

The Challenge

The newsletter of the Illinois State Bar Association's Standing Committee on Racial and Ethnic Minorities and the Law

Chair comments and 'introductions' of more REM members

BY SHARON L. EISEMAN

Although this bar year is still young, Racial and Ethnic Minority Committee members are working at the figurative 'grindstone' planning CLE programs for this term on implicit bias and unfair housing practices which contribute to continuing racial, ethnic and socio-economic class segregation. In addition,

as you can see from this issue of our newsletter, members are busy writing for *The Challenge*. One of the busiest is our own Newsletter Editor Khara Coleman who actually—and thankfully—VOLUNTEERED for this responsibility—not easy when you have to 'issue' deadlines

Continued on next page

Spotlight on REM members (and past members!)

What a Guy—He Never Stops Giving!

BY SHARON L. EISEMAN

The members of the REM Committee extend our congratulations to Cory White on his recent election by the Board of Governors to the position of Delegate to the American Bar Association. The BOG also deserves applause for its sound judgment in choosing Cory for this coveted honor of representing the ISBA in matters that come before the ABA's House

of Delegates. We understand that Cory was chosen by a unanimous vote of the Governors in a five-person competition at the Board meeting following the ISBA's June Assembly meeting at which no nominations for ABA Delegate were received.

We who have worked with Cory on

Continued on next page

Chair comments and 'introductions' of more REM members

1

Spotlight on REM members (and past Members!)

1

So you want to be a media star? What you can learn from the judges and lawyers who appear in the media

4

Feature: Spotlight on REM members

6

Issues Involving the Continuing Criminal Enterprise (CCE) Act

7

Recent Illinois Appellate Court opinion, in concert with the new Act on preventing sexual assault on college campuses, may help curb such violence

9

Save the Date!

10

(Notice to librarians: The following issues were published in Volume 26 of this newsletter during the fiscal year ending June 30, 2016: May, No. 1; June, No. 2).

Chair comments

CONTINUED FROM PAGE 1

various diversity and inclusion initiatives, several of which he has overseen, are not surprised by the choice the BOG has made. Having seen him in action as past Chair of REM and current Chair of the Diversity Leadership Council (DLC) for an unprecedented second year, a position that has been designated as a one-year term since the creation of the DLC in 2009, we know that under Cory's skilled, compassionate and visionary leadership, any task can be accomplished no matter the degree of difficulty.

As our facilitator during a process of review and 'restructuring' of the current status and functioning of the DLC by the officers of the six "Constituent Committees," Cory provided effective guidance to us all. That guidance enabled us to tackle a mission that was especially challenging, given the serious and understandably passionate investment of the leadership of the respective Constituent Committees—and their predecessors—in how the DLC should operate. A primary objective was to determine what the DLC's mission, goals and membership should be in order to best achieve increased diversity and inclusiveness within the ISBA and in the greater legal community. Due to the importance of this task and the pressure to accomplish it in short order, it is a wonder that anyone would even wish to be at the helm, trying to lead the group of Committee leaders. Yet Cory stepped up to the plate and never left the game until unanimous agreement was reached on the substance and the specific wording of the restructuring proposal.

For such work, Cory has been widely praised. We have come to respect him for his calm and deliberate approach to discussing and resolving challenging issues, especially when emotions have intensified and the situation threatens to dissolve into chaos. Cory possesses that rare skill of retaining his focus and composure while simultaneously encouraging all individuals to express their views no matter how those views may conflict with other

opinions previously shared. Moreover, by his respectful listening to everyone, he becomes the model for our remembering the importance of showing respect for and listening carefully to the views of others even when we strongly disagree with them. He is then relentless in keeping us on task and getting us to the finish line, even when it means we are asked to vote on a series of small pieces that make up the important whole. And during that process which seems to convey the illusion of being seamless, Cory is gently urging us into negotiations with one another in a way we hardly notice is even a negotiation process. And then, magically, we arrive at consensus and congratulate each other as if we got their entirely on our own.

The question that comes to mind as I write this tribute to Cory is: How does Cory manage to be a successful lawyer at his high-intensity firm while he is managing the group of intense and driven attorneys who are so frequently engaged themselves in resolving matters of urgency to the legal profession? If you don't already know, Cory became a licensed attorney in 2009 and in the short time since then he founded his own law firm, Hafelein/White, LLC, where he specialized in securities law and regulation, structuring of for-profit and non-profit entities, and general corporate representation. In mid-2013 Cory moved on to The International Business Law Group where he has expanded his existing fields of practice to include international transactions and cross-border representation.

If you were to review Cory's resume, you would be astounded by the number of his publications on pretty heady legal topics, including ones whose titles are instantly inscrutable to me. Some areas he has addressed are: registration of private equity and hedge fund advisers under Dodd-Frank; crowdfunding and the role of the JOBS Act; proxy contest basics for non-registrants; SEC reporting relevant to institutional investment managers; and Sarbanes-Oxley Act considerations related

The Challenge

Published at least four times per year.
Annual subscription rates for ISBA members: \$25.

To subscribe, visit www.isba.org or call 217-525-1760.

OFFICE

ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITOR

Khara Aisha Ashanti Coleman

MANAGING EDITOR / PRODUCTION

Katie Underwood

✉ kunderwood@isba.org

STANDING COMMITTEE ON RACIAL AND ETHNIC MINORITIES AND THE LAW

Sharon L. Eiseman, Chair
Yolaine M. Dauphin, Vice-Chair
Kenya A. Jenkins-Wright, Secretary
Athena T. Taite, Ex-Officio
Beverly A. Allen
Khara Aisha Ashanti Coleman
Geraldine A. D'Souza
J. Imani Drew
Jamel Anthony Greer
Marissa R. Hanson
Ebony R. Huddleston
Otto S. Hurtado
Jameika W. Mangum
Prof. J. Damian Ortiz
Arlette G. Porter
Masah S. Renwick
Juan R. Thomas
Sonni C. Williams, Board Liaison
Melissa L. Burkholder, Staff Liaison
Daniel R. Saeedi, CLE Coordinator
Timothy J. Ting, CLE Committee Liaison

DISCLAIMER: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

to environmental liability. And all of these writings seem to have been produced from 2011-2015 while, as many of us have witnessed, he was thoroughly engaged in helping promote diversity in the ISBA and across the profession. No wonder Cory has been selected as a Rising Star in Business/

Corporate and Securities in 2015 and 2016 by the Illinois Super Lawyers Magazine. Pretty soon he'll be orbiting outer space. And speaking of travel, being a native of New York with continuing strong ties to that state, Cory was admitted to the New York Bar in December of 2015. Selfishly, we

hope we don't lose him to Big Apple!

Understandably, REM members are so proud and pleased to call Cory 'one of our own' though we don't mind sharing him with the rest of the ISBA! ■

Spotlight on REM members (and past members!)

CONTINUED FROM PAGE 1

for article submission and then pester people when nothing arrives on the scheduled date! But it seems Khara loves to write and to review what others have written, and she uses those skills in her life as a lawyer.

When she is not doing REM work, Khara focuses on her role as an associate with the Pugh, Jones & Johnson, P.C. law firm where she concentrates in complex civil litigation, compliance and internal investigations and employment matters. At the start of her career in law, Khara served as a judicial law clerk for the Hon. David Hansen of the Eighth Circuit Court of Appeals and also as a criminal prosecutor in Scott County, Iowa. After moving to Illinois, Khara joined Attorney General Lisa Madigan's office where, as an Assistant Attorney General in the consumer fraud division, she handled civil prosecutions against for-profit colleges and predatory lenders and other companies engaged in deceptive practices injurious to consumers. As you can imagine, we feel fortunate to count Khara as an active and devoted REM member.

Another lawyer on our Roster you either do know or should know is Sonnie Choi Williams. While Sonni is our Board of Governors Liaison and not a 'regular' REM member, we consider her an integral part of our Committee and as strong an advocate for us and for the advancement of our mission as any REM member is expected to be. For example, in the many years Sonni has been our Liaison, she has rarely missed a meeting and when she is there, she fully

participates. Yet more significantly, Sonni is a respected, thoughtful, well-informed and passionate ambassador for our mission and for our programs and other initiatives, as her several major awards for leadership and for promoting diversity reflect. Sonni is a valuable mentor and guide and always 'in our corner' making sure we don't get stuck in a corner.

One of our newest young members (almost any new member would be younger than yours truly!) is **Jamel Greer**, an associate at Franczek Radelet P.C. where his focus is Education Law which encompasses collective bargaining, school business operations, employment law and real estate matters. We anticipate he will be of enormous value to REM, given his intense involvement in issue-oriented activities even in law school where he was President of the Black Law Students Association and a member of the Public Interest Law Society and the Frederick Douglass Moot Court Team, to name only a few of his affiliations, as well as his achievement of a dual undergraduate degree in political science and African American Studies—and while playing football.

Arlette Porter, no stranger to many of us, is another welcome new addition to our Roster. Like Masa Renwick, Arlette had the vision, determination and, to my mind, a special kind of courage not every lawyer can call upon, to start her own family law practice which she operates in Chicago's far south side. She is also a devoted ISBA member, serving on our Assembly since

2009, first by appointment to fill a vacancy and then by member vote in several elections and is active on both the Family Law Section Council and the Standing Committee on Judicial Evaluations in Cook County. We look forward to hearing her ideas for improving the diversity quotient of the ISBA and the profession at large.

Finally, to complete the introductions of our membership (and certainly not as an afterthought), I wish to shine a light on REM member J. Imani Drew who was recently appointed to the bench. While I would love to "wax eloquent" about the Hon. J. Imani Drew, you should instead read, in this issue, the beautifully penned tribute to her (and the Hon. Geraldine D'Souza) by Masah Renwick. In that piece you will find a virtual list of Judge Drew's impressive 'firsts' as a young woman, a law student, a lawyer and a prosecutor. Through her achievements and the manner in which she professionally embodies them with a rare mix of grace and assurance, Judge Drew serves as a role model and an inspiration for so many women and women of color.

Once again, on behalf of the entire Committee, I thank you for reading this issue of *The Challenge*. Please keep it up—and because, in keeping with the name of our Newsletter we must be challenged, please share with us your thoughts on the work you believe we should be doing to advance diversity in the State bar and in the profession. ■

So you want to be a media star? What you can learn from the judges and lawyers who appear in the media

BY JUDGE GERALDINE A. D'SOUZA

During the mid-year ISBA meeting in December 2015, the ISBA had a CLE entitled "Media Talk: How and Why Judges and Lawyers Should Speak on Legal Topics." This event entailed a panel discussion in which judges and one lawyer who regularly appear in the media spoke about their experiences and why they believe it is good for the profession overall if judges and lawyers speak to the media. They gave helpful suggestions as to how to address questions in the media, and also some hints on how to become a guest speaker if one were interested.

Karen Conti was one of the panelists. She is a successful attorney who has become a very coveted media commentator, having appeared as a guest on everything from Court TV to Nancy Grace and CNN. Ms. Conti had a very interesting start to her media career in that she was on the team of lawyers who was representing John Wayne Gacy during his appeal. The media was of course interested in the case and Ms. Conti, a fervent anti-death penalty advocate, felt that speaking to the media could aid her client and perhaps further her cause. Ms. Conti did consent to speak to the media, and made sure to always be prepared and have specific and concise answers. She also went on to explain how important it is not to use "legalese" when speaking to the media since you want to use language that viewers understand. Due to her stellar performance during the Gacy case, Ms. Conti was asked to comment on other media worthy cases, and from there a whole side career as a media personality evolved.

Ms. Conti discussed the Illinois Supreme Court rules which govern attorneys who wish to speak to the media, and stated that when speaking to the media

what you say cannot be dishonest and you cannot say anything which could bring the profession into disrepute. The pertinent rule is Supreme Court Rule 3.6 of Article VIII. Illinois Rules of Professional Conduct. That rule reads as follows:

Rule 3.6: Trial Publicity¹

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and would pose a serious and imminent threat to the fairness of an adjudicative proceeding in the matter.
- (b) Notwithstanding paragraph (a), a lawyer may state:
 - (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
 - (2) information contained in a public record;
 - (3) that an investigation of a matter is in progress;
 - (4) the scheduling or result of any step in litigation;
 - (5) a request for assistance in obtaining evidence and information necessary thereto;
 - (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an

individual or to the public interest; and

- (7) in a criminal case, in addition to subparagraphs (1) through (6):
 - (i) the identity, residence, occupation and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) the fact, time and place of arrest; and
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.
- (c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.
- (d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

When speaking to the media you must always keep these rules in mind. Be aware that prosecutors have additional rules which cover what they are allowed to say to the media. It is also very important that

your client give you consent to go speak to the media about any case is which you represent a party. Under the rules, a lawyer can never make false statements and cannot bring the profession into disrepute, such as by name-calling of opposing counsel.

The panel also included several judges. Judge Michael McCuskey, from the 10th Judicial Circuit, and Justice Robert Steigmann, of the Illinois Appellate Court, do regular guest appearances on radio shows in their home jurisdictions. James Turpin, who hosts a radio show which highlights legal issues in the Champaign, Illinois area was also on the panel. Mr. Turpin explained how the public is very interested in legal topics, and that he enjoys having judges and lawyers appear as guests on his show because those garner the highest ratings. Justice Steigmann explained that he believes that judges speaking to the media and answering general questions thrown out by listeners to the radio show on which he appears helps the system as a whole. His concern is to insure that the general public not believe that judges are out of touch with the needs of regular citizens and “live in an Ivory tower.” He believes that his media appearances demonstrate that judges do understand the concerns of everyday citizens. Judge McCuskey pointed out that his media appearances help people to understand the system and the law.

Retired Lake County Judge Raymond McKoski was the final panelist. Judge McKoski is an international expert in judicial ethics, who explained that the ethical rules for judges when speaking to the media are in the Illinois Judicial Code, and do not allow judges to speak about any case which is pending before them. While speaking about court procedures and the law is acceptable, judges must use a hypothetical scenario and not address any specific case which is pending before them. Judges must also insure that nothing which they say reflects adversely on their impartiality. When giving a personal opinion on an issue, a judge must explain that that is merely a personal opinion and explain that as a judge they will put aside that opinion and follow the law. It is important for the public to know that the

judge will put aside their personal opinions when ruling on a legal matter.

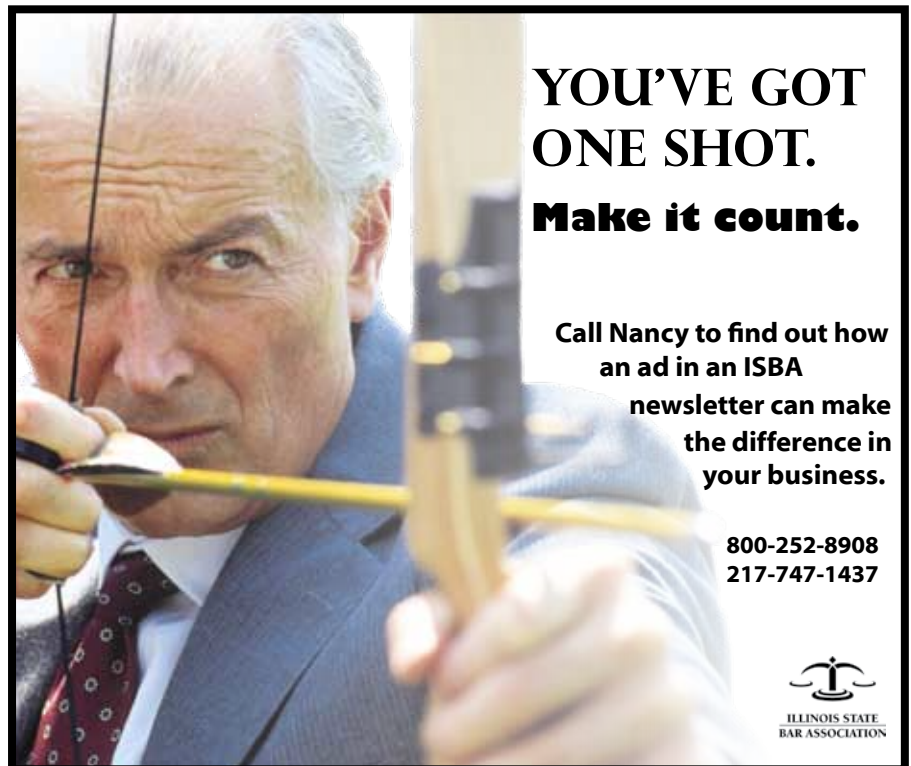
There can be tremendous benefits from speaking to the media, and all panelists felt that having attorneys and the judiciary speak to the media can benefit the legal system as a whole. Karen Conti, who represents clients and does commentary on pending cases in which she is not involved, explained that there are many benefits to attorneys appearing in the media. She explained that the primary benefit is to her clients, who may want her to speak to the media on their behalf in order to gain an advantage in their case. The second benefit is to the lawyer. Having the general public view an attorney as a persuasive and articulate advocate on someone else’s behalf is a wonderful way to reach potential clients. Finally, the system as a whole benefits when lawyers appear in the media. Ms. Conti uses her position as a media personality to advocate for injustices in the system, and was able to use her platform to speak out against the death penalty when her client John Wayne Gacy was facing that ultimate punishment. It is a way to reach

the public and make them understand something they may not otherwise understand.

All the panelists believe that they do a service to the legal system overall by speaking in the media about legal issues. Explaining legal issues and court proceedings to the public and having a public who is educated about the legal issues which the courts face every day can only lead to a better court system overall and more trust in the system as a whole. Judges and lawyers who wish to pursue the role of media commentator should contact their local TV and radio stations via letter. You should explain your area of expertise and how it relates to the current hot topics in the media. Who knows, you may have a whole side career as a media celebrity awaiting you! ■

Judge Geraldine A. D’Souza is a Municipal Department judge who is assigned to the Sixth Municipal District in Cook County, Illinois.


1. Adopted July 1, 2009, effective January 1, 2010.



**YOU’VE GOT
ONE SHOT.
Make it count.**

**Call Nancy to find out how
an ad in an ISBA
newsletter can make
the difference in
your business.**

**800-252-8908
217-747-1437**



ILLINOIS STATE
BAR ASSOCIATION

Feature: Spotlight on REM members

A Tale of Two “Sisters-in-the-Law” and Their Parallel and Intertwined Pathways to the Bench

BY MASAH S. RENWICK

Congratulations are in order for the recent appointments of J. Imani Drew and Geraldine A. D’Souza to the bench. On April 19, 2016, The Honorable J. Imani Drew became the first black female judge in Kankakee County upon her appointment. J. Imani Drew, a longtime attorney in Kankakee, has always been a trailblazer and leader within the legal community, overcoming many obstacles on her road to becoming an attorney. The odds were against her as a resident of Chicago’s Southside, yet she prevailed.

Taking on law school while dealing with the challenge of one-year old twins, Drew was able to graduate from the University of Iowa Law School and pass the bar exam. In 1983, she became the first black prosecutor in Kankakee County. From 1989-2001, she was the lead prosecutor for felony sex offenses. Judge Drew was the first lawyer in her family, the first African-American female attorney to live and work in Kankakee County, the first African-American attorney to serve as corporation counsel for the City of Kankakee (1985-1986) and the first to open her own law practice (1985). Finally, her appointment to the bench makes her only the second black judge in Kankakee County history. We hope one day she will share with us her experience being the FIRST in so many positions—which can feel like a burden, a blessing, a huge responsibility, a joy or something else entirely, depending upon the individual carrying that ‘mantle.’

Geraldine D’Souza, the daughter of Indian and Chilean immigrants, earned her bachelor’s degree at the University of Illinois at Urbana-Champaign and she received her Juris Doctorate from IIT Chicago-Kent College of Law. She has been licensed to practice law in the state of Illinois since 1992. Judge D’Souza comes from a well-established family, but she was nevertheless the first lawyer and is now the first judge in her family. Before her

appointment, D’Souza was a Cook County Assistant State’s Attorney for an impressive twenty-two years, serving as first chair at 26th and California. As a testament to her hard work, Judge D’Souza has received a number of ISBA appointments, including to the Criminal Justice Section Council for which she is the Vice-Chair this bar term, and the Racial and Ethnic Minorities and the Law Committee on which she continues to serve. Additionally, she was elected to the Assembly, the ISBA’s policy-making body.

The history of these two jurists and the crossing of their career paths spans over two decades. They both started their law careers at the Kankakee County State’s Attorneys’ Office where they worked together as Assistant State’s Attorneys from 1992-1993. Their friendship and bond has continued as their careers have progressed. They are, if you will, sisters-in-the-law. According to Judge Imani, “Judge D’Souza was and is a joy to work with. She brought a fresh excitement and perspective to our office. Her work, of course, was exemplary.”

Both Judges Drew and D’Souza have had tremendous accomplishments in their careers. They are pillars within our profession and are examples to their communities that nothing is impossible. Achieving true diversity on the bench is still a barrier that needs to be overcome. Recognizing the importance of diversity in the legal profession is perhaps even more important. According to the latest figures published by the National Center for State Courts in *Diversity on the Bench: Illinois*, the number of women judges on the bench is approximately 33%, the number



Judge J. Imani Drew (left) and Judge Geraldine D’Souza (right).

of African-American judges on the bench is approximately 16%, and the number of Native American judges is approximately 0%. Clearly, we still have a long way to go.

As ISBA President Vincent Cornelius has stated, we as members of the bench and bar must remember that *implicit* bias exists in all of us. It is a fact that cannot be denied. Each day we bring to our courthouse, cases, trials, rulings and judgments, our personal experiences that shape our notions of justice. Therefore, if justice is to be truly blind, and access to the legal system ever to be truly equal, then we must have diversity on the bench. President Cornelius states it best: “Pioneers are remembered more for how they affected the landscape than for the mere fact that they arrived there first.” The appointments of Honorable Judge J. Imani Drew and Honorable Judge Geraldine D’Souza are two big steps in the right direction for our profession and I look forward to seeing the trails that will be blazed by these living legal legends. ■

Issues involving the Continuing Criminal Enterprise (CCE) Act

How the CCEA is a politically generated “quick fix” to the “War on Drugs”

BY KENISHA DAY

The Continuing Criminal Enterprise (CCE) statute, commonly referred to as the “kingpin statute,” was enacted in October 1970 in an effort to combat drug cartels by directly attacking their leadership.¹ The statute makes it a federal crime to commit a continuing series of felony violations of the Comprehensive Drug Abuse Prevention and Control Act of 1970 when those acts are in concert with five or more people. Essentially, a criminal enterprise is comprised of a group with an identified hierarchy, or comparable structure, engaged in criminal activity. The Continuing Criminal Enterprise statute, 21 U.S.C. §848, provided the means by which a “kingpin” could be punished severely and the enterprise could be dismantled through asset forfeiture.² These kingpin statutes are aimed at the leaders of criminal operations that grow, manufacture, export and sell drugs.³ While Congress’ concern about drug abuse in America is justified, a major concern with statutes like the CCE is the probability that it is applied disproportionately to minority groups.

To convict under the CCE statute, the government must establish five predicate elements.⁴ First, the defendant must have “violated one of the substantive drug crimes under Title XXI of the United States Code....”⁵ Second, the defendant must be “engaged in a continuing series of federal drug felony violations.”⁶ Third, this series of violations must be conducted in concert with five or more people.⁷ Fourth, the defendant must have served as an organizer, supervisor or some other type of leader within this operation.⁸ Lastly, the defendant must have derived substantial income or resources from the criminal operation.⁹ With these elements proven, the law imposes severe mandatory minimum sentences and criminal forfeiture

of assets upon one convicted of engaging in a “continuing criminal enterprise.”¹⁰

The CCEA has two purposes: (1) to provide debilitating punishment to existing criminal enterprises; and (2) to deter the creation of new enterprises.¹¹ The statute’s provisions reflect these two goals.¹² A defendant convicted of operating a continuing criminal enterprise will be sentenced to 20 years, at a minimum, with the possibility of life-incarceration, in addition to forfeiture of all assets derived from the enterprise.¹³

Under the so-called “super kingpin” provision, added to the CCE statute in 1984,¹⁴ there is a mandatory life sentence without possibility for parole for any person convicted of being a “principal” administrator, organizer, or leader of a criminal enterprise that either (1) involves a large amount of narcotics (at least 300 times the quantity that would trigger a five-year mandatory-minimum sentence for possession), or (2) generates a large amount of money (at least \$10 million in gross receipts during a single year.

The CCEA has led to the convictions of high profile drug kingpins like Larry Hoover, founder of the Chicago-based gang Gangster Disciples.¹⁵ However, the core flaw of the CCEA is that it redefines ordinary criminal activity in essentially political terms to appease the public’s passion for politically generated results or “quick fixes” to issues that were largely created by politicians. Many may justifiably view the CCEA as a politically generated “quick fix” to the “War on Drugs” problem.

Legislative History of the CCEA

In the late 1960s, America discovered that a burgeoning drug problem afflicted society.¹⁶ Exponential growth in drug use defied provincial perceptions of a

small, contained drug sub-culture, and sophisticated markets emerged to satisfy user demand.¹⁷ Just before the CCE statute was enacted, Congress had enacted the Racketeering Influenced and Corrupt Organizations Act (“RICO”). When RICO was enacted, Congress anticipated that the statute would help eradicate organized crime, specifically, but not limited to, the Mafia.¹⁸ RICO’s drafters hoped to dismantle the Mafia and other criminal organizations by disabling their enormous financial bases, thus diluting their power.¹⁹ Congress concluded that federal drug enforcement laws had been, ‘for the most part, ineffective in halting the increased upsurge of drug abuse throughout our United States.’²⁰ As a result, the CCEA was passed as § 408 of the Comprehensive Drug Abuse Prevention and Control Act of 1970.²¹ The Act shifted the focus of drug enforcement efforts from strict penalties against small-time users to more severe punishment for drug peddlers.²² Essentially, Congress sought to prosecute those benefiting the most from drug transactions: the kingpins.

As part of the Act, Congress defined a new crime, the “continuing criminal enterprise,” to serve as an additional vehicle to punish the leaders of extensive drug networks.²³ Arguably, Congress structured the CCE statute to describe a complex crime, allowing prosecutors to efficiently indict and severely punish those people that Congress believed had been responsible for the rise of drug abuse in America.²⁴ The CCE statute provided prosecutors with a new tool for obtaining lengthy sentences for leaders of drug organizations.²⁵ The CCE offense was the only section in the Act incorporating a mandatory minimum sentence.²⁶

Problems with the CCEA

While mandatory minimum sentences are the product of good intentions, they undoubtedly give prosecutors unbridled discretion to charge under the statute or engage in the plea bargaining processes. With statutes giving mandatory minimum sentences, prosecutors have unreviewable discretion over the charges in a given case, which has likely resulted in severe and arbitrary punishments. While Congress' concern about drug abuse in America is justified, a major concern with mandatory minimum statutes like the CCEA, is the probability that it is applied disproportionately. Arguably, the CCEA is applied almost exclusively to minority groups.

The Supreme Court has referred to the CCE statute as a carefully constructed provision which aims to reach and punish "the 'top brass' in the drug rings, not the lieutenants and foot soldiers."²⁷ The goal of the CCE statute, and for many prosecutors, has been to punish the leaders of extensive and successful drug operations.²⁸ What the statute has failed to do, however, is to curtail the creation and operation of criminal enterprises. One issue is that the implementation of the statute cannot eradicate the structure of the "enterprise," it can only remove the person at the top tier, giving opportunities to other members of the enterprise to assume a higher position. Communities with lower socio-economic statuses allow criminal enterprises to thrive because they provide jobs and revenue that remain within the community. Thus, the statute has only been successful in its efforts to punish those who are captured.

Violation of the CCE statute leads to harsh penalties, including a mandatory minimum sentences or the death penalty.²⁹ The fact that the sentence for a first CCE offense is a mandatory minimum 20 years' imprisonment, a fine not to exceed \$2 million, and forfeiture of profits and any interest in the enterprise should be enough to question why the statute has only applied to gangs. It is apparent from the harshness of the punishment that the law targets large-scale drug traffickers responsible for long-term and elaborate drug conspiracies, and not members at the lower tier who

make up the users and small-scale drug distributors. It is also apparent to many in the legal community that the application of the CCEA to gang-controlled narcotics enterprises targets minorities.

Michelle Alexander, author of *The New Jim Crow*, explores this idea of how racial profiling, police brutality, and drug law enforcement in poor communities of color has led to the mass incarceration of poor Blacks.³⁰ Alexander argues that the American criminal justice system functions more like a caste system than a system of crime control. In the mid-1980s, a national sense of urgency surrounded the drug problem igniting Congress to create different penalty structures for drug related offenses. Congress' resolve to create mandatory minimums and sentencing commissions to combat drug abuse in America ultimately led to politicians revising drug-related legislation to criminalize Blacks at a higher rate than non-Blacks. ■

Kenisha A. Day works in the Law Office of Kirt J. Hopson.

1. Roger McDonough, *Collaring Drug Kingpins: International Extradition and Continuing Criminal Enterprise in United States v. Levy*, 16 Md. J. Int'l L. & Trade 127 (1992)

2. William G. Skalitzky, *Aider and Abettor Liability, the Continuing Criminal Enterprise, and Street Gangs: A New Twist in an Old War on Drugs*, 81 J. Crim. L. & Criminology 348 (1990)

3. McDonough, 16 Md. J. Int'l L. & Trade at 127.

4. Id.

5. Id.

6. Id.

7. Id.

8. McDonough, 16 Md. J. Int'l L. & Trade at 127.

9. Id.

10. Sharon C. Lynch, *Drug Kingpins and Their Helpers: Accomplice Liability Under 21 USC Section 848*, 58 U. Chi. L. Rev. 391, 392 (1991)

11. Skalitzky, 81 J. Crim. L. & Criminology at 348.

12. Id.

13. Id.

14.

15. Larry Hoover is the founder and longtime leader of the "Gangster Disciples," a street gang out of Northern Illinois and Indiana. Hoover has been incarcerated since 1974 for murder. While incarcerated, Hoover ran the gang's illicit drug trade in prison and on the streets. In 1995, Hoover allegedly operated a criminal enterprise with 30,000 "soldiers" in various states and made

\$100 million a year. For his involvement, he received another life sentence.

16. William G. Skalitzky, *Aider and Abettor Liability, the Continuing Criminal Enterprise, and Street Gangs: A New Twist in an Old War on Drugs*, 81 J. Crim. L. & Criminology 348 (1990)

17. Id.

18. Bart H. Rubin, *Hail, Hail, the Gangs Are All Here: Why New York Should Adopt A Comprehensive Anti-Gang Statute*, 66 Fordham L. Rev. 2033 (1998)

19. Id.

20. Richard Finacom, *Successive Prosecutions and the Continuing Criminal Enterprise: The Double Jeopardy Analysis in Garrett v. United States*, 13 Hastings Const. L.Q. 785 (1986)

21. Lynch, 58 U. Chi. L. Rev. at 392.

22. Janet Bauman, *Conspiring Drug Kingpins: Twice in Jeopardy?*, 61 U. Chi. L. Rev. 197, 198 (1994)

23. Id.

24. Katherine L. Harvey, *Criminal Law-United States v. Canino and the Continuing Criminal Enterprise: Do Drug Kingpins Have A Right to Specific Juror Agreement?*, 15 W. New Eng. L. Rev. 271 (1993)

25. Lynch, 58 U. Chi. L. Rev. at 392.

26. Id.

27. Harvey, 15 W. New Eng. L. Rev. at 271.

28. Bauman, 61 U. Chi. L. Rev. at 198.

29. Harvey, 15 W. New Eng. L. Rev. at 271.

30. Alexander, Michelle. *The New Jim Crow*. New York: New Press, 2011.

Did you know?

Every article published by the ISBA in the last 15 years is available on the ISBA's Web site!

Want to order a copy of any article? Just call or e-mail Jean Fenski at 217-525-1760 or jfenski@isba.org

***Sorry, if you're a licensed Illinois lawyer you must be an ISBA member to order.**

Recent Illinois Appellate Court opinion, in concert with the new Act on preventing sexual assault on college campuses, may help curb such violence

BY SHARON EISEMAN

As you may know from reading the article on this subject that was published in our June newsletter—or from other sources—the Illinois Legislature passed and Governor Rauner recently signed into law PA 99-426 entitled “Preventing Sexual Violence in Higher Education Act” (Act). This Act, which took effect on August 1, 2016, defines a broad range of acts of sexual violence that fall within its scope. It also provides guidance for institutions of higher learning as to protocol for processing reports of sexual assault; for investigating complaints; for providing a “fair and balanced” hearing process for resolving complaints; and for training school personnel. These covered institutions must also inform the student body about the Act and its protections as well as other available resources such as survivor counselling and options for scheduling changes to accommodate survivors, education for bystanders, and the role of campus security. A primary objective of the Act is to hold college and university administrations more accountable and thereby facilitate their provision of safer environments so their students can focus on the pursuit of their higher education goals. Thus, they must also file annual reports with the Office of the Illinois Attorney General.

To further the protections afforded to those students who report their attackers to school personnel, and perhaps as a warning to would-be attackers, we now have a First District Illinois Appellate Court Opinion issued June 1, 2016 that addresses a component of the process for reporting an attack. The case, *Omid Shariat Razavi v. Eva*

Walkuski and Ariel Zekelman and School of the Art Institute of Chicago, 2016 IL App (1st) 151435, clarifies that the privilege attaching to statements made to law enforcement regarding the commission of a crime extends to college student reports of sexual assault to campus security.

All three named parties in the appeal attended the School of the Art Institute of Chicago (SAIC) and lived in the same school dorm. The basis of the trial court action that resulted in an appeal was a defamation claim Razavi filed against two female classmates, Walkuski and Zekelman, both of whom had reported Razavi to the campus security director in late 2013 for sexually assaulting them. One of those complainants, Ariel Zekelman, ultimately withdrew her complaint but Eva Walkuski proceeded with hers (for both sexual assault and stalking) which led to a disciplinary hearing for Razavi before the SAIC student conduct board.

Based upon the board’s finding that Walkuski’s allegations were credible, Razavi was subsequently expelled from the SAIC. In July 2014, Razavi sued both Walkuski and Zekelman for defamation *per se* and *per quod* for what he characterized as false reporting of sexual assault to the SAIC campus security officers. When the trial court denied defendants’ Motion to Dismiss plaintiff’s complaint, defendants requested and the court granted certification, under Illinois Supreme Court Rule 308, of the following question for appeal:

“Under Illinois law, does the absolute privilege for reporting

crimes to law enforcement apply to a college student’s report of on-campus sexual violence to campus security, particularly when federal law encourages college students to report sexual violence to campus security?”

In its analysis of the certified question, the Appellate Court first noted that its role was to answer the question and not to “address the application of the law to the facts of the case.” Due to that circumscribed role, the Court did not delve into a detailed factual analysis of the SAIC student policies for the administrative handling of victim reports, nor did it consider plaintiff’s arguments that defendants’ statements to non-police school personnel during the investigation of the reports were of a lesser status because those personnel were not connected in any way to law enforcement.

Reviewing as a matter of law, and *de novo*, whether a defamatory statement is privileged, the Court observed—and plaintiff acknowledged—that SAIC’s handbook does offer victims the option of reporting sexual assault to local police or to campus security. Plaintiff Razavi asserted, however, that statements to campus security do not qualify for protection from liability for defamation as do statements to local law enforcement. The Court disagreed and, consistent with “Illinois’ long history of affording absolute privilege to individuals who report crime to further public service and administer justice”, the Court held that absolute privilege extends to a crime victim’s statements to campus security, whether at a public or private

university, and can therefore be raised as an affirmative defense to a defamation action.

The remainder of the Opinion reinforces that a campus security department exists to protect and assist students and uphold the law; that an absolute privilege attaching to reports to campus security helps safeguard students and “further public policy of limiting sexual violence on college campuses”; and that failure to deem such reports as privileged would deter reporting and penalize victims who do report incidents of sexual violence. Moreover, once a privileged statement is made, restatements “in furtherance of an investigation” are covered by that same privilege. The Court buttresses its conclusion with a citation to *Hartman v. Keri*, 883 N.E.2d 774 (Ind. 2008), wherein the Indiana Supreme Court held that

student reports of sexual assault and harassment are protected by absolute privilege even though existing Indiana law extended only a qualified privilege for statements made to law enforcement. The *Hartman* Court determined, as did the *Razavi* Court here, that a lack of absolute privilege would have a chilling effect. Finally, the Court made short shrift of the second requirement for a defamation action: that the statements were made for the purpose of initiating legal proceedings, by concluding that courts should not be mandated to examine the subjective intent of the person reporting the sexual assault. Instead, the absolute privilege must apply to protect the victim.

It is encouraging, as well as a reflection that the Court recognizes the gravity of campus sexual violence, that the *Razavi*

Opinion references in footnotes both the ‘It’s On Us’ campaign initiated in 2014 by President Barack Obama’s administration and the new Illinois Act, briefly described at the start of this article, that addresses sexual violence on college campuses. It is likely that the *Razavi* case—in which the remand to the trial court was issued on July 1, 2016, will be considered an important, positive step toward improving the climate for students on college and university campuses throughout Illinois—and it may even be relied upon favorably for assault victims in other states. ■

The part of this article discussing the *Razavi* case is reprinted with revisions from an article covering the case and the Act that was recently published in *The Tablets*, the Decalogue Society of Lawyers newsletter.



SAVE THE DATE

Tips for Combating Compassion Fatigue

October 19, 2016 • 9:55 a.m. Central

Live Webcast

Sponsored by the ISBA Standing Committee on Women & The Law

CLE Credit: 1.0 MCLE

FREE ONLINE CLE:

All eligible ISBA members can earn up to 15 MCLE credit hours, including 6 PMCLE credit hours, per bar year.

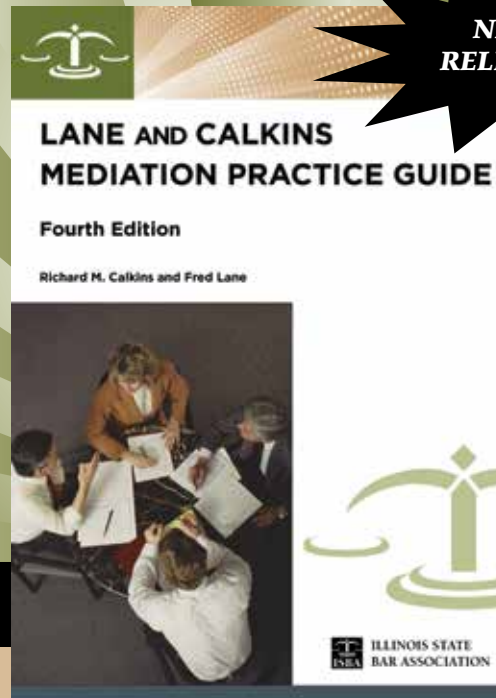
For more information:

www.isba.org/cle/upcoming

Being an attorney requires more than just your ability to successfully negotiate, litigate, and mediate. Understanding your client, empathizing with their situation, and showing compassion for their dilemma also comes with the territory. But what happens when compassion fatigue sets in, leaving you burnt out and unable to feel for your clients? Don't miss this one-hour online seminar that offers you the tips and strategies you need to combat compassion fatigue in your practice and your life.

Member Price: \$30.00

Bundled with a complimentary Fastbook PDF download!



**NEW
RELEASE!**

LANE AND CALKINS MEDIATION PRACTICE GUIDE, 4th Edition

Whether you're considering starting a new mediation practice or just looking to brush up on your skills, *Lane and Calkins Mediation Practice Guide* is a must-have book. Now in its Fourth Edition and published for the first time by the ISBA, this time-tested guide has long been the go-to book for mediators. The guide is written by respected experts Fred Lane and Richard M. Calkins who use it as the materials for their popular *40 Hour Mediation/Arbitration Training* course.

The book covers everything from a basic overview of alternative dispute resolution to a detailed discussion of the psychology of mediation. You'll learn the mediation process, the roles of all parties involved, closing techniques, and creative approaches to settlement. Throughout the book, real-life case studies are provided to highlight and exemplify the ideas discussed. In the Appendices you'll find an overview of how to develop a mediation practice, a discussion of collaborative divorce, and excerpts from relevant statutes, standards, and rules. Order your copy today and pay a fraction of the price previously charged by for-profit publishers!

Order at
<http://www.isba.org/store/books/mediation>
or by calling Janet at 800-252-8908
or by emailing Janet at Jlyman@isba.org

LANE AND CALKINS MEDIATION PRACTICE GUIDE, 4th Ed.

\$65 Member/\$100 Non-Member *(includes tax and shipping)*



Illinois has a history of
some pretty good lawyers.
We're out to keep it that way.