



# THE IOWA LAWYER

Volume 65 Number 8 August 2005

## Annual Meeting 2005

Marti Nerenstone with her Rolland Grefe Pro Bono Publico Award with Mary Grefe and President-elect Marion Beatty



The Young Lawyers Division Award of Merit winner Emily Hughes with Elisabeth Reynoldson



Senior Bar Award of Merit winner Carroll Reasoner with Mary Lynn Neuhaus



Deb Tharnish with her mother and two daughters



Legislative Counsel Jim Carney receives the President's Award from President Critelli



Sally Reavely received Nick Critelli's President's Award



Outgoing YLD President Joe Moreland passes the gavel to his successor, Matt Preston.



Inga Bumbarly-Langston (at left) flanked Attorney Willie Glanton with Romonda Belcher Ford

### ALSO IN THIS ISSUE

- Awards mark bar lawyers' accomplishments
- Part II - ICWA is something to be proud of
- Exceptional lawyers serve Iowa Legal Aid
- Justices, bar leaders meet in conclave



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presents 2006 trips from Des Moines and other select Midwest cities



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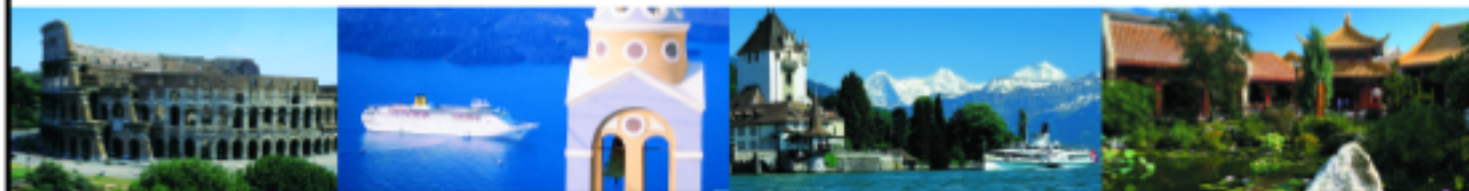
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**ABOUT THE COVER**

Annual Meeting time in June is traditionally when the ISBA and other legal organizations give their major awards recognizing the contributions of some of their extraordinary volunteers and officers. This year was no exception with a bumper crop of winners singled out for thanks and praise. Read their stories inside and understand what Immediate Past-President Nick Critelli said all last year, that “Iowa lawyers can do.”

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ABA President-elect Mike Greco was an ISBA Annual Meeting guest

# Do you want fries with that?

It seems like whenever they take my order at the finer restaurants, you know the ones where the menu is emblazoned in lights above the counter guarded by employees in pointed hats, they ask, "Do you want fries with that?" I suspect they ask to insure that each bun selection du jour is accompanied by those wonderfully fragrant grease-laden tubers. I also suspect they ask to try to make an extra buck

on each order. I even suspect they ask simply to provide a service by reminding you to order something you may have overlooked. Service to the customer, often with a smile.

As members of The Iowa State Bar Association, you are our customers. Do we provide service to you? Your bar association tries every day to continue to provide you with the services, the products, and the help you need in your practice. Whether it be a legislative association and lobbying efforts, continuing legal education, Iowa Docs®, lawyers helping lawyers in times of stress, group rate on insurance and office supplies, these and many more are the services traditionally provided to members of the ISBA. But we as your association must also step back and ask, "Do you want fries with that?" Are we offering to you additional service and assistance that you must find elsewhere? Services like mentoring new lawyers, law office practice aids, or public relations initiatives to improve the image of lawyers and to highlight the services we provide. Or do we continue to offer the same menu without change?

For example, is CLE only provided by talking heads in a hotel ballroom filled with lawyers reading the newspaper, or have we found ways to make it interactive, user friendly, or

office based? The Iowa State Bar Association is over 100 years old. What was needed and of interest to lawyers at the turn of the 20th century is of little value today. This is not your granddaddy's Bar. We need to be able to respond to lawyers of all ages, gender and race, and to storefront and high-rise lawyers, in-house and out of state lawyers, and members of the bar serving on the bench.

In order for you to feel good about the dues you pay to your association, you need to feel that the services provided are beneficial to your needs and can't be better obtained elsewhere. If your association expects to retain your membership, it must provide the best of what you need. However, in order for The Iowa State Bar Association to be responsive to your needs, we must hear from you. As they say, "it's hard to see the picture when you are in the frame." Please take the time to contact your representative to the Board of Governors, your officers, your executive director, and bar office staff to let them know what you like and what you don't, what you need, and what we can do for you.

Until you tell grandma you don't like her tuna casserole, you are likely to get it every time you visit. Eventually, you will stop visiting, which is bad for you and bad for grandma.



President Nick Crittelli and J.C. Salvo's father watched as Chief Justice Louis A. Lavorato administered the oath of office to President Salvo.

# When will you find out how good your malpractice insurance really is?

Not all malpractice plans are created equal. If a claim is ever filed against you, you want to be confident you have coverage that adequately protects you and your practice.

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*First woman to lead the bar -*  
**Carroll Reasoner cited with  
 Award of Merit**

This year's ISBA Award of Merit, the Association's highest honor, has been presented to Carroll Reasoner, the first woman to lead as president of the bar.

Last year's recipient of the

honor, Mary Lynn Neuhaus, made the presentation at the Annual Meeting Awards Banquet at the State Historical Building during the Annual Meeting. Here is the way she honored this year's winner –

“We don't accomplish anything in this world alone....Whatever happens is a result of the whole tapestry of one's life and all of the weaving of individual threads from one to another that create something...” When Associate Justice of the Supreme Court Sandra Day O'Connor uttered these words, she could have been speaking of the positive effects that this year's recipient of the Award of Merit has had on the Iowa State Bar Association, both the Young Lawyers and the senior bar. This lawyer has given 25 years of service becoming involved in the bar shortly after graduation and moving into leadership roles. She becomes only the third female recipient of the Award of Merit in the long history of the award.

“Our recipient graduated from law school 27 years ago at a time when there were very few women in the legal profession. After being born and raised in Washington, D.C., she returned to her father's home state upon his urging and completed her education at University of Iowa Law School. She joined the law firm of Shuttleworth & Ingersoll in Cedar Rapids and has focused primarily in areas of business law. Over the years, she has had to develop techniques to communicate with leaders in business who weren't necessarily interested in taking advice from a young woman, to advocate effectively for

her clients and to negotiate resolutions for difficult situations. In the bar association, however, she found her home, in fact, as the first female president of the Young Lawyers, she began running the house. By now, most of you have gathered the evidence and have reached the conclusion that that this faithful servant of the bar is Carroll Reasoner.

“Evidence of her success includes listings in The Best Lawyers in America, Who's Who in American Law, Who's Who in American Women, and Who's Who in Emerging Leaders. She became the first woman and youngest lawyer to head The Iowa State Bar Association (being only the 13th time in the history of the United States that a woman ran a state bar association). The Young Lawyers awarded Carroll their highest award in presenting their Award of Merit to her in 1988. She has served on the YLD Executive Committee, on the Board of Governors and has chaired so many projects and committees that it would be more efficient to list those that she has not served on. She also has been the Chairman of the Board of St. Luke's Hospital, the Iowa Health System, the University of Iowa Foundation, the Downtown Rotary Club, and the Linn County Regional Planning Commission. She serves on the Judicial Nominating Commission. She has been honored with the Visionary Youth Leadership Award by the National Council on Youth Leadership, the Hancher-Finkbine Medallion by the University of Iowa, the Excellence in Governance Award by the Iowa Hospital and Health System Association, and Woman of the Year chosen by the Women's Equality Day Committee in Cedar Rapids.

“When asked what she is proudest of, her response isn't any of the contributions that she has made to her firm, the bar or her community, but to be a great mother to Bill and Mike Pepper and a loving wife to her life partner and law partner, Tom Pepper. The entire bar association joins me, Carroll, in presenting to you, their highest honor, the 2005 Award of Merit.”

# Rollie Grefe

*Marti Nerenstone was presented The Rolland E. Grefe Award for public service by President-elect Marion Beatty. Here is the verbatim text of his remarks –*

Every town wants a Marti Nerenstone. Every community needs a Marti Nerenstone, but very few communities are blessed with a Marti Nerenstone. So it is proper that when a community – and Iowa – are so blessed, we recognize such an individual who has committed her life to community service and the enhancement of human dignity of others by improving or delivering legal services.

Marti Nerenstone is a graduate of Oberlin College, served in the U.S. Army as a chaplain's assistant in Fuerth Germany, and is a graduate of the University of Iowa accelerated law school program.

She worked with Alaska Legal Services in Bethel serving the needs of Yupik Eskimos and the Athabascan Indians.

From 1993 to 2003 she served as managing attorney with Iowa Legal Aid in the Council Bluffs Office.

In an effort to have more personal and closer client contact she opened a solo office practice in Council Bluffs in October of 2003.

She now takes a great number of court appointments, both in the criminal defense and in juvenile matters. She has been engaged in a substantial amount of guardian ad litem work with her juvenile practice.

Marti has always been community minded and committed. She was recognized in 2003 with an ISBA community service award. Her community service included volunteering and serving as lay leader of her synagogues and at the Rose Blumkin Nursing Home. She is a member of the Pottawattamie County FEMA Board, the Pottawattamie County Decategorization Planning Committee, and she serves on the board of Joshua House, the project working on building a shelter for homeless men in Council Bluffs. Over the years she and her therapy dog Emma made regular visits to her local hospital.

This past year was not an easy one for Marti. She was diagnosed with a brain tumor. Her multiple surgeries while

# Award to Nerenstone

successful in removing the tumor left her deaf on her right side. She also lost her beloved dog Emma.

Her hearing loss forced her to give up one of her many interests and hobbies she had enjoyed since her days in Alaska – being a volunteer disc jockey and radio show host. But true to her form, she rededicated herself to the service of others. She expanded her community service to include juvenile assistance. She is one of the community participants in the Drop-Out Prevention Task Force of the Council Bluffs Community Schools, conducting surveys of drop-outs to get a better idea why youth are leaving school and developing strategies to keep these students in school. She also participated this spring as a panel member in the community forums in Sioux City and Council Bluffs entitled “Making Our Schools Safe for the GLBT Youth” organized by the Iowa Civil Rights Commission’s GLBT Youth in Iowa

Schools Task Force.

The list of services she continues to provide at little or no cost to her community is long but my time grows short.

Marti, you have established yourself a friend of the underprivileged. Your humane philosophy, your capacity for understanding, and your tireless efforts on behalf of the less fortunate are the qualities that endear you to all of Iowa’s lawyers and the ISBA, your many clients and friends, and particularly those in need.

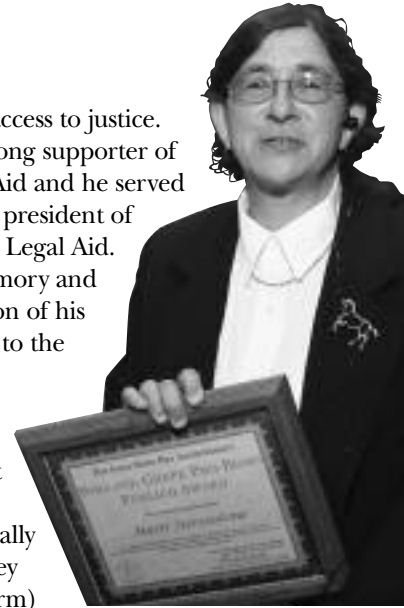
You rank very high indeed among the friends of the needy and – most importantly – among those of us who respect and hope and pray to emulate your many good qualities. May God Bless you and your good work.

It was because of people like you that Mary Grefe, Rollie’s widow, established the Rolland Grefe Award. Rollie, like you, was a dedicated attorney who worked for equal

justice and access to justice. He was a strong supporter of Iowa Legal Aid and he served as chair and president of Polk County Legal Aid.

In his memory and in recognition of his long service to the ISBA, Mary established and funded the award. It will be presented annually to an attorney (not a law firm) who has enhanced the human dignity of others by improving or delivering legal services for those who for one reason or another are unable to afford a lawyer.

Congratulations, Marti, on being the 2005 recipient of the Rolland E. Grefe *Pro Bono Publico* Award.



## Hughes impact on Iowa YLD in a few short years noted



Elisabeth Reynoldson, last year’s recipient of the YLD Award of Merit, presented the award this year.

Here are some of her remarks.

Emily Hughes, associate director of the Center for Justice in Capital Cases at DePaul University College of Law in Chicago, where she lives with her husband and daughter while teaching, and an adjunct professor of law at the University of Iowa College of Law, would appear to have more to do than to also volunteer for Young Lawyer’s Division projects. She commutes between Chicago and Iowa City to teach at both schools.

She was an assistant public defender in Johnson County. She was Sacks Fellow at the Criminal Justice Institute at Harvard Law School. She was a judicial law clerk for Judge Michael Melloy who was chief judge for the U.S. District Court for the northern district of Iowa at

the time.

She is former chair of the We the Jury Committee of the ISBA YLD and created the We the Jury Program for high school students in 2002, and is former chair of the membership committee of the ISBA YLD and created the Iowa Law Days program for U of I and Drake Law Schools in 2000. The following year she was invited to present a demonstration law days program at the ABA YLD National Conference.

She coached a high school mock trial team to the state championship and seventh place in nationals that year.

Emily organized the Iowa Association of Criminal Defense Lawyers Annual Conference. She currently is chair of the Illinois Association Criminal Defense Lawyers Death Penalty Committee.

“Emily is superwoman. She does more than anyone I know and she is successful in everything that she does,” said Tim Semelroth. “She is the kindest, most generous person I have met in the practice of law.”



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# I.O.W.A. cites women for assisting women attorneys

The Iowa Organization of Women Attorneys annually names recipients of its Arabella Mansfield and Gertrude Rush Awards.



## The Arabella Mansfield Award

The Arabella Mansfield Award is named after the first woman admitted to practice law in the United States, in Iowa, in 1869. It is given annually to honor a woman lawyer who has promoted and nurtured women in the legal profession.

Deborah M. Tharnish this year is the fourth recipient of the award. She graduated Phi Beta Kappa from Iowa State University in 1977 and earned her Juris Doctorate with high distinction from the University of Iowa in 1980, and is a member of the Order of the Coif. In 1980, Deborah was admitted to the Iowa Bar and associated with the law firm currently known as Davis, Brown, Koehn, Shors & Roberts, P.C.

Throughout her career Deborah has been instrumental in the careers of countless women in the legal profession.

Deborah was the first woman in Des Moines to lead a large law firm, serving as president of the Board of Directors for the Davis Law Firm. In her spare time Deborah enjoys spending time her husband, Nick Roby, and their blended family of seven children. In addition, Deborah currently serves on the Public Library of Des Moines Foundation, and on the Board of Directors for Hawthorne Hill.



## The Gertrude Rush Award

The Gertrude Rush Award, established jointly by the I.O.W.A. and the INBA in 2003, recognizes a lawyer who manifests the pioneering spirit of Gertrude Rush, demonstrates leadership in the community and in the legal profession and demonstrates concern for human and civil rights. Gertrude Rush was the first African-American woman to be admitted to the

practice of law in Iowa in 1918 and was one of the founders of the National Bar Association in Des Moines. The third recipient of the award is Inga Bumbary-Langston.

Inga attended the University of Virginia, earning a Bachelor of Arts degree in 1978 and Juris Doctorate in 1981. Since graduating from law school, she has worked for the state and federal governments and in private practice. Inga works for the United States Department of Agriculture's Office of General Counsel – Civil Rights in Washington, D.C.

She served as executive director of the Iowa Civil Rights Commission from 1986 through 1992. From 1994 through 2005, Inga was the chief of the Civil Division of the United States Attorney's Office for the Southern District of Iowa. She served as an executive assistant from 1997 through 2002, and as interim United States Attorney from June through October 2001.

Inga has been the ethics officer for the United States Attorney's Office since 1995, and she was a member of the Polk County Bar Association's Ethics Committee from 2000 through 2004. She has served on the Board of Directors for the United Way, acting as a committee chair and as vice president of the Executive Committee.

She also is a member of the Des Moines Chapter of the N.A.A.C.P., a board member for The Links, Inc., and Delta Sigma Theta Sorority. Inga has also served as a volunteer for the Cathedral Church of St. Paul at the United Churches Homeless Shelter.

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# *First Lady gives her support to a Mansfield memorial -* **That Belle Mansfield is remembered by all**

*By Seleta Bainter*

Thank-you for inviting me to speak with you for a few moments at this special occasion, honoring, in part, the 2005 recipient of the Belle Babb Mansfield award of excellence.

I practice law in Mt. Pleasant, which is a community of approximately 8,000 residents, and is located in southeast Iowa. I have been in the private practice of law for nearly twenty-two years. My law partner is my husband, Jeff Thomas, and so I guess that this makes us a real “mom and pop” shop.

My husband and I chose the profession of law, not only because it is an interesting and challenging career, but because it also allowed us to be self-employed, gave us a comfortable standard of living, and most importantly, gave us flexible hours for raising our children.

We have taken the practice of law, and have veered slightly off of the traditional path. We have farm fresh eggs delivered to our office weekly, and so our clients can purchase legal services, or eggs, when they come to our office. If we fall behind, we close our office to the public on Thursdays. We have liberal holiday vacations, and I like Halloween, so we close early on Halloween.

I look amongst my colleagues, and see that we are all contributing to the resolution of conflict and the resolution of sorrow in our society, but in our own way. Each of you here tonight, has a similar story of how you are “doing it.” And the recipient of the Belle Babb Mansfield award is being honored for her special story, and her extraordinary contributions to this cause. Belle Babb Mansfield would be pleased.

I recently visited the grave of Belle Babb Mansfield, the first woman admitted into the practice of law in the United States and a great benefactress of all women, and I found her near a beautiful hickory nut tree in the Forest Home Cemetery in Mt. Pleasant.

She died in 1911 at the age of 65, after a brilliant career as a public orator, educator, world-traveler, art-historian, and journalist. Belle Babb Mansfield led by example, and showed women everywhere, that you can take your educational degrees, and use

them as a “ticket” to become the person that you want to be. You can “break the mold,” but in your own way.

During her lifetime, Belle Babb Mansfield felt a deep connection to the State of Iowa, to her alma mater, Iowa Wesleyan College, and to her hometown of Mt. Pleasant. Even in her death, when her final work was done, it was Belle’s wish that she come home to the state and the community that first supported and encouraged her in her historic endeavors.

In March of this year, I received a telephone call from another person who was born and raised in Mt. Pleasant, who is also a benefactress of all women, and that is First Lady Christie Vilsack. Christie shared with me her concern that Belle Babb Mansfield has not been physically memorialized as one of Iowa’s great women. She was concerned that the young people of our state and our country, are not adequately exposed to memorials that honor the accomplishments of our famous women.

Christie was passionate that this oversight should be remedied, and resolute in her desire to form a “grass roots” effort to raise funds to memorialize Belle Babb Mansfield. Based upon everything that I have told you about myself tonight, I, too, believe that I am indebted to Belle Babb Mansfield and “owe” her this recognition.

A committee has been organized to pursue this effort. The committee has met on several occasions, and has included administration officials from Iowa Wesleyan College in Mt. Pleasant. After careful consideration of many options, the committee has set forth a beginning fund-raising goal of \$250,000, which would be used to create a bronze statute of Belle Babb Mansfield to be placed in the town square or college campus in Mt. Pleasant. The cost of the bronze statute would be approximately \$100,000. It is also proposed that the remaining \$150,000 be used to endow a women’s lecture series at Iowa Wesleyan College that would invite high profile and nationally recognized speakers into our state to encourage women to achieve their goals. Iowa Wesleyan College has set up a challenge grant that will match the \$150,000, and so

the funds available to endow the women’s lecture series would actually be \$300,000. First Lady Christie Vilsack has expressed her willingness to approach notable women as possible guest speakers.

I am here tonight because we need an organization that is also inspired by this vision. We hope that the I.O.W.A will help us with a campaign to reach women across the state and possibly the country, educating them about Belle Babb Mansfield and insuring that future scholars will not forget her accomplishments. I urge you to reach out to your colleagues, friends, spouses and firms, to contribute to this timely and worthy cause.

In closure, I would like to describe for you the family monument that marks the grave of Belle Babb Mansfield. It is an imposing slab of granite. It is waist high and approximately four feet in width. A portion of the front and backside of the slab has been ground to a smooth, polished finish, and bears the family name. But it is the sides of the monument that are unusual, for the sides are jagged, rough and broken-looking. It is an unfinished monument, by intent, for clearly the sides were never touched by the artist’s hand.

I believe this monument represents all of Belle Babb Mansfield’s life. She pursued something good and beautiful, but her work, like our work, will never quite be finished. This should inspire us and not discourage us, and we can take this inspiration to do good things in her name.

Thank you for your time this evening and for your consideration.

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# ICWA meant the state wanted the best for Native American children, gave all Iowans something in which they can be proud

By Felicia Bertin Rocha\*

## PART II

*This is the final installment of a two-part series, beginning with the July issue, on Iowa Indian Child Welfare Act (ICWA) legislation that was passed in 2003. The author writes about ICWA from a unique perspective: she is an attorney and she was a pre-ICWA child in the system, a First Nations' Inuit born in Quebec Province. This month's article focuses on the positive changes that have occurred in Iowa's Indian communities since the passage of ICWA and ends with the author's practical solutions for some of the challenges faced by practitioners and courts in implementing ICWA. Just as this was going to press, the Iowa Supreme Court issued a new ICWA opinion, *In the Interest of R.E.K.F.*, No. 72/04-1864 & 05-0251, of June 10, 2005, which clarifies issues of notice, reiterates tribal self-determination in ICWA cases and discusses conditional terminations when ICWA statutes are improperly applied.*

## The Iowa ICWA Legislation: Positive Changes for Native Communities

In 2003, the Iowa legislature adopted the Iowa Indian Child Welfare Act under section 232B.<sup>1</sup> ICWA's purposes include "to cooperate fully with Indian tribes and tribal citizens in Iowa to ensure that the intent and provisions of the federal [ICWA] are enforced. This cooperation includes recognition by the state that Indian tribes have continuing and compelling governmental interest in an Indian child...." Iowa Code § 232B.2.

The law also recognizes that if an out-of-home placement is necessary, then the placement must "[reflect] the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community." *Id.*

This is important language that is often overlooked. As a result, some criticize ICWA and say that it is in the best interests of the tribe, not the child. This kind of statement shows a lack of understanding of how tribal communities function differently than mainstream America. To Native communities, the best interest of each child is inexplicably interwoven with the tribe's future. Tribal communities and families are unlike white middle-class nuclear families in structure. Extended family in tribal communities is not extended – they are family, often with tribal traditional roles for raising children. For example, in one southeastern Alaska Native culture, children's major discipline is entrusted to specific clan relatives, not the parents. So when a parent decides to let a grandparent, aunt, or uncle care for a child, it is not seen as abandonment, but extended family members fulfilling their responsibilities to the tribe's well-being.

In a general, white, middle-class nuclear families exist on a daily basis without thinking much of government as a direct part of their lives. In contrast, tribal governments exist in just the opposite way: as part of families with the histories of those families known within the tribe for many generations or even hundreds of

years. This inseparable cultural link between the tribe and its children is what ICWA seeks to strengthen when child custody proceedings occur that may sever the child from the tribe.

The latest Native child welfare studies are beginning to focus on Native adult adoptees, of which more than an astonishing ninety percent attempt to reconnect with their tribes at some point in their lives.<sup>2</sup> These studies now are looking to find out how to 'fix' unique problems such as 'split feather syndrome' that is rampant in Native adult adoptees who have participated in research projects in the United States, Canada and Australia. (See sidebar for additional information.) For the Iowa ICWA to mandate measures that will prevent or lessen the effects of 'split feather syndrome' is truly in the long-range best interests of Native American children, if they must be removed from their tribal families. If a child is able to remain with, or be placed with extended family or other tribal members, the Iowa ICWA assists tribes with the 'full cooperation' promise and recognition of tribal governments and tribal courts. See *In the Interest of R.E.K.F.*, No. 72/04-1864 & 05-0251 (6/10/05) (where the court held, in part, that notifying the wrong tribal sovereign when sufficient details made the tribe's identification possible was a violation of Iowa's ICWA statute and that a conditional reversal was in the best interests of the child in order to let the correct tribe determine: (1) if the child is ICWA-eligible and (2) to intervene or not with the involuntary termination. If the tribe intervenes, then the termination is reversed, but if the tribe does not intervene, then the termination is affirmed; hence the court's 'affirmed conditional order'). Additionally, the Court rejected the state's suggestion that ICWA would only apply to Native children raised in what the state perceived as 'Indian culture.' *Id.* The Court reiterated tribal self-determination for determining its own membership in that "tribes are the arbitrators of their own membership" and "whether a not a child is an Indian child is,

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after all, a question for the tribe to answer in the first instance.” **Id.** (Emphasis added.) The R.E.K.F. opinion is a healthy sign that the Supreme Court is understanding the deeper implications of ICWA in protecting Native children. This is commendable.

How is the Iowa ICWA being implemented? First, let’s look at a traditional tribal response and then to an urban application of this question. The Meskwaki Nation (Sac and Fox) recently put into place their own tribal court and, in response to the Iowa ICWA law, doubled their Family Services caseworker staff to help families in crisis. The tribe now has several options when a child is placed in foster care: the tribe makes an assessment whether the child is or could be eligible to be an enrolled member of the Meskwaki tribe or is a member of the tribal community; whether the case should be transferred to tribal court; whether the tribe will intervene in state court; and under the previous options, whether the tribe will seek unification with a parent or attempt to find a tribal member or extended family to take the child. The

Meskwaki Nation takes on this responsibility with tribal resources, not Department of Human Services (DHS) resources, in order to find, place and/or provide reunification or placement options within the tribe for children. These options and services have strengthened dramatically the tribe’s ability to act in the best interest of the tribal community’s children since the passage of the Iowa ICWA.

In the urban Native community of Sioux City, Woodbury County DHS has implemented a specialized Native American Unit of social workers in response to Native urban organizations requests for culturally-competent services. Their focus is to identify for the courts potential ICWA children; to provide culturally-competent services to Native families in the system; increase Native foster homes; increase relative placements; and to provide culturally-appropriate continuing education to white foster families with Native children. Terry Cross, the executive director of the National Indian Child Welfare Association (NICWA), states that when Native families

have culturally-competent services with the focus on family preservation and in-home services by Native organizations and tribal agencies, the state saves one-third of the monies earmarked for services for Native children and their families; the children and families spend one-third less time in the system; and recidivism is slashed by one-third.<sup>3</sup>

In 2001, there were eleven organizations in the Sioux City metro area providing Native-specific, culturally-competent services in all of the following areas: religion, education, child welfare, workforce development, rehabilitation and community service centers.<sup>4</sup> The Native Family Resource Center in Sioux City queried Native families and found that the need for more service providers and expansion of successful programs were desperately needed to meet the needs of the urban Indian population, and specifically, to meet the needs of families with children in the child welfare system.<sup>5</sup> The initiation of the DHS Native American Unit with on-going input from local Native community organizations and Indian staff is a progressive and uniquely-tailored

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# Adult Split Feathers speak out on shame

Understanding Split Feathers in their own words... Shame is a big part of the Split Feather experience. Why? Shame develops for being an Indian with little or no personal cultural basis, yet experiencing discrimination by the dominant culture based on the physical appearance of 'looking Native American;' also shame develops for being an adopted Indian who may never be totally culturally competent around other Indians. 'Adopted' is spoken in hushed tones, if spoken at all by Native adult adoptees around other Native people because of the shame associated with being adopted out. Unlike other children from minority backgrounds, only Native Americans are birthed into tribal community. Without tribal identity, Native adult adoptees are caught between two worlds: the dominant culture that sees them as non-whites and responds accordingly; and their Native community that see them as non-Native because they have been "detrribalized" through adoption.

*"I work for an Indian organization and I rarely tell anyone that I was adopted out, although my spouse knows – (who is also an Indian)."*

*"They gave me everything a child could ask for, except my Native American identity. ... In school, I was cut down and made fun of because I was Indian... I kept all the shame to myself."*

*"I did not go blabbing around that I was Native American. If the subject came up, I would say, but [people] would always say 'What tribe? What are you?' and you know, I'd be like 'I don't know.' Sometimes I would avoid it, actually, so I wouldn't sound so stupid."*

*"My adopted mother told me that my greatest handicap in life was my race... being Indian. No wonder I felt ashamed."*

*"Adoption causes such intense inner pain that you do anything to get away from it. That's how I got into trouble with alcohol: it was pain medicine."*

*"I was adopted at age four... In sixth grade, I started having problems with the other kids. Whites, Mexicans and others didn't like me because of being Indian."*

*"I felt like a chocolate chip in a sea of white, a fish out of water. I was always conscious of my differences, [my] skin color, body shape and facial features... I hated being different... I wasn't comfortable. I experienced anxiety. Everything worried me." She hid the teasing at school from her parents: "It made me feel uncomfortable, their having to deal with it... it would upset them, and you hate to see your mom or dad cry, you know? I guess... it was all part of the shame. I just didn't know how to handle it."*

response to directly benefit Sioux City's Indian children caught child custody proceedings.

## Challenges to Implementation of ICWA

The new ICWA legislation has raised concerns as to implementation of the statute. This next section seeks to demystify some of these concerns with culturally-appropriate and practical considerations.

**Statutorily mandated notice** to tribes. The Iowa ICWA statute requires that potential tribes of a Native child, in involuntary child custody proceedings, shall receive notice of all proceedings by certified mail, return receipt requested. Iowa Code § 232B.5(4). Some contend this requirement is costing the state thousands of unnecessary dollars to send out repeated notices to tribes that do not respond.

The author suggests the following solution. First of all, courts need to understand that most tribes are poor and they have few resources. They may not have computers or there may not be a full-time ICWA specialist for the tribe. In those circumstances when the tribe is non-responsive, as early in the proceedings as possible, the judge is obligated to make a determination concerning the ICWA status of the child. Iowa Code § 232B.4(3). A phone call placed by the judge after sending a letter to the tribe will often be more effective than papering the tribal office with repeated notices. One phone call may cut through the problem tribes face with very limited resources. If a judge calls a tribe, it will get the tribe's attention. The judge may choose to follow up the conversation with a letter confirming the contents of the conversation concerning the child's eligibility or ineligibility. Then, in compliance with Iowa Code section 232B.4(4) and based on the information provided by the tribe when the child is ineligible for membership, the proceedings may move forward.

In a variation of that scenario, when the child's tribe including a parent and/or Indian custodian cannot be found or determined, then the party seeking termination must send a letter to the Secretary of the Interior, who has 15 days to respond after the receipt of the notice. The Secretary must attempt to contact the child's parent, Indian custodian, and/or determine which tribe to contact. Iowa

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Code § 232B.5(5). The court must wait at least 10 days after receipt of the notice before proceeding with a foster care placement or termination of parental rights. If a tribe, parent or Indian guardian responds, then the court shall grant up to 20 additional days to the tribe or parent to prepare for the proceeding. **Id.** In both situations, the court does not have to let a non-responsive tribe continue to receive months of repeated notices. The Iowa ICWA allows the court to be pro-active and to make a final determination fairly quickly in the proceedings.

However, as in R.E.K.F., giving notice to the Secretary of the Interior is not applicable when a party has given specific information as to possible tribal membership. In R.E.K.F., the father had given notice that he was part Seneca "from the eastern United States" and/or Canada. The state wrongly sent a notice to the Seneca-Cayuga tribe in Miami, Oklahoma, who determined the child was not a member of the tribe, when the state should have sent a notice to the Seneca Nation of New York. The Court held that notifying the wrong tribe is insufficient ICWA compliance and that notification to the Secretary of Interior is inapplicable when the tribal identity is ascertainable.

#### **Indian child and other definitions.**

Other critics believe that the definition of an Indian, Indian child, and Indian child's tribe are too broad. See Iowa Code §§ 232B.3(5), 232B.3(6) and 232B.3(8).

**First**, an Indian under the definition, is anyone who is a member of a tribe, eligible for membership in a tribe or an Alaska Native who is a member of a Native regional corporation. Iowa Code § 232B.3(5).

**Second**, an Indian child is defined as one under the age of 18 years and who is identified as a child of the tribe's community. Iowa Code § 232B.3(6).

**Third**, an Indian child's tribe is one in which the child is a member or eligible for membership. Iowa Code § 232B.3(8).

These definitions are responsive and respectful to Native nations' autonomy to determine tribal membership. As discussed earlier (in the first installment and In the Interest of R.E.K.F. in this installment), tribes set their own criteria and traditions. The Iowa legislature's careful wording reflects the realities of Indian Country and tribal communities. In one tribe, members may have a time limit of days to enroll a

child after birth. In another tribe, members of the tribe may wait years to "officially" enroll, yet they are considered members of that particular Native community, but cannot, for example, vote in tribal elections. In other instances, a child may be 100 percent Indian and a part of the Indian community, yet is not eligible for membership in one tribe, but may be eligible for enrollment in another tribe, due to blood quantum or matrilineal or patrilineal descent requirements. Following this example, let's suppose a child's mother is 100 percent Meskwaki and the father is 100 percent Alaska Native, but he is not enrolled in his Native regional corporation for whatever reason. In addition, the family resides near the Meskwaki Settlement and is considered a part of the community. The Meskwaki are patrilineal, but the child, who is 100 percent Native American, is not eligible for membership, as the child is descended from the mother. In like manner, under the Iowa statute, since the father is not enrolled in his regional corporation, the child is not enrollable, either. It is this kind of scenario that the Iowa ICWA closes the loophole for Native children (who would fall through the cracks of bureaucracy otherwise) to receive the benefits of their Indian community membership. In this situation, under the statute, the Meskwaki could intervene by recognizing the child as part of their Indian community, and place the child with (extended) family (on the mother's side), even though the child is not eligible for federally-recognized tribal enrollment. In like manner, the Alaska Native traditional IRA (Indian Reorganization Act of 1934) village government could intervene and recognize the child as part the tribal community, too.

In summary, the Iowa ICWA legislation is something that all Iowans should be proud. It is responsive to modern tribal needs; respects Native sovereignty; and begins to address the very long range best interests of the Native child through young adulthood with culturally-appropriate provisions that seek to keep the child with extended family, tribal members, or if removed, to mandate on-going connections with the child's tribe to prevent psycho-social trauma as the child matures.

<sup>1</sup> The author would like to thank Jerry Foxhoven, Administrator of the Iowa Child

Advocacy Board, for sharing his wealth of knowledge on child welfare issues and ICWA in particular; and to her excellent editor for this article, Chuck Corcoran, communications director for The Iowa State Bar Association

<sup>2</sup> Sindelar, Rita. August 2004. *Negotiating Indian Identity: Native Americans and Transracial Adoption*. (Master's Thesis, Loyola University, Chicago, IL)

<sup>3</sup> Bear King, Connie. July 2001. *American Indian Service Providers in Siouxsland: A Report and Directory*. Sioux City, IA.

<sup>4</sup> **Id.**

<sup>5</sup> **Id.**



**Felicia Bertin Rocha**

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Know these things, make your job easier –

## When Iowa inheritance tax returns are required to be filed and when are they not

By Bob Cowie – Chair, ISBA Probate and Trust Law Section

### Some notable quotes:

1. *“The check is in the mail.”*
2. *“This is going to hurt me more than it is going to hurt you.”*
3. *“Of course, I will respect you in the morning.”*
4. *“We are doing this to make both of our jobs easier.”*

Lawyers dealing with the Iowa Department of Revenue may be accustomed to hearing the first three quotes from representatives of that governmental agency (okay, maybe not the third one), but recently they have been hearing the fourth quotation after filing an Iowa Inheritance Tax Return.

For certain estates there is no requirement for filing an Iowa Inheritance Tax Return for Iowa residents dying after July 1, 2004. Those estates not required to file an inheritance tax return are those that

pass all of the assets to spouse and/or lineal ascendants or descendants and there is no requirement to file a federal estate tax return. For many estates this is exactly what the attorney finds:

Between the Will, joint accounts, beneficiary designations, all of the property of the decedent will pass to the spouse and/or children, grandchildren, parents, or grandparents.

Attorneys who even rarely practice in the estate field can quickly note some difficulties with this “simple” change. Referee’s Reports at the closing of estates still require an Inheritance Tax Clearance; the Final Report is to include a statement concerning Inheritance Tax Clearance; attorney fees and executor fees are based on assets filed for inheritance tax purposes; the Department of Revenue will not issue an Income Tax Acquittance until the inheritance tax is filed; how is basis in the property to be established; will the absence of an inheritance tax

clearance cause problems with passing real estate title?

Sue Pence, as chair of the Probate Section, worked tirelessly with other members of the Probate Section and the Department of Revenue to solve these issues. Obviously, there were a number of other people involved but this shameless plug is limited to Sue. I believe that most of the questions raised in this article have been answered as follows.

1. **Fees** – The statutory reference “for inheritance tax purposes” has been deleted from the statute regarding attorney and executor fees:
2. **Income Tax Acquittance** – The Department of Revenue will review the form 1041 Fiduciary Income Tax Return without accompanying inheritance tax return. This will be expedited if the cover letter from the attorney will state that an inheritance tax return was not required to be filed because of how the property passed.
3. **Final Report** – Signed and Certified to by the personal representative that an Iowa inheritance tax return was not required to be filed due to the beneficiaries of the estate being exempt.
4. **Referee’s Report** – We believe that all of the clerks of court and probate referees have been informed of the change in the statute. If there is any clerk that insisting on an inheritance tax clearance, please notify myself or the Bar Association and we will conduct an education course.
5. **Basis in property** – Filing an inheritance tax return never guaranteed that the values were placed on the property were going to “challenge proof” upon audit. Some attorneys are taking the position that they are going to file Federal 706 (estate tax returns) for any estate where they have a potential basis issue. Others will continue to file the inventory and use those values to establish a stepped

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up basis. The Department and the Bar Association is continuing to work through this issue.

**6. What about real estate and passing of title** – A review of the Title Standards shows that under any circumstances when the estate passes to spouse, lineal ascendants or lineal descendants there is no clearance of Iowa Inheritance Tax required.

Please note that although fairly common, the classification of estates that are not required to file Iowa Inheritance tax returns are only those where all of the property passes to spouse, lineal ascendants and/or lineal descendants without the necessity of filing a Federal Estate Tax Return.

Estates that pass assets to charities or non exempt individuals; where a disclaimer is filed; where a Federal Estate Tax Return is required to be filed; assets passed by beneficiary designation to non exempt individuals; wrongful death proceeds passing through the estate; and further where the decedent retained a life estate in property that is included in the estate must still file inheritance tax returns.

However, for those estates that are not required to file an inheritance tax return, do not file one even for a protective reason. The department will not review the return – they will not even look at it. In fact, preliminary rules of the department were that they were going to destroy such returns.

I hope this explanation clarifies the situation and does in fact make your job easier.



**Chief Justice Louis A. Lavorato (left, back to camera) and Justice Marsha Ternus (to his left), met with ISBA Executive Director Dwight Dinkla (top left) and (to his left, clockwise) Dean Carolyn Jones of UI Law, Legislative Counsel Jim Carney, Immediate Past President Nick Critelli, President J.C. Salvo, Vice President Joel Greer, President-elect Marion Beatty and Dean David Walker of Drake Law at the Bar's annual conclave.**

## Justices and Bar leaders meet in conclave at Drake

*By George F. Davison, Jr. – Chair, ISBA Public Relations Committee*

Chief Justice Louis Lavorato, Justice Marsha Ternus, Dean Carolyn Jones of the University of Iowa College of Law and Dean David Walker of Drake University Law School met in annual conclave early in July with President J.C. Salvo of The Iowa State Bar Association, President-elect Marion Beatty, Vice President Joel Greer, Immediate Past-president Nicholas Critelli, Executive Director Dwight Dinkla and Legislative Counsel Jim Carney.

During the meeting, the chief justice commended the efforts of the Bar and its leaders for their concerted support of full funding for the Judicial Branch during the 2005 session of the General

Assembly. As a result of the General Assembly restoring much of the money cut in previous years from the Judicial Branch's budget, Chief Justice Lavorato said the courts will be able to resume full operations.

The meeting also examined ways to increase involvement by members of faculty at the two schools not only in bar but also in community activities.

It is hoped that faculty may be able to offer their expertise in several areas, including consideration amendments to the criminal code, judicial independence, and diversity within the bar.

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# Quality help in the exceptional people at Iowa Legal Aid

By Dennis Groenenboom, Director – Iowa Legal Aid



Iowa Legal Aid staff dedicate their careers to representing low-income people for varied and diverse reasons. We are all products of the environment in which we were raised. For me, the decision to work with legal aid was a mix of religious, philosophical and social reasons. The Old Testament says in Micah “what doth the Lord require of thee, but to do justly and to love mercy and to walk humbly with thy God.”

Martin Luther King said that “human progress is neither automatic nor inevitable. . . every step toward the goal of justice requires sacrifice, suffering and struggle; the tireless exertions and passionate concern of dedicated individuals.” The authors of our Constitution put it this way – one of their goals was to establish justice. The “establishment” of justice implies that the promise of “equal justice under law” is not self-executing, it requires stewardship by its trustees in the legal community.

Asked today, 27 years since joining the legal services for the indigent program, why I still work with Iowa Legal Aid, nothing

has changed for me except that now there are additional reasons that involve the community I operate in every day. I am inspired by the dedication of the staff who work with Iowa Legal Aid, and the strength and integrity of the clients I have been fortunate to represent over the years and who now are assisted by the staff of Iowa Legal Aid.

The exceptional Iowa Legal Aid staff have dedication and creativity needed to be effective advocates for low-income clients. Many have gone on to elective office, the bench, or other careers through which they continue to work for justice. To name every staff person who has made a positive difference in this organization and in the state on behalf of Iowa’s most vulnerable people would fill a considerable book, but to illustrate in brief, the following are just a few of the stewards of justice who inspire me every day.

**Hattie Holmes**, a paralegal in Iowa Legal Aid’s **Waterloo Regional Office**, has been working with Iowa Legal Aid and its predecessor organizations for over 30 years. Hattie is particularly dedicated to helping people with disabilities. She has worked with the Black Hawk County Board of Supervisors, trying to get Social Security or SSI disability benefits for people who receive General

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Relief. What is most notable about Hattie is the size of her heart. She gives her best in the pursuit of fairness for our clients, and she does so without fail.

**Frank Tenuta** is the Managing Attorney of Iowa Legal Aid's **Northwest Regional Office** in Sioux City. Frank was one of the first attorneys I hired after I began doing recruitment for new attorney staff. Frank's commitment to changing systems that have been perpetual institutions of unfairness is best exemplified by his assistance to persons with mental disabilities, especially in the Hedin case, an Iowa Supreme Court decision involving the rights of individuals under guardianship. Frank is a legal visionary who refuses to tolerate injustice, even in long-accepted systems and institutions.

**Dennis Kirkwood** has been integral to the delivery of legal services in Iowa for decades. Dennis currently works as a Managing Attorney in the **Central Iowa Regional Office** in Des Moines, mentoring new staff to become skilled legal aid lawyers. Dennis' experience and creativity have helped innumerable clients who have had domestic violence and other family law problems. He also possesses a wealth of consumer experience and finds creative solutions to problems confronted by clients with predatory lending and other consumer problems. Perhaps most admirable about Dennis Kirkwood is his daily enthusiasm and love for this work. Even in difficult situations, even when we don't win, his devotion to and conviction on behalf of our clients is unflagging.

Of course, it is not just those who are elders in the Iowa Legal Aid community who inspire. Young attorneys choose this path with new fire and passion, bringing refreshing energy and perspective to this organization. Shellie Mackel joined Iowa Legal Aid almost one year ago. She splits her time between duties as a staff attorney and a development officer. She approaches her fundraising position as a resource advocate, on par with her attorney work, with the determination and understanding that without funding, Iowa Legal Aid simply cannot serve Iowans in need.

**Derek Johnson** is a staff attorney in Iowa Legal Aid's **Iowa City Regional Office**. Before joining Iowa Legal Aid about three years ago, Derek worked in the Peace Corps. Derek is an active member of the Young Lawyers Division and has chaired its Domestic Abuse Committee. He brings tremendous intellect, good will, great sense of humor and understanding of the diversity of cultures in our world.

These are just five of the people who work with Iowa Legal Aid who bring the ingenuity, commitment, and work ethic that are needed to protect the legal rights of low-income Iowans. Without them, clients would have nowhere else to turn for critical legal help with issues involving abuse, housing, utilities, health care and other basic necessities.

The personal reasons why people work with Iowa Legal Aid may vary from mine, but we all share the social and professional belief that providing access to justice is a critical necessity for our clients, our courts, and our communities. We all share the honor of representing clients who stand up for their right to be free from abuse and discrimination, clients who refuse to tolerate unfair employment practices, clients who protest unfair housing practices, and clients with disabilities who demand full participation in society. Iowa Legal Aid serves thousands of clients who, in turn, help advocates articulate and understand the law's obligation to all citizens. The promise of justice for each of these people is the reason we all work for Iowa Legal Aid.



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Dr. Farnham has thirteen years experience performing Independent Medical Evaluations and thirty-two years practical medical experience in the workers compensation and personal injury arena. He has successfully defended professional medical opinions before the South Dakota Supreme Court and South Dakota Department of Labor. Dr. Farnham keeps flexible hours and is available for telephone consultations.

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**Immediate Past-president Nick Critelli** and **Attorney Jerry Crawford** have been honored by the Iowa Supreme Court with certificates for exceptional service to the State Judicial Branch.

The citations noted their “[their] life long efforts to promote and maintain high professional standards in the Bar, [their] resolute advocacy for a well-funded court system and a fairly compensated judiciary, and [their] devotion to the administration of justice.”



**Lance W. Lange**

**Lance W. Lange** has joined Belin Lamson McCormick Zumbach Flynn, P.C. Lance previously practiced at Winston & Strawn LLP in Chicago.

Lance is a 2001 graduate of the Columbia University School of Law and practices in the areas of

civil litigation, intellectual property litigation, antitrust, and defamation law. He also holds an undergraduate degree from Stanford University and a Master of Arts degree from the University of Iowa. He is licensed to practice in both Iowa and Illinois.

**Drake Law Professor Russ Lovell** and **Drake alumni Robert Wright, Sr., and Henry Hamilton III** were cited by the NAACP with Foot Soldiers in the Sands awards at its national convention in Milwaukee. The awards recognized them and five other lawyers for their pursuit of justice and civil rights, “leaving footprints on the sands of time that others can follow.”



**Don Heinrich**

**Don Heinrich** has joined Innovative Captive Strategies, a division of Holmes Murphy and Associates in West Des Moines, as vice president of Program and Risk Management Services.

Don is a 1981 graduate of Drake University School of Law and was formerly assistant general counsel with Allied Insurance.

**Richard Hanson** has retired with 36 years of service to the U.S. Army and U.S. Air Force, most recently as deputy chief trial attorney at the Department of the Air Force, a post he held for nearly 20 years.

He is now a partner at Preston Gates Ellis & Rouvellas Meeds, Washington, D.C., where he anchors its government contract litigation practice.

He received a BS from ISU in 1963 and a JD from UI College of Law in 1967.



**Deborah L. Petersen**

**Deborah L. Petersen** of Council Bluffs, Iowa, a 1984 graduate of Creighton University School of Law, has opened her own law practice as Deborah L. Petersen, P.L.C. She was formerly a partner in the firm of Reilly, Petersen, Hannan & Dreismeier, P.L.C.



**Melissa A. Hancock**

**Melissa A. Hancock** has become an associate at Pappas & Schnell, P.C. in Rock Island, Illinois. She graduated with distinction from the University of Iowa College of Law in 2002 where she was a Merit Tuition scholarship recipient.

Melissa practiced with the Kintzinger Law Firm in Dubuque prior to joining the firm. She spoke at the ISBA Tax School in December of 2003 and was a panel member at the Women in Law Conference at the University of Iowa in March, 2003.

Pappas & Schnell, P.C., was started in 1996 by Matthew P. Pappas and Molly O’Meara Schnell. There are eight attorneys practicing in the states of Iowa and Illinois.

**David S. Rifkind** has been appointed president and general counsel of Starr Litigation Services, Inc., a trial consulting firm with offices in Des Moines, Scottsdale, and Philadelphia.

He is responsible for creating and managing Starr’s business strategy, policies and programs, as well as managing the company’s corporate affairs. He will offer his legal, management and technology expertise to clients in the areas of trial preparation management, courtroom technology, electronic discovery, witness preparation, and theme development.

**Sheila K. Tipton** has joined Belin Lamson McCormick Zumbach Flynn, P.C., of Des Moines as a member.

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**Ruth Cooperrider**

**Ruth Cooperrider** has been elected president of the United States Ombudsman Association. She is the deputy ombudsman and legal counsel for the State of Iowa's Office of Citizens' Aide/Ombudsman.

The United States Ombudsman Association is comprised of ombudsmen at various levels of the government in the United States and also has members from Canada and other parts of the world. Ruth has served for two years each as vice-president and chairperson of the Outreach and Development Committee of the OSOA. She also chaired the committee that drafted the association's Model Ombudsman Act in 1997 and participated on the American Bar Association's Ombudsman Steering Committee that developed the ABA's 2001 Ombudsman Standards.

She is a member of the ISBA's Administrative Law Section Council and serves as the secretary of the Polk County Bar Association and is a former president and the current Professional Action Chairperson of the Iowa Organization of Women Attorneys.



**William P. Kelly**



**Susan J. Freed**

**William P. Kelly and Susan J. Freed** have been elected shareholders at Davis, Brown, Koehn, Shors & Roberts, P.C., of Des Moines.

**Bill** is a general litigator and **Susan** focuses in the areas of benefits and health law.



**Denise M. Hill**

**Denise M. Hill**, formerly with the Iowa Medical Society, has joined the firm as a member of the health law department. She received her J.D. from Drake University Law School.



**Jodie L. Clark**

**Jodie L. Clark** has joined the firm as an associate with the litigation division. She is a 2004 graduate of the University of Arizona College of Law.

## Iowa attorneys update guide to computer presentations

The second edition of "The Lawyer's Guide to Creating Persuasive Computer Presentations" was released in June. Co-authored by Patent Attorney John D. Goodhue and Iowa Assistant Attorney General Anne E. Brenden, the 272-page informational book is a direct guide to the "when, whys and hows" of using computer technology to benefit both lawyers and their clients.

Published by the American Bar Association, this newest version includes a CD-ROM with on-screen tutorials, new chapters on hardware and software used in digital displays and directions on some of the latest Microsoft PowerPoint® techniques.

Commenting on the content, The Law Marketing Portal reviewers said, "It excels with its nuts and bolts approach to presentation technology. . . a great introduction to creative design and hands-on techniques for executing a stellar presentation. The authors

have done their homework and it shows."

John D. Goodhue has been a practicing patent attorney with McKee, Voorhees & Sease, P.L.C., of Des Moines since 2000. In addition to the juris doctorate, he holds a degree in computer engineering, along with a

### The Lawyer's Guide to Creating Persuasive Computer Presentations

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By Ann E. Brenden and John D. Goodhue

background in mechanical and electrical engineering.

Ann E. Brenden is an assistant attorney general in the Prosecuting Attorney's Training Coordinator Division of the Iowa Attorney General's office.

For more information about the book and to order, log on to [www.abanet.org/abastore](http://www.abanet.org/abastore) or call 1-800-285-2221.

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## SIXTH EDITION OF BAR'S BIGGEST HIT!

# Handbook for Older Iowans debuts at Bar's state fair booth

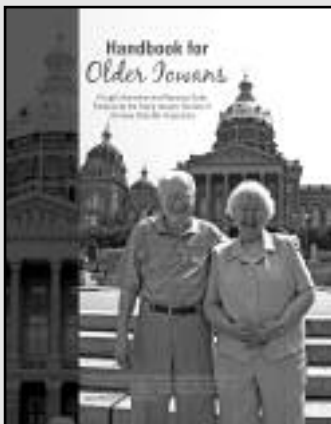
By Bill Miller\*

The Iowa State Bar Association-Young Lawyers Division Services to the Elderly Committee is glad to announce the August launch of the sixth edition of its popular *Handbook for Older Iowans*.

The *Handbook* covers a variety of legal issues that affect older Iowans and their caregivers. The book is not intended to be a substitute for the advice of an attorney, but it is meant to help older Iowans gain a basic understanding of some of the legal issues they may face. It is also the committee's hope that the *Handbook* will help older Iowans recognize when a legal issue is present in a certain situation so they can communicate on the issue with attorneys and others. It also includes a lengthy listing of resources for older Iowans at the back of the *Handbook*.

The *Handbook* was first printed 17 years ago, in 1988. It has with every revision been a smash with the public. The Services to the Elderly Committee, made up of 25 young-lawyer members, has been hard at work writing and editing articles and identifying resources to be included in the new edition.

Topics include Age Discrimination in Employment; Consumer Protection; Elder Abuse and Neglect; Federal Income Taxes;



**Predictions are that there will be over 40,000,000 Americans over the age of 65 just five years from now. Today Iowa is home to over 400,000 persons over "retirement age." Many Iowa lawyers personally can attest to the growing, intense interest among older Iowans on this subject. Many have first-hand knowledge of the frustrations of their older clients who feel bombarded by sundry legal issues and who have had little luck finding answers to each.**

**The ISBA YLD again has the answer!**

Food Assistance; Funerals; Grandparent and Great-Grandparent Visitation; Guardianships and Conservatorships; Landlord/Tenant Law; Living Wills; Long-Term Care Insurance; Long-Term Health Care Facilities; Medicaid; Medicare; Medicare Advantage; Medicare Supplemental Health Insurance Policies (Medigap); Multi-Party Banking Accounts; Power of Attorney; Property Tax Relief for the Elderly; Reverse Mortgages; Revocable Trusts; Social Security: Retirement Benefits, Disability and Supplemental Security Income (SSI); Veterans Benefits; and Wills.

Each article also has been reviewed by an outside expert in each topic to confirm we are using the latest, accurate information. The reviewers are acknowledged, along with others who assisted in the project, in the preface to the *Handbook*. Also acknowledged are our sponsors who supported the project financially – the Iowa State Bar Foundation, The Iowa State Bar Association, the ISBA-Young Lawyers Division, and Gremler Financial Group of Des Moines. The committee is extremely grateful for all of their assistance – both financial and otherwise!

The new edition of the *Handbook* is set to debut at this year's Iowa State Fair, where – if history is a guide – it will be one of the most popular "give-aways" at the bar association's booth in the Varied Industries Building. It also will be available starting in August from The Iowa State Bar Association, Iowa Area Agencies on Aging, the Iowa Department of Elder Affairs, and Iowa Legal Aid offices.



Bill Miller

*\*Bill Miller is an associate at Bradshaw, Fowler, Proctor & Fairgrave, P.C., in Des Moines. He served as a law clerk for the Honorable Mark Cady of the Iowa Supreme Court. Bill is an active participant in several bar association and community activities, including chairing the Young Lawyers Division Services to the Elderly Committee.*



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# Calling Fair Trial volunteers for fun, education

The Young Lawyers Division State Fair Committee needs volunteers for the **Iowa State Fair Trial By Jury** event scheduled for August 11-21, 2005.

The annual mock trial is staged for the public to give spectators a taste of what a jury trial entails. It will be held every evening from 6:30 p.m. to 8 p.m. at the Variety Theater in the Family Center on the Fairgrounds (sometimes known as the Maytag building). It is located near the main entrance, west of the Grandstand and east of the DNR building with the fish tank exhibits.

Volunteers are needed to serve as moderators, lawyers, witnesses, judges and court reporters. All volunteers need not be lawyers, but can be younger members of lawyers' families to serve as witnesses. The committee has prepared a civil trial problem and a criminal trial problem. The civil problem is a car accident/personal injury and the criminal problem is a robbery case.

All volunteers will receive a packet that includes the problem, as well as tickets for free State Fair admission and free parking

Questions or concerns? Contact Loretta Harvey at 641-782-7051 or e-mail her at [loretta\\_harvey@hotmail.com](mailto:loretta_harvey@hotmail.com)

*As one of his last acts as president of The Iowa State Bar Association, Nick Critelli's issued a "Final Report to the Courts and the Public." For those of you who did not see it in the press, we publish it here.*

## To the Honorable Justices and Judges of the Courts of Iowa, The President of The Iowa State Bar Association's Report to the Courts:

A learned society, a guild, a general council; what exactly is the The Iowa State Bar Association? One thing it is not... it is not a trade association, for, if it were, it would only serve one constituent, our own members. It is in fact a "law society" with a duty to serve three constituencies: Iowans, Iowa Courts and Iowa Lawyers. This was recently driven home – rather dramatically – when I was preparing the budget for our extensive legislative initiative. Over one half of our entire legislative effort goes to serve the public interest. Innovative and technical amendments to Iowa's corporate law, uniform commercial code, probate code, etc. serve not the lawyer's personal gain but the greater public good. In fact, with the sole exception of an increase in indigent defense fees, our entire affirmative legislative program was devoted to furthering the public's interest. One quarter of our initiative goes to further the Court's interest, be it a salary increase or full funding for the judicial system itself. It is only the remaining quarter where one might see legislation designed to protect the legal prerogative...and effort that is solely defensive, i.e. reacting to other legislation proposed by other interests seeking to change the status quo regarding existing legal rights or legal protection.

But a learned society does not limit its activities solely to legislative initiatives. Each year our Sections and Committees devote literally thousands of hours to promoting

the interests and legal knowledge of the public, furthering and improving the

administration of justice as well as advancing the education and training of our profession.

Since the inception of the common law, the bench and bar have flowered from the same root. As we grow it is crucial that we recognize and honor our common ancestry. If we are to remain strong as a profession of justice, we must both value the twin concepts of Independence of the Courts and Independence of the Bar. Courts must remain free from undue political influence from the other branches of the government. Likewise, for the public to have confidence in the justice rendered by our Courts, it must have access to legal representation that is not conflicted by undue influence and pressure by the Courts. For the system to work properly, the courts must not be subservient to the legislature nor the bar subservient to the courts.

This year the Independence of the Courts was threatened by an unwarranted electoral attack on a sitting judge. Recognizing the vulnerability of the judiciary, we were able to make the case to the electorate that a judiciary free from the political whims of the day and faithful to the rule of law is an essential ingredient of our Republic. As expected, they understood. However in the same quarter of the State, bench-bar relationships came under scrutiny by a press that does not understand that it is essential that the bench and bar maintain a close collegial relationship. Nothing could be worse for Iowa or our high quality of justice than a monastic judiciary. However collegial relationships are often misunderstood. To ensure the benefits of bench-bar collegiality in a setting above reproach, the Bar

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continues to sponsor joint bench-bar activities including the semi-annual Bench-Bar Conference.

We enjoy a judicial system that is of high quality and free from scandal. It is the envy of many states. To keep the status quo, it is necessary to provide reasonable compensation and staff support for our judicial officers. Working with court administration and the Judicial Compensation Commission, the Bar formed a Task Force on Judicial Compensation composed of leading business people from across the state. They reported that our judges were entitled to a substantial increase in compensation. While increased compensation was approved by the Senate, it lost its way in the House. But it is by no means dead and it will not be forgotten. Next year the report will act as the foundation for a fresh legislative approach at increased judicial compensation.

The tragic events in Georgia made us acutely aware of the necessity for security in our courthouses. Iowans deserve no less. Our Task Force on Courthouse Security, composed of many individuals from all walks of life, is nearing completion of a report and recommendation of uniform safety regulations for our courthouses.

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We worked with the Supreme Court regarding the study of the Iowa Rules of Professional Responsibility and will gladly take the challenge of funding, establishing and maintaining a Standing Committee on Ethics and Practice to issue formal opinions on ethics and guidelines regarding practice of law.

All is well in Iowa, but unfortunately, as I travel and practice around the country, I perceive the winds of change are blowing an ill-wind. There is a developing trend toward what I call 'poison pen jurisprudence,' whereby the judicial writer takes literary license to criticize, belittle or otherwise berate counsel. This behavior promotes discord between the bench and the bar and seriously damages the relationship between client and counsel. Worse yet, it undermines the respect that the public has for the court and its officers. Allied with this unfortunate trend is an air of judicial arrogance directed not only at counsel but also clients, witnesses and even jurors. It is most usually manifested in matters of time management. The judicial calendar is not sacrosanct but exists to serve the needs of the parties and public. A juror, witness, party or counsel whose personal needs are made to be irrelevant by an arrogant judiciary, results in a citizen who demands the right to over-see the courts through the power of the ballot box...as has been experienced in some of our sister states. We have been spared the stress, acrimony and electoral combat because we are two flowers from the same root. By constantly watering the root and appreciating the bloom, we are assured a successful future.

We value your membership and friendship. As I leave office, I do so with the knowledge that J. C. Salvo shares the same commitment to our constituents as do I and that as a result our future is bright. It has been an honor being your President.

## ATTORNEY DISCIPLINARY DECISION

**W. Michael Shinkle**  
**Kansas City, Missouri**  
**Public Reprimand**  
**Supreme Court Decision**  
**June 24, 2005**

Shinkle's Davenport client fell and injured his back while working on a barge on the Mississippi River in 1988. He received worker's compensation benefits under the Longshore and Harbor Workers' Compensation Act until August 1990, when the insurance carrier notified the client that payments were being terminated. Any claim for compensation thereafter had to be filed within one year. There was conflicting evidence as to whether the client notified Shinkle of the termination notice, and no claim was filed within the one-year period. The client testified that Shinkle concealed his failure to file the claim and advanced the client funds over the years to placate him. The client understood that these were advances on an eventual settlement, but Shinkle testified that he gave the client money because of sympathy for his financial need.

Shinkle moved from the Davenport area in 2000 and his client then filed a complaint with the Board. The Grievance Commission found that the Board had not met its burden of proving neglect of the workers' compensation case by a convincing preponderance of the evidence, but that Shinkle's payment of money to the client while representing him was a violation of DR 5-103(B), which prohibits a lawyer from advancing financial assistance to a client while representing him in connection with contemplated or pending litigation. The Supreme Court agreed and imposed a public reprimand.

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Former Director Appellate Screening

Supreme Court of Iowa '85-'92

# Who was Samuel Carruthers?

By Alison Werner Smith\*

One weekend last winter, I was on eBay searching for items to add to my collection of old photographs. During my search, I found a listing for a picture labeled, appropriately, "old Iowa lawyer." Intrigued, I bought the item for the princely sum of \$5.00 plus shipping.

What arrived in the mail was something slightly more primitive than an actual photograph. It was instead a glass negative of a stately gentleman in an old-fashioned suit, complete with bowtie. He held in his hand a large legal tome, "Iowa Probate Law and Practuce." Draped on his chest appears to be a possible Civil War or fire brigade medal. On the top of the photoplate, someone had etched "Carruthers 4-96." These were the clues I had to work with in identifying the mystery man.

Oh, the miracles of modern technology. Imagine my surprise when I signed on to Westlaw and typed in "Carruthers" as a search term. There, in the list of cases, were dozens of decisions from the Iowa Supreme Court where an attorney named Samuel Carruthers was one of the appellate attorneys of record. The cases were dated from before the turn of the 20th century. His name: Samuel Sights Carruthers. At least I had a full name now of an Iowa lawyer who practiced probate law at about the right time.

Armed with the possible name of my mystery man, I needed to know more. I contacted the State Law Library of Iowa, where, in less than 24 hours, a law librarian named Linda was able to date the dusty Iowa Probate book to editions published in 1884, 1898 and 1912. Based on the date in the photo, which I now presumed was "1896," Samuel Carruthers was holding a first edition of Iowa Probate by Herrick and Doxsee. What a fabulous resource we have in our law librarians!

Now that I thought knew who he was, and when he practiced law, I wanted to know more about this imposing figure, if for no other reason than to satisfy my innate curiosity of the unknown. The Iowa Supreme Court opinions located his law firm in Bloomfield, Iowa, which is located in Davis County. I pressed on, and sent a letter to the Davis County Genealogical Society.

I was pleasantly surprised this spring while opening a large stack of rather dull mail to find a letter from Deborah Barker, president of the Davis County Genealogical Society. As attorneys, we think we know how to do research. Your average genealogy buff might just have us beat cold. Ms. Barker had found primary source documents from old newspaper and books. She even offered to head over to the courthouse to obtain a copy of Samuel Carruthers's signature!

Her generous efforts revealed some very interesting information about Samuel Carruthers. Carruthers arrived in Iowa from West Virginia. He was born in 1837. During his early years, he moved to Missouri, Indiana, back to Virginia and then, and at the age of seventeen, traveled to Iowa and settled in Bloomfield, where his brother-in-law was a judge.

As a young man, he began to study law in the offices of H.H. Trimble and James Baker. Both Trimble and Baker were called into service upon the outbreak of the Civil War. Baker served as a colonel of the Second Iowa Infantry, and his law partner Trimble was a lieutenant colonel of the Third Iowa Cavalry. Colonel Baker was one of the hundreds of Iowans who gave their lives in service to the Union during the Civil War. He was shot and killed while leading his regiment in a charge at the battle of Corinth.

In 1860, Samuel Carruthers was admitted to the Iowa bar. Back then, attorneys did not necessarily dispense with the technicalities of a law school education or the formality of a bar exam. With a common school education, Carruthers trained under the supervision of experienced attorneys until he was



deemed competent to handle matters on his own.

In 1861, Samuel Carruthers took over the law practice along with Trimble, who had retired from both the bench and from military service. The law office of Trimble & Carruthers prospered for many years, adding Trimble's son Palmer to the firm in 1867. Trimble and Carruthers had an admirably large practice for a turn of the century, small town law firm. He was the local attorney for the Wabash Railroad Company, the CB&Q (Chicago, Burlington & Quincy) Railroad and also the CRIP (Chicago, Rock Island & Pacific) Railway. As the 1882 edition of Davis County History recounts, the firm "has done the leading business in the county, which is evidenced by the large estates which they have accumulated."

In 1882, Trimble retired, and Carruthers continued to practice on his own, until he died in 1912. Judge Edward H. Stiles described Samuel Carruthers in the following manner:



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"He had a fine figure, a fine head, a pleasing, handsome face and everything about him was manly and attractive."

You can't get much better than that, especially coming from a judge! He did have a "fine" figure, as you can see from the photograph. I can just imagine him seated at his desk, affable and smiling, musing over the intricacies of railroad law at a time when trains were the lifeblood of modern commerce.

He went by "Sam" and apparently, by all accounts, was revered and loved as the hometown attorney. People simply don't use such glowing language to describe attorneys in today's day and age. Or, if they do, they do so in private....

Sam Carruthers was a founding father of the first independent Normal School west

of the Mississippi, the Southern Iowa Normal School. Normal schools were used to educate, train and prepare professional teachers, and were often financed by local businesspersons. You can see the building today in Bloomfield, where it is part of the Davis County Hospital complex, housing physician's offices and the Home and Community Health Office.

Sam Carruthers was known as a "staunch Democrat" but one who "never had inclination for office." (Maybe due to the large estate he had accumulated?) His wife, Lucretia, and their children, Belle, W.K. and Iowa Carruthers all lived in Bloomfield. By all accounts, this was a satisfied attorney and family man.

The 1924 Pioneer History of Davis County, again citing to Judge Stiles, characterizes Sam as – "amiable in character and of fine traits. His presence was always pleasing on any occasion. He had about him the air and carried the influence of a natural born gentleman. He was slow to anger, perennially unruffled and held in noble esteem."

To be perennially unruffled, and still accumulate a large estate in a lucrative legal practice – is this not every counselor's dream? What a man you were, Mr. Carruthers!

Samuel Carruthers was not, apparently, a church going man but was a supporter of many community causes and was active in the Masons "and other secret orders from a very early day." In 1888, he served as an Iowa delegate to the Democratic National Convention, and was a member of the Iowa Commission at the 1904 World's Fair held in St. Louis.

The Bloomfield Democrat hailed the passing of Samuel Carruthers in 1911 with the heading "Answers Last Call." Carruthers died of a "complication of diseases" after a gradual decline in health.

His obituary pointed out that he was a "valiant sufferer, never complaining." Would that we were all as steadfast in our last days!

His funeral was held on a Tuesday afternoon and the "members of the Davis County bar attended in a body."

The Davis County Republican, apparently the rival media in the area, also provided coverage of Samuel Sights Carruthers' departure from this earth. The Republican provided more details about the funeral service, appropriate for a person with the character of Carruthers, noting there was reading of scripture, prayer and signing. Interestingly, Carruthers dictated his own obituary to a representative of the Davis County Republican a month prior to his death, and that obituary was apparently read at the service. (There is no mention in the article as to whether it was, in fact, the same obituary that Carruthers dictated to them a month before).

I am pleased with the results of my legal detective work. However, as of the date of this article, I have been unable to identify the medal on Sam Carruthers' suit. If any history buffs out there know the origin of this medal, or if anyone has any additional information about Samuel Carruthers, please let me know. I very much enjoyed this exercise in forensics, and wanted to share my discoveries with other fans of legal history.



Alison Werner Smith

*\*Alison Werner Smith practices law in Iowa City, Iowa. She is a member of the ISBA Legal Heritage Committee.*

## And the Annual Meeting door prize laptop goes to . . .

Ellen Henry of Jewell, Iowa, won the laptop computer door prize at the Annual Meeting in June.

Unfortunately she was not present for the drawing at the close of the meeting but in a phone call with CLE Director Kelley Rue said she was "thrilled" at her good fortune.

Ellen said she always wanted one of the little boxes and at 67 thought she would have to wait until retirement to get one. She said she couldn't wait to have it shipped to her.



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## ADMISSION ON MOTION

These attorneys have applied for admission on motion to the Iowa bar: **Timothy John Wilka** of Wilka & Ramstad, P.C., of Sioux Falls, South Dakota and **Jerry Marvin Slusky** who is in practice in Omaha.

Anyone with questions or comments should contact Keith Richardson, clerk of the Supreme Court, at 515-281-5911, or write to the Office of Iowa Supreme Court Clerk, 1111 East Court Avenue, Des Moines, Iowa 50319.

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- Oct. 14           **Probate & Trust Law Seminar**  
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- Oct. 21           **Environmental Law Seminar**  
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- Oct. 26           **\*Labor & Employment Law Seminar**  
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*\*Please note the change of date for this seminar*
- Oct. 27-28       **Family Law Seminar**  
                          *West Des Moines Marriott—West Des Moines, IA*

**December**

- Dec. 2           **Federal Practice Seminar**  
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# Trade Regulation/Corporate Counsel Annual Seminar

**Wednesday, September 14, 2005**

The annual joint seminar of the Trade Regulation Section and the Corporate Counsel Section will be held at the Hotel Fort Des Moines from 8:30 a.m. to 4:15 p.m.

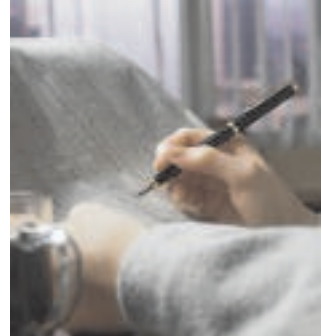
Every year, this seminar is designed to provide cutting-edge legal advice for corporate counsel and lawyers practicing in trade regulation.

This year's seminar will cover a number of timely topics, including:

- What every corporate counsel needs to know about white-collar criminal law in the current legal environment.
- How to protect your trade secrets.
- An update on franchise law.
- An update on antitrust law, including the Supreme Court's full antitrust/trade regulation docket for the October 2005 term.
- A review of indirect purchaser litigation in Iowa.

As usual, the seminar will also present the popular one-hour ethics panel hosted by Bill Raisch, General Counsel for RYKO.

For a complete agenda and to register on-line visit [www.iowabar.org](http://www.iowabar.org)



## Registration Form: Trade Regulation/Corporate Counsel Seminar • September 14, 2005

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### **Cancellation Policy/Walk-in Registration Fee**

Registration refunds will be issued only if written notification is received by the Bar Office by Friday, Sept. 9, 2005. Written notification can be mailed/faxed or e-mailed to the Bar Office. **Walk-in registration fee will be an additional \$50 (Sept. 14).**



# ISBA Government Practice Seminar Program Agenda ♦ September 14, 2005

### Seminar Location & Hotel Rooms:

Hotel Fort Des Moines  
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Phone: (515) 243-1161  
Room Rate: \$89.00

## Wednesday, September 14

8:00	Registration Opens	
8:30	<b>County-City Consolidation</b>	<i>Robert E. Josten, Des Moines</i>
9:15	<b>Other Statutory Local Government Consolidation</b>	<i>James E. Brick, Des Moines</i>
9:30	<b>Ethics (1 hr. Ethics)</b>	<i>Bruce E. Bergman, Des Moines</i>
10:30	Break	
10:45	<b>28 E. Agreements</b>	<i>Elisabeth S. Reynoldson, Osceola</i>
11:15	<b>Law Enforcement 28 E. Agreements</b>	<i>Gary W. Kendell, Indianola</i>
11:45	<b>School District Consolidations</b>	<i>Rick Engel, Des Moines</i>
12:15	Lunch	
1:15	<b>School Closings</b>	<i>Andrew J. Bracken, Des Moines</i>
1:45	<b>Teacher Terminations</b>	<i>Sue Seitz, Des Moines</i>
2:30	<b>Reductions in Force</b>	<i>Hugh J. Cain, Des Moines</i>
3:15	Break	
3:30	<b>Unforeseen Consequences of RIFs</b>	<i>Mark L. Zaiger, Cedar Rapids</i>
4:00	<b>Property Tax Appeals</b>	<i>Bruce B. Green, Council Bluffs</i>
4:30	Adjourn	

### Continuing Legal Education

Application has been made and approval is pending for 6.5 State CLE including 1 hour Ethics CLE.

Attendees can also register online at the  
ISBA website: [www.iowabar.org](http://www.iowabar.org)



## Registration Form: Government Practice Seminar • September 14, 2005

Name : \_\_\_\_\_ Member # \_\_\_\_\_

Address: \_\_\_\_\_ Phone # \_\_\_\_\_

### Advance Registration:

#### ISBA Members:

Government Practice Section Member	\$130	\$ _____
ISBA Member	\$140	\$ _____

#### Non ISBA Members:

\$195	\$ _____
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(Lunch is included in registration fee)

**Method of Payment:**  Check enclosed  MasterCard  Visa **TOTAL DUE: \$ \_\_\_\_\_**

Credit Card #: \_\_\_\_\_ Exp. Date: \_\_\_\_\_ Cardholder Signature: \_\_\_\_\_

**Return Registration form by 9/5/05 to:** ISBA CLE, 521 E. Locust St., Fl. 3rd, Des Moines, IA 50309-1939  
or register online at [www.iowabar.org](http://www.iowabar.org). For questions call: (515) 243-3179 or fax (515) 243-2511

### Cancellation Policy/Walk-in Registration Fee

Registration refunds will be issued only if written notification is received by the Bar Office by Friday, Sept. 9, 2005. Written notification can be mailed/faxed or e-mailed to the Bar Office. **Walk-in registration fee will be an additional \$50 (Sept. 14).**

# Labor and Employment Law Annual Seminar

Wednesday, October 26, 2005

West Des Moines Marriott

*Announced by:*

Charles Gribble, Section Chair

Greg Naylor, CLE Chair

**NOTE DATE  
CHANGE!  
(Was Sept. 16)**

Participants will be brought up to date  
on all areas of Employment Law  
including presentations on:



- ◆ An Employer's Duty to Preserve and Disclose Electronic Evidence
- ◆ Medical Information: How to Get It and How to Avoid Legal Problems in the Process
- ◆ Looking at Your Case Through the Eyes of the Jurors
- ◆ In-House Counsel's Perspective on Handling Employment Litigation
- ◆ What's New at the Iowa Bureau of Labor, Workforce Development and Iowa Civil Rights Commission
- ◆ Winning Your Employment Case on Appeal
- ◆ Defending Baby-Boomers Age Discrimination Claims

For Additional Details or to Register Online

Visit [www.iowabar.org](http://www.iowabar.org)



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