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The newsletter of the ISBA's Bench & Bar Section Council

Former Illinois Supreme Court Justice Seymour Simon, 1915-2006

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By Michele Jochner

Justice Seymour Simon recently passed away at age 91, after an extraordinary career in law and politics that spanned nearly seven decades. Justice Simon—a decorated World War II veteran—held positions in each of the three branches of government, at all levels. He leaves a legacy as a caring, independent thinker, true to his beliefs and not hesitant to follow his conscience—even if against the trend of popular opinion or the political party line.

Justice Simon was born in Chicago in 1915. He attended Roosevelt High School and became an undergraduate at Northwestern University at the early age of 16. After obtaining his Bachelor's Degree, he thereafter attended Northwestern University Law School, where he graduated first in his class. He was admitted to the Illinois bar in 1938, and he became an attorney in the antitrust division of the U.S. Department of Justice. In 1942—at the height of World War II—he joined the Navy, served for three years, and was presented with the Legion of Merit medal for his service. At the end of the war, Justice Simon returned to Chicago and resumed his practice of law. He began his political career in 1955, when he ran for the position of Alderman of Chicago's north-side 40th Ward. He was victorious and remained in that position until 1961, when he was appointed to fill a vacancy on the Cook County Board. Justice Simon became the President of the Cook County Board in 1962, and remained in that position until 1966. However, when he did not receive backing from the Democratic Party in his bid to be reelected Cook County Board President, he returned to the Chicago City Council in 1967.

In 1974, Justice Simon began his career in the judicial branch of government, becoming a judge on the Illinois Appellate Court. In 1980, he ran for a seat on the Illinois Supreme Court and won it, despite the fact that he did not have the backing of the Democratic Party. During his time on the court, he authored nearly 200 majority opinions, including a landmark 1984 decision upholding Morton Grove's ban on handguns (*Kalodimos v. The Village of Morton Grove*, 103 Ill. 2d 483, 470 N.E.2d 266 (1984)), and a 1986 decision that ruled invalid a proposed referendum aimed at unseating Chicago's Mayor Harold Washington by conducting Chicago's mayoral election on a nonpartisan basis (*Lipinski v. The Chicago Board of Election Commissioners*, 114 Ill. 2d 95, 500 N.E.2d 39 (1986)). In addition, Justice Simon dissented in every death penalty case that came before the Illinois Supreme Court, based upon his belief that the death penalty was unconstitutional because it could never be fairly applied. See e.g., *People v. Lewis*, 88 Ill. 2d 129, 179, 430 N.E.2d 1346 (1981) (Simon, J., dissenting). His passionate dissents showed that he stood firm in his beliefs, and that he was unafraid of taking a controversial position as an early opponent of the death penalty several years before such an opinion became more acceptable in the view of the general public.

After eight years on this State's highest judicial tribunal, Justice Simon retired from the bench and joined the Chicago law firm of DLA Piper. He also devoted time to volunteer activities, and was the recipient of countless honors and awards. In news reports announcing Justice Simon's passing, many who knew him remarked that although he was a Democrat and loyal to the Democratic Party, he was also an independent thinker who did not hesitate to differ with party leaders when he believed that it was necessary for the public good.

Justice Simon—who dedicated his life to public service—was greatly admired by the Illinois legal and political community. He made tremendous contributions during his career, and he will be truly missed.

IN THIS ISSUE

Chair's Column

By Hon. Barb Crowder

When a lawyer is chosen to become a judge, whether the choice was made by the voters after an election or by appointment from other judges, the new judge swears to uphold the laws of the State of Illinois and the Constitution. Judicial independence is born; the judge decides cases fairly and impartially based upon what the law says and no longer is able to be an advocate for a specific point of view. That is the promise of the judge and the point behind being a third, co-equal branch of government.

What then, are all the attacks on judicial independence? What about groups advertising that judges are not fair and impartial, but have specific political agendas they are furthering? Or groups that are angry because a decision does not agree with that group's outlook? When we read a decision by a federal judge who is appointed for life and presumably free from pressure, do we check who appointed that judge and claim the judge ruled to please the President's party who appointed him or her? Should an electorate be allowed to recall judges like California recalls Governors?

ISBA President Irene Bahr has asked the Bench and Bar Section Council to study judicial independence and report at the mid-year meeting. This committee is being chaired by the capable Ed Schoenbaum, Secretary of the Bench and Bar Section and an administrative law judge. Joining him are James Ayres, Justice Richard Goldenhersh, Judge Ann Jorgensen, Justice Kent Slater and Julie Matoesian, along with other members of the council. Their mission is to review the joint ISBA/CBA report on Judicial Independence and to review some referenda and legislative initiatives from around the country. The committee will report to the council and the section council will ultimately suggest a plan for ISBA's position on any such movements in Illinois.

Judges and the legal system itself continually evaluate their functioning and suggest programs to improve court and to allow it to better meet needs. Does a court lose independence by creating a drug court to help those with drug or alcohol problems or by joining community groups together to address domestic violence? This committee will make recommendations that may assist all those who work in the legal community to fulfill their roles without fear that their independence in decision making is being attacked.

Those readers who have ideas about judicial independence or suggestions for specific rules, legislation or programs are invited to contact the Bench and Bar Section Council. We welcome your input. Please direct your comments to Ed Schoenbaum, IDES, 1108 S. Grand Ave West, Springfield, IL 62704-3553. Fax: (217) 524-1221.

The other shoe drops: Reflections on Illinois' Long–Arm Statute

By Judge E. Kenneth Wright, Jr. and Baseer Tajuddin

The Illinois Long-Arm Statute, 735 ILCS 5/2-209, poses a conceptual dilemma for courts trying to discern it. The culprit is a not-too-innocent and straightforward addition enacted seventeen (17) years ago, which has invited judges to take different paths in analyzing whether a foreign defendant should be brought into State court. What had previously been a relatively transparent assessment, became, after the amendment one laced with doubt.

Traditionally the Illinois Long- Arm Statute allowed the State court to exercise jurisdiction over out-of-state entities and individuals if two (2) requirements were met. First, jurisdiction must be proper under 735 ILCS 5/2-209(a) or 209(b). Both 2-209(a) and 2-209(b) list potential acts which connect the defendant to the State. Second, the jurisdiction must be within Constitutional bounds by comporting with federal and State due process of law. This was uniformly applied until 1989 when a general provision, 2-209(c), was introduced.

Section 2-209(c) provides: "A court may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States." On its face this language appeared to make proving any of the acts in 2-209(a) or 2-209(b) irrelevant as long as 2-209(c) was satisfied. But it was unclear if 2-209(c) required an independent basis for jurisdiction or if it was just a catch-all. Because of this confusion, some judges continued to use the traditional two-step analysis, while others determined that the only relevant question was that of due process under 2-209(c).

The First District of the Illinois Appellate Court expressly dissected the now-muddled state of the law in *Kostal v. Pinkus Dermathopathology Laboratory, P.C.*, 357 Ill. App. 3d 381, 827 N.E.2d 1031 (1st Dist.2005). In that case, defendants cited *International Business Machine Corp. v. Martin Property & Casualty Insurance Agency, Inc.*, 281 Ill. App. 3d 854, 666 N.E.2d 866 (1st Dist, 1996) to try to persuade the court to use the traditional two-step analysis.

Instead the court found that 2-209(c) served as an independent basis for exercising personal jurisdiction, following First, Third and Fifth District precedent. Nevertheless, without the controlling ruling in the field, uncertainty remains.

Two subsequent Second District opinions demonstrate this confusion.

Keller and *LaRochelle*: Contrasting Methods Used in the Second District

In *Keller v. Henderson*, 359 Ill. App. 3d 605, 834 N.E.2d 930 (2d Dist, 2005) PLA den. 217 Ill.2d 603, 844 N.E.2d 966 (2006), the Second District followed *Kostal*, and applied the interpretation that 2-209(c) was an independent basis for exercising personal jurisdiction and 2-209(a) was "wholly unnecessary." Accordingly, the court focused only on the question of whether the due process requirements had been satisfied.

Yet, a few weeks later, in *LaRochelle v. Allamian*, 361 Ill. App. 3d 217, 836 N.E.2d 176 (2d Dist. 2005) PLA den. 217 Ill.2d 603, 844 N.E.2d 966 (2006), the Second District employed the very analysis it had determined, in *Keller*, to be unnecessary. In *LaRochelle*, the court first looked at whether jurisdiction was established through 2-209(b)(4) or one or more of the acts described in 2-209(a). Then the court looked at the due process requirements. The court did not use 2-209(c) as an independent basis for jurisdiction despite acknowledging that due process was coextensive with the Illinois Long-Arm Statute.

A footnote in *LaRochelle* explained the decision the court made to use the two-step analysis despite its logic in *Keller*. After noting that *Keller* found 2-209(c) "…coextensive with due process…'and'…that the first step of our analysis is not always necessary,"…. the *LaRochelle* court held that, nevertheless, in the interests of thoroughness, we elect here to employ the traditional, two-step analysis of personal jurisdiction."

These two contrasting opinions are a microcosm of the problems that courts are dealing with dealing with regarding the statute. If the first step in the two-step analysis is admittedly unnecessary by the court's own interpretation, why employ it? If the two-step analysis is more thorough, why do some defendants get the benefit of a thorough application of the statute while other defendants do not? If there is some logic to when the two-step analysis is preferable over the 2-209(c) analysis, as the court hints at (first step is "not always necessary"), why does the court not explain why it is not necessary?

The parallel of Federal Due Process and 2-209: How *Keller* and *LaRochelle* were decided

Once the court in *Keller* determined that 2-209(a) and 2-209(b) were unnecessary, the court focused on federal due process, as no operative differences exist between federal due process and state due process; and therefore, satisfying federal due process satisfies both.

The federal due process analysis consists of three prongs: 1) that the defendant had minimum contacts with the forum state creating a "fair warning" that the non-resident defendant could be brought into court; 2) that the action arose out of, or was related to, the defendant's contacts with the forum state; and 3) that to require the defendant to litigate in the forum state is reasonable. (See, e.g., *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471, 105 S.Ct. 2174 (1988)

The *Keller* court recognized that the minimum contacts required for personal jurisdiction differ depending on general or specific jurisdiction. If the court had general jurisdiction then the "defendant may be sued in the forum state for suits neither arising out of nor related to the defendant's contacts with the forum state," adding that suit "is permitted only when the defendant has:" continuous and systematic "business contacts within the forum." *Keller*, 359 Ill.App.3d at 613, 834 N.E.2d at 936.

If the court had specific jurisdiction, then the suit may only be brought if the suit "arises out of or relates to the defendant's contacts with the forum State." *Keller*, 359 Ill.App.3d at 613, 834 N.E.2d at 936. Thus the second prong only applies when the plaintiff contends Illinois has specific jurisdiction.

When looking at the first prong, the *Keller* court noted that the defendant had hired an Illinois company, the sale took place in Illinois, the defendant paid for the service in Illinois, and that the defendant was aware part of the performance (in this case, the ferrying of an airplane across Illinois) would take place in the State. Overall, the court found minimal contacts as "defendant purposely directed its activities at the forum state, reached out beyond one state to create continuing relationship with citizens of the forum state, or purposely derived benefits from its activities in the forum state." *Keller*, 359 Ill.App.3d at 614, 834 N.E.2d at 937.

Despite the fact that the court in *Keller* did not do the traditional first step analysis, one can speculate how it would have to determine whether the suit would be decided under the specific jurisdiction of 2-209(a). Could a person be brought to Illinois court for "any cause of action arising" from the 2-209(b), where the suit can be brought whether the action arose "within or without this state," but only if they were found to be "doing business" in Illinois? In *LaRochelle*, the phrase "doing business" was interpreted as requiring something more than casual or occasional business within the State (*LaRochelle*, 361 Ill. App. 3d at 222).

Once it determined that the plaintiff was contending only specific jurisdiction, the court would look to see if the defendant had committed any of the actions under 2-209(a)(1) "the making or performance of any contract or promise substantially connected with the state." According to *Presley v. P & S Grain Co., Inc*. 289 Ill. App. 3d 453, 683 N.E.2d 901 (5th Dist, 1997), factors to consider in determining minimum contacts include: the nature of the business transaction, the applicability of Illinois law, the contemplation of the parties, who initiated the agreement, where the contract is formed, and where it is to be performed. These factors closely mirror the considerations for transacting business under 209(a)(1): who initiated the transaction, where the contract was entered into, and where performance of the contract was to take place. *Ideal Insurance Agency v. Shipyard Marine, Inc*., 213 Ill. App.3d 675, 572 N.E.2d 353 (2d Dist. 1991). Overall, to transact business {under 2-209(a)(1)} within the State is to voluntarily seek the benefits and protections of the law of this State. *Ideal*, 213 Ill. App.3d at 680, 572 N.E.2d at 357.

What should be evident is that although the court looked only at Federal due process in *Keller*, it still asked every question it would have asked if only considering sections 2-209(a) and 2-209(b). Thus, whether one examines 2-209(a) and 2-209(b), and then considers the third prong of the

due process test (the first two prongs repeating the analysis of 2-209(a) and 2-209(b)), or if one goes straight to the three-prong test, the result would not change and the analysis would be almost identical.

The decision in *LaRochelle* shows this as well. The court looked at 2-209(b)(4) and found there was enough continuous activity to be regarded as doing business. When the court focused on the Federal due process part of the analysis, the court wrote, "These contacts with Illinois [the ones found under the 2-209(b)(4) analysis]are sufficient to comport with the federal due process requirement."

Regardless of the analysis by the courts, the same principles which were applied years ago in the International Shoe case are the basis for 2-209(a), (b), (c): a foreign corporation is subject to suit in state court if it has minimum contact with the state, and, maintenance of the suit would not offend the notions of fair play and substantial justice. That is the footprint of 2-209.

Conclusion: Making sense of the Long-Arm Statute

Regardless of the analysis by the courts, sections 2-209(a), (b) and (c) exist together to fully answer the question asked years ago in International Shoe Co.: would allowing the state to hear the case offend the notions of fair play and substantial justice? That is the footprint of Section 2-209.

Walnuts keep falling on my head and other horrors of litigation

By Terrence J. Lavin

Reading slip opinions is part and parcel of the practicing attorney's daily grind. Back in my legal youth, I had the assignment of closely following the advance sheets in search of instructive opinions in the personal injury arena, so the senior lawyers could spend their time more wisely in seemingly complicated matters like depositions and trials. At the afternoon call, I was regularly asked to relate the facts and holdings of some of the significant cases that were handed down.

A more intellectual type may have only presented the opinions of true legal significance. I, on the other hand, was ever on the lookout for an offbeat case that would provide some levity in what was an otherwise melba-toast dry enterprise. These cases typically found their way into speeches for the partners' presentations at bar association seminars. I recall fondly a shooting accident case (only a personal injury lawyer fondly recalls a shooting accident) in which the defendant mistook his pal for a turkey, even though he was dressed up in hunter paraphernalia. The defendant's lawyer pleaded contributory fault. I would have pleaded insanity; that is, until Dick Cheney filled his hunting buddy full of lead, thus lending an air of legitimacy to the defense.

There is nothing better than a silly fact pattern to make the day of an advance sheet warrior. Perhaps it is the observation of an aging lawyer, but I have to say that there are precious few wacky cases out there in the legal hustings. I could probably find a few in the criminal arena, but it's hard to wade through all the perversions when you're just in search of a little tragicomedy.

Fortunately for all of us, we have a budding legal humorist in the Third District Appellate Court. Justice Daniel Schmidt, a relatively recent addition to the Court, was given the assignment of dispensing justice in a slip-and-fall case. *Pageloff v. Gaumer and Ruffit Park*, 365 Ill.App.3d 481, 849 N.E.2d 1086 (3rd Dist. 2006). This ordinarily wouldn't provide much of an opportunity for wit, or jurisprudence for that matter, but Justice Schmidt was smart enough to recognize that this case was different because the offending "defect" that perniciously caused such a dangerous condition for the never-alert plaintiff was a nut. That's right, a real nut.

Here are the salient details. Mrs. Pageloff and her husband went to a campground in beautiful Whiteside County. (Parenthetical note, I have actually been to Whiteside County and it is indeed a pastoral pleasure). When their normal campsite was occupied, they were fortunate enough to get another spot, a cozy nook in the park underneath the canopy of a bunch of walnut trees. Unfortunately for the Pageloffs, this was Labor Day weekend and the walnuts were falling. On their heads, on their camper and, of course, all over the ground. On their third day, one of these rascals somehow got under Mrs. Pageloff's foot and she slipped and fell, injuring her ankle.

In a normal society, this would be an occasion for nothing more than a "thinking of you" Hallmark card, but Mrs. Pageloff got herself a lawyer. (So did Mr. Pageloff, claiming loss of consortium presumably attributable to the marriage-wrecking ankle break. Justice Schmidt gave him a pass in the opinion, but methinks there is material aplenty in that part of the case). They filed their case in Whiteside County where the very capable Judge Timothy Slavin sent them packing with a summary judgment for the defense. Most people would have moved on with their lives but persistence must be a Pageloff family trait, because they took the case up to the Appellate Court, Third District where the ironic Justice Schmidt lay in wait.

In drier, less capable hands, this fact pattern might lend itself only to a discussion of the frivolous nature of the lawsuit, but Justice Schmidt unleashed his pent-up wit along with some boilerplate premises liability law. Here's his take on the facts:

> Walnut trees were adjacent to this campsite, and for the entire weekend walnuts, as they are prone to do in late summer, fell off the trees onto the site. What might have been a baker's dream, turned into plaintiffs' nightmare:

> walnuts everywhere. During her deposition, Kelly [Mrs.] stated that she and Dale [Mr.] had been cleaning the fallen walnuts up all weekend and that the walnuts 'were everywhere' and 'everywhere you tried to walk'. Falling walnuts even damaged plaintiffs' camper. Notwithstanding the unrelenting barrage of falling nuts, plaintiffs remained on the campsite. The Pageloffs brought a rake with them and used it to clean walnuts from the campsite during the entire weekend. Three days after their arrival, while cleaning up the campsite to go home, Kelly stepped on a walnut and fell, suffering a rather severe injury to her left ankle. She did not know how long the offending nut had been on the ground.

Justice Schmidt then focused on the nitty-gritty details of his day job and elucidated the standard of review and laid out the legal duty analysis. Journeyman judging, for the most part, but he slipped in a few pearls while talking about the ever-fascinating topic of whether a landowner has a duty to warn of walnuts that fall from trees onto the heads and vehicles of campers, only to land on the ground on which they inevitably walk. This brought the Justice into the familiar but mind-numbingly boring legal backwaters of the duty to warn of open and obvious conditions. (To me, the real open and obvious situation here was that the plaintiffs were, figuratively speaking, nuts, but I digress).

The defendants sought refuge in the "natural accumulation" cases which hold that a landowner is not liable for injuries caused by a natural accumulation of ice or snow. They found a sympathetic judicial ear in Justice Schmidt, who felt that guarding against injuries from a fallen nut would be "beyond onerous because, [p]ractically speaking, you could not have walnut trees on campgrounds. Like the snow from the sky in winter, nuts fall from walnut trees in the late summer." It ain't poetry, but this is the law we're talking about, so it sounds like Kipling to me. He was also bluntly humorous when holding that the defendants had no duty to remove trees from their campground: "Of course, defendants could cut down all of the nut-bearing trees and pave their property. That might make for a safer campground. Most likely one devoid of campers, too."

Turning litigious piffle into readable legal prose is no small task. While reading Justice Schmidt's pleasant and humorous slam of this cipher's suit, I kept recalling the turkey shooting case from my days as a neophyte lawyer. In my mind's eye, I don't see the actual hunters, but rather the corpulently comic Bobby Baccala from the television *Soprano's*, trudging through the New Jersey Pine Barrens in his hunter's regalia in search of Christopher and that guy with the wacky hairdo. What's his name again? Paulie Walnuts.

Sorry, I couldn't restrain myself. Surely Justice Schmidt sympathizes.

What you may not ask

By Thomas Bruno

When Lou Grant interviewed Mary Richards for a job at WJM-TV, he asked her about her religion. Said Mary: "You're not allowed to ask that when someone's applying for a job. It's against the law." Said Lou: "Wanna call a cop?"

If Mary had applied for a job at WGN, the Illinois law she would be referring to is the Illinois Human Rights Act, 775 ILCS 5/1-101 et. seq. Besides religion, this Act also regulates the use of a prospective employee's criminal history in hiring practices. Section 2-103(A) of the Act states:

> Unless otherwise authorized by law, it is a civil rights violation for any employer, employment agency or labor organization to inquire into or to use the fact of an arrest or criminal his-

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So if Lou had asked Mary about her past sentence of court supervision, could Mary's response have been the same as for a query about her religion?

For years criminal defense attorneys have advised clients to consider pleading guilty in exchange for a sentence of court supervision. Since court supervision is not a "conviction" under 730 ILCS 5/5-6-3.1(f), it was the common wisdom among defense attorneys that "a discharge and dismissal upon a successful conclusion of a disposition of supervision shall be deemed without adjudication of guilt and shall not be termed a conviction for purposes of disqualification or disabilities imposed by law upon conviction of a crime." Thus if Mary had successfully completed her court supervision sentence, and her case was discharged, her attorney would have advised her to tell Lou at her employment interview that she had not been convicted of a crime.

However, two Appellate Court decisions, and one Illinois Supreme Court decision, have called into question this once sage advice. The first case is *Sroga v. Personnel Board*, 359 Ill. App.3d 107, 833 N.E.2d 1001 (2005). The City of Chicago Personnel Board had removed Sroga from the list of persons eligible to become a Chicago Police Officer because Sroga had received a disposition of court supervision on a theft case. Sroga filed an action in the circuit court asking to be reinstated on the list. The trial court ruled in his favor. The judge explained:

> …a per se prohibition against an individual becoming a Chicago Police officer after being prosecuted and successfully completing a period of supervision for an offense arising out of that incident would be in contravention of State law" as espoused by section 5-6-3.1 of the Unified Code of Corrections (730 ILCS 5/5-6-3.1 (West 2002) (incidents and conditions of supervision))… "As the Hearing Officer found the sole basis for removing Mr. Sroga from the eligibility list was his conduct in committing the 1994 theft, he must be restored to the eligibility list.

The City appealed and the First District reversed. The Appellate Court based its decision in part on the fact that Sroga had himself supplied the information as to the facts which were the basis of the theft charge, and on the timing of these admissions before his arrest was expunged. But the court also made the following comment as to Section 2-103(B), the companion of Section 2-103(A):

> Finally, section 2-103(B) does not bar the Personnel Board from considering an applicant's real conduct. According to that statute, the "prohibition against the use of the fact of an arrest contained in this Section shall not be construed to prohibit an employer * * * from obtaining or using other information which indicates that a person actually engaged in the conduct for which he or she was arrested." 775 ILCS 5/2-103(B) (West 2002). [fn4] In disqualifying Sroga, the Personnel Board relied upon Sroga's actual conduct as told to Officer Rebich by Sroga himself.

An employer therefore can consider a criminal act in employment evaluation even if no conviction resulted from the conduct.

The second case in this line is Beard v. Spectrum, 359 Ill. App.3d 315, 833 N.E.2d 449 (2005). Beard had applied for a job with Sprint (Spectrum). The employment application contained the following question:

> Have you ever been charged with a crime (including misdemeanors but not minor traffic violations) which resulted in a conviction?

The application further stated:

> For the purposes of this question, convictions also include guilty pleas (including No Contest pleas), suspended impositions of sentence, adjudications deferred or withheld (except in Montana), diversion programs (except in California or Ohio) (beyond the probationary period), first offender programs (except in Massachusetts and Georgia), non-prosecutions with leave to reinstate, pre-trial interventions (beyond the probationary period), stays of imposition to vacate and dismiss (beyond the probationary period), and set dockets (beyond the probationary period).

In response to this question, Beard answered "no." Beard also authorized Sprint to obtain a consumer background report on him. That report revealed a sentence of one month of court supervision and a twenty-five dollar fine for a public morals offense. Sprint declined to hire Beard.

Beard filed a complaint with the Illinois Department of Human Rights and cited the Human Rights Act and the court supervision statute as the basis of his complaint. When the Department of Human Rights denied his complaint, Beard appealed to the Third District Appellate Court. They, too, ruled against Beard. The Court said that the a disposition of court supervision does not free a defendant completely from the consequences of a crime, and that not receiving a private job was not one of the legal disabilities to which the legislature referred in the supervision statute.

As to the human rights violation, the court stated that Section 2-103(A) allows for a company to define conviction in a way to avoid the Act:

> The Illinois legislature has not prohibited employers from defining "conviction" as Sprint did. In enacting section 2-103(A), the intent of the legislature was to prevent inquiry into mere charges or allegations of criminal behavior but to allow inquiry where criminal conduct has been proven. The background investigation conducted by ChoicePoint indicated that the circuit court criminal record indices for Will, Du Page, and Cook Counties were searched. In that petitioner never had his record expunged, the court record still reflected the conviction.

Viewed together, the Appellate Courts have ruled that employers may ask prospective employees about sentences of court supervision and may refuse employment based on those

dispositions without running afoul of the Human Rights Act or of the court supervision statute.

The Illinois Supreme Court denied Sroga's petition for leave to appeal. Apparently Beard did not file a PLA. The Supreme Court, though, has not left these cases unnoticed. In *People v. Jordan*, 218 Ill.2d 255, 843 N.E.2d 870 (2006), the Supreme Court was considering the issue of whether an appeal from a disposition of court supervision was moot because the trial court had dismissed the case after the defendant had successfully completed the supervision period. In ruling that the matter was not moot, the court cited the above cases:

> We note in passing, without expressing either approval or disapproval, that recent appellate decisions have upheld the adverse consideration of dispositions of supervision in employment decisions. See *Beard v. Sprint Spectrum, LP*, 359 Ill. App. 3d 315, 319-20 (2005); cf. *Sroga v. Personnel Board*, 359 Ill. App. 3d 107, 111-14 (2005).

Clearly, a defendant subject to an order of supervision may suffer collateral legal consequences as a result of that disposition.

We need not wonder about the outcome in the Illinois Supreme Court of Mary Richards' appeal against Lou Grant and WJM-TV. What defense attorneys must now do is reevaluate our initial advice to Mary about the consequences of a plea to supervision.

Summary of important items from the September 2006 meeting minutes

By Hon. Edward Schoenbaum, Secretary

The following Committees reported:

Newsletter: Al Swanson reported on the need for articles and reminded every member of their responsibility for providing articles.

Alternative Dispute Resolution (Mediation): Judge Kiley reported for the Committee on mediation and a potential training programs under the new Supreme Court Rule. Starting in January, all family cases will need mediation. There are potential Guardian ad litem training programs in Northern Illinois, Vandalia, and Quincy.

Legislation & Supreme Court Rules: Tom Bruno reported that the bill tracking report is available and ready to go. As we comment on bills by e-mail, he will send feed-back to encourage more comments from those who still have not commented.

Continuing Legal Education: Chair Crowder reported further on the two-day education for attorneys in custody cases under the new Supreme Court Rules in August. This program met CLE requirements and was a sold-out event. There have been requests to repeat it in other locations.

Our program on the new Eminent Domain and Condemnation law that takes effect in January 2007 and July 2007 in TIF districts was approved by the CLE Committee for presentation on Friday, December 8, 2006, during the Midyear meeting. She also pointed out that presenters receive four hours of CLE credit for speaking for one hour. JulieAnn Sebastian announced that the Local Government Law Section and the Real Estate Law Section have both been asked to co-sponsor this program and the Women and Minority Committee has asked to co sponsor.

The Website for the MCLE Board is up and running - <http://www.mcle-board.org/>.

Intermediary: Judge Karahalios reported that our best chance for the next circuit to implement the program would be DuPage County with Chief Judge Ann Jorgenson, who is now on our section council. Justice Karmeier is working with the circuits in his district. We can remind people that the Supreme Court rule protects the intermediaries.

Reports of Special Subcommittees

Court Security: Judge Kiley reported on his search to find out if there is a repository of threats against judges. The Illinois Judges Association referred him to retired Judge Geiger, and neither he nor the Administrative Office of Illinois Courts has any information. Judge Kiley will continue to investigate and update his report at the midyear meeting. Judge Mike Chmiel pointed out that county Sheriffs unilaterally have control over the courthouse, but that there should be input from judges. Tom Bruno suggested that civility should be an important emphasis. Funding should be statewide. It was also suggested that the Election Board should expunge judges' home address from its Web site.

Judicial Independence: Administrative Law Judge Schoenbaum reported that the committee will focus upon three major areas and would love to have everyone who is interested in any of the three areas to volunteer to work with the subcommittees. Al Swanson was on the task force and will work on the legislative areas. We need to turn in a report to the Board of Governors by November 3, 2006. The president wants a response from each section on what can be done for Judicial Security and Judicial Independence. Judge Goldenhersh will be our liaison to work with the Illinois Judges Association for implementation of programs.

The main task will be to do follow-up to the Joint CBA-ISBA Task Force on Judicial Independence and to develop an implementation plan for the recommendations. The three areas are:

Amendments to the Illinois Constitution

1. Extend the terms of Circuit Judges to eight years and associate circuit judges to six years
2. Allow the Illinois Supreme Court to substitute a judge if a member recuses himself or herself

Actions by the Illinois General Assembly

1. Enact legislation for non-partisan

election of judges
2. Provide for public funding of judicial campaigns
3. Provide for sufficient funding for the judicial branch
4. Enact legislation providing for full disclosure of funding and sources of funding for judicial campaigns

Actions by the Bar and Bar Associations

1. Take immediate action when judicial campaigns are conducted improperly or appear to be influenced improperly
2. Take more steps to communicate the bar's positions on judicial candidates
3. Provide seminars on judicial campaign conduct
4. Bar Associations should play a leadership role in educating the public about the role of the judiciary and judicial independence.

Recent judicial appointments and retirements

1. The Illinois Supreme Court, pursuant to its constitutional authority, has appointed the following to be Circuit Judge:
   - Hon. Richard A. Kavitt, Associate Judge, Cook County Circuit, 13th subcircuit, September 1, 2006
   - Hon. William G. McMenamin, Associate Judge, 12th Circuit, 2nd subcircuit, September 1, 2006
   - Steven L. Garst, 5th Circuit, September 8, 2006
2. The Illinois Supreme Court, pursuant to its constitutional authority, has appointed the following to the Appellate Court:
   - Hon. Robert L. Carter, Retired Judge Recalled, Appellate Court, 3rd District, September 1, 2006
3. The Illinois Supreme Court has accepted the resignations of the following judges:
   - J. Gregory Householter, 21st Circuit, September 30, 2006
   - John J. Mannion, Associate Judge, Cook County Circuit, September 30, 2006
   - Angus S. More, Jr. Associate Judge, 17th Circuit, September 30, 2006

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