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Welcome to **Ancel Glink Defense E-News**, our electronic newsletter. In this newsletter, we focus on the latest court decisions and legislative changes in litigation which may affect you.

Ancel Glink Defense E-News is a publication of the defense litigation group of Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.

For more information about this edition of the **E-News**, please contact litigation partner, [Lucy Bednarek](#).

First Quarter 2015

CASES YOU SHOULD KNOW ABOUT

Fourth Amendment - "Knock and Talk" Exception

Carroll v. Carman, 135 U.S. 348 (Nov. 10, 2014)

Two police officers, responding to a call about a stolen car and guns, entered the plaintiffs' house from the backyard and back deck. The police officers did not have a warrant. The United States Supreme Court held the police officers did not violate the property owners' Fourth Amendment rights and were entitled to qualified immunity for entering the property in this manner. The Supreme Court explained there was no established rule restricting police to approach only the front door of a private home when investigating a possible crime. The Supreme Court specifically held there is no "front door" rule that precludes officers from approaching the back door for a "knock and talk."

Fourth Amendment - Reasonable Mistake of Law

Heien v. North Carolina, 135 U.S. 530 (Dec. 15, 2014)

A police officer stopped a car with a broken brake light based on the officers' belief that a North Carolina law required cars to maintain *both* rear brake lights in working order. While issuing a warning ticket for the broken light, the officer became suspicious and requested to consent to search the vehicle, which was granted. The officer found cocaine in the car and arrested the driver for attempted drug trafficking. North Carolina state law actually only requires one brake light to be in working order. The United States Supreme Court held that a police officer's reasonable suspicion, as required for a traffic stop or investigatory stop, can rest on a reasonable mistake of law. Here, the officer's mistake of law, in stopping the car for one broken brake light, was reasonable.

Fourth Amendment - Expectation of Privacy

U.S. v. Webster, 2015 WL 55448 (7th Cir. Jan. 5, 2015)

The criminal defendant, Tommy Webster, was apprehended after police responded to his house as a result of an anonymous tip. The police also apprehended another suspect, Frederick Jones, after Jones ran out of the house when the police arrived. The police officers placed Webster and Jones in the caged back seat of a patrol car while the police obtained a search warrant for the house. The internal video camera in the car recorded all conversations between Webster and Jones in the patrol car, including a phone call made by Webster. Webster argued the squad car recording should not have been used as evidence against him, alleging it was a violation of his right to privacy. The Seventh Circuit Court of Appeals disagreed, finding that Webster did not have a reasonable expectation of privacy in the back of a police car.

Due Process Rights - Alleged Fabrication of Evidence

Saunders-El v. Rohde, 2015 400559 (7th Cir. Jan. 30, 2015)

The plaintiff, Omar Saunders-El, was arrested on burglary charges but later released on bond shortly after his arrest and acquitted on all charges at trial. The plaintiff then brought a Section 1983 lawsuit against the arresting police officers, claiming the officers violated his due process rights by planting his blood at the crime scene in an attempt to frame him. The plaintiff tried to create a *Brady* claim by arguing the officers should have revealed their alleged fabrication of evidence to the prosecution. The Seventh Circuit affirmed the dismissal of the Section 1983 claim, finding the plaintiff's due process rights were not implicated. The Court explained that because a police officer does not violate an acquitted individual's due process rights when the officer fabricates evidence, it follows that an officer cannot violate due process rights for failing to reveal the officer's alleged misconduct to the prosecution.

School Law - Teacher Properly Terminated for Pretending to Throw a Stapler at Student

James v. Bd. of Educ. of City of Chicago, 2015 IL App (1st) 141481 (Feb. 6, 2015)

A tenured teacher was terminated after he pretended to throw a stapler at a disruptive student, the stapler slid out of its plastic sleeve, flew across the room, and hit another student in the head, resulting in injury. The Chicago Board of Education filed dismissal charges against the teacher, alleging the teacher violated several terms of his employment, including refraining from negligent and incompetent conduct and avoiding physical contact with students. After a formal hearing before the Illinois State Board of Education, the teacher was terminated. The Illinois Appellate Court found the Board's findings that the teacher was negligent and caused physical injury to a student was not against the manifest weight of the evidence. Because the conduct was deemed per se irremediable, the teacher was not entitled to a written warning before his dismissal.

School Law - Termination Based on Violation of Drug and Alcohol Free Workplace Policy

Kinsella v. Bd. of Educ. of City of Chicago, 2015 IL App (1st) 132694 (Feb. 10, 2015)

The Chicago Board of Education terminated a tenured teacher after she reported to work with a high blood alcohol level. After the assistant principal smelled alcohol on the teacher's breath at 8:30 a.m., the teacher was asked by the principal to submit to a breathalyzer test performed by a certified technician. The test was administered at 11:32 a.m. and registered at .053 BAC. Based on the Board's drug and alcohol free workplace policy, the teacher was terminated from her position. The Illinois Appellate Court held the BAC test was not enough evidence to establish that the teacher was "under the influence" of alcohol. Under the Board's rules, "under the influence" is defined as a "mental, emotional, sensory or physical impairment." The Court found there was no evidence that the teacher exhibited any impairment caused by alcohol on the day in question and reversed the Board's decision to terminate the teacher, finding the decision arbitrary.

Driver's Privacy Protection Act - Police Officers' Physical Characteristics Considered Personal Information

Dahlstrom v. Sun-Times Media, 2015 WL 481097 (7th Cir. Feb. 6, 2015)

The Driver's Privacy Protection Act (DPPA) is a federal law prohibiting individuals from obtaining or disclosing certain personal information from a motor vehicle record. Five Chicago police officers sued the Sun-Times Media after the newspaper published an article that included information about the

officers obtained from the Secretary of State's drivers' license database, including their birth dates, height, weight, hair color and eye color. The article criticized a homicide investigation line-up in which the police officers had participated. The Seventh Circuit rejected the newspaper's arguments that the published information was not "personal information" for purposes of the DPPA, or that DPPA's prohibition on acquiring and disclosing personal information from driving records violated the newspapers First Amendment rights.

NEW AND PENDING LAWS THAT MAY AFFECT YOU

Proposed Amendment to the Premises Liability Act

Illinois House Bill 1441 seeks to amend the Premises Liability Act, 740 ILCS 130/2, to provide that whether a condition is open and obvious may be considered by the trier of fact only in assessing the degree of comparative fault, if any, and whether a condition is open and obvious shall not be considered with respect to any other issue of law or fact, including duty. This bill was referred to the Rules Committee on February 6, 2015. Ancel Glink will continue to monitor the bill's status.

New Pregnancy Discrimination Law

Illinois Public Act 098-1050, effective January 1, 2015, amended the Illinois Human Rights Act, 775 ILCS 5/1-102 et seq., to provide greater protections to pregnant employees. Not only is it unlawful for employers to discriminate against a pregnant employee, but employers are also required to take reasonable measures to allow pregnant employees to continue working.

New Anti-Bullying Law

Illinois Public Act 098-0801, effective January 1, 2015, expanded Illinois' bullying prevention law, 105 ILCS 5/27-23.7, to prohibit students from being bullied through online sources, such as Twitter or Facebook, using computers not on school property. The new provision allows school districts to take action "if the bullying causes a substantial disruption to the educational process or orderly operation of the school." This new provision applies only in cases in which the school receives a report that bullying through this means has occurred. The school is not required to monitor any such non-school related activity, function or program.

WRONGFUL CONVICTION DEFENSE VICTORY

Attorneys: Thomas DiCianni and Lucy Bednarek

Beaman v. Freesmeyer, 2015 WL 156744, Seventh Circuit Court of Appeals (January 13, 2015)

On January 13, 2015, the Seventh Circuit affirmed the decision of the U.S. District Court for the Central District of Illinois granting summary judgment in favor of the Town of Normal and Normal police officers. Litigation partners, Thomas DiCianni and Lucy Bednarek, defended the Town of Normal and its officers in this federal lawsuit.

The plaintiff, Alan Beaman, was convicted in 1995 of the murder of his former girlfriend Jennifer Lockmiller. Beaman served 13 years in prison for the murder until the Illinois Supreme Court overturned his conviction, finding due process violations under *Brady v. Maryland* because certain information about an

alternative suspect, including a report of a polygraph taken by the alternative suspect, was not disclosed.

After his release from prison, Beaman filed a federal lawsuit under 42 U.S.C. §1983 against the Town of Normal, its investigating police officers, and other defendants involved in the investigation of the murder and Beaman's prosecution. The lawsuit alleged the defendants conspired to suppress materially exculpatory evidence during the criminal case in violation of *Brady*.

On April 15, 2013, Beaman was granted a Certificate of Innocence from the State of Illinois. On January 3, 2014, the Central District granted summary judgment in favor of the Normal defendants. On January 9, 2015, Governor Quinn granted Beaman clemency.

Despite both the Certificate of Innocence and the grant of clemency, the Seventh Circuit affirmed the decision of the Central District, finding insufficient evidence of a conspiracy, and the investigating officer had qualified immunity for failing to produce the polygraph reports. The Court found the law regarding the admissibility of a polygraph report was not well-established at the time of Beaman's prosecution.

For additional information regarding the [*Beaman v. Freesmeyer*](#) case or the defense of wrongful conviction cases, please contact [Thomas DiCianni](#) or [Lucy Bednarek](#).

RISK MANAGEMENT NEWS & EVENTS

Litigation partners Thomas DiCianni, Darcy Proctor and Lucy Bednarek attended the Defense Research Institute's Civil Rights and Governmental Tort Liability Seminar in San Diego, California in January, 2015. The Defense Research Institute (DRI) is an international membership organization of lawyers involved in the defense of civil litigation.

Darcy Proctor presented at DRI's Civil Rights and Governmental Tort Liability Seminar in January, 2015 on the *A-B-Cs and 1-9-8-3s of School Liability Litigation*. This presentation focused on recent federal cases brought by parents and students against schools and school officials alleging civil rights violations under 42 U.S.C. §1983, and relevant liability issues.

Lucy Bednarek and Darcy Proctor presented at the IAPD/IPRA Soaring to New Heights Conference in January, 2015 on *Hot Topics in Employment Litigation: Ways to Reduce Your Exposure*. The presentation provided a background of federal and Illinois civil rights and employment laws affecting park districts and ways a park district can defend and prevent such claims.

Darcy Proctor and Elizabeth Barton also presented at the IAPD/IPRA conference on *Protests and Marches in Parks; First Amendment Issues in the Use of Public Parks & Property*. This presentation discussed the latest constitutional checks and balances on First Amendment rights, including freedom of speech and freedom of assembly, as well as the current state of Illinois law on restricting access to and the use of public parks.

Darcy Proctor presented on *Hot Topics in Governmental Tort Immunity* for the Illinois State Bar Association in November, 2014. This presentation focused on recent Illinois tort immunity cases regarding municipal liability for police and fire services, immunity for discretionary activities, defenses and immunities to

claims involving municipal property and related topics.

Darcy Proctor also presented at the IASB/IASA/IASBO Joint Annual conference on *Hazing Headlines: Be Gone! Best Practices for Prevention of Hazing in Schools and Handling of Hazing Incidents* in November, 2014. This presentation addressed school liability under federal and state laws for hazing and best practices for prevention of hazing in schools and handling hazing investigations.

Darcy Proctor presented at the Illinois Municipal League's 101st Annual conference in September, 2014 on *2014 Year in Review: Illinois Tort Immunity Update*. This presentation provided an overview of recent Tort Immunity cases and issues affecting public entities, officials and employees.

Ellen Emery will be presenting at a Police Deadly Force Events seminar jointly sponsored by the Illinois Association of Chiefs of Police, the Illinois Municipal League and Ancel Glink on March 5, 2015 in Bloomington, Illinois. Ellen will be presenting on *Accountability and the Law*.

Elizabeth Barton was appointed as the Vice Chair for the Young Lawyers' Division of the Illinois Association of Defense Counsel (IDC) for 2015. The IDC is a membership organization of Illinois defense attorneys.

RISK MANAGEMENT PUBLICATIONS

Darcy Proctor authored the 2014 edition of the *Illinois Governmental Tort Immunity Handbook*, a publication which provides an overview of governmental tort liability and the immunities available to public entities and their employees in Illinois when involved in litigation in state or federal court. A copy of the [Tort Immunity Handbook](#) is available on Ancel Glink's website.

Thomas DiCianni co-authored the *Civil Rights Liability* chapter in the 2015 supplement to the IICLE publication, *Illinois Municipal Law: Contracts, Litigation, and Home Rule*.

Lucy Bednarek and Darcy Proctor co-authored the article, *Defending Sexual Harassment, Abuse and Molestation Claims*, published in DRI's For the Defense journal. The article provides a background of Title IX, the federal law prohibiting sex-based discrimination in education and summarizes the standards of proving a Title IX harassment or abuse claim. The article also provides guidelines for school districts in defending and preventing these claims.

Darcy Proctor also recently authored an article regarding school bullying in CLM's Litigation Management Magazine, a publication covering news and topics of interest to the professionals who manage litigation.

Elizabeth Barton authored an article, *To the Young Lawyer: Tips for Court Appearances*, in the Second Quarter (Vol. 24, No. 2) of the IDC Quarterly Journal.

ANCEL GLINK RECENT NEWS

Congratulations to Julie Tappendorf and Scott Puma who were named Ancel Glink equity partners in 2015!

Steve Mahrt joined Ancel Glink as a partner in 2014, after retiring from his position as Town of Normal's Corporation Counsel where he served for more than 20 years. He will be located in Ancel Glink's Central Illinois office in Bloomington.

ABOUT ANCEL GLINK DEFENSE

The attorneys who comprise Ancel Glink's defense litigation group are dedicated almost exclusively to defending governmental entities in tort, civil rights, employment, business and other claims and lawsuits. In addition to defending municipalities, school districts, park districts, townships and other entities in lawsuits in state and federal courts, Ancel Glink's litigation group handles appeals, administrative hearings, critical incident crisis management, loss control training and seminars, file audits, and special consultation. Visit our web-site at www.ancelglink.com or email us at e-news@ancelglink.com.

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