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## ARTICLES

### Proof Beyond a Reasonable Doubt: Shifting Sands of a Bedrock?

Azhar J. Minhas ..... 109

*It is a "bedrock" principle of our criminal jurisprudence, that the state has the burden of proving the guilt of the defendant beyond a reasonable doubt. A standard jury instruction to this effect is read out to the prospective jurors, prior to jury selection process, hinted upon (to put it mildly) during voir dire, and then again given to the selected jury panel at the close of all the evidence in a trial. In Illinois, however, at no point is the phrase "proof beyond a reasonable doubt" ever defined. In this state, it is assumed as a matter of law, that the term "reasonable doubt" does not need any elaboration, and is therefore understood by the fact finders. How did we get to this point? This article argues that a definition of reasonable doubt is not only possible, but is a necessary prerequisite to restoring justice in our criminal jurisprudence.*

### Public Employers and E-Mail: A Primer for the Practitioner and the Public Professional

John F. Fatino ..... 131

*E-mail and related technology have created multi-faceted issues for public employers and legal practitioners. The article examines the issue of e-mail communications from the perspective of public records and public meeting requirements of several midwestern states including the impact of e-mail on public employee "privacy" in light of several recent cases concerning the monitoring of employee e-mail. Public employer liability for misconduct in cyberspace is likewise explored. Public employees' rights under the First and Fourteenth Amendment to the United States Constitution are examined as well. Finally, the article discusses the preservation of privileges and discovery/litigation issues concerning e-mail.*

The Tangled Web—Complexities, Fallacies and Misconceptions  
Regarding the Decision to Release Treated Sexual Offenders From  
Civil Commitment to Society

LeRoy L. Kondo ..... 195

*“When should a treated rapist, child molester, or other sexual offender, convicted under a sexually violent predator statute, be released to society?” This question is fraught with multiple levels of complexity in a tangled web of misconceptions, fallacies, myths, and pitfalls reflected in the scientific and legal literature. Several excellent scientific reviews have documented tremendous progress in sexual recidivism research over the past few decades. However, decision-makers (e.g., psychiatrists, psychologists, social workers, judges, juries, district attorneys, public defenders, parole officers, and administrators of both correctional facilities and hospitals) remain confronted with a plethora of conceptual landmines and a morass of difficult, perplexing notions in risk assessment that may defy reduction to comprehensibility. Towards untangling the tangled web of complexities and misconceptions in this field, this article will clarify some of the conceptual frameworks that may underlie common thought regarding decisions to release sexual offenders and provide a brief summary to guide decision-makers who wish to utilize a therapeutic jurisprudential approach in the evaluation of whether treated individuals who have been previously convicted of sexual offenses should be released to society.*

Compounding the Error: “Deliberate Indifference” vs. “Discriminatory  
Animus” Under Title II of the ADA

Nina Golden ..... 227

*One incorrect decision reached by the Ninth Circuit Court of Appeals in 1998 has created a quagmire of cases over the past five years. In Ferguson v. City of Phoenix, the court decided that a plaintiff suing under Title II of the Americans with Disabilities Act (“ADA”) had to prove intentional discrimination in order to recover compensatory damages. This decision resulted in an ongoing struggle in the courts about how to define intentional discrimination. But the struggle was unnecessary. Title II of the ADA does not require intentional discrimination and the courts never should have applied any analysis of the type of discrimination perpetuated by Title II defendants. This article will first set forth the background and history of the Ferguson decision. Next, it will examine the fallout from that decision: five years of cases that make clear how the Ninth Circuit erred in its approach to Title II. Finally, this article will address appropriate solutions to the problem created by the court when it required proof of intentional discrimination before allowing recovery of compensatory damages in Title II cases.*

COMMENTS

No Other Choice: Litigating and Settling Homeless Education Rights Cases

Ryan J. Dowd .....257

*This pragmatic article, the first exhaustive review of the issue, details how lawyer advocates can help homeless children have access to the education to which they are legally entitled. Topics discussed include: legal background and authority, seeking alternatives to litigation, litigating, settling, after a settlement is reached or a decision occurs, and the future of homeless education rights. Incorporating cases, personal interviews with the attorneys who litigated the cases, settlements, complaints, motions and other non-published court documents, state and federal statutes, state administrative codes, federal and state constitutions, congressional testimony, educational agency reports, law review articles, reports by homeless advocacy groups, newspaper articles and more, the author provides a beginning-to-end roadmap for anyone facing resistance from ignorant or hostile school boards.*

Adult Survivors of Childhood Sexual Abuse Seeking Compensation From Their Abusers: Are Illinois Courts Fairly Applying the Discovery Rule to All Victims?

Chrissie F. Garza .....317

*Victims of this childhood sexual abuse suffer tremendous injuries, some of which can carry on into adulthood. Some of the injuries might not manifest until years after the abuse has ended. Adults often do not realize that the psychological problems that plague them day after day, year after year, are a result of the abuse they suffered through as children. When victims make this causal connection, some want to pursue civil damages so that the defendant can compensate them for their injuries. Unfortunately, most often the victims' claims are barred by the statute of limitations. Some jurisdictions apply the discovery rule to toll these victims' claims, while others do not. Illinois is one state that does not toll the statute of limitations for victims of childhood sexual abuse who have always known of the abuse, but did not make the causal connection with their injuries and the abuse until after the limitations period had passed. By doing so, the courts are denying these victims the compensation they deserve. Illinois should take a more liberal stance in applying the discovery rule to such cases because of the traumatic nature of the misconduct and the unique nature of the victims' injuries.*

**TWENTY-FIRST ANNUAL  
NORTHERN ILLINOIS UNIVERSITY  
COLLEGE OF LAW  
PRIZE MOOT COURT COMPETITION**

**Moot Court Program ..... 339**

*Thirty-four students participated in the Twenty-First Annual Northern Illinois University College of Law Prize Moot Court Competition. Each team of students submitted a brief, and participated in at least two rounds of oral arguments. The field of participants was narrowed through the quarter-final and semi-final rounds to two teams that participated in the final arguments. The finalists for the oral argument portion of the competition were; Meaghan Ring and C. Scott Brinkman for the petitioner, and Charlotte LeClercq and Kory A. Atkinson for the respondent. These students advanced to the Final Round based on brief scores and oral scores from the semi-final arguments. The judges of the final argument selected the winning team and a "best oralist" based solely on oral scores. The winning team was Meaghan Ring and C. Scott Brinkman. The "best oralist" was C. Scott Brinkman. The briefs were judged separately and the best petitioner's brief and best respondent's brief are published in this issue of the NORTHERN ILLINOIS UNIVERSITY LAW REVIEW.*

**Best Petitioner's Brief**

**C. Scott Brinkman and Meaghan Ring ..... 349**

**Best Respondent's Brief**

**Charlotte LeClercq and Kory A. Atkinson ..... 375**