IOWA STATE BAR ASSOCIATION

THE IOWA LAWYER

March 2021 V81 N2

MOCK TRIAL GOES VIRTUAL

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APPLY TO SERVE ON A SECTION COUNCIL OR COMMITTEE

The need for meaningful connection has never been greater.

Did you work remotely over the past year and miss the connections with your professional colleagues? Did you observe changes to your practice that made you wish you could help steer the legal profession to meet future challenges? Is your 2021 resolution to make new connections and further your career? Your best first step to accomplish these goals is to apply to serve on an ISBA section council or committee.

The Iowa State Bar Association is currently accepting applications to serve on section councils and committees for 2021-2022. Please visit iowabar.org/SectionSignUp. Applications are due by April 1.

You can view the list of sections by visiting **iowabar.org/sections**; and the list of committees by visiting **iowabar.org/committees**. These small but incredibly influential groups, which span many practice and interest areas, are the lifeblood of our association. It is through them that we provide the services that are important to our members. These groups help put together CLE programs, propose legislation, create manuals and practice guides, and help the ISBA serve its members in countless other ways.

Please go to **iowabar.org/SectionSignUp** to submit an online application for up to three section councils or committees. Please note that you must first be a member of a section to apply for a section council position. Each application will be evaluated, and I will make the appointments for these positions later in the spring, to take effect after the ISBA Annual Meeting in June.

Thank you,

Anjie Shutts
ISBA President-elect

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The Iowa Mock Trial Program is a virtual success!

LETTER BY ISBA PRESIDENT JERRY SCHNURR III

The Iowa Mock Trial program is one of the oldest and richest programs in the nation. Since 1983, the mock trial program, sponsored by The Iowa State Bar Association, has given thousands of students the opportunity to learn about the judicial process through the experience of working in cooperation with a team to prepare a case for trial.

The mock trial program is run out of the ISBA Center for Law and Civics Education, which is spearheaded by John Wheeler. John has a real passion for mock trial and civics education in general, and he has turned this program into the gold standard program in the nation. But John cannot do it all alone. The success of the program for our young people depends on many volunteers.

Ideally, an attorney and educator work as coaches with the students to teach them basic principles and trial practice with a focus on the specific aspect of law involved in the case for the year. The attorney will meet with students once or twice a week to help them on things like theme, theory, elements of law, objections, responses, strategy, etc. Some teams rely on local attorneys as resources "on-demand," that is, students ask them questions about the law or trial practice via email, Zoom or phone. The most successful teams have a great partnership of teacher, lawyers and dedicated students. (Perhaps you could help coach a team or act as an "on-demand" resource in your community!)

Mock trial seeks to educate participants about the law and legal process. The case materials present a different legal problem each year. This allows students to learn about specific laws while refining and demonstrating familiarity with courtroom processes. Beyond that, mock trial challenges students to develop critical thinking, as well as skills in preparation, presentation, advocacy and teamwork. These are all skills that will serve young people well in whatever path they take in life.

The students see the connection between a law-related activity and real-life application. Mock trial engages participants in an appreciation for the rule of law and the role of the trial court system and the people involved who advocate for fairness, equality and justice. This results in producing young people who are informed, active and engaged citizens. We are not sure that mock trial results in more young people choosing law as a profession. However, they are prepared for success in their future endeavors. Regardless of the path they take, participants will develop the skills to manage a complex project, and to communicate with skill, coherence and poise in any setting. And, critically, they will have embraced our legal process as an effective way to handle disputes. In short, these "mockers" make better citizens!

The mock trial program did not escape the consequences of the pandemic. The Iowa High School tournament begins in March each year. Last year, we had to cancel the tournament, but not this year. This year, we will have 83 teams participating via Zoom in March. This is an excellent turnout under the circumstances (normally about 100 teams participate).

John Wheeler has worked tirelessly so that The Iowa State Bar Association could offer mock trial this year. Iowa led the nation in testing a new process for virtual competitions in our fall 2020 middle school competition. The fall program was a combination of a number of virtual formats. Teams from schools that allowed face–to–face instruction could choose to present in a "traditional" team way over Zoom. Other teams had students on their own devices in different locations. Many were presenting from their homes. The program did not escape technical challenges, such as finding good internet connections without too much home distractions. But here is what Christina Thompson, ISBA YLD Mock Trial Chair, said

The 2020 Middle School Mock Trial state competition was held via Zoom. The winning team was from Harding Middle School in Cedar Rapids.

ISBA Center for Law & Civic Education Director John Wheeler pictured at podium discussing competition rules while opening the 2019 Middle School Mock Trial State Tournament championship round.

MOCK TRIAL JUDGES NEEDED

The Iowa High School Mock Trial Tournament regional rounds begin March 1, but can only be held if there are enough attorneys to serve as judges of the competition. This year, it is easier than ever for attorneys to serve as judges because the tournament will be conducted virtually via Zoom. Preliminary rounds continue through March 13, with the high school state tournament scheduled for March 23-26.

All rounds will be conducted via Zoom and ballots will be done electronically. Volunteer judges will be asked to assess student performances as they take on the roles of attorneys and witnesses. Last year, more than 600 members of the bar assisted as judges and coaches in tournaments held throughout Iowa.

You can sign up to volunteer by visiting **iowabar.org/HSMockTrial**, then clicking on "Volunteer to Judge." For more information, contact ISBA Center for Law & Civic Education Director John Wheeler, at 515-697-7882 or **jwheeler@iowabar.org**.

The winner of the 2019 Iowa High School Mock Trial Tournament was the Marion Home School "Ethos" mock trial team, which defeated Des Moines Lincoln High School's team to take home the state championship trophy.

about the trial-run: "The virtual middle school mock trial experiment this fall was a resounding success. While we had some teething issues, we are proud that the bar association was able to continue providing mock trial as an option for students in a safe and effective manner."

The high quality of the students that participate in the mock trial program constantly amazes us. When faced with issues that challenged their ability to put the case on, they showed impressive flexibility, fortitude and grace to work together within their teams and with other teams to find solutions. They showed high levels of sportsmanship and maturity that is a model for all of us regardless of age. The process worked better than we could have imagined. Perhaps the biggest compliment received in connection with the middle school program was that being in mock trial this year, in any form, was the most "normal" thing students got to do this fall. While mock trial presented challenges, it also provided students something to look forward to.

Says Thompson: "Students in Iowa have had their lives drastically changed in the last year, and many activities have had to be cancelled. Making mock trial available made it possible for the participating students to keep a sense of normalcy in one small part of their lives. The committee is grateful for the hard work of John Wheeler and his intern Lauren Barnes, as well as for the flexibility and generosity of the attorneys who participated as judges."

I encourage you to sign up as a volunteer judge for the High School Mock Trial competition in March. Since it is virtual this year, there is no travel involved. You will get to spend a couple of hours with some talented, dedicated and hard-working young people skillfully putting on a trial. While it will be enjoyable, you will help so many young people grow in their knowledge and appreciation for the rule of law, the role of the court and the importance of trials as a peaceful way to resolve disputes in our communities. Finally, you will come away with a firm conviction that with so many great young people, the future is bright.

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Cooperation and Corporate Representative Depositions:

EXPLORING THE NEW "MEET AND CONFER" REQUIREMENT IN REVISED FRCP 30(B)(6)

By Leslie Behaunek and Frank Harty

INTRODUCTION

For over a decade, leaders in the legal profession have bemoaned the vanishing jury trial.[1] Two of the many factors leading to the decrease of jury trials are the escalating costs of litigation as well as time and budget demands of judicial resources. Experts agree the cost of discovery is directly related to the total costs in civil cases and the concomitant strain on the courts.

The Dec. 1, 2020 "meet and confer" amendment to Federal Rule of Civil Procedure 30(b)(6) is a positive step when it comes to addressing these problems. Iowa trial lawyers who are concerned about disappearing jury trials should informally incorporate the "meet and confer" concepts found in the amended rule into the Iowa Rules of Civil Procedure.

This article will briefly describe the history of the federal and state rules concerning deposing corporate representatives. It will also discuss the history and intent of the Dec. 1 "meet and confer" amendment to the federal rule. The article will offer some insight into committee notes and comments surrounding the new rule. Finally, the authors will briefly describe proposed best practices under Rule 30(b)(6) as well as Iowa Rule of Civil Procedure 1.707(5).

FRCP 30(B)(6) AND IRCP 1.707(5)

Under the previous version of FRCP 30(b)(6), and mirrored in current IRCP 1.707(5), the process of noticing up a deposition directed to an organization included the following basic steps: (1) the notice or subpoena would set forth the name of the entity to be deposed along with a description of the matters for examination; then (2) the named organization was required to designate one or more individuals to testify on behalf of the organization about information "known or reasonably available to the organization." If there was a dispute about the matters to be examined, for example, then the receiving party could serve an objection or file a motion for protective order in advance of the deposition date. There was no requirement that the parties meet and confer regarding the matters upon which the witness(es) would be examined or any other issue related to the noticed deposition.

PREPARING THE CORPORATE DEPONENT

There are a number of frustrating practical problems lawyers are forced to deal with whether they are taking or defending the deposition of a corporate representative. Some of the common problems reported by Iowa practitioners might be addressed with a "meet and confer" obligation. The most common complaint among counsel perpetuating FRCP 30(b)(6) testimony is that the corporate witness is, by design or neglect, unprepared to provide the requested testimony. On the reverse side, those defending the depositions of corporate witnesses outline two primary concerns:

1. The deposition notice is so expansive and ambiguous that it is nearly impossible to adequately respond; and

2. The deposing party is engaging in gamesmanship hoping to obtain inconsistent testimony from a single deponent who is a fact witness and the likely person with knowledge for a corporate representative deposition.

A deponent under rule 30(b)(6) is required to give responsive answers to questions posed.[2]

From a practical standpoint, there may be more than one deponent who has to be identified in response to a notice. It is well recognized that a deponent is not required to have personal knowledge of some or all of the topics to be addressed—but the corporation is obligated to prepare the witness so that they can give knowledgeable answers to the questions posed.

Under current practice in Iowa, the litigants will most likely end up before a judge if there is disagreement over the scope of the notice or the preparedness of the deponent.[3] A party objecting to a deposition noticed under Rule 1.707(5) has an obligation to clearly define the objections. In response, the deposing party must resolve the dispute or file a motion to compel prior to taking the deposition. Otherwise, the deposition will be taken subject to the objection.[4]

PROPORTIONALITY AND NARROWING THE SCOPE OF MATTERS TO BE EXAMINED

An additional issue that permeates the discovery process, including corporate representative depositions, concerns the proportionality requirements set forth in FRCP 26(b)(1) and IRCP 1.503(8)(c). Where the matters to be examined set forth in the deposition notice are overly broad in scope, this proportionality consideration may necessitate a narrowing of the issues to be discussed to strike the appropriate balance between (1) access to information that is relevant to the claims and defenses in the case and (2) the increasing costs of discovery. This balancing or narrowing process is frequently addressed through formal, written objections, as well as through motions for protective orders or motions to compel, all of which is more adversarial than collaborative.

HISTORY AND INTENT OF THE NEW MEET AND CONFER DUTY UNDER FRCP 30(B)(6)

As noted above, there were multiple problems that arose under the former FRCP 30(b)(6) (and current IRCP 1.707(5)) framework for corporate representative depositions. These problems included overly broad and vague deposition topics, preparation issues with designated witnesses, and an adversarial approach to resolving disputes with such depositions.

In 2017, the Rule 30(b)(6) Subcommittee of the Advisory Committee on Civil Rules requested comments about practitioners' experiences with Rule 30(b)(6). The subcommittee also identified six potential amendments for consideration:

1. Including a specific reference to Rule 30(b)(6) among the topics for discussion by the parties at the Rule 26(f) conference and between the parties and the court at the Rule 16 conference;
2. Clarifying that statements of the Rule 30(b)(6) deponent are not judicial admissions;
3. Requiring and permitting supplementation of Rule 30(b)(6) testimony;
4. Forbidding contention questions in Rule 30(b)(6) depositions;
5. Adding a provision to Rule 30(b)(6) for objections; and
6. Addressing the application of limits on the duration and number of depositions as applied to Rule 30(b)(6) depositions.[5]

After receiving comments from practitioners, the advisory committee focused on adding a meet and confer obligation to FRCP 30(b)(6) and proposed the following language for inclusion in the rule: "Before or promptly after the notice or subpoena is served, and continuing as necessary, the serving party and the organization must confer in good faith about the number and description of the matters for examination and the identity of each person the organization will designate to testify."[6]

After a comment period and two public hearings, the advisory committee amended the proposed language to state as follows: "Before or promptly after the notice or subpoena is served, and continuing as necessary, the serving party and the organization must confer in good faith about the matters for examination."[7]

The new rule, including the revised language to require a meet and confer for any corporate representative deposition, was submitted by Chief Justice John Roberts on behalf of the U.S. Supreme Court on April 27, 2020, and it became effective on Dec. 1, 2020.[8] Notably, the new meet and confer requirement does not apply to Rule 31 written depositions directed to an organization, and it also does not require the parties to confer about the number and identity of the witnesses who will testify pursuant to the 30(b)(6) notice.

The new rule should force the parties to collaborate and reach agreement on which matters will and will not be covered during the corporate representative deposition without the need for timely and costly motion practice. By narrowing the topics, this should also reduce the number of witnesses who will be required to testify in response to a FRCP 30(b)(6) deposition notice, thereby helping to address the rising costs of discovery for litigants. Further, this meet and confer process may alleviate witness preparation issues that have arisen in the past due to the mutual agreement on topics to be covered and clear expectations for all involved. To the extent there are concerns about the time, method or manner by which the deposition is set to take place, the parties may seek to discuss those issues as well.

BEST PRACTICES UNDER THE IOWA CORPORATE DEPOSITION RULE

To be clear, the "meet and confer" amendments apply only to the federal rules; the Iowa Supreme Court has not amended Rule 1.705 to include a specific obligation of this sort. On the other hand, there is a general duty under Iowa law to make a good faith effort to engage in meaningful discovery and avoid unnecessary motion practice. Regardless of the scope of that duty, lawyers who are interested in the preservation of trial by jury and who are driven by general concepts of professionalism and civility

will be advised to adopt best practices that emulate the federal requirements.

For attorneys perpetuating testimony, it is advisable to create precise, tailored notices describing topics to be addressed. One should avoid the urge to adopt a "form" obtained from a CLE presentation or professional colleague. It also is important to avoid the urge to attempt to inflict pain on the opposing party through the corporate deposition process. Lawyers responding to corporate deposition notices should make a good faith effort to "see the other side of things." Avoid the knee jerk urge to object to a notice that at first blush seems overly broad or mean spirited.

Without the "meet and confer" requirement, Iowa lawyers noticing a corporate deposition should include reasonable instructions on the deponent's duties for preparing responsive testimony. It makes sense to prepare a letter accompanying the notice inviting the counsel for the deponent to confer to discuss the parameters of the notice.

There is some confusion as to whether a responding party has an obligation to serve an objection to a notice opposed to simply outlining concerns and inviting a conference. It may be prudent to start with an invitation to conference before serving an objection.

This new meet and confer requirement presents opportunities for thoughtful advocacy and compromise. The responding party should consider whether there are opportunities to narrow the topics, thereby potentially reducing the number of witnesses needed to testify as corporate representatives yet still providing access to relevant information related to the claims and defenses in the case. Additionally, the responding party likely has knowledge about their own client's corporate structure, which can be used to educate opposing counsel and streamline the deposition process in a manner that will reduce costs for the litigants yet still provide the opposing party with discoverable information.

CONCLUSION

Litigation is and will always be an adversarial endeavor. But the new Federal Rule 30(b)(6) is a step in the right direction to find compromise and reduce the rising costs of discovery while still ensuring access to relevant information as contemplated in Federal Rule 26(b)(1).

[1] *See* American College of Trial Lawyers "Vanishing Jury Trial" (2004).

[2] *See Spanski Enterprises, Inc. v. Telewizja Polska,* S.A., No. 17-7051 (D.C. Cir. 2018).

[3] *See Iowa Rule of Civil Procedure* 1.517(1)(2).

[4] *See Rumsey v. Woodgrain Millwork, Inc.,* LACL138889, Iowa District Court for Polk County (July 15, 2019).

[5] https://www.federalrulesofcivilprocedure.org/latest-updates/.

[6] Id.

[7] Id.

[8] Id.

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How economists calculate earnings losses from Eighth Circuit employment termination cases

By Charles L. Baum II, Ph.D.

INTRODUCTION

Economic losses are awardable as damages in federal employment cases from discrimination based on sex, race, religion, age, disability and pregnancy under various federal statutes. Attorneys may hire an economist to calculate the economic losses.

This article describes the methods economists use for their calculations, and reviews whether these approaches are permissible under federal statues and case law from the Eighth Circuit. Eight key elements are examined. Calculating economic losses in employment termination cases has likely become more important; the U.S. Supreme Court recently determined (in *Bostock v. Clayton Cty., Ga.*, No. 17-1618 (June 16, 2020)) that employment protections under Title VII of the Civil Rights Act extend to sexual orientation and gender identity.

1. Lost earnings

Economists have calculated economic losses from lost earnings in federal employment termination cases.[1] They typically base their calculations on the worker's earnings at the time of the termination or on an average of past earnings.[2] This information is typically available from tax returns, W-2 statements, and pay stubs. Economic damages are awardable in federal employment termination cases for lost earnings to make the terminated worker whole.[3] Both back (pre-trial) pay[4] and front (post-trial) pay[5] are recoverable, although reinstatement may be preferred as a remedy to front pay.[6]

In the Eighth Circuit, factors to be considered include "(1) the plaintiff's age; (2) the length of time the plaintiff was employed by the defendant employer; (3) the likelihood the employment would have continued absent the discrimination; (4) the length of time it will take the plaintiff, using reasonable effort, to secure comparable employment; (5) the plaintiff's work and life expectancy; (6) the plaintiff's status as an at-will-employee; (7) the length of time other employees typically held the position lost; (8) the plaintiff's ability to work; (9) the plaintiff's ability to work for the defendant-employer; (10) the employee's efforts to mitigate damages; and (11) the amount of any liquidated or punitive damage award made to the plaintiff" (citations excluded).[7]

2. Employment benefits

Economists often include the value of employment benefits in their economic loss calculations, along with earnings, because both are part of a worker's compensation. Common employment benefits are various types of insurance benefits, retirement benefits and benefits that are mandated by the government.

The pecuniary value of a worker's employment benefits could be based on

the cost incurred by the employer to provide them.[8] This amount may be different than the replacement cost to the terminated worker in the market due to group rates and tax deductibility.

Alternatively, economists may identify the value of lost employment benefits using national or occupation-specific average costs for employers.[9] The Bureau of Labor Statistics regularly provides this information.[10] Currently, the average cost of worker employment benefits for employers is 29.9 percent of compensation for private-sector workers and 37.7 percent of compensation for public-sector (government) workers.

Economic losses from lost employment benefits are awardable in Eighth Circuit employment termination cases,[11] with one notable exception. Lost benefits have not been awarded when the terminated worker did not pay to replace the lost benefit and incurred no costs from the benefit being lost,[12] as may be the case with health insurance.

3. Work-life expectancy

Economists have used three measures of work-life expectancy over which to calculate lost front pay. First, economists have used common retirement ages, such as 62, 65 or 70. The Social Security Normal Retirement Age—the age at which one can retire and receive full retirement benefits without penalty—ranges from 65 to 67, depending on year of birth.

Second, economists have used projections from work-life tables.[13] Work-life projections are published by economists using federal government data.[14] The projections are provided separately by age, gender, race and education for individuals currently in and not in the labor force.

Third, economists have used a fixed number of years (e.g., two, five or 10 years) over which to consider lost front pay. The Eighth Circuit has accepted each of these approaches (common retirement ages,[15] work-life expectancy[16] and a fixed number of years[17]).

4. Mitigating factors

Economists typically assume terminated workers attempt to mitigate damages by searching for another job. In turn, economists calculate lost earnings by subtracting actual or projected earnings after the termination, if any, from projected earnings without the termination. This is required in federal employment cases,[18] including those in the Eighth Circuit.[19] The worker must exercise reasonable diligence seeking replacement employment[20] but is not required to accept a demotion.[21] The terminated worker otherwise forfeits the right to damages, but it is the defendant's burden to prove the plaintiff did not use reasonable diligence.

Collateral source rules typically stipulate that income and benefits from third-party sources should not be deducted from the economic losses, to prevent the wrongdoer from receiving a windfall. Federal courts in other circuits retain wide discretion over how to handle collateral benefits,[23] but the Eighth Circuit—perhaps uniquely—strongly prefers collateral benefits not be deducted as offsets.[24] This is true of unemployment benefits, Social Security income and workers' compensation.

5. Growth rates

Wages typically grow over time with price inflation, to maintain purchasing power, and with technological advances, as workers become more productive. Wages also increase over a career as workers gain experience and skills. Economists may use a worker's past rates of salary increases to project future wage growth. When information on a worker's past earnings is not available, economists may predict future wage growth using historical growth rates experienced by all or part of the labor force, provided in several reports from the Bureau of Labor Statistics.[25] In addition, economists forecast wage growth for several federal entities such as the Congressional Budget Office, the Council of Economic Advisers, the Social Security Advisory Board.[26]

Including projected wage growth, step increases and anticipated raises in economic loss calculations is permitted in the Eighth Circuit.[27] For example, an economist included annual wage growth of four percent in one case.[28]

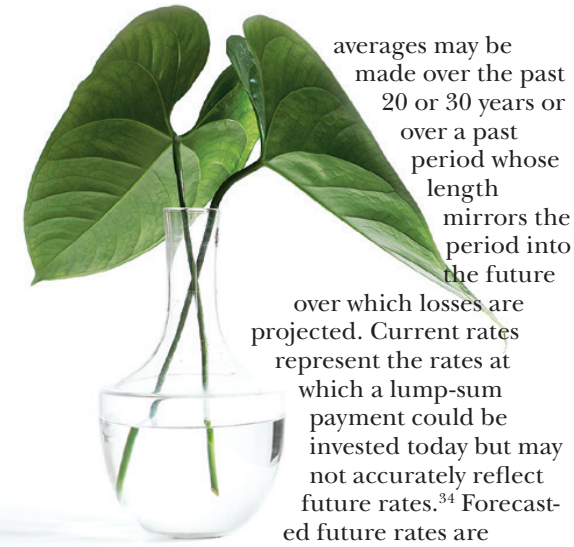
6. Discounting to present value

Economists typically discount future losses to present value in their calculations. This is because a lump-sum payment made today will grow over time when invested. If the nominal amount of future losses were paid in the present without discounting, then this damage award plus interest when invested would grow to a larger amount in the future than the losses.

Economists have used three methods to discount future losses to present value: the 'case-by-case' method, where the rate used to project future wage growth and the interest rate used for present value discounting are independent of each other; the 'below-market' discount method, where the wage growth rate and the discount rate are both identified excluding inflation, so that these adjustments are made using real values with inflation offset; and the 'total offset' method, where the rate of wage growth is assumed to be exactly equal to the interest rate used for discounting, resulting in no adjustments because the two offset each other.

Federal courts direct future losses to be discounted to present value,[29] but the only guidance given on the discount rate to use is that it should be that on "the best and safest investments."[30] Courts in the Eighth Circuit have typically set the wage growth rate and the discount rate separately. The primary exception has been in a couple of Eighth Circuit cases where the court neglected both to include future wage growth and to discount future losses to present value.[31] The court assumed the two canceled each other out. Other circuits have used a 'below-market' discount rate[32] and the total offset method.[33]

Economists may base their discount rate on historical averages, current rates or forecasted future rates. Historical



averages may be made over the past 20 or 30 years or over a past period whose length mirrors the period into the future over which losses are projected. Current rates represent the rates at which a lump-sum payment could be invested today but may not accurately reflect future rates.[34] Forecasted future rates are provided by economists for the Social Security Advisory Board, the Congressional Budget Office and the Economic Report of the President.[35]

7. Pre-judgment interest

Economists may include pre-judgment interest in their economic loss calculations when the terminated worker has lost back pay. This is because the worker lost the use of that money for a time and the money's value has been eroded by the effects of inflation. Economists have frequently used interest rates on bonds to calculate pre-judgement interest. Including pre-judgment interest in awards for economic damages is permissible in Eighth Circuit employment cases to make the plaintiff whole.[36] Although the Eighth Circuit has not stipulated a pre-judgment interest rate, often used are rates on government treasuries, such as the statutory rate for federal post-judgment interest, which is the rate on a 52-week treasury bill.[37]

8. Tax adjustments

Unlike in personal injury cases,[38] damage awards for lost earnings in employment cases are taxable.[40] Economists may adjust damage awards for tax differentials because a large, lump-sum payment may move the plaintiff into a higher income tax bracket in the year of the award. Additionally, a damage award for lost employment benefits will be taxed, but the employment benefits (e.g., health insurance benefits) when otherwise received might not have been taxable. Eighth Circuit courts do not adjust damage awards for taxes.[41] This may partially be due to the absence of expert testimony to guide tax adjustments.[42] In another circuit, tax adjustments have been provided in response to expert testimony from an economist.[43]

CONCLUSIONS

Federal courts do not require testimony from an economist to recover economic damages in employment termination cases, although some courts have declined to address key damage elements—such as wage growth[44] or tax adjustments[45]—when economic expert testimony is absent. This article summarizes the stipulations and guidance provided by federal statutes and Eighth Circuit case law for eight important elements economists typically address in their damage calculations. This summary is designed to give economists and attorneys a better understanding of the methods and techniques that are permissible in Eighth Circuit employment cases.

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[1] *Prine v. Sioux City Cmty. Sch. Dist.,* 95 F.Supp.2d 1005, 1011 (N.D.Iowa.2000).

[2] *Dollar v. Smithway Motor Xpress, Inc.,* 787 F.Supp.2d 896, 916 (N.D.Iowa.2011).

[3] *Cowan v. Strafford R-VI Sch. Dist.,* 140 F.3d 1153, 1160 (8th Cir.1998).

[4] *Paxton v. Union National Bank,* 688 F.2d 552, 574 (8th Cir.1982).

[5] *Newhouse v. McCormick & Co., Inc.,* 110 F.3d 635, 641 (8th Cir.1997).

[6] *Sellers v. Mineta,* 358 F.3d 1058, 1063 (8th Cir.2004).

[7] *Ogden v. Wax Works, Inc.,* 29 F.Supp.2d 1003, 1015 (N.D.Iowa.1998).

[8] *Prine v. Sioux City Cmty. Sch. Dist.,* 95 F.Supp.2d at 1014.

[9] *Dollar v. Smithway Motor Xpress, Inc.,* 787 F.Supp.2d at 916.

[10] Bureau of Labor Statistics. (2019). "News Release." U.S. Department of Labor, Employer Costs for Employee Compensation – September 2019. Washington, D.C.: U.S. Bureau of Labor Statistics: https://www.bls.gov/news.release/pdf/ecec.pdf.

[11] *Paxton v. Union National Bank,* 688 F.2d at 574.

[12] *Tolan v. Levi Strauss & Co.,* 867 F.2d 467, 470 (8th Cir.1989).

[13] *Prine v. Sioux City Cmty. Sch. Dist.,* 95 F.Supp.2d at 1012.

[14] Skoog, Gary R., James E. Ciecka, and Kurt V. Krueger. (2011). "The Markov Process Model of Labor Force Activity: Extended Tables of Central Tendency, Shape, Percentile Points, and Bootstrap Standard Errors." *Journal of Forensic Economics,* 22 (2): 165-229.

[15] *Roswick v. Mid Dakota Clinic, P.C.,* 2019 WL 5964553, at *10 (D.N.D.2019).

[16] *Ogden v. Wax Works, Inc.,* 29 F.Supp.2d at 1015.

[17] *Hukkanen v. International Union of Operating Eng'rs, Hoisting & Portable Local No. 101,* 3 F.3d 281, 286 (8th Cir.1993).

[18] *Ford Motor Co. v. E.E.O.C.,* 458 U.S. 219, 231, 102 S.Ct. 3057, 3065, 73 L.Ed.2d 721 (1982).

[19] *Denesha v. Farmers Ins. Exch.,* 161 F.3d 491, 502 (8th Cir.1998).

[20] *Brooks v. Woodline Motor Freight, Inc.,* 852 F.2d 1061, 1065 (8th Cir.1988).

[21] *Ford Motor Co. v. E.E.O.C.,* 458 U.S. at 231, 102 S.Ct. at 3065, 73 L.Ed.2d.

[22] *Excel Corp. v. Bosley,* 165 F.3d 635, 639 (8th Cir.1999).

[23] *Lussier v. Runyon,* 50 F.3d 1103, 1107 (1st Cir.1995).

[24] *Salitros v. Chrysler Corp.,* 306 F.3d 562, 573 (8th Cir.2002).

[25] Bureau of Labor Statistics. (2019). "Employment & Earnings Online." Washington, D.C.: U.S. Department of Labor: http://www.bls.gov/opub/ee/.;

Bureau of Labor Statistics. (2019). "Employment Cost Index." Washington, D.C.: U.S. Department of Labor: http://www.bls.gov/news.release/eci.toc.htm.

[26] Chairman of the Council of Economic Advisers. (2019). "Economic Report of the President, March 2019." Washington, D.C.: Government Publishing Office.

Congressional Budget Office. (2019). "An Update to the Budget and Economic Outlook: 2019-2029." (August 2019 Update).

Social Security Trustees Report. (2019). "2019 OASDI Trustees Report." Washington, D.C.: Social Security Administration, 2016 OASDI Trustees Report, Economic assumptions and Methods, Tables V.B1 and V.B2.

[27] *Hawkins v. Anheuser Busch, Inc.,* 697 F.2d 810, 816 (8th Cir.1983).

[28] *Dollar v. Smithway Motor Xpress, Inc.,* 787 F.Supp.2d at 924.

[29] *Baker v. John Morrell & Co.,* 263 F.Supp.2d 1161, 1187 (N.D.Iowa.2003).

[30] *Jones & Laughlin Steel Corp. v. Pfeifer,* 462 U.S. 523, 537, 103 S. Ct. 2541, 2550, 76 L.Ed. 2d 768 (1983).

[31] *Ogden v. Wax Works, Inc.,* 29 F.Supp.2d at 1021.

[32] *Rhodes v. Guiberson Oil Tools,* 82 F.3d 615, 622 (5th Cir.1996).

[33] *Fitzgerald v. Sirloin Stockade, Inc.,* 624 F.2d 945, 956 (10th Cir.1980).

[34] Rosenberg, Joseph I., and Rick R. Gaskins. (2012). "Damage Awards Using Intermediate Term Government Bond Funds vs. U.S. Treasuries Ladder: Tradeoffs in Theory and Practice." *Journal of Forensic Economics,* 23 (1): 1-31.

[35] Chairman of the Council of Economic Advisers (2019), Congressional Budget Office (2019), Social Security Trustees Report (2019).

[36] *MacDissi v. Valmont Indus., Inc.,* 856 F.2d 1054, 1061 (8th Cir.1988).

[37] 28 U.S.C. §1961; *Roswick v. Mid Dakota Clinic, P.C.,* WL 5964553, at *11.

[38] 26 U.S.C. § 104(a)(2).

[39] *United States v. Burke,* 504 U.S. 229, 112 S.Ct. 1867, 119 L.Ed.2d 34 (1992).

[40] *Eshelman v. Agere Systems, Inc.,* 554 F.3d 426, 441 (3rd Cir.2009).

[41] *Hukkanen v. International Union of Operating Eng'rs, Hoisting & Portable Local No. 101,* 3 F.3d at 287.

[42] *Id.*

[43] *Eshelman v. Agere Systems, Inc.,* 554 F.3d at 441.

[44] *Kolb v. Goldring, Inc.,* 694 F.2d at 873.

[45] *Hukkanen v. International Union of Operating Eng'rs, Hoisting & Portable Local No. 101,* 3 F.3d at 287.

THE WILD WEST OF DATA BREACH NOTIFICATIONS

With 50 laws in 50 states (and new legislation moving in Iowa), it pays to understand your obligations before a crisis strikes.

By Trevor Meers

Nobody knows exactly how bad it is yet—but it's bad. The IT staff just notified your leadership team that, somehow, hackers got into your system, potentially giving them control of both your customers' sensitive personal data and your business' reputation. In a conference-room-turned-situation room, the assembled managers stare across the table, waiting for wise recommendations. In that moment, no one's going to lead with, "Let's tell everyone what just happened!"

But if there ever was a time to publicly own a failure, you're probably there. While it's tempting to bury a data breach deeper than a political scandal, that plan has two major problems:

1. Any good public relations consultant will tell you that the best way to manage bad news is to get out ahead of it and drive the narrative.
2. Concealing the breach is probably illegal.

50 STATES, 50 LAWS

Knowing your exact legal obligations after a breach, however, won't be easy. All 50 states have their own requirements for notifications after hackers access sensitive information such as social security numbers, drivers license numbers, bank account information and more. To further complicate things, few breaches occur within the clear confines of a single state's jurisdiction.

"What's commonly misunderstood about breach notification?

Almost everything. It's still the Wild West," says Matthew McKinney, an attorney with BrownWinick in Des Moines. "There's no universal standard. The biggest thing is the uncertainty and the lack of uniformity."

In any given year, a dozen or so state legislatures are working on new breach notification laws built on national models. During Iowa's current legislative session, for example, the Federation of Iowa Insurers, the Iowa Insurance Division and many private partners have collaborated on a pre-filed bill. Known as the Insurance Data Security Act, it would require cybersecurity programs and breach notifications specifically for the insurance industry. (To read the proposed act, visit https://www.legis.iowa.gov/legislation/billTracking/prefiledBills and look for the bill pre-filed on 02/02/2021.)

Until laws nationwide truly begin to coalesce around shared standards, answers to breach notification questions almost always start with, "Well, it depends…" But the following guidelines address some common questions.

WHAT ARE THE ROOTS OF ALL THESE NOTIFICATION LAWS?

California enacted the United States' first security breach notification law in 2002 (effective July 1, 2003) to help end users mitigate the damage when their personal information falls into the wrong hands. All 50 states have since followed with their own laws, although California remains a leader in this space. The recently passed California Consumer Privacy Act (CCPA) and California Privacy Rights Acts (CPRA) continue to affect businesses serving customers nationwide and provide a model for upcoming legislation.

WHICH INDUSTRIES ARE SUBJECT TO BREACH NOTIFICATION REQUIREMENTS?

As with most data privacy laws, the healthcare and financial industries face the heaviest breach notification rules since they manage the most sensitive personal data. HIPAA, for example, established some of the earliest requirements for letting consumers know when their data has been compromised. But at this point, nearly every business has notification-related legal responsibilities.

WHAT ARE MY FIRST STEPS REGARDING NOTIFICATION AFTER A BREACH?

Ideally, you have a solid incident response plan in place, so no one has to figure out next steps under the pressure of a crisis. As part of that plan, make sure you're building a relationship in advance with a digital forensics team and qualified attorneys.

As we'll discuss below, the forensics team can help clarify your notification requirements by clearly determining exactly which data was actually affected and how. BrownWinick's McKinney says it's also important to have legal counsel available because some breach notification requirements have windows as short as 72 hours.

WHAT EVENTS TRIGGER A NOTIFICATION REQUIREMENT?

Things get fuzzy at this point. One key point is that even relatively small breaches typically require notifications. So, don't assume you're off the hook by thinking, "We're not Facebook, and we don't store thousands of credit card numbers, so our little breach can fly under the radar." The key factor, McKinney says, is whether the breached data is protected or unprotected.

That's where your digital forensics partner comes in. McKinney says the difference between accessible and accessed information can determine whether a notification is required in some states. Bad actors may not even realize the treasure trove they've found, so they may leave data unmolested like a burglar walking by classified information laying on someone's desk. A digital forensics team can track the hackers' steps and help a company determine exactly what was compromised.

That information will clarify your notification requirements based largely on two factors: Was the compromised data encrypted, and did it constitute personally identifiable information (PII)?

"Every state is so different, but a generalized theme is that if it's encrypted, then you have some pretty good protections against having to do a notification," McKinney says.

Your response will also depend on whether hackers could link up two pieces of PII using what they stole. "Laws aren't going to protect your type of car or color of car," McKinney says. "But we're looking for whether they can marry up two concepts, such as your name and date of birth. If you have that situation and it's unencrypted, you're going to have to do a breach notification."

WHAT LAWS APPLY TO MY SITUATION?

"We do a lot of 'conflict of laws' analysis" to untangle all the relevant jurisdictions, McKinney says. Key questions an attorney will guide a company through include:

- Where is the data located?
- Where are the affected customers located?
- Who has access to the data?
- Who owns the data?

It's easy to see the thicket of statues in play in a situation like this one: An Iowa-based company has offices in five other states, customers in 30 states and data stored on servers in Nevada. When a breach occurs, which state's notification laws are in effect?

Specific chains of custody and contract details also affect which law is relevant. "If I give a hard drive to someone in another state, do they own it?" McKinney asks. "Then their state law may apply. But if they just possess the hard drive, then my state law may still apply. So, your master services agreement in regard to who owns the data could very well play into which state law applies."

WHAT CONSTITUTES A NOTIFICATION?

By now, you know the answer depends on the applicable state laws. But in general, you can meet notification requirements by sending an e-mail to affected customers. Depending on whether you have that contact information on file and depending on your jurisdiction, you may also have to put a notice in a local newspaper or mail printed notices.

One best practice McKinney recommends is to let any pertinent regulatory agencies know about a breach right away. "You don't want your state insurance regulator to learn through the newspaper that you had a breach," he says.

WHAT HAPPENS IF I FAIL TO PROVIDE THE REQUIRED NOTIFICATION?

Failing to notify users could trigger several outcomes:

- Civil penalties – State authorities could level significant fines for failure to follow requirements.
- Federal penalties – The Federal Trade Commission may take action against companies it concludes have made false or misleading statements related to security and privacy or those who violated trade practices.
- Private lawsuits – If customers have their identity stolen because a company failed to protect their personal data, they could seek damages based on the claim that they would have changed their usernames and passwords, canceled credit cards, etc., if the company had notified them of the breach.

Clearly, effective responses to data breaches begin months before the breach occurs in the form of solid security policies and a team qualified to handle security and legal issues. While specific legal obligations after a breach will probably be complex for some time, acting proactively will help protect an organization's data, clients and bottom line.

Trevor Meers leads Pratum's content development and partner relationships and has covered technology as a journalist for more than 20 years. Pratum (pratum.com) is an information security services firm based in Ankeny. The company helps small-to-midsize businesses nationwide solve information security challenges based on risk, not fear. Pratum does not sell hardware or software, keepings its focus on objective security consulting services.

LEGISLATING CIVIL LIABILITY OF AUTOMATED VEHICLES

By Scott M. Wadding and Delaney Schwarte

What seemed to be a far-off idea of an automated future is much closer than some may think. The exponential growth in technology has been fast and steady and likely will not be slowing. One of the most significant changes to our society in the transportation context is on the horizon: self-driving cars.

With the latest technological advances, autonomous vehicles (AVs) are more than just a hypothetical vision of the future, and the legal system needs to be prepared. Not surprisingly, then, a debate has emerged among practitioners and commentators asking what legislation is needed to balance progress in the development of AV technology and compensation for those injured by AVs on the roadways. The answer is simpler than some may think.

First, some background. The National Highway Traffic Safety Administration (NHTSA) provides guidance, resources and information on all things AV. Notably, the NHTSA created a six-level classification system for AVs that breaks down AV technology, capabilities and interactivity:

Level 0: No Automation – "Zero autonomy; the driver performs all driving tasks."

Level 1 (hands on): Driver Assistance – "Vehicle is controlled by the driver, but some driving assist features may be included in the vehicle design."

Level 2 (hands off): Partial Automation – "Vehicle has combined automated functions, like acceleration and steering, but the driver must remain engaged with the driving task and monitor the environment at all times."

Level 3 (eyes off): Conditional Automation – "Driver is a necessity but is not required to monitor the environment. The driver must be ready to always take control of the vehicle with notice."

Level 4 (mind off): High Automation – "The vehicle is capable of performing all driving functions under *certain* conditions. The driver may have the option to control the vehicle."

Level 5 (steering wheel optional): Full Automation – "The vehicle is capable of performing all driving functions under *all* conditions. The driver may have the option to control the vehicle."[1]

Currently, only Levels 0, 1, and 2 are on the market to consumers. The well-known Tesla autopilot feature is a Level 2 because the driver is required to be attentive at all times. However, the first Level 3 available to consumers is set to be released in Japan by Honda before the end of March 2021.[2] This vehicle, the Honda Legend, can operate without human control and does not require the driver to stay alert and monitor the road, but it does require the driver to be available to take control at any time if the vehicle is unable to perform on its own. Many other manufacturers, including Mercedes-Benz and Cadillac, have the technology for Level 3s and are waiting on government approval to operate on public roadways.[3]

Though not available to the average consumer, Level 4 and 5 technology exists: Google's Waymo, the most well-known "self-driving car," and Uber's AV ride-hailing service being tested in Arizona. Much of Waymo's and Uber's fleets are operated without human drivers, which is prohibited in some states.

As the above illustrates, AVs are just getting started. AV legislation addressing civil liability must therefore navigate between a silicon Scylla and regulatory Charybdis. If the legislation is too rigid, it may be obsolete by the time it becomes law. If too amorphous, AV manufacturers, retailers and prospective owners lack the guidance needed to foster the technology's growth and development.

To understand what the law should be, it's helpful to understand where we've been. When the means of transportation evolved from ox carts to horse-drawn carriages and from horse-drawn carriages to automobiles, common law courts were called upon to wrestle with civil liability issues that, for their time, involved rapidly evolving technologies.

Treatises and restatements emerged to aid courts, commentators and practitioners in their efforts to chart a common law course that kept up with the technology of the day. Our experience teaches that the elegance of common law is its ability to develop as technology evolves and matures.

In line with this tradition, AV legislation addressing civil liability should allow courts to apply common law principles, at least until AV technology matures and the regulatory landscape stabilizes. Tennessee's experience offers guidance. In 2017, Tennessee passed the following AV civil liability legislation:

> (a) Liability for accidents involving an ADS-operated vehicle shall be determined in accordance with product liability law, common law, or other applicable federal or state law. Nothing in this chapter shall be construed to affect, alter, or amend any right, obligation, or liability under applicable product liability law, common law, federal law, or state law.
> (b) When the ADS is fully engaged, operated reasonably and in compliance with manufacturer instructions and warnings, the ADS shall be considered the driver or operator of the motor vehicle for purposes of determining:
> (1) Liability of the vehicle owner or lessee for alleged personal injury, death, or property damage in an incident involving the ADS-operated vehicle; and
> (2) Liability for nonconformance to applicable traffic or motor vehicle laws.[4]

The Tennessee statute at once codifies common law principles and provides guidance to manufacturers and owners. The statute also allows legislative and administrative rules to continue to set forth the regulatory framework for the use of AVs on the roadways. And if the legislature disagrees with a decision of the courts, it may reject the decision by enacting legislation. Thus, by codifying common law principles, legislation similar to the Tennessee statute leverages the strengths of common law while maintaining the symbiotic relationship between the three branches of government.

In *The Common Law,* Oliver Wendell Holmes, Jr. said, "The life of the law has not been logic: it has been experience." For centuries, experience has guided common law courts to define, determine and develop the rules of civil liability. The common law met the challenge as we transitioned from an agrarian to the industrial society. Now, as technology propels us from our industrial moorings, the common law should continue to play its enduring role in defining the contours of civil liability throughout the digital revolution. In the context of AV technology, issues of civil liability should therefore not be determined through crude, one-size-fits-all legislation; instead, at least until AV technology matures, civil liability should be determined based on common law principles that take into account the unique circumstances of each case and the rapidly evolving technological and regulatory landscape.

[1] *Automated Vehicles for Safety,* NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., www.nhtsa.gov/technology-innovation/automated-vehicles-safety (last visited Jan. 27, 2021) (emphasis added).

[2] Reuters Staff, *Honda Says Will Be First to Mass Produce Level 3 Autonomous Cars,* REUTERS (Nov. 11, 2020), www.reuters.com/article/honda-autonomous-level3/update-1-honda-says-will-be-first-to-mass-produce-level-3-autonomous-cars-idINL1NZHX0BU.

[3] Erik Johnson, *The 2021 Mercedes-Benz S-Class Is Ready for Our Autonomous Future,* MOTORTREND (Sept. 2, 2020), www.motortrend.com/news/2021-mercedes-s-class-level-3-level-4-drive-pilot-automated-autonomous-driving/.

[4] Tenn. Code § 55-30-106.

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During the Covid-19 pandemic, Jeff and Mark are hosting ZOOM mediation teleconferences to keep all participants safe.

IOWA STATE BAR ASSOCIATION— 2021 Affirmative Legislative Program *(Updated 2/23/21)*

BILL NO.	SUBJECT	DESCRIPTION	STATUS
HF 711/ SF 244	**Probate & Trust Law** Calculation of Probate Court Costs	Iowa Code §633.31 is currently being applied inconsistently throughout the state. There are now several district court cases declaring the clerks in at least six counties to be calculating court fees inappropriately. The bill addresses how the clerks of probate court determines and collects charges in connection with services provided in probate matters. Excludes from the determination of court fees property over which the court lacks probate jurisdiction and for which the clerk renders no services.	**House:** Passed House Ways & Means Committee, eligible for floor debate **Senate:** Ways & Means Subcommittee recommended passage 2/17/21
HSB 27/ SSB 1007	**Probate & Trust Law** Guardianship & Conservatorship Update	Proposed changes to HF 610 to "fix" technical errors and substantive issues with the legislation that passed during the 2019 Legislative Session. This bill only addresses requested changes in Iowa Code 633.	**House:** Subcommittee assigned **Senate:** Subcommittee assigned
HSB 14/ SSB 1035	**Probate & Trust Law** **Family Law** Guardianship & Conservatorship Update	Proposed changes to HF 591 to "fix" technical errors and substantive issues with the legislation that passed during the 2019 Legislative Session. This bill only relates to amendments to Iowa Code 232D, or the Iowa Minor Guardianship Act. Specially, this bill makes clarifications to the role of "court visitor," background checks, court confidentiality, and when and how the Court should be notified with regard to minor conservatorships.	**House:** Subcommittee recommended passage 1/13/21 **Senate:** Subcommittee assigned
SF 173	**Probate & Trust Law** Certification of Trusts	Amends Iowa Code section 633A.4604 (Certification of Trusts) to require these certifications to include names of all currently acting trustees, state how many trustees must agree if there is more than one trustee, and allow signers to certify these documents (no longer will signature notarization be required). Amends Iowa Code section 633A.4703 (general order of abatement) to make trust code provisions for abating shares of surviving spouses who don't take elective shares of the trust be the same as the probate code provisions for abating shares of surviving spouses who don't take elective shares under the decedent's will.	**House:** Unanimously passed the House Floor, 93-0 on 2/16/21 **Senate:** Unanimously passed Senate Floor, 46-0 on 2/3/21 Awaiting Governor's signature
SF 239	**Probate & Trust Law** Liability of Decedent's Estate	Amends Iowa Code Section 611.22 to limit the parties who can represent a decedent's interest in litigation following a decedent's death to parties who can and must treat the results of litigation as any other asset or liability of the decedent's estate. Legislation would ensure that a decedent's liability pursuant to litigation isn't given a higher priority for payment than any other claim under §633.425 of the Probate Code, and that any additional assets to which a decedent becomes entitled after death as a result of litigation aren't exempt from taxes or other obligations to which estate assets are subject. As proposed, only a personal representative of a decedent's estate as defined in Section 633.3 or a "successor" as defined in Section 633.356 (the affidavit procedure for settling estates with probate assets worth $50,000 or less) because only these parties are obligated to pay the decedent's financial obligations (taxes, debts, Medicaid claims etc.).	**House:** Unanimously passed House 94-0 on 2/16/21 **Senate:** Unanimously passed Senate 48-0 on 2/9/21 Awaiting Governor's signature
SF 240	**Probate & Trust Law** Uniform Custodial Trust Act	Creates a new chapter in Iowa Code called "Uniform Custodial Trust Act." This legislation would provide a tool to facilitate small gifts to adults akin to the Uniform Transfers to Minors Act (Chapter 565B). Additionally, this act would be used for litigation proceeds, gifts or bequests to vulnerable adults who may not be qualified to manage the new assets, but where a conservatorship isn't a suitable vehicle. Finally, this proposal will facilitate the management of property for adults and will facilitate estate planning for testators and trust settlors.	**House:** Unanimously passed House 94-0 on 2/10/21 **Senate:** Unanimously passed Senate 48-0 on 2/9/21 Awaiting Governor's signature
HF 587/ SF 235	**Probate & Trust Law** Contested Claims in Probate	This proposal amends and updates the Iowa Probate Code that governs contested claims in Probate Proceedings, Iowa Code § 633.68-633.449. More specifically, this legislative proposal updates the required procedures in these proceedings to coordinate with the EDMS electronic court-filing system. Increases the value of contested claims that can be litigated under these statutes from $300 to the small claims statutory values passed by the legislature in 2019 ($6,500). Finally, this legislative proposal streamlines the notice requirements in these proceedings by removing outdated provisions regarding the use of USPS.	**House:** Eligible for floor debate **Senate:** Unanimously passed Senate 48-0 on 2/9/21

BILL NO.	SUBJECT	DESCRIPTION	STATUS
HF 561/ SF 341	**Construction Law** Mechanic's Lien Proceedings	This proposal amends Iowa Code § 572.8 to allow a mechanic's lien involving real property covering multiple counties to be posted once on the centralized, digital MNLR system and indexed on all applicable counties. In addition, this legislative proposal amends Iowa Code § 572.32 to provide statutory certainty on the recovery of attorney fees by prevailing claimants in mechanic's lien actions where the lien is discharged by a bond.	**House:** Unanimously passed House 93-0 on 2/23/21 **Senate:** Eligible for floor debate
HSB 681/ SF 266	**Business Law** Uniform Model Corporations Act	Along with 33 other states and the District of Columbia, Iowa has generally followed the Model Business Corporation Act in enacting the law governing business corporations. It is substantively sound and well drafted, and it offers benefits to Iowa courts, practitioners, and businesses on account of its widespread adoption, court interpretations (although non-binding), and useful Official Comments. In December 2016 the ABA Corporate Laws Committee published a 4th Edition of the MBCA. The 4th Edition amends the MBCA in various substantive ways. It also represents in part a restatement of the MBCA to include amendments approved since publication of the 3rd Edition; and in recognition of continuing developments in the law, the 4th Edition integrates the MBCA with the law governing unincorporated business associations such as LLCS. Finally, some changes were made simply to improve clarity.	**House:** Ways & Means Subcommittee scheduled for 3/2/21 **Senate:** Ways & Means Subcommittee recommended passage

In addition to the above legislative proposals, The Iowa State Bar Association supports the following positions as part of its 2021 Affirmative Legislative Program:

- Full funding of indigent defense and adoption of legislation providing for $5 per hour increase with an automatic cost of living increase in indigent defense fees.
- Full funding of the Judicial Branch.
- Full funding for Legal Services.
- Full funding of the IA Secretary of State's Office as requested by IA Secretary of State Paul Pate.
- Full funding for the Office of Substitute Decision Maker through the Aging and Disability Resource Center to protect the interests of Iowans who have no one else to manage their financial and health care needs.
- Support for child abuse prevention and treatment efforts and funding for child abuse prevention and treatment.
- Opposition to the legalization of title insurance.
- Opposition to absolute immunity legislation.
- Opposition to arbitrary caps on the recovery of damages in medical malpractice cases.

The Iowa State Bar Association

JUVENILE & CRIMINAL LAW SEMINARS

APRIL 15 & 16

JUVENILE LAW SEMINAR

April 15 | 8:30 a.m. - 5:00 p.m. | Live Webinar

Sponsored by the ISBA Family and Juvenile Law Section

iowabar.org/juvenilelaw

- Parents, Medication and Therapy: Who Should Drive the Bus?
- Family First: Lessons Learned
- No Contact Orders: How to Navigate Conflicting Restrictive Orders

CLE Credit: 7.5 state hours which includes 7.5 juvenile and 1 attorney wellness hour

CRIMINAL LAW SEMINAR

April 16 | 8:30 a.m. - 4:30 p.m. | Live Webinar

Sponsored by the ISBA Criminal Law Section

iowabar.org/criminallaw

- Implicit Bias and the Ethical Issues Involved
- COVID-19 and its Effect Upon Criminal Cases and Procedures
- Criminal Case Law Update

CLE Credit: 7 state hours; 1 diversity and inclusion hour

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Is racial sentencing disparity fueled by race or Afrocentric facial feature bias?

By Mark W. Bennett, retired U.S. District Judge and the first Director of the Drake University Law School's Institute for Justice Reform & Innovation*

Conventional wisdom is that Black-White racial disparity in America's criminal justice system is based on race. That seems obvious, doesn't it? However, as British author and creator of Sherlock Holmes, Arthur Conan Doyle, penned: "There is nothing more deceptive than an obvious fact."

Emerging empirical social science casts serious doubt on the accuracy of what has appeared so obvious to so many for so long: that racial disparity in sentencing is based on race. Emerging social science research suggests that Afrocentric facial-feature bias leads to more disparity in the criminal justice system than simply race. Shockingly, that may be true for whites with high Afrocentric facial features (a very small percentage of whites), too. Afrocentric facial features is not a specific scientific term but generally refers to a combination of features like dark skin, curly hair, wide nose, and full lips (the scientific term is racial phenotypicality).

Social psychologists have clearly established that faces of black males instantly trigger thoughts of crime, violence and dangerousness and that thoughts of crime trigger thinking and images of black males. This presumption of dangerousness increases with greater Afrocentric facial features.

My recent article, co-authored by Professor Victoria Plaut from Berkeley: Looking Criminal and the Presumption of Dangerousness: Afrocentric Facial Features, Skin Tone and Criminal Justice, 51 U.C. DAVIS L. REV. 745 (2018), explains this and how social scientist rank a person's Afrocentricity by nine facial features. The four most important for characterizing "African" faces in descending order are skin tone, hair, mouth and lips, and nose.

President Obama understood this, when in 2016 at a town hall meeting in the nation's capital, he stated: "I do think that in that sense, what is true for me, is true for a lot of African-American men, is there's a greater presumption of dangerousness that arises from the social and cultural perceptions that have been fed to folks for a long time." As identified in our article, this presumption can be traced back to slavery where low Afrocentric facial-feature male and female slaves were given better jobs in the slave owner's homes and those with greater Afrocentric facial features were given the harsher tasks in the fields.

Stereotypes of blacks as criminal, violent and dangerous are deeply rooted in American history from slavery forward and intractably entrenched in our nation's psyche. Outside the criminal justice system, darker-skinned blacks earn less money, achieve fewer years of education, work in lower-status jobs, live in more racially segregated neighborhoods, suffer more depression and lose more political elections than their light-skinned counterparts. In short, both sociological and anthropological studies since the 1940s corroborate historical and modern accounts that society confers greater benefits on lighter-skinned blacks than darker-skinned ones.

Turning to criminal justice, over half a dozen emerging social science empirical studies indicate that Afrocentric facial-feature bias, rather than race, leads to greater decisions by judges to incarcerate rather than give probation. Among incarcerated inmates, Afrocentric facial-feature bias leads to longer sentences. In other words, using sophisticated multiple regression analysis to rule out other sentencing causation factors, the strength of Afrocentric facial features is the factor that increases the length of sentences. In two of the studies the researchers found the small percentage of whites that have strong Afrocentric facial feature also receive longer sentences.

In one of the first studies in 2006, Professor Jennifer L. Eberhardt, an internationally recognized scholar on psychological associations between race and crime found that Black defendants with greater Afrocentric facial features where the victims were White, were almost twice as likely to receive the death penalty than Blacks with low Afrocentric facial features. Interestingly, when the victim was Black there was no Afrocentric facial feature effect.

After I posted a blog post summarizing a draft of my first article on Afrocentric facial-feature bias titled "The Implicit Racial Bias in Sentencing: The Next Frontier" in the Yale Law Journal Forum, a federal district judge who I often sparred with about implicit bias in the criminal justice system posted: "I confess that I have known this – the Afrocentric feature effect – in my heart for a long time. It is very difficult for me to overcome – it is almost like it is hard-wired." He is correct in noting that this bias is hard-wired for many. Dr. Mahzarin Banaji, a Harvard psychology professor, one of the three inventors of the Implicit Association Test and a leading world-wide scholar on implicit social cognition, has written that implicit bias is the "thumbprint of culture on our brain."

Precisely because social science empirical research on Afrocentric facial-feature bias is emerging, much more research needs to be done to explore its effect on suspicion, arrest, bail, plea-bargaining, trial and sentencing. It is then imperative to develop empirically tested debiasing techniques, and that will be no easy task.

*The Drake University Law School's Institute for Justice Reform & Innovation (IJRI) is dedicated to enhancing and modernizing both civil and criminal justice to better serve and meet the needs of 21st century justice in America. Through scholarship, empirical research, education, training and policy advocacy, the IJRI works to enhance efficiency, fairness, accountability and trust in justice systems.

The IJRI serves as a center for research and training on topics including implicit bias, sentencing reform and improving trial procedures.

HOMECOURT ADVANTAGE: ON COURTROOM PREP, BETTERING COMMUNITIES AND BEING GOOD LEGAL NEIGHBORS

By Brandon Findlay

Chris Johnston was never going to be surprised by the volume nor variety of questions he knew he would face. Building a courtroom inside a new law office offers plenty of opportunities for plenty of people to ask about reasons. What was most surprising was that he ended up with plenty of reasonable answers. The best of Johnston's reasons came to reside in Windsor Heights, where his Law Group of Iowa (LGI) is working to become a community resource, one which may recalibrate what *advocacy* can mean in this era of reinvention.

2021 marks Johnston's 20th year practicing law, and his fifth as a member of Iowa's Bar. Partnered with long-time colleague Chris Martineau in a busy plaintiff personal injury firm in Roseville, Minnesota, and deeply involved in the day-to-day lives of his large family, the once-native Iowan had plenty of good reasons to *not* return to central Iowa. Yet, one bit of logic proved inescapable – he knew attorneys only truly get good in the courtroom by *being* in a courtroom.

"I am always looking for interesting fact patterns, and I kept seeing that the need for trial experience was not being met by the reality of current legal practice," said Johnston, a Certified Civil Trial Specialist by the Minnesota Bar Association. "It's harder to get cases to verdict, and if a case makes it that far, there's a decent chance the attorneys are less prepared than they could have been, because they aren't always able to secure the hours in the right setting to get ready."

Johnston was easily motivated from personal experience, having encountered difficulty in consistently sourcing accurate environments to conduct witness preparation and trial simulation. Further inspiration also had a direct central Iowa connection, in the form of attorney David Hirsch and his scholarship on the legal career of President Abraham Lincoln:

"I want you to open the case, and when you are doing it talk to the jury as though your client's fate depends on every word you utter."
– Attorney James Haines, recounting trial encouragement from co-counsel Abraham Lincoln.[1]

It was in considering the greater social possibilities that Johnston realized more reasons – perhaps better reasons – for undertaking this significant endeavor. "We moved pretty quickly from, 'This would be amazing!,' and knowing that we would become better attorneys for having this kind of resource towards bigger ideas about a wider range of people."

A key part of the "we" Johnston speaks of frequently is Des Moines attorney Thomas Tully, who joined the firm in October 2019: "I was drawn in by Chris' energy, but it was his creative spirit that convinced me to become a part of this law firm and its long-term vision."

That Tully was enticed by Johnston's unorthodoxy was in large part because it mirrored many of his own ambitions. That their relationship began so in-tune confirmed for Johnston what his circle of legal contacts had told him for years, a mission Tully clearly articulated – "Build a collection of professionals who are looking at new approaches to this old profession."

Said mission began in Indianola, where Johnston acquired the remnants of the retired Warren County Courthouse. Johnston kept thinking bigger and installed a redesigned three-judge-wide bench to allow for appellate-type simulations, while the original juror chairs serve as subtle reminders of the project's genesis. Across from the jury seats are two multi-functional deliberation rooms, which double as needed for depositions and mediations.

The centralized convenience of the Des Moines Metro is already paying dividends as well. Johnston anticipates that a current TCPA (Telephone Consumer Protection Act) class action, which includes attorneys

Senior Partner Christopher Johnston and Managing Attorney Thomas Tully began collaborating in October 2019 to bring Law Group of Iowa to life. The year-long custom build fulfilled a long-held dream for Johnston. (Not pictured: Senior Partner Christopher Martineau)

Tully and Johnston appreciate the balance of utility and novelty the in-house courtroom provides. They have hosted mediations and mock trial teams, while exploring the creative possibilities the space encourages.

from across the country, may be the first internal matter to make full use of the Iowa office. And as excited as Johnston is for the in-house opportunities, his truest joy comes when he talks about cultivating relationships with the larger community.

"I have always seen this as two-pronged. It's great for any kind of lawyer, which means it's great for all kinds of clients, but it's amazing in another way. When we host a defense team one week, and a plaintiff team the next, the community as a whole gets improved legal advocacy across the board. And that is very meaningful for me." Tully encourages this as a kind of *peer advocacy* as well: "When other attorneys run test trials here, they address their case's complexity and perfect their exhibits, witnesses and game plans. It's a small expense compared to losing."

While CLEs and learning opportunities will bring additional diversity of use to the space, one deeper implication of this goal is multi-generational. As mock trial teams continue to need practical locations, LGI has provided solutions at no cost to the students or school districts, to help nurture the next cohort of trial attorneys, a practice the attorneys plan to continue long after COVID-19 concerns are resolved.

Already into the next development phase, Johnston and Tully are filling the remaining offices with professionals who offer a complementary range of client services. "Part of why we built at this scale was to offer access to resources that enhance what we do. When that's 20 feet outside my door, yes it helps our clients, but it's another way we stay focused on community needs."

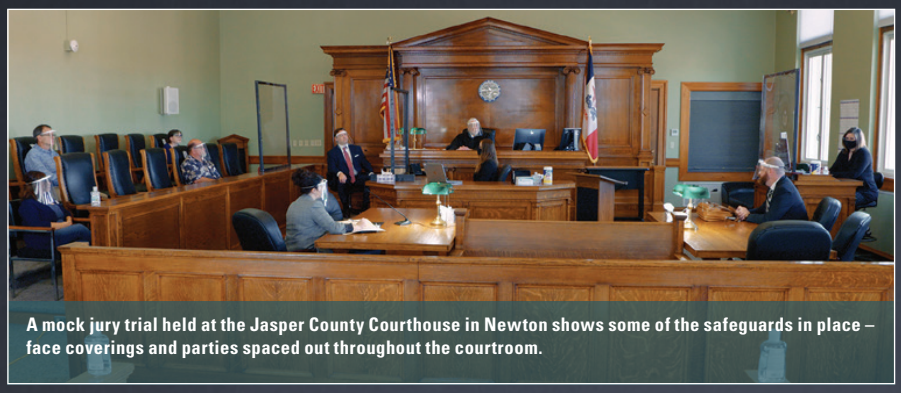
When Johnston talks about the community, he doesn't just mean lawyers and related personnel – he truly means everyone. *To Kill a Mockingbird* comes to mind: "A court is only as sound as its jury, and a jury is only as sound as the men who make it up."[2] And while developing the greater jury pool is not necessarily feasible, perhaps this is Johnston's most personal reason for building all that became LGI: "If every person is a potential client and a potential juror, then respect them as such, and you can't really lose."

[1] David Hirsch and Dan Van Haften, *Abraham Lincoln and the Structure of Reason* (El Dorado Hills, CA: Savas Beatie, 2010), 237.

[2] Harper Lee, *To Kill a Mockingbird* (New York: Warner Books, reprint 1982), 205.

Since 2002, **Brandon Findlay** has created professional content for an eclectic and fulfilling range of publications and clients, from Guitar World and Relix, to LNG Industry. He and his wife Tina are well-established artists, and he has travelled the country as both musician and writer. He can be reached at: **bfindlay@jmlegal.com.**

NEW PSA CAMPAIGN INFORMS ON SAFE JURY SERVICE PROCEDURES



A mock jury trial held at the Jasper County Courthouse in Newton shows some of the safeguards in place – face coverings and parties spaced out throughout the courtroom.

The Iowa Judicial Branch, in partnership with The Iowa State Bar Association, recently released a public service announcement (PSA) campaign informing Iowans called for jury service about the safety measures provided to ensure the health and safety of jurors during the COVID-19 pandemic.

Entitled "Serving Safely," the PSA includes two videos narrated by retired Des Moines news anchor Kevin Cooney. A 60-second PSA will be used on social media to direct people to the Iowa Judicial Branch "Serving Safely" web page, which has extensive juror information, and a longer video that explains the safeguards in place in courthouses statewide. Both videos can be viewed on the Iowa Judicial Branch YouTube channel.

The Iowa Supreme Court postponed jury trials in March 2020 to protect public health and safety due to the COVID-19 public health emergency. Jury trials resumed for a short time in the fall but were paused again after a high rate of COVID-19 positive tests in Iowa were reported in November. Jury trials resumed again on Feb. 1.

"Our Iowa State Bar Association (ISBA) member attorneys care deeply about Iowans' access to justice, so it is essential that jury trials restart in a careful and safe manner so litigants can have their day in court," said ISBA President Jerry Schnurr, a member of the Jumpstart Jury Trials Task Force, the group formed to gather the information needed to provide a safe workplace for the public, jurors and staff. "We applaud the tremendous efforts of Iowa counties and the Iowa Judicial Branch to help make courthouses safer places for the public and all of us involved in the judicial system during this pandemic."

The PSAs were funded by an Iowa CARES Act grant.

DISCIPLINARY OPINIONS

CASE NO. 20-1004: IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD V. STEPHEN WARREN NEWPORT

Filed Feb 19, 2021

Summary adapted from the opinion issued by Justice Mansfield

Attorney Stephen Newport, 69 years old, has been practicing in the Quad Cities since 1978. At the times relevant to the case, he maintained a law office in Bettendorf.

Newport was charged with violating Iowa Rule of Professional Conduct 32:8.4(g) for sexually harassing two clients. He was also charged with committing indecent exposure and sexual assault against one of those clients in violation of rule 32:8.4(b).

Iowa Rule of Professional Conduct 32:8.4(g) makes it professional misconduct for an attorney to "engage in sexual harassment or other unlawful discrimination in the practice of law." Iowa Rule of Professional Conduct 32:8.4(b) makes it an ethical violation when an attorney "commit[s] a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects."

A criminal trial occurred, in which a jury acquitted the attorney of both of those offenses; nonetheless, the Iowa Supreme Court Grievance Commission found three-to-two that the attorney had committed both crimes. All five of the commission members found the attorney had engaged in sexual harassment. After a careful review of the evidence on de novo review, the Iowa Supreme Court found the sexual harassment proved but the criminal conduct not proved by a convincing preponderance of the evidence. In other words, as to the violations, the court agreed with the two commission members in dissent rather than the three in the majority. For the sanction, the court **suspended the attorney's license indefinitely with no possibility of reinstatement for one year** based upon the acts of sexual harassment. Should Newport desire to resume practicing law, he must file a written application for reinstatement of his license.

TRANSITIONS

Jessica Susie has been named a shareholder of Brick Gentry, P.C, in West Des Moines. She is a member of the firm's patent and intellectual property law division and focuses her practice in the areas of intellectual property and technology law. Susie is licensed to practice in the state of Iowa, as well as the United States Patent and Trademark Office.

Brad Hansen has been appointed to a four-year term as the Federal Public Defender for the Districts of Northern and Southern Iowa. In a press release on Feb. 9, Honorable Lavenski R. Smith, chief judge, United States Court of Appeals for the Eighth Circuit, announced the appointment. The Federal Public Defender Office is located in Des Moines and provides legal representation to persons charged with federal criminal offenses.

Alexandra C. Galbraith has joined Lederer Weston Craig in Cedar Rapids as an associate. She earned her J.D. from the University of Iowa College of Law in 2016. Before joining the firm, Galbraith served as a law clerk to Justice Thomas D. Waterman of the Iowa Supreme Court, Judge Sharon Soorholtz Greer of the Iowa Court of Appeals, as well as the Seventh Judicial District Court of Iowa. Galbraith practices civil litigation, with a focus on commercial litigation, tort defense and insurance defense. She is licensed to practice law in Iowa and Illinois.

James G. Rowe has joined Ellis Law, P.C., in Des Moines. He graduated from Regent University School of Law in Virginia Beach in 2005. Rowe's practice focuses on family law, criminal law, real estate, estate planning and civil litigation. He is also a mediator.

Kecia C. Van't Hof has joined the Gehling Osborn Law Firm in Sioux City as an associate attorney. She focuses on family law, estate planning and adoption. She received her J.D. from Creighton University School of Law.

Erica Yoder has joined Day Rettig Martin, PC in Cedar Rapids. She received her J.D. from the University of Iowa College of Law. Yoder's practice focuses on business formation and transactions, regulatory compliance, debt/creditor matters, bankruptcy and estate planning.

Eddie Fishman and **Kylie Franklin** have been named shareholders at Hopkins & Huebner, P.C. in Des Moines.

Fishman has been practicing law in Iowa since 2013. He maintains a general practice in Adel, working in criminal defense, civil litigation, family law and probate.

Franklin has been practicing law in Iowa since 2014. She practices primarily in personal and work-related injuries in Iowa and Illinois.

John Fatino, S. Luke Craven and **B. MacPaul Stanfield** have been named as the 2021 Executive Committee at Whitfield & Eddy P.L.C. in Des Moines.

Fatino will chair the committee and has been with the firm since 1999. He serves as a business advisor for midsize and small businesses which are not publicly traded in matters such as contract negotiation, employment and real estate.

Craven began his career with the firm in 2008 as a clerk. He serves clients in the manufacturing, construction, industrial design, sales, finance and insurance industries.

Stanfield has been with the firm since 2002. He has represented commercial real estate lenders and business clients since he arrived at Whitfield & Eddy.

Erika L. Bauer and **Christopher J. Jessen** have been promoted to shareholders at Belin McCormick, P.C. in Des Moines.

Bauer's practice focuses primarily in the areas of litigation (complex civil litigation, professional negligence & licensure, appeals) and labor and employment law. She received her J.D., with Highest Honors, from Drake University in 2016 (Order of the Coif).

Jessen's practice focuses primarily in the areas of litigation (complex civil litigation, administrative law, appeals) and labor and employment law. Jessen received his J.D., with Highest Honors, from Drake University in 2016 (Order of the Coif; Research Editor, Drake Law Review).

THE CADY CUP RETURNS FOR 2021

By Greg Kenyon, Cady Cup Planning Committee

After being in quarantine last year, competitors are eager for a return to the links on May 17 at Echo Valley Golf Club, just south of Des Moines, for the annual Cady Cup.

The annual Cady Cup Tournament (formerly the Dean's Cup, renamed for the late Chief Justice Mark Cady) is an event for law school graduates, faculty, staff and students of Drake Law School and the University of Iowa College of Law. All are invited to participate regardless of skill level to show support for their law schools and raise funds for Iowa Legal Aid.

The competition includes match play and four-person scramble competitions. Points are awarded for each segment, with the team accumulating the most points winning the coveted Cady Cup. A full field of 100 golfers is expected in 2021.

Former Iowa Supreme Court Chief Justice Mark Cady (left) shown at the 2019 Dean's Cup golf outing. The Dean's Cup was renamed the Cady Cup in 2020 in honor of the late chief justice's love of golf and support for the cause of raising money for Iowa Legal Aid.

The 2019 event took place at the Amana Colonies Golf Course and was won by Drake, so Iowa will be looking for redemption. Visit **www.probono.net/iowa/** then scroll down and click on the Cady Cup link to learn how to register.

IN MEMORIAM

Edward Hoyt Palmer, Jr., 96, formerly of Winfield, Kansas, died Oct. 22. Palmer was born in 1924 in Paterson, New Jersey. He served in the U.S. Army Air Corps in World War II and received his J.D. from the University of Iowa College of Law. He then held posts as assistant dean at Northwestern University School of Law in Chicago, dean of Oklahoma City University School of Law and eventually retired as executive director of the Oklahoma Bar Foundation.

Thomas Albert Lawler, 74, of Waverly, died Feb. 13. Lawler was born in Eldora in 1946. He received his J.D. from Columbus School of Law in Washington, DC. Lawler practiced law in Parkersburg for 46 years. He was active in the American Agricultural Law Association, serving on the board of directors and as president of the association. He was the recipient of the Award of Merit from the AALA. Drake University Law School recognized his work when he was inducted into the Agricultural Law Hall of Fame. He also served as a member of the Board of Governors of The Iowa State Bar Association and as a section chair and committee chair for a number of years.

Robert Mac Smith, 72, of Sioux City, died Feb. 3. Smith was born in 1948. He served in the U.S. Army Reserve and received his J.D. from the University of Iowa College of Law. Smith practiced labor law for decades, earning induction into the Northwest Iowa Labor Council Hall of Fame (2004) and the Iowa Federation of Labor Hall of Fame (2014), as well as frequent entries in the Best Lawyers in America listing. He also was a proud member of the American Federation of Teachers, AFL-CIO, Local 716, for 30 years. He taught at the University of Iowa Labor Center throughout his entire professional career and even into retirement.

Steven J. Hodge, 67, of Dubuque, died Dec. 12. Hodge was born in 1953 in Dubuque. He received his J.D. from the University of Iowa College of Law. After law school, he went into private practice with an emphasis in criminal law until 1991. That year, Hodge became one of the first attorneys to work in the Dubuque public defender office. He practiced law for over 35 years, retiring in 2017 as the chief attorney of Dubuque's public defender office.

Eugene "Gene" Marlett, 93, of Cedar Rapids, died Jan. 29. Marlett was born in Keokuk in 1927. He served in the US Navy during WWII and received his J.D. from the University of Iowa College of Law. After law school, he joined Farm Bureau Insurance where he retired after 35 years as vice president of claims. He was also active in the Iowa Defense Counsel Association.

Peter W. Burk, 82, of Waterloo, died Jan. 22. Burk was born in Fort Dodge in 1938. He received his J.D. from the University of Iowa College of Law. After law school he was a partner with the Gallagher et. el. Law Firm before starting his own Burk Law Firm in 1976. While there, he also worked in the Black Hawk County Attorney's office until retirement at 81.

Gregg Buchanan, 73, of Algona, died Feb. 2. Buchanan was born in Algona in 1947. He received his J.D. from Drake University Law School where he was the Case Notes Editor of the Drake Law Review. Buchanan had a distinguished clerkship with Chief Justice W.W. Reynoldson with whom he maintained a close friendship. He then returned to his hometown to join what is now known as Buchanan, Bibler, Gabor & Meis, where he eventually became managing partner.

POSITIONS AVAILABLE

Attorney – John Deere, Johnston, IA – As an attorney for John Deere Financial located in Johnston, you will provide research, legal counsel, recommendations and alternatives for legal questions and issues in the general practice areas of consumer and commercial secured transactions and revolving credit, debt collection and related litigation, bankruptcy, banking, privacy, information security, and compliance management. *To apply, visit https://careers.iowabar.org/jobs/14358974/attorney*

Tax & Estate Planning Attorney – McGrath North, Omaha, NE – McGrath North, a growing Omaha-based law firm, is seeking a lateral attorney to join its growing and nationally recognized tax and estate planning practice. Relevant legal experience should include assisting clients with federal and state tax planning and advocacy (with an emphasis on business transactions), estate planning, wealth transfer planning, business succession planning, charitable planning, estate and trust administration and related work. *To apply, visit https://careers.iowabar.org/jobs/14166242/tax-estate-planning-attorney*

Staff Attorney – Farmworker Rights Project – Iowa Legal Aid, Des Moines/Council Bluffs/Sioux City, IA – Iowa Legal Aid's Farmworker Rights Project is seeking applicants for a staff attorney position. Our dynamic, collaborative team fights to protect agricultural workers who are marginalized due to low wages, lack of adequate safety equipment, substandard housing, sexual harassment and discrimination, and labor trafficking. To apply, submit letter of application (indicate geographic restrictions), resume, law school transcript (recent graduates only), recent representative writing sample, and names, addresses and phone numbers of at least three professional references. *Application materials should be mailed to: Iowa Legal Aid, 1111 9th Street, Suite 230, Des Moines, IA 50314.*

Associate Attorney – Hayek, Moreland, Smith & Bergus, LLP, Iowa City, IA – Hayek, Moreland, Smith & Bergus, LLP is an established, AV-rated, Iowa City law firm seeking an associate attorney to support and grow a general practice focused on family law, business law, real estate, estate planning, civil litigation and criminal defense. Experience in one or more of these areas, or in tax work, will be preferred. Ideal candidate will have 2-5 years' experience in direct client advocacy and counseling, strong verbal and written communication skills, and confidence in legal research and analysis. *Send cover letter and resume to: Joe Moreland, moreland@hmsblaw.com; Hayek, Moreland, Smith & Bergus, LLP, 120 E. Washington St., Iowa City, IA 52240.*

Paralegal – Gundersen Health System, La Crosse, WI – Gundersen Health System is looking for a paralegal in La Crosse, Wisconsin. Ideal candidates would have familiarity with electronic health care records systems. The paralegal reports to the associate general counsel and is responsible for working under the supervision of attorneys in the legal department. He or she provides legal advice and assistance to Gundersen Health System and its key affiliates. *To view the complete job description and apply, please visit: https://www.gundersenhealth.org/careers/.*

Associate – Clark, Butler, Walsh & Hamann, Waterloo, IA – Clark, Butler, Walsh & Hamann seeks an associate attorney to join the firm. This is a full or part-time associate position in civil litigation primarily involving insurance defense work. *To apply, visit https://careers.iowabar.org/jobs/14421517/associate.*

Attorney – Lamson Dugan & Murray LLP, Des Moines, IA – Lamson Dugan & Murray LLP is seeking an attorney to join the firm's growing litigation practice group in our Des Moines location. The ideal candidate would possess at least 2-5 years of litigation experience, preferably some experience in medical malpractice defense. *Please send a resume, writing sample, and salary requirements to apply@ldmlaw.com.*

Employment Law Attorney – BrownWinick Law Firm, Des Moines, IA – Seeking a full-time qualified attorney with 2+ years of experience to join our Employment Law Practice Group. Candidates must be proactive, detail oriented and organized. Candidates should also have experience in counseling employers on employment-related issues, including but not limited to disciplinary actions, terminations, employment policies, wage and hour issues, employee leave, unemployment, discrimination, harassment and retaliation prevention and training, and other employment-related issues. Confidential inquires, including cover letter, resume and law school transcript (unofficial is acceptable) should be directed to: *Tia Calhoun, Recruiting Coordinator, BrownWinick Law Firm, 666 Grand Avenue, Suite 2000, Des Moines, IA 50309, E-mail: tia.calhoun@brownwinick.com.*

Legal Counsel – Gundersen Health System, La-Crosse, WI – Seeking an attorney to serve as legal counsel. This is an in-house position for an experienced attorney with five to seven years of experience handling general health care, risk mitigation, business, employment and labor relations, regulatory and contractual matters. Reporting directly to the associate general counsel, the legal counsel will work collaboratively and respectfully across departments to anticipate, identify and manage Gundersen's legal issues. *To apply, visit https://careers.iowabar.org/jobs/14427084/legal-counsel*

Public Finance Associate – Dorsey & Whitney LLP, Des Moines, IA – Dorsey & Whitney LLP is seeking an attorney with zero to three years of experience to join the public finance team in our Des Moines office. This attorney will have opportunities to work on a variety of public finance transactions, economic development and redevelopment projects and public contracting matters, and to learn and advise clients on state and federal governmental and tax law issues. *Dorsey accepts online applications at http://www.dorsey.com/attorneyjobs. We do not accept application materials by mail or email except as a reasonable accommodation for qualified disabled applicants.*

Senior Attorney – Hardware, Software & Connectivity – John Deere, Johnston, IA – As the Senior Attorney – Hardware, Software & Connectivity for John Deere in Urbandale, you will play a key role in the realization of this vision by providing legal counsel on the development, licensing and global distribution of Deere's embedded software, hardware and connectivity solutions. *To apply, visit https://careers.iowabar.org/jobs/14426666/senior-attorney-hardware-software-connectivity*

Associate Attorney – Nidey Erdahl Meier & Araguas, PLC, Cedar Rapids, IA – Nidey Erdahl Meier & Araguás, PLC, seeks a full-time associate attorney to practice primarily in family law and juvenile law in Cedar Rapids and surrounding communities. The ideal candidate will have 0-4 years of experience and a desire to work in a position that requires great empathy, creativity and advocacy. Compensation consists of a base salary and bonus system. Benefits include a 401(k) plan and health insurance. *Please send a resume, writing sample and references via e-mail to both Frank Nidey at fnidey@eiowalaw.com and Chris Nordstrom at cnordstrom@eiowalaw.com.*

Research Specialist: Diversity, Fairness, and Inclusion – The National Conference of Bar Examiners, Madison, WI – This research specialist will contribute to NCBE's organization-wide efforts to ensure that diversity, fairness, and inclusion pervades NCBE culture, operations, test products and services. This position will report to the director of

assessment and research and the president and work closely with NCBE's leadership team to help the organization develop and achieve diversity, inclusion and fairness as strategic goals. Some travel will be required once COVID restrictions lift. *To apply, visit https://careers.iowabar.org/jobs/14443870/research-specialist-diversity-fairness-and-inclusion*

General Counsel – EFCO Corp, Des Moines, IA – EFCO Corp. in Des Moines, IA is looking for a general counsel with broad legal and business knowledge and capability. Top candidates will be team players with outstanding advocacy and people skills. *To apply, visit https://careers.iowabar.org/jobs/14446493/general-counsel*

City Attorney – City of Grand Island, Grand Island, NE – The City of Grand Island, Nebraska, a community of approximately 50,000 residents, is seeking a highly ethical leader and manager with proven successful experience in municipal law to serve as the next city attorney. The city attorney, plans, directs and participates in the provision of complex professional legal services to the mayor, city council, city administrator, city departments and various boards and commissions. *To apply, visit https://careers.iowabar.org/jobs/14453258/city-attorney*

Career Law Clerk to US Magistrate Judge Stephen H. Locher (pending appointment) – U.S. District Court, Southern District of Iowa, Des Moines, IA – The United States District Court for the Southern District of Iowa is seeking a career law clerk to a United States magistrate judge. Incumbent reports directly to the judge and is primarily responsible for conducting legal research; advising the judge on legal matters; preparing legal documents such as orders, memoranda and jury instructions; and drafting opinions and verifying citations. The incumbent provides administrative support to the judge. Applications materials should be marked "confidential" and mailed or e-mailed to: *Mindi Decker, Human Resources/Training Manager, U.S. District Court, Southern District of Iowa, P.O. Box 9344, Des Moines, IA 50306-9344, E-mail: mindi_decker@iasd.uscourts.gov.*

OFFICE TRANSITION OFFER

LAST CHANCE – STORE FRONT PRACTICE – Owner of store front law practice, at same location in central Iowa for more than 50 years, will be retiring at the end of the year. The office is located within 45 minutes of the Polk County Courthouse. Core practice areas include probate, real estate, estate planning, small business entities, criminal, divorce and tax preparation. Excellent opportunity for a confident, industrious, client-oriented attorney with a strong transactional background to mold a practice to suit his or her interests. All terms negotiable. For more information please write: *The Iowa State Bar Association, Code 872, 625 East Court Ave., Des Moines, 50309-1904, or email at isba@iowabar.org. Please include Code 872 on the envelope if mailing and in the subject line if emailing.*

BUSINESS OPPORTUNITY

Attorneys – are you interested in expanding your real estate practice and generating more revenue? Unique opportunity awaits. All inquiries will be kept strictly confidential. *Please contact the ISBA via email at communications@iowabar.org using reference code 873.*

SERVICES OFFERED

Mediation – Former Justice Michael J. Streit who served for over 27 years on the bench is offering mediation and arbitration services. Streit was appointed as a district court judge in 1983 where he served the Fifth Judicial District. In 1996 he was appointed to the Iowa Court of Appeals and in 2001 to the Iowa Supreme Court where he served until 2010. *For information and scheduling please call 515-244-3500 or 515-247-4708.*

PERSONAL

If depression, stress, alcohol or drugs are a problem for you, we can help. We are a non-profit corporation offering attorneys free help in a totally confidential relationship. We are the Iowa Lawyers Assistance Program. Under order of the Iowa Supreme Court, all communication with us is privileged and private. Our director is a former lawyer and a recovering alcoholic and drug addict. He is a trained substance abuse counselor. We cannot help unless you call – *515-277-3817* or *800-243-1533* – or message (in confidence) *help@iowalap.org*. All you have to do is ask us to contact you. No other details are necessary. We will call you. The Iowa Lawyers Assistance Program also can provide speakers for local bar associations.

Thank you

to the speakers for CLE events sponsored by the ISBA in February 2021.

2020 A Lawyer's Role and Ethical Obligations Regarding Court and Administrative Tribunal Security – Feb. 1, 2021

Hon. Celeste Bremer, U.S. Magistrate Judge, U.S. District Court, Southern District of Iowa

Roxann Ryan

Mediation and Arbitration Techniques: 40 Hours of Insights – Feb. 4, 2021

Richard M. Calkins, Calkins Mediation Services and Training, Former Dean of Drake Law School

Case Ellis, Law Office of H. Case Ellis

Joe Happe, Happe Mediation, PLC

A Fresh Look At The Administrative Process – Feb. 12, 2021

Denise Timmins, Iowa Department of Inspections and Appeals, Chief Administrative Law Judge, Work Unit, Administrative Hearings

Well-Being and Substance Issues During COVID-19 – Feb. 24, 2021

Theresa Garthwaite, Risk Control Specialist, Lawyers Professional Liability, CNA Global Specialty Lines

Matthew Fitterer, Risk Control Attorney, CNA Insurance

Spotlight on Service Kevin Patrick


Kevin Patrick

Kevin Patrick ended up in Des Moines by chance. It wasn't his hometown, and he didn't have any previous connections to Iowa. Born in Michigan, raised in California and educated in New Jersey, Patrick planted roots in Iowa as a political field organizer during the 2008 Barack Obama presidential election.

He stayed to attend law school at Drake, then stayed to begin practicing law. He chose to stay to grow his career and family in a community he has grown to care deeply about. His commitment to that community rivals that of any native.

"Nowadays, we are siloed. We live in homes right next to each other, but are isolated from one another, and we have lost the ability to see others' perspectives," he said. "But, in a community the size of Des Moines, we all share common purpose that is only exposed when we step outside our comfort zones. And one way to bridge that gap and thread us together is by volunteering."

Patrick joined Nyemaster Goode, P.C.'s litigation department in 2019 after six years as an Assistant Polk County Attorney. Part of his work in the Juvenile Division allowed him to serve on a committee that addressed the disproportionate minority contact in the Polk County juvenile detention center.

"It is important to have experiences that remind you of how blessed you are in your life, and see that people caught up in the system are not always bad people," he said. "They have stories just like yours and, but for grace, you could be in their shoes."

At Nyemaster, Patrick now serves on the firm's Diversity and Inclusion Committee, as well as the Recruiting Committee. He is also an active volunteer in several community-based initiatives, including a recent appointment to the City of Des Moines' newly-created Community Policing and Code Enforcement Policy and Practice Review Committee.

As the son of a police officer and as a former prosecutor, Patrick recognizes the indispensable contributions police officers make to the community. Equally important for Patrick is the need to "strengthen the relationship between the community and police officers, look at policies and practices in the police department and what has had a disparate impact on people of color, help the community get to know their rights when dealing with police and at the same time making sure our police officers are being held accountable."


Patrick (pictured left) served as a moderator for the Des Moines Authors Visiting in Des Moines (AVID) series. The author (pictured right) is Chigozie Obioma, who wrote "An Orchestra of Minorities."

Patrick is also a member of Alpha Phi Alpha Fraternity, Inc. Founded in 1906, it is the first intercollegiate Greek-letter fraternity historically established for African American men in the country. Through that organization, he has worked with young people of color through programs such as Project Alpha, which teaches sexual responsibility and consent to young males. The fraternity has also organized presentations for high schoolers about the benefits of college and how to afford it, raised money for educational scholarships and hosted voter registration drives at the annual Back 2 School Bashes at the Grubb YMCA.

"Volunteering is a chance to get out of your own way and see what people are really going through. Boards that do it right put you in the environment you're trying to serve," he said.

He also serves on the Iowa Access to Justice Commission and on the Drake Law Board of Counselors, which serves as the eyes and ears of the dean of Drake Law to make sure the school is paying attention to issues that impact students and alumni.

Of all of these experiences, Patrick says it was an early volunteer project that had the biggest impact on him. He was invited to serve on the Des Moines Public Arts Foundation ad hoc committee raising funds for the "Monumental Journey" art sculpture to be erected honoring the National Bar Association (NBA) and its African American founders who created the organization in 1925 in Des Moines after being denied entry into the American Bar Association.

"Not being from Iowa, I had no idea the NBA was founded here," he said. "I couldn't believe that my professional legacy was founded here. To see how influential the state of Iowa has been, even in my own professional life, was very impactful to me. I wanted to be part of the story of making this sculpture happen." He is now an active member in the NBA's local chapter.

He says that "telling stories," like the story of the NBA's founding, is a big part of how he decides what causes to devote his time and energy to. "I try to think about what causes I am passionate about and whether I can be an effective voice to tell the story of that organization," he said. "If so, then I know it's the right opportunity for me."

The ISBA Public Relations Committee honors an Iowa attorney or group of attorneys each month in this special "Spotlight on Service" feature in The Iowa Lawyer. If you would like to nominate someone to be recognized for his or her work in the community, please contact: **Melissa Higgins, mhiggins@iowabar.org.**

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