Justinian Society of Lawyers
Spring 2017 Newsletter

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President's Message

As the Justinian Society of Lawyers' 2016-17 year of "Generosity and Humility" and my year as President comes to a close, I reflect on the goals I set out for this year. I would like to thank all of my fellow officers and Executive Committee members for all of their hard work and support in making this year a success in my eyes. As I write this article, our membership is over 365 members, we are nearly ready to vote on a final version of our updated By-laws, and we are doing well fiscally. There has also been great turnout and participation at our monthly meetings – A trend that I hope continues well beyond my term.

Since the last newsletter, we had our Past President's Dinner on November 17, 2016 at Bella Notte on Grand Ave. where we recognized our past presidents. At that meeting, we had a great turnout not only of our members and past presidents, but also of many ISBA members, as we circulated petitions for some of our members who were interested in running for ISBA Assembly or leadership roles.

The Joint Dinner Meeting on January 19, 2017 at the Estate by Gene & Georgetti's in Rosemont, IL brought another good turnout. Many members from our joint chapters in other counties, who cannot usually make it downtown to our monthly events, were able to attend and be with their fellow Justinians.

The Bocce tournament was held on February 16, 2017 at PinStripes in Oakbrook. Cocktails were flowing, food was great, and my team won the tournament. What was there to complain about!

As I write this article, I am finalizing the details for the CEF dinner that will be held on March 16, 2017 at LuxBar in Chicago. With raffle tickets selling like hotcakes, I would anticipate that we will have another wonderful event where we make our annual Grant Awards, and perhaps be able to raise even more money for our Grant recipients.

Also during the month of March 2017, the ballots for the ISBA elections will be emailed to ISBA members, so I ask that our Justinian members support all of our fellow Justinians who have chosen to run for ISBA positions. The Justinians have always been very active in the ISBA, where several of our past presidents were past presidents of the ISBA, not to mention the countless numbers of our members who have served on the ISBA Board of Governors, the Assembly, and many Section Councils.

The final two meetings will be the April 20, 2017 Nomination of Officers Meeting, which will be held at Tufano's in Chicago and the May 17, 2017 Installation of Officers Dinner meeting, which will be held at Gibson's in Chicago. At the April meeting, we will also vote on the amended Bylaws. We have already sent out notice of the vote on the bylaws and we have incorporated suggested minor changes that members

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Joint Meeting

The below photos are from the January 19, 2016 at Gene an Georgetti's in Rosemont. The place was packed!













Bocce Tournament

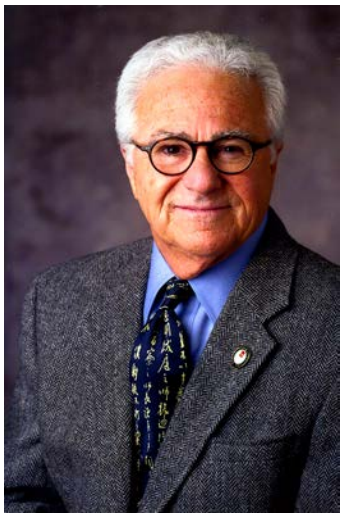
The below photos are from the Bocce Tournament on Februrary 16, 2016 at Pinstripes in Oak Brook. As you can see, everyone had a great time.

CEF Dinner

The 2017 Justinian Society Children's Endowment Fund (CEF) dinner was held on March 16th at LuxBar in Chicago. The dinner is held each year in March, and the CEF presents a grant to various charitable organization. This year, Justinian President, Frank A. Sommario and CEF Founder, Antonio M. Romanucci presented sizable grants of $3,625.00 each to the Reflections Foundation and St. Jude Children's Research Hospital. The Reflections Foundation assists African American and Latina girls in becoming better communicators at home, in school and the future workplace. St. Jude Children's Hospital leads the way in treating and someday defeating childhood cancer and other deadly diseases. Over 60 Justinians attended including all of the current Officers and eight past presidents.

Is there a "crisis" of law schools in America?

Written by Leonard F. Amari for publication in the May 2017 edition of the ISBA Senior Counsellors's Section Council newsletter. We reprint with his gracious permission.



CRISIS

We've heard, generally mentioned, in the hallways of our courthouses, at bar or alumni association meetings or casually mentioned among lawyers at lunch, that law schools today are in trouble. It has been mentioned so often and so casually that it has become a "given." This article is to identify if there is a true crisis of law schools in America – and if so, to what degree and why.

One legal scholar, and from whom much of this article relied upon for insights, facts and perspectives, Paul Campos, of the University of Colorado, says, succinctly:

"The ongoing contraction in the employment market for new lawyers has combined with the continuing increase in the cost of legal education to produce what many now recognize as a genuine crisis for both law schools and the legal profession."

Also, please be aware that this article is written by someone with a modicum of involvement and experience with this dynamic, as a seventeen year board trustee of The John Marshall Law School, the last ten as its President. John Marshall is one of only six or so totally independent, stand-alone law schools of the 226 or so law schools in America.

DIMINISHING ENROLLMENTS

Professor of education at the University of Pennsylvania, Robert Zemsky, in his study, mapping a contracting market, analyzed 171 law schools and found that enrollment dropped by 21% at private law schools between 2011 and 2015. At public law schools, enrollment dropped by 18%. In the year 2009-2010, total law school enrollment of the 206, or so, ABA accredited law schools was 154,549, with awarding of JDs, LLBs to 44,004. Between 2010 and 2012, the number of applicants to ABA accredited schools fell by 40,000, from 87,900 to approximately 66,500. Of course the reasons for such significant declines in the applicant pool are consumer generated, the given, high cost of a legal education and diminishing job market for new lawyers.

COSTS

Skyrocketing costs of a legal education, and why: Since approximately 1985, tuition in private law schools has increased by 161.5% in real inflation adjusted terms, and 396.8% for public law school resident tuition.

Some examples: the University of Illinois law school went during this period from about $7,000 annually, to about $45,000. Texas from about $5,000 to about $28,000. Minnesota from about $12,000 annually to about $35,000. Or, looking at it another way, at John Marshall, from $220 per credit hour in 1985 to $1,540 per credit hour presently.

Professor Campos indicates in his well thought out and generally accepted treatise that the estimated total cost of attendance for most law schools is now more than $150,000, and topped $200,000 at many. For example, my present law clerk owes $250,000 for her combined college and law school education. In choosing the two annually awarded $10,000 JMLS scholarship recipients (to 2L students) of the Lupel & Amari scholarships, most applicants owe upwards of $80,000 – pointing out these are the second year/third semester students.

Therefore, in light of the perception, very real as evidenced by ABA employment statistic reported by its 206 or so accredited law schools, of a terrible employment market and the high cost of a law school education, "crisis" became the hot topic in legal publications and the news media. Thus, the perception.

But, though the skyrocketing costs of a legal education is also a "given" and empirically validated in law school statistics and media publications, the reader may wish to learn why law school has become so expensive. Without closer examination, the following are the generally accepted reasons:

Declines in student-faculty ratios – inundated by the ABA in its accreditation process, now dictated to be 20 to 1 or less, student to teacher; inflationary and rising costs of faculty, and especially tenured faculty; the creation and cost of clinics in the legal education process; the expansion and rising costs of competent and experienced administrative person-

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nel, advances and high cost of 21st century technology, and experienced administrative professionals and expensive capital construction projects.

As to rising faculty-student ratios, John Marshall is as good an example to use as any. In the later 1960s/early 1970s, the faculty consisted of prominent and respected Chicago practitioners, leaders in their fields, tort, labor, immigration, IP and the rest. For the overwhelming most part, they were adjunct. And those wishing to teach in a Chicago law school were abundant – I was an adjunct at my alma mater from 1968 to 1974, paying about $1,500 per course – and with no other benefits. Many practitioners call me and often, about adjunct faculty opportunities at JMLS. There is no shortage of competent attorneys who are anxious to teach a class or two as a complement to their practice.

When I became a trustee at JMLS, the year 2000, enrollments and applications were the highest ever and the school had to comply with the ABA ratio demand of 20 to 1 student to faculty. In a few years, the school finally reached that ratio. Of course, over the next ten years, and as the applicant/enrollment bubble was about to burst, many (most?) of these new "ratioed" teachers became tenured – fixing higher teacher costs well into the future. We all know what job (and other tenure benefits) security is involved with being tenured.

To accommodate the swell of applicants and enrollees to be competitive to draw from, in addition to much greater scholarship opportunities, schools had to increase their facilities. All at substantial costs – also factoring into those capital expenditures, the substantial costs of improving and expanding its IT capabilities, with attendant equipment, software and on premises IT professionals.

Starting in 2000, or so, to satisfy these higher enrollment demands, JMLS invested almost 150+ million dollars in capital improvements, when the total on campus students totaled almost 1,800. The school created a state of the art facility, almost a full block of lien free real estate in downtown Chicago that as to facilities (and location) compares favorably with any other of eight law schools in Illinois.

DIMINISHING EMPLOYMENT OPPORTUNITIES

Lawrence E. Mitchell, the Dean of Case Western Reserve's Law School, in observing the job market for new lawyers says "it's bad." "Bad" in law means that most students will have trouble finding a first job, especially in law firms.

Historically, until the beginning of the crisis, eight percent of law graduates found employment as a lawyer within nine months. Dean Mitchell points out that in 1998, 55% of law graduates started in law. He says in 2011, that number was 50% and has been a recognized weak market since. Professor Campos argues in his treatise the more realistic figure for 2011 is 40%. And he points out that 26% of all jobs taken by these graduates (including non-legal jobs) were temporary positions.

SUMMARY

We'll finish this article the way we started it, with the quote from Professor Campos:

"The ongoing contraction in the employment market for new lawyers has combined with the continuing increase in the cost of legal education to produce what many now recognize as a genuine crisis for both law schools and the legal profession."

So yes, these are difficult times for American law schools. Is it a crisis? Depends how draconian one defines crisis.

JMLS, for example, downsized and with a great board, for the most part alumni of practicing lawyers and judges, righted its ship – got lean and mean. JMLS since 2007 went from a 1,700+ student body to just over 900, bought out at considerable cost, many of its tenured faculty, mostly older teachers, leased out much of its now excess space, examined its budget, eliminating as much fat and surplus as the school could have. Keeping in mind JMLS is a totally tuition driven institution, its annual budget is zero-sum (even with a little surplus, no debt, almost a full block of downtown Chicago real estate without debt, state of the art facilities, an energetic administration and faculty that understands what the realities are in law school education today.)

Some law schools are closing, some are at risk of losing accreditation, there is some merging. It will be interesting to follow these developments in the years ahead.

[The author wishes to thank 2L at JMLS, Anthony Pontillo, for his research assistance in the production of this article.]

"The Art of Purposeful Negotiation."

The following is an unpublished excerpt from a book in progress by the author, "The Art of Purposeful Negotiation."

POST EVENT NARRATIVE

With every negotiation there is eventually going to be a post negotiation story to be told by all the parties and players, a 'Post Event Narrative.' Much like the initial narrative story presented by the parties to negotiation, they will subsequently frame the issues and events of the negotiation experience in a manner that is subjectively self-serving. If the purposeful negotiation is artfully completed, the parties will feel that they have invested in the playing of the negotiation game and have obtained a fair result that has been mutually earned by the respective parties, that every concession was the result of bargaining and mutual agreement. If one party feels that they haven't had the opportunity to participate in a fair manner or that they are being taken advantage of, there is less likelihood that the negotiation will result in a negotiated resolution and even when one is accomplished will be considered to be the result of coercion, unfair advantage or the product of an unfair process. This will result in a post event narrative that will be negative towards the opposing party and hamper any lasting relationship thereafter.

When conducting negotiations, the parties and players should be mindful of the fact that there is value in how the post event narrative is told. By striving to obtain what is best for you, and your positive post event narrative, remember that negotiation is the game that everyone wants to play and win, but is a game that people play especially not to get beat. You

can give them something that is valuable to them, and costs you nothing, by crafting a settlement that provides them with concessions that were earned by bargaining and, even if the result is less than they sought, will provide them with a face saving post event narrative. Surrender or take it or leave it offers or ultimatums are not conducive to settlements that will provide a feeling of earned concessions and, accordingly, will result in a lesser likelihood of acceptance. To accept such demands, as opposed to offers of compromise in the spirit of respectful negotiation, is tantamount to surrender. Even if the offer is fair, the manner in which it is presented is sure to result in a negative response or reactive rejection from one's opponent. Framing the offer in a manner that provides mutual respect and acknowledgement of the value of the concession given in exchange for the offered compromise provides justification for the other party to accept it and costs you nothing additional.

An example of the value placed upon post event narratives that applies to everyone eventually is their Obituary. Think about it, your every purposeful interaction in this game that is your life will be reflected, for the best or worse, in your Obituary. I have been attendant to a number of persons who gave their last breaths under peaceful and not so peaceful circumstances. I can tell you that none have placed value upon having more money, cars or possessions. Family, honor and a sense of purpose and self-worth and making a positive difference are the themes heard and valued most often.

Recently I attended a funeral for a friend who died at the age of 100. When he was born there were only 8,000 cars and 140 miles of paved roads in America, radios were new and World War I was just beginning. After a long life filled with a wealth of experiences, his parting words to those in attendance were these: "Lord, when my last putt has dropped into the cup and the light of my last day has faded, may I be able to turn into You, a scorecard to show…I did my best." Forget about yes, and the accumulation of artificially valued items, getting what's best for you is doing your best.

The pervasiveness of the post event narrative is found in the story of Steve Bartman, the intrepid Chicago Cubs fan who will forever be remembered for interfering with a foul ball that if caught would have allowed the Cubs to go the holy grail for every Cubs fan, a thing called the World Series. The interference play is assuredly the most visible and lasting event of this unfortunate fan's lifetime. He could subsequently win a Nobel Prize in medicine for finding the cure to a disease, that would be nice, but his post event narrative that will be his obituary will begin with, "Steve Bartman, baseball fan who is most remembered for his interference with a foul ball that cost the Chicago Cubs their best chance to win a World Series in well over a hundred years……"

Historical negotiations provide further examples of the importance of

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a post event narrative to the parties. The recent U.S. led Iran anti-nuclear proliferation talks will note the many comparisons made by political pundits of these negotiations to those preceding World War II by British Prime Minister Neville Chamberlain and Germany's Nazi leader. The result of the talks was the infamous agreement that England would not interfere in Germany's taking of German speaking Czechoslovakia, in exchange for their promise of non-aggression towards Western Europe. Well, we know how well that turned out. This grand Appeasement by Chamberlain is his lasting ignominious legacy and post event narrative to the failed negotiations.

Current Western leaders are no doubt cognizant of this comparison and shape their negotiation tactics and offers of compromise to avoid the stigma of such a post event narrative being attached to their efforts. Getting what's best for them thru the negotiation process includes a lasting and favorable legacy. Their desire to be seen as peacemakers rather than appeasers is of value to them, affects the negotiation process, and is something that can useful when framing an offer of resolution as one of compromise rather than surrender or capitulation.

JOHN J. LAG has developed The Art of Purposeful Negotiation over the course of a legal career spanning five decades which has provided him with invaluable knowledge and experience in the field of dispute resolution. In addition to practicing law, the author is an Adjunct Professor of Law at the John Marshall Law School where he teaches Negotiation Theory and Practice. He is also a Fellow of the International Academy of Dispute Resolution, promoting peacemaking and education, worldwide.

DID YOU KNOW...

- The city of Syracuse in Sicily was once the largest Ancient Greek city in the world.
- The Colosseum in Rome is the largest ancient building dedicated to entertainment. The second and third largest Roman amphitheatres in Italy are respectively those of Capua and Verona.
- The catacombs of Rome are 13 km long and contain some 40,000 tombs. They lie 7 to 19 meters below the surface and extend for more than 13,000 square meters (140,000 sq ft). They also house the oldest image of the Virgin Mary on Earth (early 2nd century).
- At its apex in the 1st century Rome had a population of approximately 1.5 million. By the early 15th century it had fallen to a mere 17,000, before being revived by Renaissance popes as one of Europe's great cities. In other words, 99% of the ancient population of Rome was lost by the end of the Middle Ages, meaning that modern Romans can hardly claim to descend from the ancient population of the city.
- The Republic of Venice was founded in 697 and was dissolved by Napoleon in 1797, exactly 1,100 years later. This makes it the longest lasting republic in human history as well as the longest lasting uninterrupted form of government that ever existed. In comparison the Roman Republic lasted just under 500 years.

"Did You Know" submissions can be sent to the editor at editor4justians@gmail.com.

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have made. I want to specially thank Gregg A. Garofalo for his countless hours incorporating the changes that members have suggested over the last five or more years. I thank everyone else that participated in this as you all know what an enormous task it is to re-work bylaws for an organization.

At the May meeting we will officially install President Elect Michael F. Bonamarte, as the 2017-18 President of the Justinian Society of Lawyers, as well as the rest of the Officers. That event is always one of our most well attended. I hope you can all join us as we welcome in our 2017-18 Officers that evening.

Finally, I am very much looking forward to continuing to work with my fellow Officers and Executive Committee Members to have a strong finish to my year as president and also in the years to come! I also want to once again thank our Executive Administrator, Nina Albano Vidmer, and her daughter, Grace, for all they have done to help with all of these events, as well as with all of the other items they handle, from the membership dues to the dinner RSVPs for each event.

Thank you again for being a member, and I would ask you once again to encourage those who, although should be a member, may have not renewed their membership for whatever reason as of yet, to please do so as soon as possible. Let's continue our display of generosity and humility throughout the end of this year and carry it forward into the years to come. If there is anything that I can do for you, please let me know. I look forward to helping in any way I am called upon as a future past President of this wonderful organization!

Frank A. Sommario
2016-17 President

Strolling Down Memory Lane

By Dominic Fichera

When I was asked by Leonard DeFranco to write an article to, in effect, reminisce about my fifty-five years of practicing law in Chicago I jumped at the chance to go down memory lane.

My first memory about lawyering reminded me of why I became a lawyer. As a young man graduating from Saint Patrick's High School I had no idea what I wanted to be. However, I later found out that my father did have an idea about my future.

My father worked as a barber at the LaSalle Hotel. The LaSalle Hotel was located on the northwest corner of LaSalle St. and Madison St. on which now sits Two North LaSalle St. office building.

My father's customers were some of the more important people in the city. He had clients such as George Halas, owner of the Chicago Bears, and Judge Kennesaw Landis, the first commissioner of baseball, but more to the point -- he serviced many of the leading Chicago politicians, and lawyers. Lawyers such as Sam Rinella -- a great divorce lawyer. Joe LaBarbera, Phil Corboy, Nate Shavin, and John Phillips -- all top PI lawyers at that time. My father came to like and respect his lawyer customers. Wouldn't it be great if one of his sons became a lawyer, and there you have it. After some years, including four years driving a taxi, and my two-year Army service, I became a lawyer, and started practicing law in 1962.

I started at One North LaSalle Street in an office with Sam LaSusa, Jerry Petacque (Jerry's brother, Art Petacque, was writer for the Chicago Tribune) Saul Brauner, Anthony Tisci and Charlie Alfano, (later Judge Alfano). I started using a corner of Lasusa's desk, and later advanced to sharing a desk with Saul Brauner .

In remembering the practice of law in 1962 I found myself comparing it with the practice today. The two most notable differences really deal with the courts system and the lawyers.

As I remember it then the law division system was different . We had only two motion judges, one was Judge Nick Bua, and the other was Judge Hallet. One heard the even number cases and one the odd number cases. Both judges would meet for lunch at least once a week and discuss and decide how they would rule on certain issues for purposes of consistency.

Also I don't recall us having a Status Call, or a Case Management Call. If I recall it correctly we only went to motion call when one side or the other needed something done, or if one side failed to do something it was required to do.

There was no need for the court to hold the lawyer's hand through the trial process as it does today. I don't know how many motion judges have in the law division today, but I'm sure it's a lot more than two.

When your case was set for trial you were either prepared or not prepared. If you were not prepared, too often you were going to lose a lot of cases, and maybe clients.

These status calls or case management calls seem to lend it self to more appearances and more billable hours. This system I think was borrowed from the Federal Court. In my opinion it serves the defense bar more than it serves the plaintiff's bar

When I first started two of the top Italian American trial lawyers were Joe LaBarbera and Johnny Phillips (his family name was Giangrasso). John was born in Bagheria Sicily, where my family is from (Joe LaBarbera and Sam Rinella, also Sicilian). Aren't we great?

I would often watch LaBarbera, Phillips and also Phil Corboy try jury cases. They were the masters at it.

The relationship between lawyers was also different then. It never crossed our minds to protect ourselves against other lawyers. With few exceptions their word was their bond. Not so today; the guidewords seems to be "CYA".

In these many years of trying hundreds of cases, approximately one hundred jury cases to verdict, and dealing with many defense lawyers I have come to respect defense lawyers for their legal ability and character. Never did I remember being concerned about their honesty or truthfulness. I often give the example of a conversation I had years ago with a personal injury defense lawyer who told me I had promised to do something, which I had not recalled. I told

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him "I don't recall that conversation, but I respect you and if you say I promised that, then I believe you ,and I apologize " But today the conduct of some of the younger lawyers gives me pause. Whether they feel pressure from within the firm to impress or whether it is more basic I'm not sure, but it was better when I first started.

During my years I was, by happenstance, a close observer of two sensational news worthy murder cases. While sharing office space with Sam LaSusa, Victor Ciardelli Jerry Petacque, Nick Bell and Michael Getty (later Judge Getty) The Richard Speck murder case was being tried. Mike Getty's father was Gerald Getty, the public defender at that time, and because our office, which was located across from Civic Center, I became very familiar with the facts in that case.

And then years later while I shared office space with Dennis Nudo and Sam Amirante. Sam and Bob Motta represented John Wayne Gacy in that famous murder case. Coincidently, the Judge in that case was Lou Garippo an old army buddy of mine, and tennis partner at the time -- what are the chances?

All in all it's been a great ride I thank my father, John Fichera, for pointing me to this honored way, and yes I'm looking forward to the next fifty-five years. Ciao!

Continuing The American Dream

Why I chose to start my own law firm in 2017 at 27 years old with less than 2 years of experience

By Claudia Valeria Bertacchi

My dream job was to become a Public Defender for Cook County. I know most of you are probably thinking, "Who in the world would describe that as a dream job?" For two years I worked as a law clerk in the felony trial division with my 711 license and loved every minute of it. In addition, the ten year federal loan forgiveness program that this position offers was important for me because my loans carry an interest rate of almost 8%! Luckily, right when I got licensed there was an opening. However, with over 300 applicants and only a few spots available, I did not get hired.

I worked in three different attorney positions before I decided to open my own office. These were not stable jobs, and to be honest I would probably have made more money bartending. In my first year as an attorney, I applied to well over 100 attorney positions. I spent countless hours writing cover letters, perfecting my resume, obtaining letters of recommendation, networking, and attending events, all with no luck.

I then discovered that a lot of my family, friends, and neighbors were coming to me with various legal issues. I realized that if I had this many people coming to me with legal matters, why not just start my own law firm right here in my own neighborhood? I learned about Chicago-Kent's Solo and Small Practice Incubator program (SSPI) available to alumni. This program helps young alumni start their own law office with the guidance and resources provided by the law school. I had a vision, wrote it down as a detailed business proposal, and ultimately got accepted into the program.

My focus is all aspects of real estate, simple divorces (no children or significant assets involved), and criminal defense. I live and practice out of the Dunning neighborhood in Chicago.

Times have changed and it is not as easy to start your own law office from scratch in 2017 as it was in 1990. I have to do things that more experienced attorneys with an established practice do not dare to do. For example, I make myself available 24/7 and I accept calls and texts on my cell phone at all hours of the day and night.

It has not been easy, and my life feels like a constant hustle. When I get discouraged I remember where I came from. My Nonno Arturo was one of fourteen children. He brought his wife and four daughters from Napoli, Italy to the USA. Unfortunately, I was only nine years old when he died a tragic death in 1997. He believed that because this country was the greatest on earth, you can accomplish whatever you wanted. He would always say, "Thanks God," and "God Bless America," no matter what. These words, etched on his tombstone are also forever etched on my heart. This is my motivation to make Bertacchi Law, LLC the best law office I can, so I can continue his "American Dream," because I am his legacy.

Elder Law Update:

Legislative and Executive changes possible in 2017 in Elder care and Healthcare

A Short Outline of Topics and Issues

EDITOR'S NOTE: Due to the newsletter deadline, Anthony submitted this article before the withdrawal of the "replacement" health bill in the House.

By Anthony B. Ferraro

As we write this article at the end of February 2017 it is impossible to predict what either the Elder care or the healthcare landscape will look like a year from now. In fact, as this article is being written, President Trump is outlining to both houses of Congress his vision on many of these issues.

I. The Trump Administration

1. Obamacare Update. According to many the Affordable Care Act (ACA), or "Obamacare", may be in jeopardy. The president and some leaders of the Republican Congress have talked about block granting Medicaid, privatizing Medicare, repealing the ACA and rolling back massive regulatory restrictions created during the Obama administration.

2. Repeal and Replace – but what will "replace" look like? What is unknown is what the replace portion will be. Some of the ideas being discussed by Republican leaders , according to President Trump's speech to the joint session of Congress, are purported to include:
cross state selling of insurance,
massive expansion of the use of tax favored health savings accounts (HSA's)
reformation of the medical liability statutes creating fully funded high risk pools for those with pre-existing conditions
block granting Medicaid.

3. Block Granting of Medicaid- A major overhaul . While speaking of the block granting of Medicaid everybody should understand what that means. Right now Medicaid is a guaranteed entitlement which means that once you qualify for Medicaid you are guaranteed to receive the benefits of it and the federal government will match whatever the expenditure is that needs to be made for you either because of age, blindness, disability or long-term care needs. Under block granting instead of there being a guaranteed entitlement to an individual, the state that the individual resides in will receive a fixed amount of money for that individual and every other individual seeking Medicaid in that state. It is a fixed amount of money that will go to that state and from that point it's up to the state to administer the program and determine how that fixed amount of money is to be allocated among all of the Medicaid users in that state. This is a very different paradigm for what we currently have and it frightens a lot of people into believing that states may run out of money and there will be no guarantee of replenishment from the federal government. These measures are shaping up to be controversial in both houses of Congress, both sides of the aisle, and also with Republican governors that participated in the Medicaid expansion provided under the ACA. Those governors don't want to lose the substantial reimbursement that the federal government provides exchange for their participation in the expansion of Medicaid.

4. Changes to Medicare. Speaker Paul Ryan has spoken often of Medicare premium support systems which is in effect a voucher system for Medicare.

5. Medicare Appeals –The government is way behind . One thing that Medicare users need to be aware of is that there is a 700,000 case backlog for Medicare appeals that a federal judge has just ordered needs to be resolved over the next four years. Thus any appeal regarding coverage can be a lengthy process.

6. An Executive Order. Pres. Trump issued an executive order recently with regard to the ACA that allows administrators to waive, defer, grant exceptions from or delay the implementation of any part of the ACA that fiscally burden states or costs money for individuals, healthcare providers and others. This is an attempt in one area to rollback a lot of the regulatory overlay that the prior administration created.

II. New CMS regulations

1. When you're in the hospital, do you know the difference between" observation status" and "admitted status"? You had better. On December 12, 2016 CMS announced that hospitals must give patients a certain notice dealing with their status in the hospital.

2. "3 midnight stay" required - but the stay must be on admitted status not observation status. It's important to remember that a 3 midnight stay is required for a certain portion of patients who need post hospital care in a skilled nursing facility for rehabilitation. Medicare Part A does not cover patients in a skilled nursing facility if they do not have a 3 midnight stay in the hospital on admitted status. Being in the hospital for

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a 3 midnight stay on observation status will not qualify you for Medicare Part A coverage when you leave the hospital and go to a nursing facility for rehabilitation.

3. Look for a new notice called "MOON". CMS is now requiring hospitals to give written notice to patients of these distinctions because many patients are under the false assumption that because they are in the hospital they are on admitted status, when in reality they are on observation status only. Always check your status as to whether your admitted or an observation. Your physician should be able to give you that determination.

4. The other downsides of observation status. Outpatient status also shifts the burden that affects the patient's hospital bills as patients must pay for medications while there in the hospital and if they do not have Medicare Part B coverage they may have to pay out-of-pocket for the medicines.

5. A possible fix? Many argue that CMS should count all hospital days towards the required 3 midnights stay required.

6. Massive overhaul of the nursing home regulations regarding federal compliance for nursing homes to participate in the Medicare and Medicaid programs. On November 28, 2016 CMS rolled out the first phase of a complete overhaul of the federal nursing home regulations. There are consumer friendly provisions built into this rule.

7. Predispute arbitration clauses may be disallowed . One of the provisions requires elimination of predispute arbitration clauses in nursing home contracts. There has been court action litigating this issue. Litigation is still ongoing.

8. New Hospice rules. There are also also new rules governing the requirements for hospice providers in skilled nursing facilities.

9. You do not need to" improve". For years people believed that to get continued Medicare coverage for either skilled nursing or home health rehabilitation, that you had to demonstrate improvement, otherwise Medicare reimbursement will stop. This matter was litigated several years ago in Jimmo v. Sebelius, and the court indicated that in order to continue Medicare coverage there was no improvement standard. Rather you, the patient, either had to have the need for skilled care or the services had to be necessary to stop a backward slide or at least maintain status quo. But there has never been a requirement that the patient improve. Years after this was settled in the litigation, but CMS recently received instructions from the same district court that oversaw the class-action lawsuit and settlement and hopefully will now be abiding by what the law always was.

III. Illinois Legislative Developments

1. Illinois Medicaid backlog.There is a approximate 7000 case backlog of Medicaid applications for seniors who are in nursing homes that are seeking coverage for the nursing home for Medicaid. The State of Illinois is working towards reducing this backlog but it is straining long-term care facilities while they wait for approval of Medicaid for patients, many of whom have long since run out of their own funds to pay for the skilled care facility

2. Granny Cams. In 2016 there was a bill that was passed allowing electronic monitoring in nursing home rooms.

3. New accounts for the disabled. In Illinois we now have what are called ABLE accounts which allow individuals or disabled before age 26 to deposit of $100,000 in funds that can be used to supplement their needs without eliminating the governmental benefits. These new accounts can be created without the need to establish a special needs trust. For sums of money in excess of $100,000 however special needs trust is still required.

4. Family Caregivers. The State Illinois passed a law that indicated when an individual is discharged from the hospital the hospital can designate in the medical record a family caregiver who can receive some training to allow the individual being discharged to receive a higher quality care at home. The hospitals may provide this training to the family caregiver of record.

5. Digital assets access. Legislation was him passed allowing fiduciaries to gain access to digital assets such as passwords, etc. in order to allow the more orderly administration of the states that have digital accounts.

6. Nursing home ID bracelets. There is a new proposed Illinois bill that is suggesting that nursing home residents have ID bracelets. Many expressed concern about privacy issues.

7. Presumptively void transfers to caregivers. Illinois has passed the law that if a hired caregiver is the recipient of an asset of an elderly person that they were caring for, either through a will or some other transferring mechanism, the gift to the hired caregiver is presumptively void and the burden of proof shifts to the caregiver to rebut the presumption that the gift to the caregiver is void. There's been a lot of abuse in this area by fly-by-night caregivers. This is a good attempt to try to put some teeth into overturning some gifts that are improperly made through undue influence, coercion, etc.

This has been an overview of what is happening at the federal and state level. There are still many changes to come. We are happy to keep you apprised of these changes as we move forward.

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Tort Notes:

Loaned Servant Doctrine as a Shield Often Fails Defendant Upon Examination of the Facts

By James J. Morici, Jr.

Defendants responsible for causing in juries to the employee of another often attempt to invoke the Loaned Servant Doctrine to avoid liability where their employee injures a co-employee of the alleged "borrowing employer." This defense rarely survives scrutiny but is often alleged because of the allure it presents to wrongdoers seeking to evade liability.

The Illinois Workers' Compensation Act defines a loaned employer as:

An employer whose business consists of . . . furnishing employees to or for other employers . . . for the performance of the work of such other employers and who pays such employees their salary or wages notwithstanding that they are doing the work of such other employers. Ill.Rev.Stat.1987, ch. 48, par. 138.1(a)(4).

The case law establishes a series of factors necessary for evaluating whether a worker is a loaned servant, if any of these facts are in dispute these factors should be presented to the trier of fact and a motion for summary judgment should be denied. These factors include: the manner of hiring, the mode of payment, the right to discharge, the manner of direction of the services, and the terms of the written contract. Gundich v. Emerson-Comstock Co., 21 Ill. 2d 117, 123, 171 N.E.2d 60, 63 (1960).

When evaluating the manner of hiring element, it is clearly established that if the alleged borrowing employer did not choose who would specifically be hired and instead that choice was made by the original employer, then the worker is not a loaned servant. This is often the circumstance where a crane company rents a crane complete with an operator. The operator remains a

direct employee of the crane company and does not become an employee of the lessee. Gundich. Id. In evaluating the mode of payment, the fact that the original employer pays the operator's wages, benefits and issues W-2 forms, is usually sufficient to defeat any claim of loaned status.

The right to discharge is another element which usually strongly rests in favor of the original employment status. This factor is further strengthened when the alleged loaned employee is one of specialized training, is governed by the safety rules and instruction of his employer and the employer retains the authority to replace him and/or substitute him during the term of the lease. Where the employee is accompanied by an expensive specialized piece of equipment owned by the original employer, is responsible to the original employer and its dictates for the care and maintenance of the equipment and throughout the arrangement continually advises and answers to the employer as to the care of that equipment it is impossible to establish loaned status. Merlo v. Public Service Co. of Northern Illinois, 381 Ill.300, 45 N.E.2d 665, has continually been cited along with Gundich in support of these propositions. Further, Courts have held consistently that even though certain day to day direction during the course of the work may have been received by the alleged loaning employer, that fact does not inure to a finding of loaned status. The United States Supreme Court in Standard Oil Company v. Anderson, 212 U.S. 215, 29S.Ct. 252 wrote:

Much stress is placed on the fact that winchman obeyed the signals of the gangman,…in timing the raising and lowering of the cases of oil. But when one large general work is undertaken by different persons doing distinct parts of the same undertaking, there must be cooperation, or there will be chaos. The giving of the signals of the circumstance of this case was not the giving of orders, but of information; and the obedience of those signals showed cooperation rather than subordination, and is not enough to show that there has been a change of masters. (Cited as authority in Gundich, Id., Murphy v. Lindahl, 24 Ill.App.2d 461; and Merlo, Id.)

The above, when taken together with the terms of any existing written contract, regardless of the contract's attempt to shift employment status, leads to the defeat of the purported defense. Even when the contract gives authority to the alleged borrowing company that does not necessarily mean that the original employer is giving up control of its employee and lending him, instead the court will look to how much control the alleged borrowing employer had over the employee on the jobsite before rendering a classification of loaned servant. See Pioneer Fireproof Const. Co. v. Hansen, 176 Ill. 100, 110, 52 N.E. 17, 20 (1898).

James J. Morici, Jr. is a partner in the firm of MORICI, FIGLIOLI & ASSOCIATES, and represents Plaintiffs in personal injury, workers' compensation, and construction site related injury suits. Read all prior issues of "Tort Notes" at www.MoriciFiglioli.com

ISBA Workers' Comp Seminar Summary

By Carl A. Virgilio

On February 20, 2017, attorneys David Figlioli, Robert Butzow, and Carl Virgilio attended the Workers' Compensation Update-Spring 2017 seminar hosted by the Illinois State Bar Association. Many topics were presented, however the case law update portion was particularly enlightening. Recently, the Illinois Appellate Court authored three opinions on AMA impairment ratings and its relation to permanent partial disability (PPD) awards. These opinions were discussed at length and each clearly outlined whether an AMA impairment rating is necessary for an award of PPD, and also the weight arbitrators are to give AMA impairment ratings if one is submitted into evidence at trial.

First, in Continental Tire of Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, 397 Ill. Dec. 915, 43 N.E. 3d 556, the court held that the plain language of Section 8.1b does not require that the claimant submit an impairment report and only requires an arbitrator consider a report that complies with subsection (a), regardless of which party submitted the report into evidence. Second, in Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n, 2016 IL App (3d) 150311WC, 404 Ill. Dec. 688, 56 N.E. 3d 1101, the court held that that statute does not require either party to submit an impairment report. However if an impairment report is submitted, "it must be considered by the Commission, along with other identified factors, in determining the claimant's level of PPD." Id. Finally, in Con-Way Freight v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, the issue on appeal was whether the language of Section 8.1b "requires the impairment rating to be the primary factor to be considered in establishing permanency." The court held that nothing in the Act mandates that the AMA impairment rating be the primary factor considered for a PPD award. Further, the court held that the Commission is to weigh all factors listed within Section 8.1b when determining the level of the injured worker's PPD award.

JUSTINIANS IN THE NEWS

Amari & Locallo founding partner, **Leonard Amari**, spent some time in China in March as part of the John Marshall Law School Intellectual Property Program. See photo below.

- **Tom and Judith Jaconetty** received the Regina Dominican Caeli Award for a career of dedication to the education of young Catholic women, pictured with their beautiful daughter Nicole, a graduate of Fordham University.

- The ISBA announced its 2017 Laureates, which include **Joe Gagliardo**, Justinian past president.The luncheon was held on March 30 at the Standard Club in Chicago.

- **Patrick Salvi Sr**. was featured in a Feburary 2017 Super Lawyers article "Batting Cleanup" Click the link to the article: http://www.superlawyers.com/illinois/article/batting-cleanup/2fd6482f-0669-4ede-b451-8da2d4bfc6b6.html

- **Vincent Petrosino** is the recipient of the 2016 Jury Verdict Reporter Trial Excellence Award.

- **Marisa Shostock** received the Young Lawyer of theh Year Award from the Lake County Bar Assoc.

Justinians, continued from page 14

- **Vince Oppedisano, George Schoenbeck and Maria Sarantakis** were featured columnists in the December, 2016 ISBA YLD Newsletter on marketing as a young attorney.

- Past Justinian President **James J. Morici, Jr.**, a noted alumni of the Chicago-Kent College of Law returned to the school last month to present a guest lecture to the school's "New Lawyer Incubator Project." Jim's topic concerned marketing in the cyber age and included a great deal of information concerning the Morici, Figlioli & Associates marketing efforts and used the firm's website as a visual aid. See photo below.

- The State of Illinois Supreme Court reappointed Romanucci & Blandin Partner, **Antonio M. Romanucci**, as Vice-Chairperson to its Rules Committee, effective January 1, 2017. Antonio has served on the state's rules committee since December 2011.

- Romanucci & Blandin Partner, **Antonio M. Romanucci** was named to the prestigious 'Top 100 Super Lawyer' list in Illinois by Super Lawyers Magazine for 2017. This is the 11th consecutive year Romanucci has been recognized as a 'Top 100' and the 13th consecutive year he has been selected to the list of Illinois Super Lawyers.

- Romanucci & Blandin Partner, **Frank A. Sommario** was named an Illinois Super Lawyer by Super Lawyers Magazine. This is the second time Sommario has been selected to the Super Lawyer list following six consecutive years on the Illinois Rising Star list.

- **Tomas Cabrera** of Morici, Figlioli & Associates obtained a verdict of $71,000 before the Honorable Claire McWilliams in the Circuit Court of Cook County on February 2, 2017. The verdict against a Defendant driver in an automobile negligence case came in Mr. Cabrera's first Jury Trial. In a time honored tradition revered by many at MFA, Mr. Cabrera's necktie was appropriately severed after the win and is proudly displayed at the firm - see photo below.

- Congratulations to **Lisa M. Longo** and Mitchell B. Friedman of Morici, Figlioli & Associates on a $1,300,000.00 settlement award during trial before the Honorable Thomas J. Lipscomb. This continues a string of victories at or during trial for Lisa Longo since transitioning from a decorated career as an Assistant Cook County State's Attorney 14 months ago.

- Congratulations to **Michael Bonamarte** of Levin & Perconti on a recent $552,000.00 jury verdict on behalf of his client. Michael tried a case in front of Judge Kay Hanlon in Cook County. Cari Silverman, also of Levin & Perconti, tried the case with Michael.

- **Romanucci & Blandin, LLC** secured a $200,000 settlement on behalf of the family of a 17-year-old boy who died after strangling himself while handcuffed in the back of a police squad car. The case has led to policy change within the Anderson, Indiana police department to ensure that a suspect's palms are facing outward from each other and the back of the hands are close together, making it more difficult to grip an object or slip handcuffs under the body.

- A settlement was reached by **Romanucci & Blandin, LLC** on behalf of its clients, five former student-athletes from Maine West High School in Des Plaines, Illinois, against the school, Maine Township High School District 207 and several of its coaches for the hazing of student-athletes by upper classmen that included physical assault.

- **Romanucci & Blandin, LLC** secured a settlement on behalf of their client whose 22-year-old bipolar son was shot and killed by a sheriff's deputy from Walworth County in southern Wisconsin. As a result of the settlement, the client was awarded $1.1 million dollars.

- On February 1, **Romanucci & Blandin**, LLC filed a lawsuit on behalf of the parents of two Lake Zurich High School (LZHS) students who fell victim to the abuses of bullying and hazing taking place on the school's football team in Lake Zurich, Illinois. The lawsuit was filed against Lake Zurich Community Unit School District 95, school officials and coaches at LZHS for allowing acts of hazing and bullying to occur within the team locker room. Media outlets both locally and nationally covered the story, including: The Chicago Tribune, ABC, NBC, WGN, CBS Radio – 670 The Score, USA Today, The New York Post, and many more.

- **Romanucci & Blandin, LLC** spoke with BuzzFeed, CNN and other news outlets following the filing of a federal lawsuit in February against Chadron State College in Nebraska. The complaint asserts that the school violated the gender equity law Title IX in how it handled reports about suspected abuse on the client's 19-year-old daughter by her boyfriend.

- Romanucci & Blandin's **Gina DeBoni** addressed the media in February after being retained by the family of Desiree Robinson, a 16-year-old girl who was discovered murdered in a Markham garage on Christmas Eve 2016. Gina's comments were featured in the Chicago Tribune, WGN, CBS and many other outlets.

- **Antonio Romanucci** spoke on-air at FOX 32 Chicago following the U.S. Department of Justice's release of a 161-page report in January.

TRANSITIONS

- **Karalyn Jevaney** has accepted a job with CNA Insurance in Lisle

- **Andrew Manno** became an associate at Levin and Perconti.

- **Catie Caifano Locallo** was named partner of Robbins Schwartz law firm, which focuses on labor and employment law, and board governance matters.

- Congratulations to **Joe and Jen Gagliardo** on the birth of their granddaughter, Emma Rose, shown below with older sister, Ava Marie.

- **Adeline Spitzzeri**, mother of DCBA member, Fred Spitzzeri has passed away in December 2016

- **Lou Cairo** announce the birth of his new grandson, Louis.

- Our sincere condolences to Kathleen Field Orr on the passing of her husband, **Dr. Edward Ogata** on February 24, 2017, after suffering a massive stroke the week before. Ed spent his life serving others, first at Prentice Women's Hospital and Children's Memorial Hspital as the Head of Neonatology. In 1998, Ed was appointed Chief Medical Officer of Children's Memorial Hospital (now the Ann and Robert H. Lurie Children's Hospital of Chicago) and played a large role in the move to their new building in Streeterville. He then travelled across the globe to Doha, Qatar and served as the first Chief Medical Officer for Sidra Medical and Research Center and led the building of a pediatric and women's hospital, not only for Qatar but the broader Arabian Gulf region. Ed ended his career as Professor and Director of Outreach and Network Development at the University of Chicago Medical Center.

Nomination of Officers Dinner:

Please join us for our upcoming Nomination of Officers Meeting.

April 20, 2017
Tufano's
1073 W. Vernon Park Pl.
Chicago
6:00 pm cocktails
7 p.m. dinner

In accordance with the bylaws, the members approved the following to serve on the Nominating Committee at the March meeting: Judge Gloria Coco, Chair; John Perconti; Umberto Davi; Richard Caifano; Antonio M. Romanucci; Jessica DePinto; Lou Siracusano; Leonard DeFranco; Joseph Bisceglia.

The Committee will recommend the following slate of officers for election at the April meeting:

Michael F. Bonamarte, president
Vincent R. Vidmer, first vice president
Natalie M. Petric, second vice president
Hon. Regina A. Scannicchio, third vice president
Dion U. Davi, treasurer
Bruno R. Marasso, secretary

The Election of Officers dinner will be held on May 17 at Gibsons, Chicago.

NEWSLETTER EDITOR: LEONARD S. DEFRANCO

NEWSLETTER CONTRIBUTORS:

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Anthony B. Ferraro
James J. Morici, Jr.

Ralph Greenslade, photography
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Anyone wishing to share information with their fellow Justinians is encouraged to contact Newsletter Editor Leonard DeFranco at editor4justinians@gmail.com

Editor's Note:

This newsletter is our third and final publication for the 2016-17 year. It has been a joy and honor to serve the Society as newsletter editor.

The next publication will be printed and presented at the annual Installation and Awards Dinner. Accordingly, we need to set a July 1 deadline for submissions. All submissions should be in Microsoft Word in paragraph format.

Email forwards are problematic. Be mindful that I may not have background or context for submission for proper inclusion, threfore remember the 4 Ws: Who, What, Where and When.

Photos should be in JPG format; it is exceedingly difficult to replicate phone and web photos.

I have received many gracious comments regarding the new format, however I would like any critical observations regarding content or additional columns from members. This is your publication and it is representative of our venerable Society.

Have a wonderful summer.

- Leonard S. DeFranco, Editor
editor4justinians@gmail.com