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Trial Notebook

Deadlocked arbitrators exceeded authority by delegating their job

By Steven P. Garmisa
Hoey & Farina

In an unusual case where arbitrators deadlocked during deliberation, they voted to resolve the impasse by asking one of the defendants what he thought was a fair amount to pay the plaintiff. They ended up awarding the plaintiff what the defendant suggested.

Because of this unusual arrangement, the Illinois Appellate Court concluded the arbitrators exceeded their authority by improperly delegating their official functions.

The trial judge was ordered to vacate the award and instruct the parties to proceed with a fresh set of arbitrators. *Trimble v. Graves*, No. 5–10–0075 (April 14, 2011).

In 1998, R. Joe Trimble leased some registered Jersey cows to Clover Farms for one year. At some point, Clover Farms allegedly stopped paying rent. But Trimble reportedly failed to fetch the surviving cows until 2005.

A year later, Trimble signed an arbitration agreement with Jim Graves, Jerry Graves and Tony Graves (d/b/a Clover Farms). Trimble named Tim Butikofer as his arbitrator and the defendants selected Fred Kuenstler. Then Butikofer and Kuenstler picked Alois Kertz as the neutral.

Paragraph 6 of the arbitration agreement said that deliberations would start as soon as the parties finished presenting evidence and argument — and that the arbitrators "will not separate until the matter is resolved to their satisfaction and a written document prepared, which can be handwritten, making the award as they deem best supported by the evidence."

Paragraph 12 said "the strict formal rules of evidence do not apply," while Paragraph 17 authorized the arbitrators "to ask questions of any witness if they do not understand the answer or they want clarification for any purpose."

As recounted by the reviewing court, there was no dispute about the following facts (taken from Butikofer's dissent):

During deliberations, Kertz said he believed that Trimble was not entitled to any compensation because of the delay in asserting his claim, but Butikofer argued Trimble deserved $158,675. After two hours of deliberation, Kertz reportedly suggested letting the defendants decide how much they owed Trimble.

With Butikofer dissenting, the motion passed and the parties and lawyers were summoned back into the conference room. Kertz asked Tony Graves what he thought would be a fair amount to pay Trimble and Graves said $7,000.

The award — signed by Kertz and Kuenstler — gave Trimble $7,676.

Trimble petitioned to vacate the award, but the trial judge rejected his request, concluding the arbitrators did not exceed their powers when they voted to ask Graves what he thought he owed Trimble. Because the strict rules of evidence did not apply — and the arbitrators were authorized to ask clarifying questions — they were entitled to reopen the evidence, the judge said.

Reversing, the appellate court explained that "the arbitrators exceeded their powers when they failed to adhere to the terms of the agreement."

Here are highlights of Justice Richard P. Goldenhersh's opinion (with omissions not noted in the text):

Continued on page 4

Case Summaries

Employment bias — employer liability

The district court correctly granted summary judgment on a Title VII employment-discrimination case, given that the plaintiff failed to establish any basis for employer liability for the alleged hostile work environment.

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The 7th U.S. Circuit Court of Appeals has affirmed a ruling by U.S. District Judge Sarah Evans Barker.

Maetta Vance worked for Ball State University in the catering department beginning in 1989. Initially, she was a substitute server. She was then promoted to a part-time caterer position, and then, finally, to a full-time post. She was the only black person in her department.

The 7th Circuit stressed that since Vance had lost summary judgment, the court looked at the evidence in the light most favorable to her. By that account, Vance's trouble began in 2001, when one of her co-workers, Saundra Davis, hit her on the back of the head without provocation. Vance also came under a new supervisor, who treated her coldly. But she did not complain about either of those events at that time and shortly thereafter Davis left the department.

In 2005, Davis returned to the department. Allegedly, Davis and another co-worker, Connie McVicker, began using racial epithets and references to the Ku Klux Klan around the plaintiff. McVicker, in particular, mentioned her family's ties to the Klan. The plaintiff complained of this treatment as well as of the earlier incidents.

This complaint resulted in a prompt investigation by Ball State; the university determined that the complaint was substantiated. Ball State's normal procedure involves progressive discipline, beginning with an oral warning. But in this case, the university determined that the situation was serious enough to immediately give written warnings to both McVicker and Davis.

Shortly thereafter, Vance made a second complaint about use of epithets by McVicker and Davis. This complaint was investigated, but there was no corroboration found. So the university did not institute further discipline on that occasion. A third complaint did result in counseling sessions regarding workplace communications for McVicker and Davis.

Vance filed a complaint with the Equal Employment Opportunity Commission (EEOC) and thereafter made several more complaints about her co-workers. She also complained that she had been given diminished job responsibilities. Meanwhile, Vance was promoted to her full-time post. She complained, however, that this new post gave her a great deal of extremely menial work to do.

When she received her right-to-sue letter, Vance filed her current action. Ball State moved for summary judgment, which was granted. The 7th Circuit has now affirmed.

The court first disposed of an evidentiary issue. After the deadline for dispositive motions had long passed, Vance supplemented the record on summary judgment with evidence of additional instances of alleged harassment. Ball State argued successfully in the lower court that the evidence should be stricken because it was an attempt to backdoor an amendment to the pleadings, adding additional charges of discrimination.

The 7th Circuit disagreed with this reasoning. Because this was a hostile

Continued on page 4

Inside

Experts debate merits of the 'material support' ban

By Patricia Manson
Law Bulletin staff writer

Chicago attorney Michael E. Deutsch contends that laws that prohibit giving aid and comfort to terrorists have been stretched so far out of shape by the president and the U.S. Supreme Court that they no longer resemble the measures enacted by Congress.

Despite his background as a constitutional law professor, President Obama is "essentially following the game plan set out by the prior administration" and using the ban on "material support" to foreign terrorist organizations as a weapon against those who oppose certain U.S. policies, Deutsch said.

And Deutsch said he the U.S. Supreme Court — or at least a majority of its members — has not acquitted itself any better.

A 6-3 ruling a year ago rejecting a First Amendment challenge to material support provisions "is an ominous expansion of the law and threatens anyone who is involved in any political activity in support of foreign struggles," Deutsch said.

"I think the law has been expanded beyond what the intent of Congress was."

Professor Andrea D. Lyon of DePaul University College of Law contended that the alleged expansion of material support provisions leaves individuals and entities uncertain as to which activities are forbidden.

"The problem with the law is that it's so vague it would be very difficult to give any money to any kind of foreign humanitarian organization without having some concern that you're giving funds to a bad cause," Lyon said.

But former federal prosecutor Joseph M. Ferguson does not see it that way.

The "material support" provision is needed so that those connected with groups that have "some nexus" with terrorism "know where the line is," Ferguson said.

Ferguson conceded that the line is not set in stone.

Prosecutors need the leeway to respond to any changes in the way terrorists pursue their goals, Ferguson said.

"The law is written with some degree of openness and flexibility to allow it to be applied in a way that evolves with the circumstances that we see in the terrorism realm," Ferguson said.

But Ferguson contended that this flexibility does not prevent individuals and organizations from knowing when they step over the line from providing humanitarian aid and conflict-resolution services to bolstering the activities of terrorists.

Ferguson was a prosecutor and Deutsch and Lyon were on the defense team in the trial of former grocer Muhammad Salah and business professor Abdelhaleem Ashqar.

In early 2007, a federal jury in Chicago acquitted the men in 2007 of charges that they sent money to the militant Palestinian group Hamas to help finance murders, bombings and kidnappings.

The jury found Salah and Ashqar guilty of lesser obstruction-of-justice charges.

Ferguson is now Chicago's inspector general. Deutsch is with the Peoples Law Office.

Three years after the verdict was returned in Salah and Ashqar's case, the U.S. Supreme Court in *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010), held that the government had the authority to bar all forms of material support to des-

Material – page 22

Ben Speckmann

After nearly two decades on the bench, Cook County Circuit Judge Jennifer Duncan-Brice will retire at the end of the month.

Jurist has 'that quality that every judge' wants

By Pat Milhizer
Law Bulletin staff writer

Growing up the daughter of a steel mill worker, Jennifer Duncan-Brice got used to moving to a new city to follow her father's job opportunities.

But in nearly two decades as a Cook County circuit judge, Duncan-Brice got used to staying put.

When voters elected her to the bench in 1992, Duncan-Brice started in the Law Division. And she never left.

So she's seen plenty of courtroom battles to conclude that lawyers who fight about every motion and trial issue are doing something wrong.

"You've got to be able to give on some things. Everything shouldn't be a battle. And you've got to be able to pick those fights," she said. "It's a short life in the big picture and people shouldn't take it personally. When I rule, I'm not taking it personally. I'm doing what I think is right. And if I'm wrong, you can always appeal me."

At the end of the month, Duncan-Brice will continue to handle disputes, but she won't be in the Daley Center.

The judge who has earned praise from lawyers and judges will retire for a mediation gig on July 29, one day shy of her 60th birthday.

"It's a huge loss," said Associate Judge Michael R. Panter. "She can handle anything.

"She's got that quality that every judge really wants so much — to be trusted and sought after and respected by the lawyers that they want to bring you their cases."

Before calling Chicago home, Duncan-Brice lived in Crown Point, Ind., Cleveland, Pittsburgh and Gary, Ind.

After she graduated from The John Marshall Law School in 1976, she joined the city of Chicago Law Department as an assistant corporation counsel.

She defended the city in federal litigation, representing police officers accused of excessive force and false arrests. She moved to property condemnation cases and represented the city's landmark commission before being promoted to chief and deputy positions in the office.

Circuit Judge James P. Flannery Jr. has known Duncan-Brice since they were law students.

"She just has a tremendous work ethic, a great deal of integrity and a lot of common sense," Flannery said. "I remember one of the years when I worked with her at the city as a corporation counsel, she tried more civil cases in the federal court than any other attorney.

"When she was promoted at the corporation counsel's office and put in charge of the Torts Division, part of her job was settling cases. That's something that stayed with her when she got on the bench."

On the bench, Duncan-Brice handles a general calendar call. That means she not only presides over trials for personal

Duncan-Brice – page 22

Ohio high court defines 'aggrieved' in 911 tapes dispute

By Julie Carr Smyth
Associated Press writer

COLUMBUS, Ohio — A citizen activist who stood to collect $84,000 in fines from a small Ohio city that recorded over 20 years of 911 tapes lost his legal battle Thursday.

The Ohio Supreme Court ruled unanimously that Timothy Rhodes failed to demonstrate that he actually wanted information contained on the city of New Philadelphia's 911 tapes and so was not "aggrieved" under the state's public records law.

The ruling could squelch about half a dozen similar suits around the state where Rhodes or other activists sought old tapes that were no longer available.

In an opinion written by Justice Yvette McGee Brown, the court said the city "was able to establish through competent credible evidence" that Rhodes was more interested in the money he stood to collect than in the contents of 911 tapes, which the city's police department routinely recorded over.

In 2007, Rhodes requested tapes from 1975 to 1995. When the tapes weren't available, he filed suit accusing the city of violating records retention requirements in the law. That law says the "aggrieved" person is entitled to proceeds of a civil forfeiture, a sort of fine, when public records are improperly destroyed. It does not require a person to say why he wants the information and Rhodes did not give a reason for requesting the tapes.

"We cannot ignore the General Assembly's use of the term 'aggrieved,' and we conclude that the General Assembly did not intend to impose a forfeiture when it can be proved that the requester's legal rights were not infringed because the requester's only intent was to prove the nonexistence of the records," Brown wrote.

Rhodes' lawyers argued theirs was a fight for government transparency. They said New Philadelphia was negligent.

State law requires cities to put a records retention policy in place and to inform the Ohio Historical Society when they plan to destroy records. New Philadelphia did neither. The city's open records commission met only once, he said, at a bar in the city's downtown.

During oral arguments in April, Rhodes' attorney Craig Conley told justices it was wrong to paint his client as a money grubber, after Chief Justice Maureen O'Connor asked whether only one party could "cash in" under the law.

"First of all, I don't agree with … 'cash in.' The case law is clear: This is not compensation to the requesting party, this is a penalty designed to punish and deter," Conley told the court. "And without it, the right of access without a remedy is a meaningless right."

Rhodes initially sought $4.9 million in penalties, $1,000 a day for every one of the 4,968 days of records that were destroyed, court documents indicate. A lower court calculated New Philadelphia's penalty at $84,000 for taping over its 911 recordings from 1975 to 1995, money that would have gone to Rhodes if he won.

Similar requests have been made, and fines sought, in other Ohio communities including Canfield, Willard, East Liverpool and Bucyrus. A fine of $1.4 million was originally assessed in the Bucyrus case.

New Philadelphia's attorney John McLandrich lauded justices Thursday for clarifying an important definition within Ohio's public records law by defining what it means to be "aggrieved." During oral arguments, he told the court that every city in the state recycled its 911 tapes during the period in question by recording over them on a rotating basis — and that Rhodes knew that.

"It was very gratifying that they agreed with what we'd been arguing all along," he said after the decision. "From my perspective, it really rationalizes as opposed to weakens Ohio's public records law. If you are truly aggrieved by the destruction of information, you can still seek a penalty for improper destruction. It's just that if you're shopping around trying to find a forfeiture, it won't be a cash cow."

Casino tax money remains up in the air

By John Flynn Rooney
Law Bulletin staff writer

The collection and distribution of a casino tax signed into law by former Illinois Gov. Rod R. Blagojevich cannot be enjoined, a federal appeals court ruled today in a divided opinion.

The 7th U.S. Circuit Court of Appeals issued an en banc decision in the case brought on behalf of four riverboat casinos operating in Illinois. The defendants in the underlying case are Illinois horse racing tracks.

Judge Richard A. Posner wrote today's majority decision joined by four other judges, while Judge Diane S. Sykes wrote a dissent, joined by Judges William J. Bauer and Michael S. Kanne.

In the majority decision, Posner extended a temporary restraining order for 30 days against releasing more than $170 million being held in escrow at all Illinois racetracks, said William J. McKenna, a Foley & Lardner LLP partner representing Balmoral Racing Club Inc. and Maywood Park Trotting Association Inc. That extension would allow the riverboat casinos to ask U.S. Supreme Court Justice Elena Kagan to continue the stay order, pending the casinos' possible filing of a certiorari petition with the nation's highest court, McKenna said. Kagan is the justice responsible for handling such matters within the 7th Circuit.

"We are pleased by the [majority] decision and we're very gratified," McKenna said. "But we also recognize that this legal battle is not over."

Arlington Park Racecourse LLC "is pleased with [today's majority] decision and looks forward to using the funds for the purposes the legislature intended," said John N. Gallo, a Sidley, Austin LLP partner. Constantine L. Trela Jr., another Sidley, Austin partner, also represents Arlington Park Racecourse.

Appeal – page 22

IRS ends probe into big donors of political groups

By Stephen Ohlemacher
Associated Press writer

WASHINGTON — The Internal Revenue Service is dropping its investigation of five donors for making contributions to the kind of nonprofit groups that have become popular for spending millions of dollars on political ads in the past few years, the agency announced Thursday.

The IRS was trying to determine whether the donors owed federal gift taxes for the donations.

However, IRS spokesman Frank Keith said Thursday the law on gift taxes is unclear, so the agency is closing the cases and won't open any new ones until it reviews whether additional guidance or legislation is necessary.

"The Internal Revenue Service has little history to draw from in this area and the limited guidance we previously issued on this matter is almost 30 years old," Keith said.

"While we review the need for additional guidance or legislation, we will not use resources to pursue examinations on this issue. Any future action we take will be prospective and after notice to the public."

At issue is whether contributors to the tax-exempt organizations — many of them donate six- and seven-figure amounts — have to pay the 35 percent gift tax on their donations.

The IRS did not name the donors or the nonprofit groups to which they contributed. But the agency's confirmation of an investigation in May could have had a chilling effect on politically active groups that have become integral to campaigns.

IRS – page 22

Duncan-Brice

Continued from page 1

injury, medical malpractice and commercial disputes, she also handles pretrial motions and settlement discussions.

One issue that has dominated her caseload lately involves heparin, a drug that prevents blood clots and sparked lawsuits from plaintiffs alleging contaminated doses. She has about 400 heparin cases on her docket that will be inherited by her judicial replacement.

In the 1990s, Duncan-Brice presided over all the cases involving doctors and medical staff who received anaphylactic shock from wearing latex gloves. All of those cases settled without trial.

When his cases are assigned to Duncan-Brice, defense attorney Joseph A. Camarra said he knows he's getting a judge who will read everything he has filed.

"You know you're going to be dealing with somebody who will work as hard, if not harder, than you are. You know where she stands right from the outset," said Camarra of Cassiday, Schade LLP.

"She's probably the hardest working judge I know. She has her motion call; she has her calendar she follows; she's trying cases and in between all of this, she's pretrying cases," Camarra said. "You know you're going to get a hard working judge. You know you're going to get somebody who understands the law and you're going to get somebody who understands when she's being b.s.'d.

"She gives everybody their fair time to state their position but she tends to cut through a lot of the nonsense that goes on in these cases."

Montgomery W. Mackey, a plaintiffs' lawyer at Mackey & Kramer P.C., said Duncan-Brice will make a smooth transition to mediation.

"She's always handled pretrials for cases on her call and she's been able to devote a pretty good amount of time on working on getting those cases settled. So I think she'll be a good mediator. She's perceived as both the plaintiff's and defense bar as a fair person and a smart person," Mackey said.

The quality that judges need the most, Duncan-Brice said, is objectivity.

"You have to be willing to work and listen to people," she said. "Then you get educated. That's one of the fun things about this job. I don't think a month goes by where I don't learn something. Attorneys educate me. That's why you've got to keep your mind open and your ears open, so you'll hear something new."

Duncan-Brice has two adult children and is married to Harry L. Brice, a retired Cook County prosecutor. When her judicial days end at the end of the month, she will join Resolute Systems.

"I'm happy for her that she gets to retire," Camarra said. "But it's a bad thing for our system because she's the type of judge that any lawyer would want to have their case in front of."

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Retrial

Continued from page 3

lead counsel in the prosecution against former Gov. George H. Ryan, and Chicago lawyer James D. Montgomery.

The Springfield retrial includes the following cast of lawyers: Assistant Sangamon County State's Attorney William Andrew Davis, Assistant U.S. State's Attorney Gregory K. Harris, local attorney Carol Hansen Posegate and Urbana attorney J. Steven Beckett.

U.S. District Judge James B. Zagel is set to preside over the Chicago event and Appellate Court Justice Thomas R. Appleton will handle the Springfield retrial.

Burke said actresses will play the part of Surratt and broadcast journalist Bill Kurtis will provide "coverage" of the Chicago retrial. In addition, Burke said the audiences will get to participate as the jurors deciding the case.

John Lupton with the Illinois Supreme Court Historic Preservation Commission said he has been providing historical information about Surratt's trial to the participating lawyers, who will stick to the facts of the case, but have some creative wiggle room when it comes to their arguments.

One major difference, Lupton said, is that Surratt was tried by a military tribunal. In her retrials, she will have the chance to testify and use modern rules of evidence.

Genson said he has been reading everything and anything he can find about the 1865 case in preparation for the retrial. Even though it's not necessarily a real case, Genson was hesitant to reveal too much about his strategy.

Conti, who will be defending Surratt with Genson, said she is honored and excited to participate in the Chicago retrial.

"It's a chance to rewrite history and that's always fun," she said, adding that she has already started trash talking with Webb, who will be prosecuting Surratt.

Not only does she expect the event to be fun to watch, but Conti said the audience will learn about the case, as well as how defendants' rights differ between civilian trials and military trials.

"The beauty of it is we've got history, we've got creativity, we've got entertainment and we've got legal issues," she said. "All of those things coming together is just going to be fabulous."

Tickets cost $25 each and go on sale Aug. 1. They can be purchased by calling (312) 554-2057 for the Chicago event or (217) 558-8934 for the Springfield retrial.

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Material

Continued from page 1

ignated terrorist groups, even if that support took the form of training and advice about peaceful and legal activities.

The high court rejected the argument that provisions in the Antiterrorism and Effective Death Penalty Act that allow the government to take such a step violate the First Amendment's guarantee of free speech and assembly.

On June 21, a slew of organizations acting under an umbrella group called the Charity and Security Network marked the one-year anniversary of the *Humanitarian Law Project* ruling with a statement calling for the reform of U.S. laws and policies that purportedly hamper charitable activities and violate the First Amendment and the due process clause.

"Laws governing 'material support' to designated terrorist organizations sweep too broadly, criminalizing life-saving humanitarian aid to civilians, efforts at peacebuilding and speech advocating only lawful, nonviolent activity, even where it furthers no terrorist acts whatsoever," the statement says. "In addition, the laws give the executive branch broad discretion to place groups on terrorist lists without affording them adequate notice and a meaningful opportunity to defend themselves."

Organizations joining the statement included the Arab-American Anti-Discrimination Committee, American Friends Service Committee, National Association of Criminal Defense Lawyers and Grantmakers Without Borders.

Kay Guinane, the director of the Washington, D.C.-based Charity and Security Network, emphasized that the statement's signers are not calling for the elimination of material support provisions.

Instead, Guinane said, the signers are asking for the ability, with the fear of criminal prosecution, to provide aid and training in conflict-torn areas "so we can get terrorist groups to lay down their arms and renounce violence."

Also released on June 21 was a letter urging Secretary of State Hillary Rodham Clinton to exempt from the material support provisions activities "directly aimed at preventing or resolving conflicts."

The letter notes that the Supreme Court in *Humanitarian Law Project* held that Congress may impose restrictions on conflict-resolution and other activities, not that it must.

And Congress, in turn, enacted a statutory provision giving the secretary of state the power to determine whether to lift restrictions on certain activities, the letter says.

The letter was signed by more than two dozen individuals, included former U.S. Rep. Bob McEwen of Ohio; executive director Jolynn Shoemaker of Women in International Security; and Professor Carrie Menkel-Meadow of Georgetown University Law Center and Irvine Law School at the University of California.

Also signing the letter were several organizations, including some that joined the statement calling for the reform of material support policies and laws.

The Constitution Project, a Washington, D.C.-based organization dedicated to strengthening the rule of law, was among those organizations.

TCP senior counsel Sharon Bradford Franklin said there was no question that the United States needs to fight terrorism.

And Franklin said laws prohibiting material support for terrorist activities can be effective weapons in that fight.

But the laws also can backfire if they are not wielded properly, Franklin contended.

"Unfortunately, those laws sweep too broadly and they prohibit conduct that, No. 1, should be allowed by the First Amendment and, No. 2, hinder efforts to combat terrorism," Franklin said.

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Calendar

Continued from page 5

Delivery of Legal Services Committee Meeting
Sponsor: Kane County Bar Association
Noon
KCJC Law Library
Info: 630-762-1915; fax: 630-762-9395

AUGUST 3

Board of Directors Meeting
Sponsor: Illinois Paralegal Association
5:30-8:15 p.m. Reed Smith
10 S Wacker Dr 40th Fl
Info: 815-462-4620; fax: 815-462-4696

Appeal

Continued from page 1

During 2006, while Blagojevich was governor, he signed the 2006 Horse Racing Act, 230 ILCS 10/7(a). Among the provisions of the bill was a tax levied only on the four most profitable casinos in Illinois.

The tax was to be placed into the so-called Horse Racing Equity Trust Fund. The fund was to be paid directly to five racetracks in Illinois. The tax and the fund were to last two years; a 2008 bill extended the program for another three years

The plain transfer of money from one gambling operation to its competitor drew immediate fire. Evidence began to surface that Blagojevich essentially accepted bribes from operators of the racetracks in exchange for his influence in getting the bill passed.

Those allegations were among those that ultimately found Blagojevich removed from office and on trial for federal felonies. A federal jury convicted Blagojevich on June 27 on 17 corruption-related charges, including wire fraud, attempted extortion and conspiracy to solicit a bribe.

Before Blagojevich stood trial, the casinos filed a flurry of lawsuits. The first round of those reached the Illinois Supreme Court before the allegations of corruption surfaced. Those lawsuits were dismissed.

A second round was filed after the 2008 extension; by this time, the evidence of malfeasance was available. In 2009, the casinos filed a claim under the Racketeer Influenced and Corrupt Organizations Act against Blagojevich and the operators of the racetracks.

The lawsuit also requested that a constructive trust be placed over the proceeds from the tax.

Both sides filed motions to dismiss. U.S. District Judge Matthew F. Kennelly then refused to find that Blagojevich enjoyed legislative immunity from the suit. But the judge also found that he could not impose the constructive trust due to the Tax Injunction Act (TIA), 28 U.S.C. [section sign] 1341.

The casinos then appealed to the 7th Circuit.

In March, a 7th Circuit majority panel comprising Sykes and Bauer reversed both of Kennelly's rulings. Posner dissented.

The initial 7th Circuit's panel decision holding that Blagojevich has legislative immunity, McKenna said.

Four of the racetrack defendants sought rehearing en banc. The 7th Circuit agreed to reconsider the issue involving the Tax Injunction Act.

"The Tax Injunction Act does not bar federal monetary relief," Posner wrote for the majority in today's decision. "What the federal courts must not do is freeze the state's tax moneys by imposition of a constructive trust."

Chief Judge Frank H. Easterbrook, along with Judges Diane P. Wood, John Daniel Tinder and David F. Hamilton joined in the majority decision.

Sykes said in her dissent that "the TIA's jurisdictional bar does not apply."

"The casino surcharge is not structured as a tax and a constructive trust on the racetracks' private escrow as a remedy for the alleged RICO violations will not interfere with the assessment or collection of any state revenue," the dissent said.

Seventh Circuit Judges Joel M. Flaum, Ilana Diamond Rovner and Ann Claire Williams did not take part in the consideration or decision in the case.

The case is *Empress Casino Joliet Corp. et al. v. Balmoral Racing Club Inc., et al.* No. 09-3975.

Robert M. Andalman, a Loeb & Loeb LLP partner, represents the casinos on appeal. He could not be reached for comment for this article.

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Ford

Continued from page 2

drivers and several safety features that use sensors. One of the features automatically steers the vehicle into a parallel parking space and another alerts drivers to vehicles in their blind spots and warns of potential collisions when backing out of a parking space.

Ford has been highlighting some of the innovations in recent commercials and about 80 percent of Ford buyers get their vehicle with Sync, a $395 option that responds to voice commands and has been installed on nearly 4 million vehicles since its introduction in 2007. Sync has been a major contributor to Ford's improved reputation and increased market share, though a newer offshoot known as MyFord Touch has been panned by Consumer Reports and criticized by buyers in a recent J. D. Power & Associates quality survey.

Harmes said, before filing suit, Eagle Harbor repeatedly told Ford in 2009 and 2010 that it was infringing on the company's patents.

"We would prefer to reach some business settlement with Ford as opposed to continuing the suit," he said.

Eagle Harbor has been in discussions with other automakers and suppliers about its technology but none have agreed to license it yet, Harmes said.

Schools

Continued from page 3

fall, said she hopes to get an article for the next annual edition of Satyam on medical malpractice law or personal injury law. She also will try to solicit an article on intellectual property because "a lot of South Asian attorneys do IP," she said. "A lot have science and engineering backgrounds."

In fact, Paul said, "joining law is a relatively new thing" for people of South Asian descent.

Paul said he would like to pursue a career in education law and eventually teach in a law school.

Dhandayutham said his "main love" is criminal law, but he is also interested in immigration law, corporate and international law.

Tannan said she is considering medical malpractice law.

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Aid

Continued from page 3

time when more than half the year was already over.

The impact of that cutback, combined with reductions in state funds, interest on Lawyers' Trust Accounts and other funding sources has put many LSC-supported legal aid programs under great financial stress, according to the LSC.

In survey responses provided by 121 of the 136 LSC-funded programs, legal aid providers are projecting net staff reductions by the end of 2011 of 445 employees, including more than 200 attorneys, because of layoffs and attrition, the LSC reported in a news release.

According to the survey responses, the LSC noted, 57 percent of the legal aid programs project budget deficits for 2011 totaling more than $19 million, 42 percent of the respondents said they had imposed a salary freeze and 31 percent anticipate reducing employee benefits this year.

In Illinois, the LSC provides funding to the Legal Assistance Foundation of Metropolitan Chicago, Land of Lincoln Legal Assistance Foundation Inc., which has its headquarters in East St. Louis, and Prairie State Legal Services Inc. based in Rockford.

The previous 4 percent cut in LSC funding that hit legal aid organizations midyear translated to a reduction of about $500,000 to the three Illinois programs collectively, which had been receiving $13.7 million in LSC funding in 2010.

At Land of Lincoln Legal Assistance Foundation Inc., which serves 65 counties in central and southern Illinois, LSC funding comprises nearly 40 percent of the budget.

The House committee's proposal as it stands, said Lois J. Wood, executive director of Land of Lincoln Legal Assistance Foundation Inc., represents a "a deep cut in funding that is already very, very thin for legal services.

"Because of last year's cut and cuts in other sources of funding we are already operating at a deficit this year. It's a manageable deficit because we have some funds in reserves, but heading into 2012, if we were to absorb a full cut as proposed by the House committee it would obviously require us to rethink our staffing and our services."

The legal aid organization already targets its resources to "just the most critical legal problems," Wood said, including problems of victims of domestic violence, people facing foreclosure, senior victims of elder abuse and people struggling to receive healthcare.

The House committee is expected to adopt the spending proposal when it meets on Wednesday, LSC spokesman Steve Barr said. The proposal would then advance to the House floor before going to the Senate.

"We certainly hope that there'll be a compromise between the Senate and the House," Barr said. "But when you're starting with at a 26 percent cut, it's just a very scary process going forward."

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FCC

Continued from page 2

that "with the future of newspapers under threat, it seems hard to justify the continuation of a rule barring a newspaper-broadcast combination."

The FCC's media ownership rules, which exist to ensure that communities have choices for local news, include limits on the number of television and radio stations that one company can own in a market and cross-ownership restrictions. Holdings in some markets, such as Atlanta, where Cox Media Group owns WSB-TV and The Atlanta Journal-Constitution, are grandfathered in.

Congress requires the FCC to review its media ownership rules every four years. Thursday's ruling comes as the current FCC, now under Democratic control, is seeking to wrap up its latest review, which began last year.

In a statement Thursday, the FCC said the current review will allow it to take "appropriate steps to ensure that the nation's media marketplace remains healthy and vibrant."

The court case goes back to the FCC's 2002 review. Then-FCC Chairman Michael Powell tried to increase the number of TV and radio stations that a company could own in a market. He also tried to relax the ban on the same company owning both a newspaper and a TV station in the same market.

IRS

Continued from page 1

In the 2010 congressional elections, a number of groups incorporated as nonprofits under Section 501(c)(4) of the tax code spent millions on political ads without disclosing their donors.

The groups predominantly supported Republican candidates and causes in 2010, though both parties are expected to use them in the 2012 presidential and congressional elections.

Several key Republican members of Congress questioned whether the investigation was politically motivated.

The IRS said the examinations were started by civil servants and there was no influence from anyone outside the agency.

Rep. Dave Camp, R-Mich., chairman of the House Ways and Means Committee, said he is troubled that the IRS did not explain why the investigations were started in the first place.

He said the guidance issued by the IRS left open the door for future audits, after new guidance is issued.

Send notices of seminars, meetings, and events to the Calendar editor.
Via fax: (312) 644-4255

The New York Times Crossword Puzzle

No. 0703

MY TREAT By Pete Muller / Edited by Will Shortz

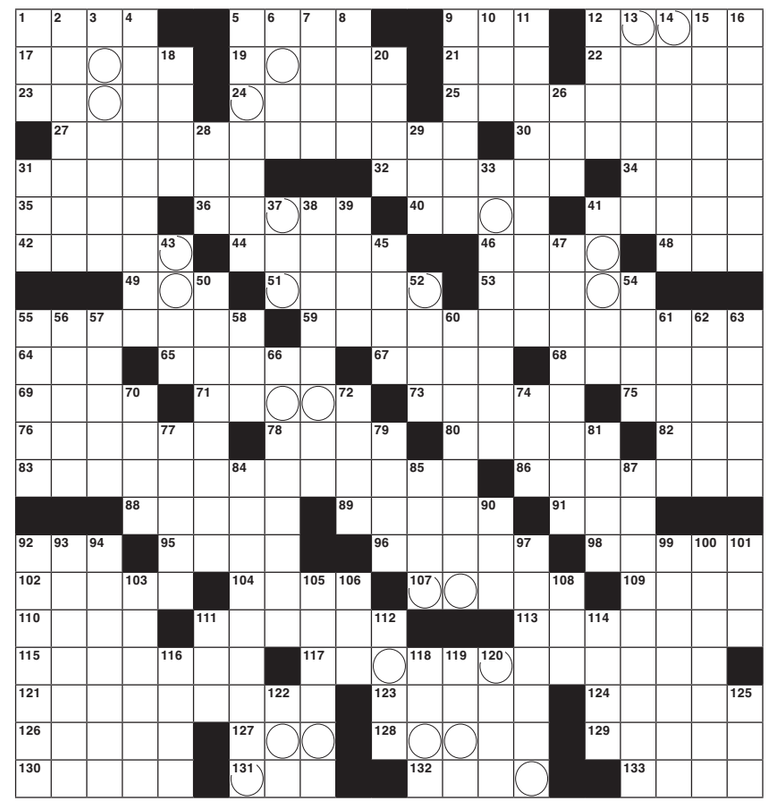
When this puzzle is done, the circles will contain five different letters of the alphabet. Connect each set of circles containing the same letter, without crossing your line, to make a simple closed shape. The resulting five closed shapes together will form a picture of a 117-Across. The five letters can be arranged to name a good place to get a 117-Across.

Across

1 Essence
5 Start of a nursery rhyme
9 "I won't bore you with the rest"
12 Actress Davis
17 They're often deep-fried
19 1964 title role for Tony Randall
21 ___-jongg
22 Indy 500 legend
23 1950s NBC icon
24 Spanish for "rope"
25 Some versions of a 117-Across
27 Ingredient in a 117-Across
30 "How is this possible?"
31 Repeat
32 Green lights
34 "___, danke"
35 Reversal of sorts
36 "Top Chef" host Lakshmi
40 Trouble's partner, in Shakespeare
41 Kimchi-loving land
42 "___ honor"
44 Some cuts
46 "___ straight!"
48 DKNY competitor
49 1960s campus grp.
51 "In case you weren't listening ..."
53 Amazon's business, e.g.
55 Whence spiderlings emerge
59 Ingredient in a 117-Across
64 Suffix with meth-
65 Island visited by Captain Cook in 1778
67 Year Columbus died
68 French kings' coronation city
69 Imprudent
71 David of television
73 Brawl
75 Thin Japanese noodle
76 Salsa seller
78 Ready, with "up"
80 Broadway lights
82 Word with black or stream
83 Utensil for a 117-Across
86 Sugary drinks
88 ___ nothing
89 Like the buildings at Machu Picchu
91 Watched
92 ___ Fields
95 Filmmaker Riefenstahl
96 Senator Hatch
98 ___ nova (1960s dance)
102 Characters in "The Hobbit"
104 "Web ___" (ESPN segment showing great fielding plays)
107 Sniggled
109 A stake, metaphorically
110 Holly genus
111 Attack fervently
113 Doing some cartoon work
115 Cruise, say
117 Something delicious to drink
121 Version of a 117-Across
123 What a graph may show
124 Baltimore and Philadelphia
126 Come to ___
127 "Catch-22" bomber pilot
128 "Later, alligator!"
129 Versatile utensil
130 Whizzes at quizzes?
131 Name connector
132 Pizazz
133 Influence

Down

1 Fellas in "Goodfellas," e.g.
2 Barely manages
3 Bad thing to be in
4 Container for a 117-Across
5 Cortisol-secreting gland
6 Family member, in dialect
7 Construction crane attachment
8 It's crunched
9 Baby baby?
10 Besmirch
11 Like many a 117-Across
12 Private eye Peter of old TV
13 "___ Man" (1992 movie)
14 Obscure things
15 Neophytes
16 Manchester United rival
18 Bristle
20 Wild ones may be sown
26 Lived and breathed
28 Pizazz
29 Gobble up
31 Meas. of screen resolution
33 Valuable iron ore
37 Possible response to "You've got spinach between your teeth"
38 Fails
39 Excessively orderly, informally
41 Jewish deli order
43 State straddling two time zones: Abbr.
45 Thailand, once
47 West Coast evergreens
50 Like mountains and computer images
52 Burned things
54 Caustic cleaners
55 ___ corn
56 Twisty tree feature
57 "Beau ___"
58 ___ sponte (of its own accord)
60 Pots and pans for baking
61 Spanish wine
62 It may be burnt
63 Hurdles for high-school jrs.
66 Main lines
70 Six: Prefix
72 Mountain sighting, maybe
74 Mountain
77 Breathing aids
79 Movie villain who sought to disrupt a space launch
81 Union opponent
84 Utensil for a 117-Across
85 Field unit
87 Quantity of a key ingredient in a 117-Across
90 Scoreless score
92 Inside look?
93 The primary instruction
94 Bit of gymwear
97 Winnemucca resident, e.g.
99 Low-rent district
100 Artist whose name is an anagram of "artisan"
101 Director Lee
103 Offer, as a hand
105 French teacher
106 It may come after a typo
108 ___ Pérignon
111 Need nursing, say
112 Rents out
114 Cos. that offer access
116 Old U.S.P.S. routing codes
118 Manitoba tribe
119 Pull (in)
120 "And Winter Came ..." artist
122 Is for two or more?
125 Shade of blue



For any three answers, call from a touch-tone phone: 1-900-285-5656, $1.49 each minute; or, with a credit card, 1-800-814-5554.