



THE IOWA LAWYER

JULY 2018 V 78 N 6

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THE IOWA LAWYER

(ISSN 1052-5327) is published monthly except for the combined December-January issue, by The Iowa State Bar Association, 625 East Court Ave., Des Moines, IA 50309-1904. One copy of each issue is furnished to association members as part of their annual dues. Non-member subscription rates are \$40 per year. Periodicals postage paid at Des Moines, Iowa.

POSTMASTER

Send address changes to The Iowa Lawyer Magazine, 625 East Court Avenue, Des Moines, Iowa, 50309-1904. Members can contact the membership department to change their address by emailing membership@iowabar.org.

PRINTER

The Iowa Lawyer Magazine is printed by Colorfx, 10776 Aurora Avenue, Des Moines, Iowa, 50322. Telephone 515-270-0402. Design and Production: Mittera Creative.

ADVERTISING

CLASSIFIED. Qualifying ISBA members receive two free non-job listings annually as a member benefit. Members should contact the ISBA Communications Department for ad placement. Non-member classified ad rate is \$110 at 125 words per listing. See classified section for further details. DISPLAY. Display advertising in The Iowa Lawyer Magazine is handled by Larson Enterprises, 909 50th Street, West Des Moines, Iowa, 50265. For display advertising and non-member classified advertisement rates, contact Alex Larson at 515-238-4406 or alex@larsonent.com.

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Outgoing Iowa State Bar Association President Steve Eckley is pictured with Sioux City attorney Cindy Moser, after the ISBA Annual Awards Gala on Wednesday night, June 20. At the gala, Moser was awarded The Iowa State Bar Association's Award of Merit. Read more about her commitment to the bar association and contributions to the legal profession on page 9.

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ISBA BUSINESS LAW PRACTICE MANUAL NOW AVAILABLE

The Iowa State Bar Association is pleased to present the 2018 edition of the Business Law Practice Manual. The two-volume manual is a project of the Business Law Section Council of The Iowa State Bar Association.

You may purchase either hard copy or electronic-only. The electronic version has been enhanced to include Fastcase hyperlinks for all cases and most references to the Iowa Code or related secondary material.

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RELATIONSHIPS

TOM LEVIS, PRESIDENT

For my first President's letter, I thought I would take the time to tell you a little about myself and some of the more meaningful relationships I made in my legal career. Let's start with a little name-dropping. Iowa Supreme Court Chief Justice Mark Cady and I became friends in 1971 when we were 18-year-old freshmen at Drake University. At the time, the chief and I, and about 25 other male students, lived on the men-only floor in the Herriott Dormitory, the only co-ed dormitory on Drake's campus. All the other dorms were either all male or all female.

Because the co-ed dorm was new, the chief and I, and our other dormitory mates, initially thought we were pretty special. However, as a practical fact, the men lived in the basement and the women occupied the top three floors of the dormitory. The men were prohibited from venturing upstairs and the women had no interest in venturing down to the basement. As a result, instead of living in an all-male dormitory with hundreds of other men, the chief and I lived with about 25 other 18-year olds in the basement.

We discovered that, in addition to being fellow students, we all had several things in common: we were all 18 years old, subject to the Vietnam War draft, and we could all legally buy and drink alcoholic beverages. We played baseball, football and basketball outside, and when it was too cold to be outside, we played cards. Drinking was not a huge pastime, but to say it didn't take place would not be true.

We all became good friends and many of us are still good friends to this day. As far as drinking, my somewhat cloudy memory is that I came to Drake a teetotaler and left with a profound love of PBR thanks, in large part to "the Honorable Mark Cady!" However, the chief might remember it differently!

Today, the chief and I marvel at how our paths crossed again in ways we

couldn't have imagined back in 1971. Who could have imagined that one day Mark Cady would be the chief justice of the Iowa Supreme Court and Tom Levis the president of the oldest voluntary bar association in America and that, in 2018, they would be working (and having a few PBRs) together. I thank my lucky stars that I established a relationship with the chief some 47 years ago and I hope the chief feels the same.

In 1974, I started my legal education at Drake law school. My law school classmates included, among many other great lawyers, former Chief Justice Marsha Ternus, ISBA Executive Director Dwight Dinkla, former ISBA President Dan Moore and current DHS Director Jerry Foxhoven (just to drop a few more names). I still have a wonderful relationship with these lawyers and most of the rest of my law class, some four decades later.

While still a first-year law student, I got a clerking position at a Des Moines law firm then known as Scalise Scism Gentry Brick and Brick. I got the job because my dad had a friend who knew the lawyers at the firm. (Again, a relationship was important).

While clerking for the firm, Larry

Scalise allowed me to participate in several major murder trials he was defending. He let me meet with clients, attend depositions, participate in hearings and sit at counsel table for trials. I even got to argue a motion or two to several presiding (and I'm sure very patient) judges. In my mind, my clerking experience was the kind of mentoring experience that every law student and young lawyer should receive. Thank heaven for the relationship my dad had with a friend who knew the lawyers at Scalise Scism Gentry Brick and Brick.

After graduating law school in 1977, I proudly joined the firm and was lucky to have the opportunity to be mentored by Nolden Gentry. In 1977, Nolden was one of a handful of African American lawyers in Iowa and a very active lawyer in community and civic matters. He was elected to the Des Moines School Board, served on the Iowa Commission for the Blind, was a leader in United Way and a leader on the Greater Des Moines Community Foundation along with dozens of other voluntary civic boards and commissions.

Nolden helped me understand that community service and civic activities were an integral part of a successful law practice. According to Nolden,



ISBA President Tom Levis shares a beer with Iowa Supreme Court Chief Justice Mark Cady at the Young Lawyers Division-sponsored "Corks and Forks" event Tuesday, June 19.



Levis is pictured (center) with Nolden Gentry (left) and Dr. David Saggau (right), both of whom attended Levis' investiture ceremony.

getting involved in community service and social activities will not only help you learn new skills, but will allow you to establish relationships with other social and civic leaders. Nolden assured me that those relationships would pay dividends later. He was so right!

Joe Brick was another mentor. After graduating from law school, Joe took me under his wing and taught me the art of how to make money practicing law. I was never as good as Joe, but he made sure I understood that the practice of law is not just a profession; it's also a business. He introduced me to bankers, CPA's and many other business leaders. As a result, I was able to establish wonderful relationships with business leaders all over Iowa, relationships that have, of course, paid dividends throughout my legal career.

My partner, Jim Brick, taught me something not taught in law school. He taught me to enjoy the practice of law, even when times are tough. Jim made sure his mental Rolodex was filled with interesting stories about fascinating people. As you might guess, they were all people Jim had established a relationship with during his legal

career. For Jim, these people made the practice of law an amazing adventure every single day. Whenever I needed a little pick me up after a bad day or a courthouse loss, Jim would reach into his mental Rolodex and tell me a hilarious story about some relationship he made during his career that you "could not make up."

In my 40 years of practice, there have been hundreds of other relationships with people who helped me grow and mature as a lawyer. I admit it. I have been lucky to have great friends and great mentors. I am 65 years old now and I can see how these relationships mattered in my life and how they impacted my career.

A couple of weeks ago at the Bench-Bar Conference, one of the major topics of discussion was "relationships" and how important relationships are to the success of lawyers (and judges). The Bench-Bar group discussed how much more difficult it is today for young lawyers to establish relationships with other lawyers, judges and courthouse staff. EDMS keeps most lawyers out of the courthouse, the place where most of us used to meet and socialize

with judges and court staff nearly every day.

Young lawyers simply don't have the opportunity to establish relationships with judges and lawyers and staff like I did. In addition, we all know that today's lawyers communicate with one another by email in lieu of calling or meeting face to face. Many lawyers don't pick up the phone and call simply because they haven't established a relationship with opposing counsel.

What does all this mean? Well, here is a simple test. Is it easier to settle a case or a discovery dispute with someone you know or someone you don't?

We all know the answer. The Iowa State Bar Association recognizes that establishing relationships is critical to a lawyer's success. As such, starting this year, the Bar will be trying out some new and hopefully innovative ways for lawyers, judges and court staff to meet with one another and establish those critical "relationships."

I am really looking forward to serving you this year. In addition to helping lawyers and judges establish relationships, we will also be working on many other very important issues facing the Bar, such as new legislation, judicial funding, law school debt, law



The Levis family: Tucker, Wendy, Tom, Hunter.

school curriculum, diversity and inclusion, access to justice, rural practice, wellness, and solutions to the threats to the practice of law. If any of you have any thoughts or ideas on ways the ISBA could improve the lives and practices of Iowa lawyers, please contact me. I'd welcome the opportunity to talk to you. My email is tom.levis@brick-gentrylaw.com. My phone number is 515-274-1450.

Thank you for letting me serve.



Tom Levis
Shareholder at Brick Gentry P.C.

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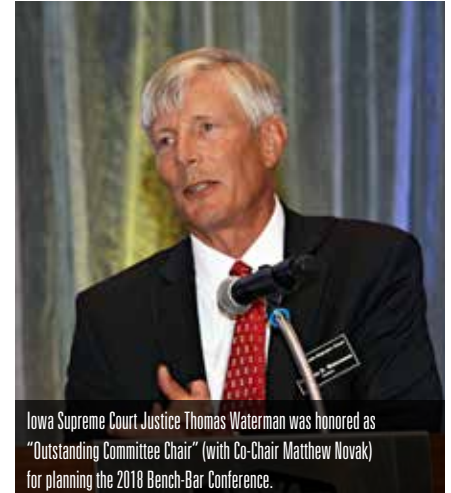
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2018 ANNUAL MEETING IN PICTURES

More than 25 CLE tracks and plenty of social & networking opportunities



Outgoing President Steve Eckley is pictured with incoming President Tom Levis, during the official "passing of the gavel." Levis will be the 132nd President of the ISBA.



Iowa Supreme Court Justice Thomas Waterman was honored as "Outstanding Committee Chair" (with Co-Chair Matthew Novak) for planning the 2018 Bench-Bar Conference.



Outgoing Young Lawyers Division President Thomas Hillers presented the YLD Award of Merit to Laura Folkerts for her service to the YLD, specifically for her dedication to law school student outreach.



New Young Lawyers Division President Maggie White addresses the crowd during the awards gala ceremony.

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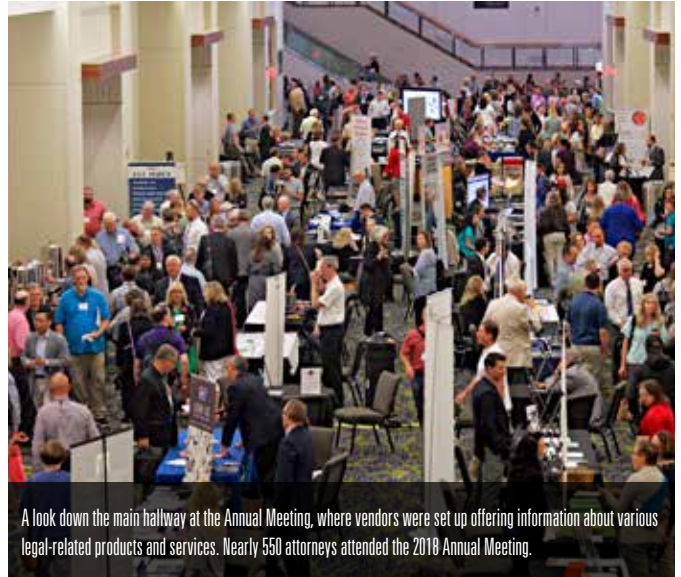
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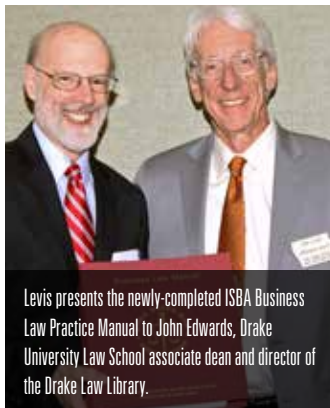
Outgoing President Steve Eckley at the podium to begin the investiture ceremony of incoming President Tom Levis.



A look down the main hallway at the Annual Meeting, where vendors were set up offering information about various legal-related products and services. Nearly 550 attorneys attended the 2018 Annual Meeting.



Judges Kevin McKeever and Mary Chicchelly from District 6, at the YLD Corks & Forks event. The Iowa Judges Association annual conference is held in conjunction with ISBA Annual Meeting.



Levis presents the newly-completed ISBA Business Law Practice Manual to John Edwards, Drake University Law School associate dean and director of the Drake Law Library.



The opening day plenary track featured Professor Todd Petty from the University of Iowa College of Law speaking on "The Iowa Constitution: Origins and Back Stories."

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Outgoing President Steve Eckley presented the 2018 President's Award to Elisabeth Reynoldson for her dedication to the ISBA and the legal profession.

Moser receives 2018 Award of Merit

Contributions to the legal profession, the bar association and her community cited as reasons

Sioux City attorney Cynthia Moser received The Iowa State Bar Association's highest honor bestowed on an individual -- it's Award of Merit -- at the annual President's Awards Gala Wednesday night, June 20. The gala concluded this year's three-day annual meeting at the Iowa Events Center in Des Moines.

Outgoing President Steve Eckley presented Moser with a crystal parthenon statue and a framed proclamation in gratitude for her many contributions to the profession, to the association and to her community.

"Created in 1947, many aspire, but few attain this coveted award," Eckley read from the proclamation. "Those who attain it do so because they have entered the rarefied air of selfless dedication to the legal profession, the bar association, and their communities, and have exhibited unequalled passion for the legal profession and their fellow attorneys."

Moser began her career as a clerk for the Honorable W.C. Stuart, chief judge for the U.S. District Court for the Southern District of Iowa, before entering private practice in Sioux City. In her 41 years of practice, she has focused on healthcare and employment law. She is a frequent lecturer on health law and employment issues and is widely recognized as a subject matter expert on the Affordable Care Act, Eckley said.

Throughout her career, Moser has been actively involved in making the Iowa legal profession one of the best in the nation. As ISBA president in 2012-2013 -- the third woman to hold the association's top position -- she focused on providing services to attorneys to help them meet the changing legal environment. She also focused on new lawyers entering the profession, searching for ways to address student loan debt and help them find meaningful employment.

Perhaps one of her greatest challenges in defending and promoting the profession occurred when she was president during the tumultuous 2012 retention election of Iowa Supreme Court Justice David Wiggins. Her unflappable demeanor and commit-

ment to fairness provided a calming effect on the frequently contentious clashes between the opposing factions, Eckley read. In addition, her countless presentations on the value of Iowa's judicial selection and retention process to citizen groups and to the media were critical to the success of the ISBA's efforts and to a better understanding of Iowa's judicial system.

Moser has continued to serve the association even after her presidency. She currently serves on the Administrative Committee helping decide administrative and legislative policies and other matters between Board of Governors'



Cindy Moser addresses the crowd after receiving her award.

meetings. In addition, she served as chair of the Scope and Correlations Committee where she guided the five members of the committee in studying the structure, function and work of the various standing and special committees, the sections and other agencies of the Association, and in making recommendations to the Board of Governors that result in better correlation and development of the association's work.

Previously, she served as chair of the ISBA's Health Law Section, and as a director for the Iowa State Bar Foundation. She also served as the chairperson of the two Judicial Selection Committees convened by Senators Grassley and Ernst to recommend candidates for nomination and appointment to the U.S. District Courts of Iowa.

A partner with the Heidman Law Firm PLLC in Sioux City, Moser also takes time from her law practice to contribute to her community. She served six years on the Sioux City Art Center Board of Trustees, and two separate stints on the Art Center Association Board, a private non-profit fundraising arm of the art center. She also has served on the Morningside College

Board, the Mercy Child Advocacy Center Advisory Board, the Mercy Foundation Board, the Girls, Inc. Board, the Iowa Legal Aid Board and the University of Iowa Alumni Leadership Council.

"The Iowa State Bar Association is fortunate to have Cindy as a member and to benefit from her many talents," Eckley concluded. "The association looks forward to many more years of her generous contributions. As a way of saying thanks and honoring the wonderful person she is, The Iowa State Bar Association presents its 2018 Award of Merit to this giant of the profession: Cynthia C. Moser."

PAST AWARD OF MERIT RECIPIENTS

- 1982 **Rolland Grefe**, *Des Moines*
- 1983 **F. James Bradley**, *Cedar Rapids*
- 1984 **Orville Bloethe**, *Victor*
- 1985 **Philip Willson**, *Council Bluffs*
- 1986 **John McClintock**, *Des Moines*
- 1987 **Allen Brennecke**, *Marshalltown*
- 1988 **Robert Van Vooren**, *Davenport*
- 1989 **William Engelbrecht**, *Waverly*
- 1990 **Russell Buchanan**, *Algona*
- 1991 **Robert Reimer**, *Denison*
- 1992 **Wiley Mayne**, *Sioux City*
- 1993 **Richard Zellhoefer**, *Waterloo*
- 1994 **Dick Schlegel**, *Ottumwa*
- 1995 **V. Jean Bartley**, *Iowa City*
- 1996 **Marvin Berenstein**, *Sioux City*
- 1997 **Jay Honohan**, *Iowa City*
- 1998 **Hedo Zacherle**, *Des Moines*
- 1999 **David Brown**, *Des Moines*
- 2000 **H. Richard Smith**, *Des Moines*
- 2001 **Robert Downer**, *Iowa City*
- 2002 **David Funkhouser**, *Mason City*
- 2003 **Thomas Cahill**, *Nevada*
- 2004 **Mary Lynn Neuhaus**, *Dubuque*
- 2005 **Carroll Reasoner**, *Cedar Rapids*
- 2006 **John Shors**, *Des Moines*
- 2007 **James Carney**, *Des Moines*
- 2008 **Bruce Graves**, *Des Moines*
- 2009 **Ed Hansell**, *Des Moines*
- 2010 **Paul Tyler**, *Des Moines*
- 2011 **William Scherle**, *Des Moines*
- 2012 **Marion Beatty**, *Decorah*
- 2013 **Dan Moore**, *Sioux City*
- 2014 **Nick Critelli**, *Des Moines*
- 2015 **Dwight James**, *Des Moines*
- 2016 **JC Salvo**, *Harlan*
- 2017 **Guy Cook**, *Des Moines*

40-YEAR VETERAN of Iowa Legal Aid RECEIVES ROLLAND GREFE PRO BONO PUBLICO AWARD

Long-time Iowa Legal Aid Executive Director, Dennis Groenenboom, received the Rolland E. Grefe Pro Bono Publico Award Wednesday night, June 20, during the annual Awards Gala that concluded the 2018 ISBA Annual Meeting.

The award is one of the most important activities at this annual banquet, President-elect Bill Boyd stated in the citation leading up to the award. It was established by Rollie Grefe's widow, Mary, in his memory and in recognition of his long service to the ISBA, as

well as his support for access to justice for all people. Mary died earlier this year, but the Grefe family continues to support the award, and plans for it to exist in perpetuity.

The award is important because it recognizes an individual who has enhanced the human dignity of others by delivering pro bono legal services to those unable to afford a lawyer, Boyd continued. In so doing, the individual commits his or her talent and training to improve the quality of justice in our communities and around the state.

Groenenboom was born on a farm near Eddyville the youngest of three sons. He knew from an early age that he wanted to be a lawyer and work with underprivileged people. He acknowledges that the Vietnam War protests and the civil rights movement had an influence on him. So, he jumped at the opportunity to join the Legal Services Corporation of Iowa (the predecessor of Iowa Legal Aid) when he graduated from the University of Iowa College of Law in 1978.

In the early years with the Legal Services Corporation, Dennis worked as a staff attorney, then as a managing attorney, senior staff attorney and deputy director. In 1992, he was appointed executive director. During the time he served as an attorney, he worked on cases that focused on disability rights, senior citizens' rights and issues with Medicaid.



ISBA President-elect Bill Boyd (left) and former Iowa Legal Aid Executive Director Dennis Groenenboom (right).

However, it was after he became executive director that he was able to multiply his individual efforts into an organization that served many times more individuals than he could on his own, Boyd said. He accomplished those achievements largely by building coalitions with other entities, (Iowa Legal Aid has contracts with 16 United Way agencies around the state, for example), by appealing dozens of cases to the supreme court and court of appeals to clarify laws impacting low-income people, by fostering and maintaining strong relationships with the ISBA and the courts and by incorporating technology to create a virtual intake system that makes the agency available to anyone anywhere in the state.

"Partnerships and working in collaboration with others are keys to our longer-term success and viability – not just ours as an organization, but ours as a judicial system and ours as a state," Groenenboom said in an article in the Iowa Lawyer magazine shortly before he retired. "Legal Aid is a cog in that success, but we're an important cog."

"I am pleased and honored on behalf of Mary Grefe and The Iowa State Bar Association to present the 2018 Rolland E. Grefe Pro Bono Publico Award to Dennis Groenenboom," Boyd told the audience. "Please join me in recognizing and thanking Dennis for his many years of advocating for the down trodden and for his contributions to improving the legal profession and citizens' lives in Iowa."

ROLLAND GREFE PRO BONO PUBLICO AWARD RECIPIENTS

The Rolland Grefe Pro Bono Publico Award was established by Rollie Grefe's widow, Mary, in his memory and in recognition of his support for access to justice for all people. The award comes with a \$1,000 stipend. Mary Grefe passed away recently and her son, Roger Grefe, presented a \$25,000 check to the ISBA to establish a fund to keep the award in existence in perpetuity.

- 2005 **Marti Nerenstone**, *Council Bluffs*
- 2006 **Diane Kutzko**, *Cedar Rapids*
- 2007 **Donald Wine**, *Des Moines*
- 2008 **Behnaz Soulati**, *Des Moines*
- 2009 **Robert Holiday**, *West Des Moines*
- 2010 **Thomas Fisher**, *Des Moines*
- 2011 **Philip Garland**, *Garner*
- 2012 **Scott Buchanan**, *Algona*
- 2013 **Robert Oberbillig**, *Des Moines*
- 2014 **Brian Peters**, *Dubuque*
- 2015 **Deborah Tharnish**, *Des Moines*
- 2016 **Timothy Pearson**, *Des Moines*
- 2017 **Steven Jackson, Sr.**, *Cedar Rapids*



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50 YEAR MEMBERS HONORED & the Supreme Court Attorney Awards



Members of the class of 1968 who attended the luncheon honoring them for 50 years of service during the ISBA Annual Meeting are pictured: (front row, left to right): James McGuire, Daniel Spellman, James Mellick, David Willis, Richard Howes, John Perkins and Michael Kennedy; (second row, left to right): Thomas Clarke, Sr., Glenn Smith, Benjamin Blackstock, David McCoid, Charles Hannan IV, Gary Boveia, Stephen Petosa and John Livingston; (third row, left to right): Charles Kiple, William Smith, J. Michael Deege, H. Eugene Anderson, Martin Peterson, Marlin Volz, Jr., and Edward Johnson; (back row, left to right): William Lillis, Eugene Olson, Marion James, Robert Holliday, Cecil Goettsch II, Robert Shimanek, Stephen Hall and Frank Mtvalsky.

Supreme Court Luncheon

At this year's Annual Meeting Supreme Court Luncheon, each Supreme Court Justice nominated an Iowa attorney to receive the newly-created Iowa Supreme Court Voice for Justice Award. This award is in recognition for the attorney's support and contributions to the administration of justice. The nominations were made as follows:

Chief Justice Mark Cady: Bill Wimmer; **Justice David Wiggins:** Emily Chafa; **Justice Daryl Hecht:** Dan Moore; **Justice Brent Appel:** Anjie Shutts; **Justice Thomas Waterman:** Matt Brandes; **Justice Edward Mansfield:** Sharon Greer; **Justice Bruce Zager:** Lora McCollom



As a surprise during the luncheon, Justice Cady also presented the Voice for Justice award to his Chief Counsel Molly Kottmeyer.

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A letter from the new ISBA Young Lawyers Division President by Maggie White

My first involvement with the Young Lawyers Division was as a founding member of the YLD Diversity Committee. Increasing diversity is also what motivated me to run for a YLD officer position. In my five years as an attorney, I've only seen men hold the role of YLD President.



The Iowa delegates to the February ABA Midyear Meeting in Vancouver at the YLD Assembly (pictured are Kyle Fry, Kristen Shaffer, Abhay Nadipuram and Maggie White).

When Reed and Tom approached me about running, I thought it was time to mix things up, and I'm proud to begin the upcoming year with the most racially and gender diverse slate of YLD officers in the history of the Iowa Bar. We have a great group leading the YLD, especially my fellow officers, Abhay Nadipuram and Torey Cuellar, and have some exciting things planned.

During the past year, the YLD has been hard at work with the ultimate goal of improving the lives of young attorneys. Our group has accomplished

a number of initiatives, and in the coming year we hope to continue and expand upon those efforts. Here are a few highlights:

- **Ask An Advocate:** In spring 2017, the YLD launched an anonymous question forum so young attorneys could ask and answer questions without fear of embarrassment. It quickly became ISBA's most-used listserv and we're looking forward to its continued use and enhanced features with ISBA Engage integration.

- **The Future of Legal Education Report:** Working with Law School Transparency, the YLD co-authored a report on the future of legal education in the United States. This report is being presented at the American Bar Association YLD Assembly at the ABA Annual Meeting this August in hopes of gaining national support.

- **Law Innovation Task Force:** This group has made presentations to various legal groups in Iowa about threats to the legal profession from new technology. After presenting to the ISBA Board of Governors in March, requests were made to present the information to district bar associations and law firms.

- **Law Student Outreach:** The YLD has partnered with the University of Iowa and Drake University law schools to plan networking and philanthropic events with law students. At each of these events, we provide promotional materials to law students to encourage

them to take advantage of free ISBA membership for students.

- **Mentoring program:** The YLD continues to offer a mentor program for attorneys in their first five years of practice. The mentoring committee works hard to accommodate requests for mentors in specific practice areas, geographic areas or with specific experiences. We have a large database of experienced attorneys and judges who would love to mentor you, so please sign up if you would like to be paired with a mentor.

- **Recruitment/Retention:** Based on feedback from YLD members, we heard that young attorneys who aren't in private practice litigation sometimes feel like there aren't enough ISBA services tailored for their unique needs. We recently formed a working group to address some of those needs for young attorneys in government, non-profit, corporate, transactional and non-traditional practices. Our goal is to increase recruitment and retention numbers for members in these roles, as they tend to renew their ISBA memberships at lower rates than those in private practice. We plan to offer more targeted CLE and networking opportunities in the coming year.

- **Advocacy:** In April, I traveled with other ISBA leaders to Washington, D.C.


KUDOS


The ISBA would like to congratulate the following individual for the honor received:

United States Magistrate Judge Celeste F. Bremer, Southern District of Iowa, for being named the 2018 recipient of the Federal Magistrate Judges Association Founders Award. Judge Bremer was appointed as a U.S. Magistrate Judge in 1985. She has worked in Davenport and Des Moines as a prosecutor, as corporate counsel, and as a partner in private practice. The Founders Award is the most prestigious honor the FMJA bestows, and is presented to those who have made valuable and lasting contributions to the Magistrate Judges system of the United States Courts.

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Mike Mesch
CPA/ABV, ASA, CFF
Partner

for ABA Lobbying Day and spoke to many of Iowa's senators and representatives about continuing funding for the Public Service Loan Forgiveness Program. On a local level, the YLD has rallied members around the state to lobby against judicial branch de-appropriations. We will continue advocacy efforts for these and other important issues as the next legislative session begins.

The YLD meets quarterly for an afternoon business meeting followed by a social event. Our meetings are open to all young lawyers, and we always welcome new faces. If you'd like to join us for a meeting or social, the dates and locations are as follows:

- Oct. 12 at the Hotel Vetro in Iowa City
- Jan. 11, 2019 at the Hotel Grinnell in Grinnell
- March 29, 2019 at the Hotel Pattee in Perry
- June 11, 2019 in conjunction with the ISBA Annual Meeting in Des Moines

If you are an attorney in your first 10 years of practice or under the age of 36 and are looking for a way to get involved with the bar association, meet new people and benefit from member services, please reach out so the YLD can connect with you. We'd also like to hear any ideas you have for how the YLD can make your life as a young

TRANSITIONS



Benjamin W. Roberson has joined the Lynch Dallas, P.C. law firm in Cedar Rapids as an associate attorney. He received his J.D. from the University of Iowa College of Law in 2016. Roberson's practice will focus on municipal law, workers' compensation and insurance defense. Before joining Lynch Dallas, P.C., he practiced with Scheldrup Blades law firm in Cedar Rapids.



Tyler Ernst has joined LaMarca Law Group, P.C. in Des Moines as an associate attorney. He received his J.D. from Drake University Law School. Prior to joining the firm, Ernst worked for a law firm in Sioux City. His practice areas include civil litigation and personal injury law and he is licensed in Iowa, Nebraska and South Dakota.



Caitlin Kilburg has joined Hennessy & Roach, P.C., in the firm's Omaha office. She received her J.D. from Drake University Law School. Kilburg has dedicated her entire legal career to defending employers and insurance companies against workers' compensation claims.

attorney better. I can be reached at: Maggie.E.White@emcins.com or 515-345-4630 and would love to talk with you about what the YLD can do for you.




Maggie White is the 2018-2019 President of the ISBA Young Lawyers Division. She is Corporate Legal Counsel for EMC Insurance, and previously worked in private practice. She graduated from Drake University Law School in 2013.




Some of the YLD executive team members pictured at the social event following the YLD quarterly meeting in Mason City in January.


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A Review of the RECENT AMENDMENTS OF IOWA'S DRAMSHOP ACT

by Adam Zenor

Dramshop statutes exist in most jurisdictions across the United States and impose civil liability on an establishment that wrongfully furnishes alcohol to an intoxicated person for damages thereafter caused by that intoxicated person. Dramshop statutes are intended to discourage irresponsible alcohol service and compensate the public for hazards resulting from the same. Such laws are a creature of statute and often create the exclusive remedy for irresponsible sale and service of alcohol. Because each state's statute is unique, dram liability varies across jurisdictions.

Iowa's dramshop statute has been in existence since 1862. The statute remained generally unchanged until 1986 when the legislature removed strict liability from our dram statute. This spring, the Iowa legislature passed a bill amending the Iowa Dramshop Act. Governor Kim Reynolds signed the bill into law on April 10, and it went into effect on July 1.

This article endeavors to highlight the recent statutory amendments and briefly consider their relative implications.

IOWA'S AMENDED DRAMSHOP ACT: IOWA CODE § 123.92

As recently amended, the liability portion of the Iowa Dramshop Act provides (with alterations indicated):

Any person third party who is not the intoxicated person who caused the injury at issue who is injured in person or property or means of support by an intoxicated person or resulting from the intoxication of a person, has a right of action for all damages actually sustained, severally or jointly, up to the amount specified in paragraph (c), against any licensee or permittee, whether or not the license or permit was issued by the division or by the licensing authority of any other state, who sold and served any beer, wine, or intoxicating liquor directly to the intoxicated person, ~~when the licensee or permittee knew or should have known the person was intoxicated, or~~

~~who sold to and served the person to a point where the licensee or permittee knew or should have known the person would become intoxicated provided that the person was visibly intoxicated at the time of the sale or service.~~

IMPACT OF AMENDMENTS ON THE SCOPE OF DRAMSHOP LIABILITY

The 2018 amendments seem designed to impact the scope of dram liability in three (3) respects:

- **Standing;**
- **Sale and Service; and**
- **Scienter.**

STANDING

The first alteration to the statute, which explicitly prohibits recovery by the alleged intoxicated person who caused an injury, relates to standing. Of course, standing is a legal principle involving whether a person has a right to bring a claim. And, as to dramshop liability, the statute previously stated that "any person" had a right to bring a claim, so long as all the other statutory prerequisites were satisfied. But that language has been revised. In its place, the legislature explicitly barred recovery for "the intoxicated person who caused the injury at issue."

The practical import of this statutory change, however, may be inconsequential. Indeed, Iowa courts have long interpreted the dram statute to bar recovery by the alleged intoxicated person. See e.g., *Evans v. Kennedy*, 162 N.W.2d 182 (Iowa 1968). For example, in *Evans*, an administrator filed a dram action on behalf of an estate of a fatally injured intoxicated person after he consumed alcohol and then died in a single vehicle accident. The trial court

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granted the dram's motion to dismiss for lack of standing. In affirming the trial court's decision, the Iowa Supreme Court determined the statute's purpose was to protect innocent parties and not intended to allow a person who over-indulges to recoup his losses incurred as a result of his own intoxication. *Id.* at 187. Accordingly, that the legislature has explicitly prohibited recovery by the alleged intoxicated person may be insignificant.

On the other hand, dramshop plaintiffs may ask the courts to interpret the change as having some significance. Appreciate that Iowa courts hold a person who participated in the alleged intoxicated person's imbibing by their complicity or assumed the risk are also not innocent and barred from recovery. *Slager v. HWA Corp.*, 435 N.W.2d 349, 351 (Iowa 1989); *Berge v. Harris*, 170 N.W.2d 621, 625-27 (Iowa 1969). By explicitly prohibiting the alleged intoxicated person's standing to recover and by not mentioning other classes of persons that Iowa courts have held cannot recover may be influential in a statutory construction analysis. That said, complicity and assumption of the risk have not been treated as standing issues, but rather as affirmative defenses that the dramshop defendant bears the burden to prove at trial.

In short, whether this first alteration will have any practical significance may be subject to future litigation.

SALE AND SERVICE

The second alteration to the liability portion of the statute, however, will likely narrow successful dramshop claims. The alteration merely inserts the word directly after the words sold and served [alcohol] and before the words to the intoxicated person. Because the ordinary meaning of directly is without changing direction or stopping and with nothing or no one in between, this alteration seems to narrow the sale and service element.

This alteration may have been a

reaction to the Iowa Supreme Court's recent holding in *Sanford v. Fillenwarth*, which arguably enlarged the scope of what constitutes sale and service. 863 N.W.2d 286, 293-94 (Iowa 2015) (finding sale and service could even be remote from one another in terms of time and location). Indeed, *Sanford* held even being a third-party beneficiary to the contract may be sufficient to satisfy the sale and service element. *Id.* Compare, *Hawthorne v. Estate of Krommenhoek*, No. 12-1455, 2013 WL 2637176 (Iowa Ct. App. June 12, 2013) (finding the sale and service element unsatisfied as a matter of law where a dram's alcohol was purchased by another and provided to a minor in the dram unbeknownst to the dram).

In short, by explicitly requiring sale and service be made directly to the alleged intoxicated person, the legislature appears to be narrowing dramshop liability.

SCIENTER

The third alteration to the liability portion of the statute will likely also narrow successful dramshop claims. The alteration limits the scope of the statute's scienter requirement because the scienter element now appears to require objective evidence that the intoxicated person was showing visible signs of intoxication.

Of course, scienter connotes the particular wrongfulness or culpability that the dram has in its service of alcohol to the alleged intoxicated person. Iowa's statute has required dram plaintiffs prove scienter since 1986. This 2018 alteration modifies that scienter requirement. Specifically, the alteration removes the dram's obligation to predict or foresee how the alcohol being furnished will impact the patron. Now, liability appears limited to only those situations where the sale and service was made directly to an AIP who showed observable signs of

intoxication at the time of the sale and service.

This amendment results in a more stringent proof requirement and appears to narrow the circumstances where a dram would be found liable.

IMPACT OF AMENDMENTS ON DRAMSHOP DAMAGES

While Iowa courts have long held punitive damages were not recoverable in a dram case, there were no other limits or caps on the size of a jury award. The 2018 amendments change that, adding a new paragraph (c) and thereby creating a soft cap on noneconomic damages for each plaintiff. The new subsection provides:

c. The total amount recoverable by each

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plaintiff in any civil action for noneconomic damages for personal injury, whether in tort, contract, or otherwise, against a licensee or permittee, shall be limited to two hundred fifty thousand dollars for any injury or death of a person, unless the jury determines that there is a substantial or permanent loss or impairment of a bodily function, substantial disfigurement, or death, which warrants a finding that imposition of such a limitation would deprive the plaintiff of just compensation for the injuries sustained.

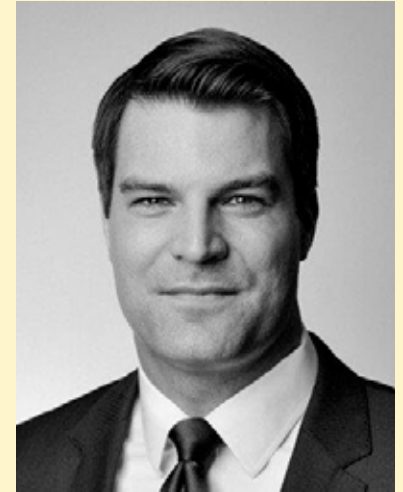
This amendment is a soft cap because the statute provides an avenue for a jury to opt out of the limitation under certain circumstances.

CHANGES TO DRAMSHOP INSURANCE?

Although there is scant legislative guidance as to what precipitated these amendments, some suggest the changes were driven by a view by some in Iowa's restaurant and bar industry. That industry feels it unfair that it should bear the burden to pay premiums for dramshop insurance. Indeed, dramshop insurance is required to

be licensed to sell and serve alcohol in Iowa. But others find it difficult to sympathize with those feelings, given that the dramshop statute preempts all other forms of potential liability for a dram's irresponsible service of alcohol and the relatively modest insurance limits required of dramshops.

Notably, the legislation also creates a new subsection, 123.92(4), requiring the Alcohol and Beverages Division to evaluate the minimum dramshop liability coverage every two years. The division previously had the authority to evaluate and change minimum liability coverage, which is required of all license and permit holders, but now must report to the General Assembly how Iowa's minimums compare with other states and any recommendations it has regarding those minimums.



Adam Zenor's practice involves complex business litigation, white collar criminal defense, trials and appellate practice. He serves on the Board of Governors for both the Polk County Bar Association and The Iowa State Bar Association. He is a Fellow in the Iowa Academy of Trial Lawyers.



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2018 Regular Session, 87th Iowa General Assembly

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To access a bill on the Iowa General Assembly website, click on the bill number.

LAWMAKERS PASS BILLS DURING 2018 SESSION

BUSINESS, LABOR, and INSURANCE

- Motor vehicle seat belts, comparative fault. SF 2135
- Dramshop liability limitations, injuries. SF 2169
- Public utilities, regulation, and energy efficiency. SF 2311
- Farmland acquisition and duties of directors, corporations. SF 2314
- Motor vehicle security interest discharges. SF 2325
- Negotiable instruments, electronic stop-payment orders. HF 2171

CIVIL and JUVENILE LAW

- Fetal heartbeat, abortions, and fetal body parts. SF 359
- Small estate administration. SF 2099
- Power of attorney to relinquish spousal rights. SF 2139
- Partition of property in kind or by sale. SF 2175
- Consumer protection and security freezes. SF 2177
- Mechanic's liens and collateral security. SF 2229
- Property of decedent, distribution by affidavit. HF 2125
- Scanning devices and encoding machines, prohibited uses. HF 2199
- Real property, redemption, foreclosure, and claims for rent. HF 2234
- Real property, time-of-sale requirement restrictions. HF 2286
- Opioid prescribing and monitoring, immunity. HF 2377
- Juvenile delinquents, transfer of custody. HF 2381
- Power-of-attorney, termination or suspension of authority. HF 2402
- Medical support in child support actions. HF 2414
- Juvenile court records. HF 2443
- Mental health and substance-related disorders, treatment. HF 2456
- Small claims jurisdiction. HF 2492

CRIMINAL LAW AND PUBLIC SAFETY

- Immigration law enforcement, state funds. SF 481
- Crime victim compensation. SF 2165
- Kidnapping of a minor. SF 2230
- Carrying weapons. SF 2231
- Critical infrastructure sabotage. SF 2235
- Portable weapons that direct an electric current. SF 2321
- Commercial vehicle operation, texting or using a mobile phone. HF 2196
- Contraband in community-based correctional facilities. HF 2255
- Operating-while-intoxicated, temporary restricted license. HF 2338
- Department of Natural Resources, seizure of property. HF 2342
- Mechanical eavesdropping and interception of communications. HF 2392
- Unmanned aerial vehicles, correctional facilities. HF 2492
- Peace officers of the Department of Transportation. HF 2494
- Reinstatement of driver's licenses, drug convictions. HF 2502

TAXES

- Inheritance tax modifications. SF 2303
- Income, corporate, sales and use, and other tax changes. SF 2417
- Parcels sold at tax sale, redemption. HF 2318



Iowa General Assembly
Website
2018 Enrolled Bills

Date convened: January 8
Date adjourned: May 5

Length: 118 calendar days

Bills introduced: 1,000
Senate Files: 458
House Files: 542

Study Bills proposed: 423
Senate Study Bills: 222
House Study Bills: 201

Bills and Joint Resolutions
enacted: 176

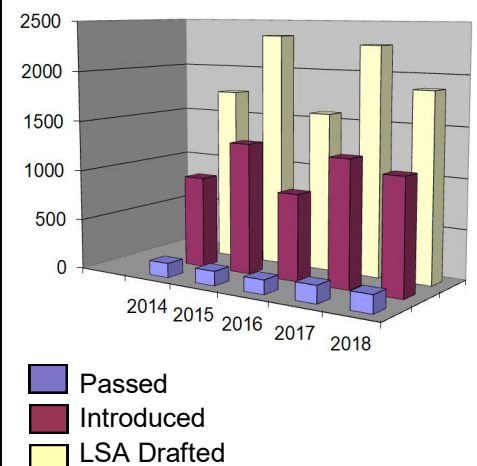
Amendments filed: 828
Senate amendments: 322
House amendments: 506

Governor's actions:
Bills and Joint Resolutions
signed: 172
Bills item vetoed: 3
Bills vetoed: 1

This page is produced by the Legal Services Division of the Legislative Services Agency and contains a partial listing of legislation of interest to the legal profession. A complete list and summary of legislation enacted during the 2018 Legislative Session may be found at www.legis.iowa.gov/publications and then by clicking on the second to last link on the page titled "Summary of Legislation."

The Legal Services Division provides legal services to the General Assembly in a nonpartisan objective manner, including bill and amendment drafting, legal and legislative research, official Iowa law publications, standing committee staffing, and Legislative Council, statutory, and interim study committee staffing. Bill drafting services are also provided to state agencies, the Judicial Branch, and the Governor.

TOTAL BILLS REQUESTED, INTRODUCED, AND PASSED DURING THE DESIGNATED YEARS



Information: Legislative Services Agency

Web access to the entire 2018 Summary of Legislation and archived summaries:
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Cancellation policy: Registration refunds will be issued only if written notification is received by the bar office by July 25, 2018. Written notification can be mailed, faxed or e-mailed to the bar office.





CLE Calendar

July 19

IP Licensing
(Live Webinar)

July 24

Secured Transactions Under
Article 9 of the Iowa Uniform
Commercial Code
(Live Webinar)

August 1-3

8th Circuit Social Security
Disability Conference
(In-person or Live Webinar)
Des Moines

August 8

Top Financial Issues
During and After Divorce
(Live Webinar)

August 23

Those Affected by
Dementia: Understanding
Their Needs
(Live Webinar)

August 30

Avoiding Pitfalls: Often
Overlooked Contract Terms
(Live Webinar)

September 12

Dealing with the 'A' Word:
How to Calculate
Spousal Support
(Live Webinar)

September 13-14

Bridge the Gap Seminar
West Des Moines

September 26

Preparing for
Mediation
(Live Webinar)

October 10

Parenting Coordination
(Live Webinar)

October 11

Bitcoin Trends and IP
(Live Webinar)

iowabar.org/calendar

Kunal K. Patra, MD Board Certified Psychiatrist



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3. Personal Injury Litigation cases for clients with memory problems or personality changes.
4. Worker's Compensation evaluations for clients with PTSD, depression, memory problems, personality changes.
5. Sexual Harassment Litigation for clients with PTSD, depression, anxiety, sleep problem.
6. Hostile workplace harassment Litigation for clients with PTSD, depression, anxiety.
7. Competency Evaluations: Guardianship, Testamentary Capacity.
8. Evaluation: Competency to Stand Trial & Diminished Capacity.
9. Determination of future medical care and costs.

**Redacted reports of actual cases as well as Attorney References
for quality of services available at www.legal.1psychiatry.org**

1 Psychiatry PC Medical-Legal Services does independent psychiatric evaluations working for both plaintiff's and defendant's attorneys.



2018-2019 New Leadership

Welcome to the new Board of Governors members and section and committee chairs.



Even

BOARD OF GOVERNORS: NEW MEMBERS

CHRIS EVEN 1A – Dubuque

Firm: American Trust & Savings Bank - Dubuque
Contact: ceven@american-trust.com; 563-589-0830



Fretheim

DANIEL FRETHEIM 1A – Decorah

Firm: Anderson Wilmarth Van Der Maaten Belay Fretheim & Zahasky
Contact: fretheim@andersonlawdecorah.com; 563-382-2959



Prendergast

HEATHER PRENDERGAST 1B – Waterloo

Firm: Roberts Stevens & Prendergast PLLC
Contact: heather@neialaw.com; 319-234-4600



Flaten

JOHN FLATEN 3A – Okoboji

Firm: Maahs & Walleck
Contact: john.flaten@gmail.com; 712-310-3616



Miller

WILLIAM MILLER 5C – Des Moines

Firm: Dorsey & Whitney LLP
Contact: miller.william@dorsey.com; 515-283-1000



Zambreno

MARY ZAMBRENO 5C – Des Moines

Firm: Dickinson Mackaman Tyler & Hagen PC
Contact: mzambreno@dickinsonlaw.com; 515-246-4512



Moser

JOE MOSER 5C – Des Moines

Firm: Finley Law Firm, PC
Contact: jmoser@finleylaw.com; 515-288-0145



Lynch

RICK LYNCH 8A – Bloomfield

Firm: Lynch Law Office
Contact: lynchl@netins.net; 641-664-1997



Langholz

SECTIONS: NEW CHAIRS

SAM LANGHOLZ Administrative Law Section

Firm: Chief Administrative Law Judge, Iowa Department of Inspections and Appeals – Des Moines
Contact: sam.langholz@dia.iowa.gov; 515-281-6468



Happe

JOE HAPPE Alternative Dispute Resolution Section

Firm: Davis Brown Law Firm – Des Moines
Contact: JoeHappe@davisbrownlaw.com; 515-246-7998



Lyon

SCOTT LYON Elder Law Section

FIRM: Disability Rights Iowa – Des Moines
Contact: slyon@driowa.org; 515-278-2502



Pray

JAMES PRAY Environmental & Natural Resources Law Section

Firm: Brown Winick PLC – Des Moines
Contact: pray@brownwinick.com; 515-242-2404



Parrish

LAURA PARRISH Family & Juvenile Law Section

Firm: Miller Pearson Gloe Burns Beatty & Parrish PLC - Decorah
Contact: lparrish@millerlaw-decorah.com; 563-382-4226



Rinkol

RAY RINKOL Labor and Employment Law Section

Firm: Bradley & Riley – Cedar Rapids
Contact: rrinkol@bradleyriley.com; 319-861-8780



Even

CHRIS EVEN Probate, Trust & Estate Planning Section

Firm: American Trust & Savings Bank - Dubuque
Contact: ceven@american-trust.com; 563-589-0830



Erickson

DAVID ERICKSON Real Estate & Title Law Section

Firm: Davis Brown Law Firm – Des Moines
Contact: daveerickson@davisbrownlaw.com; 515-288-2500



Goodman

JAMES GOODMAN Taxation Section

Firm: Moore McKibben Goodman & Lorenz LLP - Marshalltown
Contact: jgoodman@marshalltownlaw.com; 641-752-4271



Buller

COMMITTEES: NEW CHAIRS

TYLER BULLER Appellate Practice Committee

Firm: Iowa Department of Justice – Des Moines
Contact: tyler.buller@gmail.com; 515-281-5976



Cook

GUY COOK Independence of the Judiciary

Firm: Grefe & Sidney PLC – Des Moines
Contact: gcook@grefesidney.com; 515-245-4300



Currie

BETHANY CURRIE Scope and Correlation Committee

Firm: District Court Judge - 2B
Contact: bethany.currie@iowacourts.gov; 641-421-0990



Haas

FRANCES HAAS Federal Practice Committee

Firm: Nyemaster Goode PC - Des Moines
Contact: fmhaas@nyemaster.com; 319-286-7007

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Outgoing Leadership

The ISBA would like to recognize the following individuals for their work during the 2017-2018 year.

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District 1A - Dubuque

GARY MICK
District 1A - Guttenberg

JOHN WOOD
District 1B - Waterloo

JOHN M. LOUGHLIN
District 3A - Cherokee

NICOLLE SCHIPPERS
District 5C - Des Moines

ROBERT BRECKENRIDGE
District 8A - Ottumwa

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Administrative Law Section

KRISTEN HALL
Alternative Dispute Resolution Section

GREG KENYON
Elder Law Section

JOSEPH YOUNKER
Environmental & Natural Resources Section

DAVID COX
Family & Juvenile Law Section

EMILY PONTIUS
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MARK GRAY
Probate, Trust & Estate Planning Section

ERIK FISK
Real Estate & Title Law Section

DELL RICHARD
Taxation Section

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Federal Practice Committee

AARON OLIVER
Appellate Practice Committee

DWIGHT JAMES
Independence of the Judiciary

CYNTHIA MOSER
Scope and Correlation Committee

OUTGOING BOARD OF GOVERNORS MEMBERS



Outgoing President Steve Eckley with outgoing District 1A Governor Gary Mick.



Eckley with outgoing District 1B Governor John Wood.



Eckley with outgoing District 3A Governor John Loughlin.



Eckley with outgoing District 8A Governor Robert Breckenridge.

OUTSTANDING SECTION CHAIR



Eckley names Mark Gray, outgoing chair of the Probate, Trust & Estate Planning Section, as "Outstanding Section Chair" for 2017-2018.



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Board of Governors Annual Meeting

ISBA BOG honors leaders, welcomes incoming BOG members and sets goals for new year at Annual Meeting

ACTIONS

Resolutions approved by the ISBA Board of Governors included:

- Honoring ISBA Immediate Past President Steve Eckley in recognition of his service as ISBA President.
- Honoring Deceased Members. See page 24.

Additional actions taken by the BOG included:

- Approval of the 2018-2019 Budget.
- Approval of changes and additions to the Iowa Civil and Criminal Jury Instructions approved and recommended by the Iowa Jury Instructions Committee.
- Approval of the reappointment of Frank Carroll and Elisabeth Reynoldson to The Iowa State Bar Foundation Board of Directors.

REPORTS

President's report (June 20)

ISBA President Steve Eckley reported on the election of the following individuals by the general membership: Jerry Schnurr – Vice President; Bill Boyd – President-elect; and David Brown – ABA Delegate. Eckley expressed his final remarks as ISBA President and thanked all who helped him during his presidency.

Annual Meeting of the Corporation (June 21)

ISBA Executive Director Dwight Dinkla and ISBA Assistant Executive Director Harry Shipley began the annual meeting of the corporation with a presentation of Engage, a new resource

which replaced section listservs. Engage can be tailored by members to their personalized content for their respective practice area(s). Members can post questions to the community and respond either to the entire group or to an individual. Engage also stores entire email exchanges on a server that is searchable by topic. ISBA members can decide whether they want to get every email instantly or get email digest summaries either daily or weekly.

their sections. The ISBA is also testing the Child Support Calculator with the Family Law Section before it is officially released. The ISBA is exploring development of e-mail encryption for all ISBA members and their support staff. ISBA Ways & Means Committee Chair Eric Turner presented the 2018-2019 Budget for approval by the ISBA Board of Governors and noted that the ISBA remains in a strong financial position.



Shipley reported that the ISBA is beta testing an app that will allow members instant access to section emails, libraries of documents and contact information for the other attorneys in

Dinkla provided a report on membership, stating that recent membership services and benefits efforts are having a positive effect on membership trends. In particular, efforts to reduce annual loss of YLD members appear to be particularly effective. Early indications are that the five dollar increase in section dues are not having a negative impact on enrollment in sections. Updated Probate and Business Law Manuals are available for purchase. The digital versions of the manuals are now hyperlinked to Iowa Cases and the Iowa Code though the ISBA's free legal research tool, FastCase.

Legislative Counsel's report (June 20)

ISBA Legislative Counsel Jim Carney summarized successes of the 2018 ISBA Affirmative Legislative Program and highlighted opportunities for the next legislative session. Assistant ISBA Legis-



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lative Counsel Jenny Dorman reviewed legislative proposals that were successfully defeated. The ISBA's legislative team tracked over 620 bills during the last session.

The LawPAC balance is approximately \$75,000. LawPAC supports all lawyer-legislator candidates regardless of political affiliation, whether incumbents or challengers. There are 25 lawyer-legislator candidates this year. Two lawyer-legislators have retired and do not plan to seek re-election: Chip Baltimore and Helen Miller. Fred Hubbell is a lawyer candidate for governor.

Probate, Trust and Estate Planning Section Chair Mark Gray (named Outstanding Section Chair) reported on the legislative session, including the potential revenue effect from the inheritance tax set aside on Transfer on Death accounts. The section is preparing comprehensive legislation revisions for guardianships and conservatorships for the 2019 Legislative Session.

The Iowa Secretary of State's Office opened a new filing system that should greatly improve the speed of filing turnaround.

YLD President's report – (June 20)

Eckley thanked outgoing YLD President Tom Hillers for his excellent service. Maggie White, incoming ISBA YLD president, reported the YLD is presenting a paper about law school debt transparency to the ABA YLD convention in August. The anonymous listserv that was started earlier this year has been very well-received and will continue. There are 60 mentor pairs matched this year. The YLD hosted social and philanthropic events at the law schools that resulted in newer attorneys joining the ISBA.

Dialogue with Iowa Supreme Court Chief Justice Mark Cady (June 21)

Iowa Supreme Court Chief Justice Mark Cady reported that the court is trying to determine how to attract new court reporters and is also looking into remote reporting or digital recording of hearings. Additional projects focus on determining whether judicial district lines need to be changed in order to improve service – a required evaluation every 10 years; redistributing



BOG member Beth Currie is recognized by fellow board members for her recent appointment as a judge in district 2B.

work among clerks' offices statewide to improve efficiency; continuing to train judges on implicit biases, both race and gender; improving language access and increasing the availability of remote interpreter processes; and developing meaningful data collection processes to measure justice outcomes to see whether goals are being achieved. Also, the court is piloting a project to improve the bail bond system.

Although the FY19 budget is slightly better than previous years, it does not account for any de-appropriations that could be made mid-year. Judicial vacancies will be held open two months rather than 12 months. The vacancies will not impact the supreme court or court of appeals.

Incoming president's remarks (June 21)

Incoming ISBA President Tom Levis appointed a task force to review and

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The Iowa State Bar Association Resolution Honoring Deceased Members

The following resolution was approved by the ISBA Board of Governors at their June 2018 meeting:

Whereas: The following individuals have served the legal profession with dignity and honor, and **Whereas:** They have been faithful stewards in upholding the Constitutions of the United States and the State of Iowa, and **Whereas:** They have been supportive members of The Iowa State Bar Association, and **Whereas:** They have unselfishly responded to any requests made of them to further the cause of the legal profession in the State of Iowa, now **Herefore be it resolved:** That we pause for a moment of silence to honor their passing from this life into eternity.

James William Brown, 87, of Osceola died April 3.

Brian Joseph Daiker, 44, of Ashton died Dec. 5.

Lynette Donner, 58, of Urbandale died Jan. 29.

Daniel "Pat" Griffin, 74, of Des Moines died May 9.

Philip E. Harris, 66, of Edina, Minnesota died Jan. 12.

Shannon Gant Holz, 54, of Des Moines died March 4.

Jerrold 'Jerry' Jacobsen, 92, of Cedar Falls died Feb. 28.

Jerry Larson, 81, of Harlan died April 25.

Robert "Tim" McCarthy, 88, of Des Moines, died May 22.

Joseph F. McGinn, 87, of Council Bluffs died Dec. 13.

Jeffrey W. Paul, 66, of Le Claire died Jan. 31.

John Orville Reich, 74, of Panora died Feb. 2.

Robert C. Reimer, 90, of Denison died April 27.

John W. Sabbath, 86, of Cedar Falls died Feb. 9.

Jack Schroeder, 92, of Sarasota, Florida died Dec. 19.

Jerry Jay Smith, 81, of Spirit Lake, died March 11.

Bruce A. Shawver, 84, of Hot Springs Village, Arkansas died Feb. 4.

Raymond O. Snook, 77, of Glidden died May 8.

Joseph J. Straub III, 61, of Algona died Dec. 30.

Michael Voorhees, 76, of Waukegan died March 1.

Edward N. "Ned" Wehr, 90, of Davenport died Jan. 27.

Ernest W. Wilcke, 92, of Spirit Lake died Dec. 21.

Thomas X. Wright, 94, of Des Moines died March 23.



New University of Iowa Law School Dean Kevin Washburn introduces himself to the board.

assess the size and makeup of the ISBA Board of Governors and consider whether it should remain in its present form with 49 members or be reorganized in some other manner. Levis created six small groups that will each address and discuss a particular topic between quarterly board meetings and report back to the larger board where any recommendations for changes will be thoroughly vetted. The topics to be addressed include rural practice, member services, threats to the legal profession, destruction of paper client files, wellness and mental health issues.

Iowa Lawyer Assistance Program (June 21)

Iowa Lawyers Assistance Program Executive Director Hugh Grady and ISBA Past President and Lawyers Helping Lawyers Committee Chair Dan Moore commented on the importance of ILAP, highlighting the confidential services that the programs offer. Grady reminded the governors of his availability to make CLE presentations.

Reports from the law schools (June 21)

Drake Law School Dean Jerry Anderson announced that the Drake

Rural Access to Justice Initiative will be piloted in Oskaloosa this fall. Drake Law School ranked third in the nation based on success in ABA competitions. Drake won the national championship for arbitration, and the negotiations team went to the national semi-finals. Neil Hamilton is retiring next year so the law school is searching for a new Ag Law Director. Anderson also reported on upcoming events and CLEs.

University of Iowa Law School Dean Kevin Washburn introduced himself to the board. He served as a federal prosecutor in New Mexico and as a trial attorney with the U.S. Justice Department. He has judicial experience from his service as chief judge for the Court of Appeals of the Saginaw Chippewa Tribe of Indians in Michigan and as a justice of the Appellate Court for the Meskwaki Tribe in Iowa. He served as dean of the University of New Mexico School of Law from July 2009 to October 2012. In August 2012, he was nominated by President Obama to serve as the assistant secretary to the Bureau of Indian Affairs.

Applications to the University of Iowa College of Law are up 11 percent from last year, but the college will not increase class size until it can ensure there are enough jobs available for graduates.

ABA Delegate Report (June 21)

ABA State Delegate Alan Olson reported that there are several resolutions for this fall's ABA conference in Chicago that reflect the concerns and issues Iowa lawyers raise. Olson will report back at the September meeting.

**Thanks to ISBA BOG Members Jim Daane, District 3B, and Bethany Currie, District 2B, for their contributions to this report.*



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THANKS TO SPEAKERS

DEMYSTIFYING THE IOWA SUPREME COURT APPLICATION PROCESS (IN-PERSON OR LIVE WEBINAR)

Tuesday, June 5, 2018

Sponsored by The Iowa State Bar Association Diversity & Inclusiveness Committee

Hon. Rebecca Goodgame Ebinger, United States District Judge, Southern District of Iowa
Larry Johnson, Jr., Office of the State Public Defender
Christina Thompson, Phil Watson PC
Justice Thomas Waterman, Iowa Supreme Court

BRINGING AND DEFENDING WILLFUL INFRINGEMENT CLAIMS (LIVE WEBINAR)

Wednesday, June 13, 2018

Sponsored by The Iowa State Bar Association Intellectual Property Law Section

Allison Kerndt, Nyemaster Goode, PC

CHILD SUPPORT GUIDELINES (LIVE WEBINAR)

Wednesday, June 13, 2018

Sponsored by The Iowa State Bar Association Family & Juvenile Law Section and Drake University Law School

Eric Borseth, Borseth Law Office
Hon. Eliza Ovrom, District Court Judge, District 5C

ANNUAL MEETING SEMINAR

June 18-20, 2018

Hon. Paul Ahlers, District Associate Judge, District 2B
Rachel Antonuccio, Johnson County Public Defender's Office

Justice Brent Appel, Iowa Supreme Court
Jason Bahr, Detective, Webster County Sheriff's Office
Bruce Baker, Nyemaster Goode PC

Van Bawi, EMBARC

Leslie Behaunek, Nyemaster Goode PC

James Benzoni, Benzoni Law Office P.C.

Andrew Boettger, Hastings Gartin & Boettger LLP

Amy Botkin, Vocational Resources Plus LLC

Matthew Brandes, Simmons Perrine Moyer Bergman PLC

Trinity Braun-Arana, Assistant Director for Boards and Commissions, Office of Professional Regulation

Hon. Celeste F. Bremer, Magistrate Judge, Southern District of Iowa

B. John Burns, Assistant Federal Defender, Federal Public Defender Office

Jacob Bylund, Faegre Baker Daniels LLP

Angela Campbell, Dickey & Campbell Law Firm PLC

Michael Carlson, Office of the District Attorney, Cobb Judicial Circuit

Prof. Ron Carlson, University of Georgia School of Law

Kimberly Carson, Iowa Judicial Branch

Ann Carothers, Registered Professional Reporter, Certified Reporting Instructor

Kevin Caster, Shuttleworth & Ingersoll, P.L.C.

J. Andrew Cederdahl, Assistant Attorney General

Roberta Chambers, Retired Attorney

Benjamin Chatman, SUMO Group Inc.

Hon. Mary Chicchelly, District Court Judge, District 6

Jeffrey Clayton, Executive Director of the American Bail Coalition

Deanna Clingan-Fischer, Ombuds Officer, Iowa State University

Brandon Cole, Brown Winick PLC

Hon. Thad Collins, Chief Judge, United States Bankruptcy Judge, Northern District of Iowa

Frank Comito, Neu, Minnich, Comito, Halbur & Neu, P.C.

Timothy Coonan, Davis Brown Law Firm

Tré Critelli, Office of Professional Regulation

David Cox, Bray & Klockau PLC

J. Michael Deege, Wilson Deege Despotovich Riemschneider & Rittgers

Dr. Richard Deming, Medical Director, Mercy Cancer Center

Kelly Dineen, Creighton University School of Law, Attorney and Registered Nurse

Brian Crotty, HDH Advisors, LLC

Diane Dornburg, Carney & Appleby PLC

Hon. Richard Doyle, Iowa Court Of Appeals

Carol Dunbar, Chapter 13 Trustee

Jason Dunn, Public Defender's Office

Jay Eaton, Retired Attorney, Nyemaster Goode, PLC

Steve Eckley, Belin McCormick PC

Nicole Facio, Newbrough Law Firm LLP

Dr. Brian Farrell, University of Iowa College of Law

Michael Feichtinger, Minnesota Lawyers Mutual

Ray Fielder, Special Agent, Intelligence Unit

Erik Fisk, Whitfield & Eddy, P.L.C.

Mathew Fitterer, Risk Control Attorney, CNA

Financial Corporation

Charissa Flege, Iowa Coalition Against Domestic Violence

Hon. Stephanie Forker Parry, District Associate Judge, District 5C

Kirsten Frey, Kennedy Cruise Frey & Gelner LLP

Brian Galligan, Galligan & Reid PC

Hon. Arthur Gamble, Chief Judge, District 5C

Sydney Gangestad, Legislative Liaison

Theresa Garthwaite, Risk Control Specialist, Lawyers Professional Liability

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Michael Gilmer, Davis Brown Law Firm

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Elizabeth Goodman, Attorney for the Chapter 13 Trustee

Mark Gray, Hodges & Associates, PLC

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Jami Hagemeyer, Williams & Hagemeyer PLC

Kristen Hall, Hall Mediation & Law PLLC

Michael Harger, I.T. Director, Southern District of Iowa

Scott Hartsook, Iowa Legal Aid

Jonathan Heggen, Legal Services Division Editor, Legislative Services Agency

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Ellen Krug, Human Inspiration Works, LLC

Gen Langh, EMBARC

Hon. Jeffrey Larson, Chief Judge, District 4

Taylor Larson, Recent Drake Law School Graduate

Joey Leonhart, Director of Human Resources, State Court Administration

Matthew Lindholm, Criminal Defense Attorney

Holly Logan, Davis Brown Law Firm

Scott Lyon, Adult and Investigations Staff Attorney, Disability Rights Iowa

Eric Manley, Associate Professor of Computer Science, Drake University

Eldon McAfee, Brick Gentry PC

Kim McIrvin, Department of Corrections

Hon. Kevin McKeever, District Court Judge, District 6

James Meade, Meade Law Office

William Frederick Meinecke, Jr., National Holocaust Museum

Elizabeth Meyer, Davis Brown Law Firm

Cyndy Miller, Legal Director, Disability Rights Iowa

Rebecca Miller, Nyemaster Goode, P.C.

Amy Moore, Mid-Iowa Mediation and Law PLLC

Dan Moore, Moore, Heffernan Moeller

Johnson & Meis, LLP

Ann Naffier, Justice For Our Neighbors

Ron Nielson, CliftonLarsonAllen LLP

Jeffrey Noble, Assistant Polk County Attorney

Megan Norberg, Iowa Legal Aid

Hon. David Odekirk, District Court Judge, District 1B

Henny Ohr, Ethnic Minorities of Burma Advocacy and Resource Center (EMBARC)

Bryan O'Neill, Dickinson Mackaman Tyler & Hagen PC

Ann M. O'Rourke, National Holocaust Museum

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Sue Pence, Bankers Trust

Bridget Penick, Fredrikson & Byron, P.A.

Deborah Petersen, Petersen Law PLLC

Prof. Todd Pettys, H. Blair and Joan V. White Chair in Civil Litigation, University of Iowa College of Law

Alejandra Pina, Iowa Legal Aid

Hon. Jeffrey Poulson, District Court Judge, District 3A

George Psiharis, Clio

Bruce Reeve, Laboratory Administrator, Iowa Division of Criminal Investigation

Roxann Ryan, Commissioner, Iowa Department of Public Safety

Cindy Rybolt, Iowa Legal Aid

Jacqueline Samuelson, Whitfield & Eddy PLC

Robert Sand, Assistant Iowa Attorney General

Wendy Scheetz, Department of Human Services

Roxann Scheffert, Department of Corrections

Todd Schmidt, Iowa Legal Aid

Julie Schneider, Youth Emergency Services and Shelter

Bradley Schroeder, Hartung & Schroeder, LLP

Hon. Joseph Seidl, District Associate Judge, District 5C

Laurie Shipper, Domestic Violence Coalition

Hon. Anita Shodeen, Chief Judge, United States Bankruptcy Judge, Southern District of Iowa

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K. Dwayne Vande Krol, Nyemaster Goode PC

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Jana Weiler, Davis Brown Law Firm

J. Michael Weston, Lederer, Weston & Craig PLC

Hon. David Wiggins, Iowa Supreme Court

C.J. Williams, Chief Magistrate, Northern District of Iowa

Hon. Colin Witt, District Associate Judge, District 5C

Bryan Woodward, I.T. Director, Northern District of Iowa

Joel Yunek, Yunek Law Firm PLC

Julia Zalenski, Johnson County Public Defender's Office

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FAST TRACK FILING (IN-PERSON OR LIVE WEBINAR)

Tuesday, June 26, 2018

Sponsored by The Iowa State Bar Association Business Law Section

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CROSS-The art of lost opportunity EXAMINATION

by Robert J. Blink

For most lawyers, cross-examination is, at best, a lost opportunity and at its worst, a self-inflicted wound. This is due to the common error of considering cross-examination tantamount to impeachment. It is not. It is far more, and the skilled trial lawyers know this.

To try a lawsuit is to tell a story. Each advocate is confined to the same set of facts, the same governing law and the immutable rules of human nature. A trial lawyer's story is his or her theory of the case – what is most compelling given all the facts, disputed and undisputed.

Not all the facts in a case beneficial to one's theory are within the knowledge of the witnesses one would call to the stand. Inevitably, there are facts helpful to telling one's story that can only be offered through witnesses tendered by one's opponent.

Once the concept is understood that opposing witnesses may provide testimony helpful to the theory of the cross-examiner, impeachment becomes a component of the interrogative process, not the exclusive purpose.

The first question for the cross-examiner is whether it should be undertaken. Cross is the art of neutralization. Has the direct done any significant injury to one theory of the case? If not, there should be no cross unless information favorable to one's theory could be adduced, or the nature of the witness compels it, such as a party opponent.

To cross-examine infers that damage has been done on direct. The converse is true: to not cross infers no injury was done. The same can be said of redirect examination. Don't inquire when the witness is passed unless there is a specific reason to do so.

Cross-examination does not mean equal time. Content, not duration, is the key. Jurors appreciate examiners who are surgical, get to the point, ask questions they would ask and don't waste their time.

Successful cross requires control of the witness. The greatest tool of control is the leading question. Control can also be exerted by superior knowledge of the case specific facts. Knowledge is indeed powerful. Once the witness is clearly aware that the examiner has a superior knowledge of the facts, they are less inclined to "expand" or "stretch" their personal knowledge. This can be done through a gentle reminder of facts the witness has omitted or advising them of other evidence in the case of which they were not aware. Several pointed questions eliciting a concession of ignorance as to some facts may be sufficient.

A question can be leading in its verbiage or in its delivery. The inflection of the examiner's voice, the raised eyebrow at the end of the question, peeking over one's glasses can all lead the witness to the expected answer. There are four basic variables in our verbal communication: meter (rate of speech), amplitude (volume of speech), pitch (high and low octaves of speech) and pause (the interruption and duration of silence between words). Any or all these tools can be used to question the witness and take them where the examiner wants them to go.

Most lawyers cannot abide silence in a courtroom. Many simply enjoy the sound of their own voice. This is contrary to humility and one of the reasons jurors find trial lawyers arrogant. Others fill the room with words because they are talking while deciding what they really want to say. This results in convoluted questions that confuse the jury and drive court reporters bonkers. It is not a sin to think before one speaks; before one asks a question. Short, simple, well-thought-out questions will improve one's interrogation and cross-examination, exponentially.

Whether a witness is to be cross-examined and what topic or topics are to be addressed should be determined well before trial. Once the decision to cross-examine has been made,

the order of the questioning must be determined.

A simple equation should dictate how one approaches a given cross-examination: $x=m4w$. From the perspective of the cross-examiner the interrogation of an opposing witness presents three possibilities: evidence that supports my theory (mt), evidence that contradicts their opponent's theory (tt) and evidence that challenges the credibility of their witness (tw) – mt, tt, tw.

This approach has the benefit of disarming a witness well prepared to withstand an anticipated attacking cross-examination. Here, there is no immediate attack but a subtle solicitation of seemingly unimportant information. This may lull the witness into a sense of false security and, if impeachment is exercised, the witness is caught off guard by the change in interrogative intensity. Above all, a cross-examiner must maintain a realistic expectation of what is to be gained through the exercise – people admit what they can't deny and deny what they can't afford to admit.

If the witness has significant information that supports my theory of the case, that should be garnered first. Do not attack the witness because his or her credibility buttresses the reliability of their helpful information. Once the "my theory" evidence has been addressed, or if there is none, move on to any evidence in the witness's knowledge that does prejudice to the opponent's theory, "their theory."

Again, this does not require damaging the witness's credibility. Here one would elicit facts from an opponent's witness that differs from the facts on the same topic tendered by another of your opponent's witnesses. The most fertile for this kind of inquiry usually concerns one of the three components of legal competence: the ability to observe, remember and relate. Perhaps it relates to different times or different locales or differing words seen or heard

by the two witnesses. There can be but one truth about any given fact, and the disparity in the witnesses' testimony ultimately diminishes the reliability of both – in closing argument. One might call this “invisible impeachment,” because neither of the witnesses has their veracity attacked on the stand, when they might explain. The contradiction arises at the end of the case.

The “their theory” stage of cross-examination is powerful and subtle. Because there is no direct confrontation of the witness, seemingly harmless facts are conceded by the witness without notice. These are the seeds of problems for opposing counsel that are harvested in summation.

Only once the cross-examiner exhausts the “my theory” and “their theory” evidence, or there is none, does he or she proceed to attacking “their witness.” Only impeach a witness if there is a purpose for doing so and only to the degree necessary. There is a significant difference between “destroying a witness” and specifically refuting a portion of their testimony. There are but a few highly skilled cross-examiners that can maintain a witness's credibility on some points but ruin it on others. For most, cross is an all or nothing proposition: get favorable material or impeach the witness completely.

There are four basic means of impeaching a witness:

- 1. prior inconsistent statement,**
- 2. weak competence: the compromised or inability to observe, remember and relate,**
- 3. impeachment by human motives – words or actions of the witness that are either consistent or inconsistent with how an ordinary person would speak or act under the circumstances. This is usually evidenced by identifying the person's personal motives – love, fear, pain, greed and the rest of the seven deadly sins and**
- 4. prior felony convictions or prior bad acts.**

Impeachment by prior inconsistent statement is the most common technique employed to diminish credibility. To be effective, a specific lityny must be followed. First, the witness must be so firmly committed to the statement

on direct that they cannot disavow the content of that testimony. This is done by asking if the testimony on direct was correct. If they waver, they are already impeached. If they adopt the testimony, a second question in the same vein should be asked, with the cross-examiner appearing to be wounded or hurt by the in-court statement. This emboldens the witnesses and causes them to aver the truth of that statement. The feigned weakness of the examiner makes the witness more strident.

Second, the witness must confirm that he or she made a prior statement. This is done by drawing attention to the prior statement and getting a concession that they recall the time, date and place of the prior statement.

Third, the reliability of the prior statement must be established. This is done by having the witness admit the prior statement was under oath. Or, if not under oath, the witness should be asked leading questions to the effect that they told the truth on the prior occasion.

Fourth is the confrontation stage where the cross-examiner presents the witness with the exact language of the prior statement. But immediately before doing so, opposing counsel must be directed to page and line of the deposition being used or the identity of the document being relied upon for the impeachment.

This confrontation can be accomplished in one of several ways. The examiner might ask the witness if he or she recalls the previous question and the answer, reading each verbatim. Or the examiner might approach the witness stand and present the prior statement to the witness, asking him or her to confirm that it is their statement. Then the examiner reads the question and answer aloud and, after concluding, asks the witness, “Did I read that correctly?” The third option is to approach the witness stand, have the witness confirm the document is his or her prior statement and then direct the witness to read the prior question and answer aloud to the jury. Once the two different statements have been disclosed in this way to the jury, one might ask the witness, “Which state-

ment was true?” or “They can't both be true, can they?” If the impeachment procedure has been properly followed, however, the inconsistencies should be so apparent that the follow-up question may not be necessary.

The topic of cross-examination exceeds the space accorded here. But the key is this: cross-examination is not merely attacking the opponent's witnesses, it is much more. On cross-examination, seek information that supports your theory of the case, evidence that highlights the internal inconsistencies in your opponent's case, and then and only then should credibility be challenged.



Robert J. Blink is a Senior Judge for Judicial District 5C. He served as a trial judge for 22 years after a 20-year career as a criminal and civil trial lawyer. He has been a professor of Trial Advocacy at Drake University Law School since 1981.

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MEDIATION SERVICES – Former Justice Michael J. Streit has recently joined Sullivan & Ward, P.C. Streit who served for over 27 years on the bench with the District Court, Court of Appeals, and the Supreme Court is a AAA arbitrator offering mediation and arbitration services and is also consulting in litigation, appeals, professional liability, and contract law. For information and scheduling please call 515-244-3500 or 515-247-4708.

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IN MEMORIAM

Richard (Rick) Dunn, 56, of Eldora died April 28.

Dunn was born in Eldora. He received his JD from Drake University Law School in 1986. After graduation Rick joined his father in the practice of law in Eldora and practiced law in Eldora for over 30 years. He also was elected and served as the Hardin County Attorney for 16 years and served as a judicial magistrate for Hardin County for 8 years.

Daniel Patrick "Pat" Griffin, 74, of Des Moines died May 9.

Griffin was born in 1944 in Leon. He received his J.D. from the University of Iowa College of Law. He took a job with the Iowa State Department of Banking as a trust examiner working out of the Des Moines, Iowa office. In 1976, he moved to California to work as a senior trust examiner for the Federal Reserve Bank of San Francisco. After a year he returned to Des Moines and started his own business, Daniel Patrick Griffin Bank Trust Consultant.

Jerry Jay Smith, 81, of Spirit Lake died March 11.

Smith was born in 1936 in Correctionville. He served in the U.S. Navy after high school and received his J.D. from Western State College of Law. He worked for Southern California Edison, and was a Corporate Lawyer and an Attorney at Law family practice in Iowa, retiring in 1995 and moving back to Correctionville, Iowa.

Tim McCarthy, 88, of Des Moines died May 22.

McCarthy was born in 1929 in Milwaukee, WI. He received his J.D. from the University of Iowa College of Law. He was appointed to the position of Assistant Linn County Attorney, then appointed by Attorney General Larry Scalise to be the Solicitor General of the State of Iowa. He served a two-year term, later working with the Des Moines law firm of Davis, Huebner, Johnson and Burt. Tim was then hired by the four Catholic Bishops of Iowa as the Executive Director of the Iowa Catholic Conference, representing them before the Iowa Legislature.

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BrownWinick Law Firm held its first Day of Community Giving on Friday, June 8. There were five service projects that were selected by the firm:

- Animal Rescue League of Iowa
- Habitat for Humanity – Habitat ReStore
- Habitat for Humanity – Rock the Block

- Salisbury House & Gardens
- Valley View Village

Groups of BrownWinick attorneys and staff went to each of these locations and provided services, including weeding, planting, cleaning windows, general organization, floor cleaning, updating kitchen cabinetry, office

assistance, barn cleanup and meal preparation for pets. Approximately 80 individuals from BrownWinick participated in the Day of Giving.

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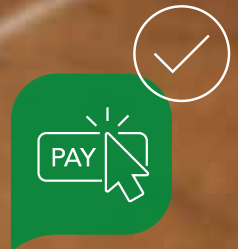
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