

bound vehicles — a white Chevrolet minivan and a blue Ford Taurus — on 143rd Street in Orland Park. The driver of the Taurus used her cell-phone to help and the dispatcher told her to pull over. Another officer stopped the minivan and then asked Kelly to summon the complaining witness, who was four blocks away.

Kelly drove down 143rd Street, stopped in the eastbound lane and told the driver of the Taurus to go four blocks west. Then, Kelly testified, he performed a three-point turn so he could escort her. During that maneuver, Kelly allegedly caused the accident that injured the Stehliks.

Affirming the ruling for Kelly and Orland Park, the Illinois Appellate Court concluded that the officer was still engaged in law enforcement activities at the time of the accident and his conduct wasn't reckless. *Stehlik v. Village of Orland Park*. No. 1-09-1278 (Feb. 17, 2012).

Here are highlights of Justice Nathaniel Howse Jr.'s opinion (with omissions not noted in the text):

Immunity under Section 2-202 does not extend to all of a police officer's activities while on duty but, instead, only to acts or omissions while in the actual enforcement or execution of a law. *Aikens v. Morris*. 145 Ill.2d 273 (1991); *Arnolt v. City of Highland Park*. 52 Ill.2d 27 (1972).

The words "in execution or enforcement of any laws" must be given their "plain and commonly ascribed meaning." *Thompson v. City of Chicago*. 108 Ill.2d 429 (1985). The question of whether a police officer was executing and enforcing the law is generally a factual determination that must be made in light of the circumstances involved in each case. Where the evidence is undisputed or susceptible to only one possible interpretation, however, the question may be decided as a matter of law. *Simpson v. City of Chicago*. 233 Ill.App.3d 791 (1992).

Whether an activity can be deemed to constitute executing or enforcing the law is determined on a case-by-case basis. *Hudson v. City of Chicago*. 378 Ill.App.3d 373 (2007). Our Supreme Court has noted "enforcing the law is rarely a single, discrete act, but is instead a course of conduct." *Thompson*, 108 Ill.2d at 433.

Therefore, where the evidence establishes a police officer was engaged "in a course of conduct designed to carry out or put into

**NOTEBOOK, Page 5**

The Illinois Supreme Court anticipates that it will release opinions at 9 a.m., Thursday, in the following cases:

- *Paula Bonhomme et al., v. Janna St.* Nos. 112393 and 112398 cons.
- *Mary Ellen McGrath v. Martin Gibbons McGrath*. No. 112792.
- *People ex rel. James W. Glasgow, etc., v. Hon. Gerald R. Kinney*. No. 113197 (mandamus).

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Cook County Circuit Judge **Thomas J. Carroll** has been appointed a circuit judge at-large. Carroll's appointment took effect Friday and will terminate Dec. 1, 2014. He fills the vacancy left by the death of Cook County Circuit Judge **Donna Phelps Felton**.

## AROUND TOWN

**Kevin A. Thompson**, a member at Davis, McGrath LLC, will present a Continuing Legal Education webinar next week on "Copyright Infringement and Damages."

The free webinar will be from noon to 12:30 p.m., June 6. For more information or to register, go to [blog.davismcgrath.com/webinars](http://blog.davismcgrath.com/webinars).

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Coordinated Advice & Referral Program for Legal Services (CARPLS) will host its Golden Gavel Celebration from 5:30 p.m. to 7:30 p.m., June 7, at Jenner & Block LLP, 353 N. Clark St.

The theme of this year's event is "Answer the Call." Cook County Circuit Judge **Michael B. Hyman** will be the keynote speaker.

Tickets cost \$100. For more information or to buy tickets, go to [carpls.org/goldengavel](http://carpls.org/goldengavel) or contact **Tanya Pietrkowski** at (312) 421-4014 or [tpietrkowski@carpls.org](mailto:tpietrkowski@carpls.org).

**IN THE NEWS, Page 2**



**Michael B. Hyman**



**Peter R. Sonderby**

## High court hears case on immunity

BY **SHAUN ZINCK**  
*Special to the Law Bulletin*

SPRINGFIELD — The Illinois Supreme Court heard oral arguments Tuesday in a case over whether the Chicago Park District should be liable for the death of a woman who fell in a parking lot that had been snow plowed.

The case stems from a wrongful death lawsuit filed by Roberta Minor Moore, acting as the special administrator to Sylvia Lee Moore.

In January 2006, Sylvia Lee Moore tripped and fell in the parking lot of the South Side's Fernwood Park after attending a senior water aerobics class. District employees plowed the parking lot after several inches of snow fell over the weekend. Moore later died from her injuries.

The suit claimed negligence on the part of the district for improper snow removal that led to Sylvia's injury and subsequent death.

The district claimed immunity under Illinois' Local Governmental **SNOW, Page 24**

## Lawyers compare '68 protests to NATO even

BY **PAT MILHIZER**  
*Law Bulletin staff writer*

John B. Simon watched thousands of demonstrators in downtown Chicago on a sunny day when one man tried to climb a flag pole. Simon tried to stop the guy, but he didn't listen.

"I can see, out of my peripheral, a police line forming. ... Police started moving forward. Next, the sky was filled with rocks, bottles, bags of urine, bags of indelible ink. And I got hit with one of each," Simon said.

This was August 1968, when the Democratic National Convention arrived in town. Simon worked as an assistant U.S. attorney and monitored the protest for the Justice Department.

With the NATO summit headed for Chicago's history books, Simon reflected on the differences between the demonstrations of 1968 and last weekend's protests.

Simon, now a partner at Jenner & Block LLP, watched the NATO protest images on television.

"I thought to myself, when you take a clip that's three minutes long in the context of what occurred



**John B. Simon**

here, it was nothing like what we experienced before," he said.

"I think the public feels, generally, that police were being pushed ... by these demonstrators. The police superintendent is getting reviews and he deserves it. The police were holding their line and were not attacking. They were defending."

When Martin Luther King was killed in April 1968, Simon was in the federal building in Chicago. **SIMON, Page 2**

# Snow

and Governmental Employees Tort Immunity Act. The act states that local entities cannot be held liable for injuries caused by "a condition of any public property intended or permitted to be used for recreational purposes."

The trial court submitted a certified question to the 1st District Appellate Court asking if an "unnatural accumulation of snow and ice 'constitutes a condition of public property.'"

The appellate court ruled against the park district in a 2-1 decision. The decision stated that snow and ice "are temporary and are not permanent conditions of real property."

George P. Smyrniotis, risk management senior counsel for the park district, said the temporary aspect of the snow doesn't disqualify it from counting as a condition of the property.

Smyrniotis cited *Syvester v. Chicago Park District*, No. 81138, in which a woman injured herself on a

temporary concrete car stop while walking to a football game in Chicago. The Illinois Supreme Court granted the park district immunity in the case.

"(This court) focused on the property as a whole, which was recreational in nature, in determining whether the statute applied," he said.

Justice Rita B. Garman asked Smyrniotis if the court should determine if the statute contains plain and unambiguous language.

Smyrniotis said the court already ruled the statute to be plain in *Bubb v. Springfield School District*, No. 77762, which involved a student injured while riding her bike on a school district-owned sidewalk.

Smyrniotis said another case, *Stein v. Chicago Park District*, Nos. 1-99-3987, 1-00-0119, raises further questions since it requires a condition of property to be affixed to the land.

He argued snow and ice can change characteristics many times over the course of a day and it would be too difficult to determine when it would be a condition under



Rita B. Garman

an affixed-to-property test.

Robertta Minor Moore's attorney, Richard J. Grossman, a partner at Steinberg, Burkler & Grossman Ltd., said the case deals with negligent conduct by the employees who plowed the snow and not the condition of the property itself.

Grossman said the snow cannot be considered a condition of property because the park district does not own the snow.

## Need an expert witness?

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runs a listing of experts and their specialties under the

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"It is an act of nature," he said. Grossman argued the statute should apply to conditions of the actual property itself, such as a hole in the concrete or a broken piece of sidewalk.

Justice Robert R. Thomas asked Grossman if the district would be immune under the statute if they negligently repaired a broken sidewalk.

Grossman said it would be, since the district owned the sidewalk, which would then constitute a "condition of the property."

Garman asked if the result should be different if the district didn't plow at all.

"Yes," Grossman said. "If they do not engage in the activity, then there can be no liability."

On rebuttal, Smyrniotis said previous courts ruled that a different provision in the immunity act describes duties regarding the maintaining of property.

"The court stated that the development and maintenance of parks do not occur through inaction," he said.

szinck@lbpc.com

# Simon

and listened to two police scanners as riots and looting broke out on the West and South sides.

"There was a number of incidents where the firefighter responders were being fired at, also the paramedics. The streets were very dangerous," Simon said. "It took two days for them to start to gain control and then ultimately get control of the situation."

Moving from racial unrest to political friction, the summer of 1968 brought the Democratic National Convention to the city. Protesters primarily rallied against the Vietnam War.

The event left a scar on the city as police battled protesters. When the fights started, Simon needed a pay phone.

"Intelligence gathering is much better and easier now. I had to get a pay phone to call in what was

## FROM PAGE 4

# DeBofsky

perspective, taking into account, inter alia, his own personal characteristics and experiences." 378 F.3d at 259. Those cases were adjudicated under a de novo standard of court review, though, and cases applying the arbitrary and

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