued while serving as mayor and as Proviso Township supervisor, a decision upheld by the Illinois Appellate Court. In his appeal to the Illinois Supreme Court, Taddeo admitted that his crimes were "related to" and "in connection with" his employment as mayor but argued that he should receive those pension benefits he had earned during his tenure as supervisor because there was no nexus between that employment and his conviction.

The *Taddeo* Court found this argument persuasive, noting that the "pivotal inquiry" in such cases is whether there is a "clear and specific connection" between the felony committed and the participant's employment. Because Taddeo's felony convictions related solely to his employment as mayor and were unrelated to his employment as Proviso Township supervisor, there was no nexus and thus no basis to disqualify Taddeo from receiving his supervisor's pension. *Taddeo*, at 597. Moreover, and a significant fact for the Court, Taddeo had accrued two "completely separate pensions" in his two positions, which were maintained in segregated reserves in accordance with statutory requirements; therefore, the different participating government entities must be treated as independent units within the pension fund.

In explaining its decision in *Taddeo*, the *Ryan* Court reasoned that, because Taddeo worked for two separate municipal employers under the Code, only one of his employers suffered a breach of the public trust as a result of Taddeo's misconduct. This reasoning is consistent with the principle stated in *Ryan*, that conviction of a job-related felony "results in the forfeiture of all pension benefits earned in service of the public employer whose trust was betrayed." The public employer for whom Ryan worked while serving in his several offices was the State of Illinois.

The decisions in both *Taddeo* and *Ryan* reflect the public policy underlying pension forfeiture statutes: to "deter felonious conduct in public employment by affecting the pension rights of public employees convicted of a work-related felony." For the Court, this policy certainly applied to Ryan, who betrayed the confidence that the citizens of Illinois placed in him by "transforming two of this state's highest constitutional offices into an ongoing and wholly self-serving criminal enterprise."

As Justice Burke reads the majority opinion, it is irrelevant to the Court that Ryan committed none of the felonies for which he was convicted while serving as Lieutenant Governor or in the General Assembly. According to the dissent, all that counts for the majority is that Ryan's criminal activity occurred during his service in *any one* position of which he was a 'member' under the Code. Justice Burke then argues that this reasoning is precisely what was rejected in *Taddeo*.

Justice Burke finds the Court's application of the nexus analysis in the two pension cases inconsistent because it results in contradictory interpretations. The dissent asserts that if the same analysis used in *Taddeo* is

applied to Ryan's service, and if it is therefore understood that Ryan's 'membership' under each pension fund was distinct, then Ryan's pension benefits, like those of Taddeo's from his two employments, are also separate and severable. Accordingly, to be consistent with the analysis used in *Taddeo* and the results reached therein, Ryan should receive those pension benefits that accrued while he was Lieutenant Governor and a legislator. Unfortunately for Ryan, however, Justice Burke's was the lone voice on the Court favoring this result, so Ryan appears to have reached a dead end in his quest for relief.

*Sharon Eiseman is an Illinois Assistant Attorney General. The appeal in *Ryan v. Board of Trustees of the General Assembly Retirement System* was handled by the Office of the Illinois Attorney General on behalf of the Board of Trustees.

Summary of recent decisions

*By Ed Schoenbaum**

Labor Law

***Department of Central Management Services v. Ndoca*, No. 1-09-1052 (1st Dist., March 23, 2010). Affirmed.**

Teamsters Union member was terminated by the Illinois Department of Transportation after a random drug test showed marijuana in his system. Arbitrator conditionally reinstated him, requiring that he complete treatment and rehab, and pass a drug and alcohol test. Arbitrator was within her authority to construe meaning of collective bargaining agreement for lesser penalty, emphasizing just cause required for termination, even though collective bargaining agreement mandates 30-day suspension pending discharge of employee who tests positive for marijuana.

***Chicago Transit Authority v. Amalgamated Transit Union, Local 241*, No. 1-08-3285 (1st Dist., March 24, 2010). Reversed.**

CTA discharged bus driver after learning that he had been convicted of aggravated criminal sexual abuse of his 12-year-old stepdaughter and was a registered sex offender. Arbitrator reinstated driver after union filed grievance on his behalf. Arbitration award violated public policy for safe and secure transportation of public, including children. The driver failed to complete sex-offender treatment program; failed several polygraphs about his sexual behavior; did not pass final polygraph until five years after he left program; and told his therapist his sexual acts with stepdaughter were too numerous to count. Several high schools, elementary schools, and parks were located along this bus route, and unaccompanied school children often ride CTA buses. Award thus exposed public to danger and exposed CTA to liability.

Municipal Law

***In re Petition to Disconnect Certain Territory Located in Kane County, Illinois, from the Village of Compton Hills*, No. 2-09-0418 (2nd Dist., March 30, 2010). Affirmed.**

Court granted summary judgment in favor of village upon petitioners' petition to disconnect a subdivision from village. Under section 7-3-1 of the Municipal Code, within one year of organization of any municipality, disconnection is allowed of any territory that is "upon the border, but within the boundary of the municipality" and which meets other statutory criteria. A division between subdivision territory and a forest preserve district property is not "the border" under Code, as that would mean a municipality may have more than one border. No isolation of territory occurs only if a continuing and connected boundary line exists. Such line can exist only on the periphery, not as an internal border.

***P&S Grain, LLC v. County of Williamson, Illinois*, No. 5-09-0079 (5th Distr., April 2, 2010). Reversed and remanded.**

Grain company and oil company filed declaratory judgment action challenging constitutionality of County School Facility Occupation Tax Law in Counties Code, which allows county governments to impose 1% sales tax for school facility use, and validity of two county ordinances that authorized imposition of the 1% sales tax in Williamson County. Plaintiff corporations met common law requirements for standing, as claim of injury is distinct and palpable, is fairly traceable to Defendants' actions, and is substantially likely to be prevented or redressed by grant of relief requested. Corporations do not lack standing by fact that they may pass school facility tax on to their customers, as it does not negate effect of tax upon them. Section 11-301 of Code of Civil Procedure does not preclude corporations, which are corporate citizens, from filing actions under that Section.

*These summaries were prepared by Adrienne W. Albrecht for the ISBA Illinois E-Mail Case Digests, which are free e-mail digests of Illinois Supreme and Appellate Court cases and which are available to ISBA members soon after the decision is released, with a link to the full text of the slip opinion on the Illinois Reporter of Decision's Web site. These summaries have been downloaded and reorganized according to topic by Ed Schoenbaum for Government Lawyers, with permission.

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June

Friday, 6/18/10– Quincy, Stoney Creek Inn—Legal Writing: Improving What You Do Every Day. Presented by the Illinois State Bar Association. 8:30-12:45.

Monday, 6/21/10- Webinar—Advanced Legal Research on Fastcase. Presented by the Illinois State Bar Association. *An exclusive member benefit provided by ISBA and ISBA Mutual. Register at <https://www1.gotomeeting.com/register/863461769>. 12-1.

Tuesday, 6/22/10- Teleseminar—Buying and Selling Distressed Real Estate, Part 1. 12-1.

Tuesday, 6/22/10- Webcast—Women in the Criminal Justice System. Presented by the ISBA Women in the Law Committee. 12-1.

Tuesday, 6/22/10- Teleseminar—Health Care Reform 2010- How it Will Impact Employers, Part 1. 2:30-3:30.

Wednesday, 6/23/10- Teleseminar—Buying and Selling Distressed Real Estate, Part 2. 12-1.

Wednesday, 6/23/10- Teleseminar—Health Care Reform 2010- How it Will Impact Employers, Part 2. 2:30 - 3:30.

Thursday, 6/24/10- Friday 6/25/10- St. Louis, Hyatt Regency St. Louis at the Arch—CLE Fest Classic St. Louis- 2010. Presented by the Illinois State Bar Association. 11:00-4:40; 8:30-4:10.

Thursday, 6/24/10- Teleseminar—Business Exit and Succession Planning for closely Held Businesses. 12-1.

Tuesday, 6/29/10– Springfield, INB Conference Center, 431 S. 4th St—Legal Writing: Improving What You Do Every Day. Presented by the Illinois State Bar Association. 8:30-12:45.

Tuesday, 6/29/10- Teleseminar—Negligent Hiring. 12-1.

July

Tuesday, 6/6/10- Teleseminar—Like-Kind Exchange of Business and Business Internals. 12-1.

Thursday, 7/8/10- Webinar—Conducting Legal Research on FastCase. Presented by the Illinois State Bar Association. *An exclusive member benefit provided by ISBA and ISBA Mutual. Register at <https://www1.gotomeeting.com/register/906864752>. 12-1.

Tuesday, 6/13/10- Teleseminar—Business Torts, Part 1. 12-1.

Wednesday, 6/14/10- Teleseminar—Business Torts, Part 2. 12-1.

Thursday, 7/22/10- Webinar—Advanced Legal Research on Fastcase. Presented by the Illinois State Bar Association. *An exclusive member benefit provided by ISBA and ISBA Mutual. Register at <https://www1.gotomeeting.com/register/403171688>. 12-1.

Thursday, 7/22/10- Teleseminar—Construction Contracts. 12-1.

Tuesday, 7/27/10- Teleseminar—Goodwill in Business Transactions. 12-1.

August

Thursday, 8/12/10- Webinar—Advanced Legal Research on Fastcase. Presented by the Illinois State Bar Association. 12-1

Tuesday, 8/17/10- Webinar—Continuing Legal Research on Fastcase. Presented by the Illinois State Bar Association. 12-1

September

Friday, 9/10/10- Webinar—Advanced Legal Research on Fastcase. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 9/14/10- Webinar—Continuing Legal Research on Fastcase. Presented by the Illinois State Bar Association. 12-1.

Thursday, 9/16/10- Chicago, Chicago History Museum—GAIN THE EDGE!® Negotiation Strategies for Lawyers. Master Series Presented by the Illinois State Bar Association. 8:30-4:00.

Friday, 9/17/10- Chicago, ISBA Regional Office—18 Months of HITECH: A Brave New HIPAA. Presented by the ISBA Healthcare Section. 10-12.

Friday, 9/17/10- Chicago, ISBA Regional Office—Hot Topics in Tort Law- 2010. Presented by the ISBA Tort Law Section. 1-4:15

Thursday, 9/23/10- Chicago, ISBA Regional Office—Experts and Litigators on Issues Impacting Children & Custody in Family Law. Presented by the ISBA Family Law Section. 8-6.

Friday, 9/24/10- Springfield, Illinois Primary Healthcare Association—Don't Make My Green Acres Brown: Environmental Issues Affecting Rural Illinois. Presented by the ISBA Environmental Law Section. 9-5.

October

Friday, 10/1/10 – Chicago, ISBA Regional Office—Countering Litigation Gamesmanship. Presented by the ISBA General Practice Solo & Small Firm Section, Co – Sponsored by the Federal Civil Practice Section. 9-5.

Friday, 10/1/10 – Webcast—Countering Litigation Gamesmanship. Presented by the ISBA General Practice Solo & Small Firm Section, Co – Sponsored by the Federal Civil Practice Section. 9-5.

Wednesday, 10/6/10- Webinar—Continuing Legal Research on Fastcase. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/6/10- Webinar—Virtual Magic: Making Great Legal Presentations Over the Phone/Web (invitation only, don't publicize). Presented by the ISBA. 8-5.

Friday, 10/8/10- Carbondale, Southern Illinois University, Courtroom 108—Divorce Basics for Pro Bono Attorneys. Presented by the ISBA Committee on Delivery of Legal Services. 1-4:45.

Friday, 10/15/10- Bloomington, Double Tree—Real Estate Update 2010. Presented by the ISBA Real Estate Section. 9-4:45.

Friday, 10/15/10- Chicago, ISBA Regional Office—Meet the Experts 2010. Presented by the ISBA Labor and Employment Section. 9-12:30.

Monday, 10/18/10-Friday, 10/22/10- Chicago, ISBA Regional Office—40 Hour Mediation/Arbitration Training. Master Series Presented by the Illinois State Bar Association and the ISBA Alternative Dispute Resolution Section. 8:30-5:45 each day.

Thursday - Saturday, 10/21/09 - 10/23/09 – Springfield, Hilton Hotel—6th Annual Solo & Small Firm Conference. Presented by the Illinois State Bar Association.

Friday, 10/22/10- Webinar—Advanced Legal Research on Fastcase. Presented by the Illinois State Bar Association. 12-1.

Thursday, 10/28/10- Springfield, Statehouse Inn—Experts and Litigators on Issues Impacting Children & Custody in Family Law. Presented by the ISBA Family Law Section. 8-6.

November

Wednesday, 11/3/10- Chicago, ISBA Regional Office—Due Diligence in Mergers & Acquisitions. Presented by the ISBA Business Advice & Financial Planning Section. 9-5.

Thursday, 11/4/10- Lombard, Lindner Learning Center—Real Estate Update 2010. Presented by the ISBA Real Estate Section. 9-4:45.

Friday, 11/5/10- Chicago, ISBA Regional Office—Trial Practice- Voir Dire to Appeal. Presented by the ISBA Civil Practice and Procedure Section. 9-5:15.

Spring Semester 2011

Friday, 3/4/11 – Chicago, ISBA Regional Office—Dynamic Presentation Skills For Lawyers. Master Series Presented by the Illinois State Bar Association. 12:30-5. ■