



Clifford's **Corner**

Clifford's



Robert A. Clifford

Top Lawmakers Take Part in Clifford Law Seminar



Some of the country's leading legislators and academicians participated in the Fifth Annual Clifford Tort Law and Social Policy Symposium held April 16-17 at DePaul University College of Law.

Sen. Richard Durbin (D-Ill.), **Sen. John McCain** (R-Ariz.), **Rep. Henry Hyde** (R-Ill.) and **Rep. Rod Blagojevich** (D-Ill.) taped interviews on the subject "Judges as Tort Lawmakers."

Also participating were some of the nation's most respected attorneys and scholars who gathered in Chicago to discuss judicial impact on current legal wars, from tobacco products to handguns, asbestos to breast implant litigation.

"Tort Deform" Rears its Ugly Head

By Robert A. Clifford

"Tort deform" is erupting once again on the front pages of newspapers across the country, this time in the form of various states enacting legislation on the heels of some large verdicts.

For instance, Alabama recently passed sweeping tort law changes, including a bill that caps punitive damages awarded by juries. The legislature reacted to a \$581 million verdict that a jury awarded a family for a satellite dish company's bilking the poor.

Virtually every state has considered similar measures since the mid-1980s, and some have been successful.

But increasingly political scientists, academicians and consumer advocates have exposed the distorted picture of the legal system drawn by big business and conservative politicians.

For example, punitive damage awards, such as the one cited above in Alabama, are rare indeed. A study of courts in the nation's 75 largest counties conducted by the National Center for State Courts

found that only 364 of 762,000 cases ended in punitive damages. A study by that same group revealed that in 16 states the number of liability suits actually declined by 9 percent since 1986.

Nor is it possible to see any connection between the current status of the economy and consumer protections in the civil justice system. And apparently neither do many elected officials.

It was recently reported in a study conducted by the Rockford Register Star that at least 26 northern Illinois local governments are using unspent taxes that were collected for paying potential tort lawsuits for other purposes—from rebuilding a running track to paying crossing guards.

Nor are runaway insurance rates materializing, as "tort deform" dooms-dayers predicted. In fact, State Farm of Bloomington, Illinois, the nation's largest auto insurer, recently cut insurance premiums in the state by an average of 6.4 percent.

It's clear that the "litigation explosion" is nothing more than a myth.

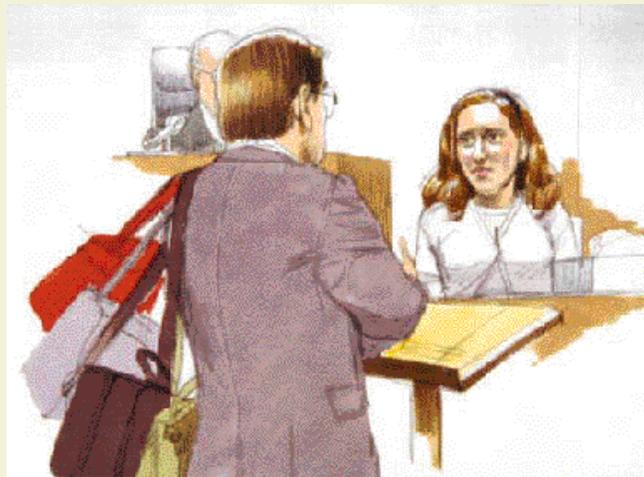
Barton Verdict Under "Tort Deform"

Robert Clifford and Kevin Durkin received a \$30 million verdict March 1, 1999, on behalf of Rachel Barton, an internationally-acclaimed violinist who was severely injured in a train accident.

Tort "reformers" have seized

the verdict as a platform for their unjustified stance to change the civil justice system. They argue the verdict would have been automatically reduced to \$8.8 million if the "tort deform" legislation that sailed through the Republican-controlled Illinois

General Assembly in 1995 would have remained law. Wrong. Under the tort "reform" law passed in 1995 by the General Assembly, as dictated by special corporate interests, and then later overturned as unconstitutional by the Illinois Supreme Court, any award by the jury would automatically have been reduced to \$3.3 million, including punitive damages. That's not even enough to cover her past medical bills let alone the future medical expenses that even the defense admitted would be necessary for Rachel during the next 56 years of her life expectancy.



Postscript: On June 14, 1999, Judge Allen Freeman upheld the verdict in favor of Rachel Barton following the defendants' post trial motion.

▲ Reporters and sketch artists crowded the Chicago courtroom in the trial of Rachel Barton earlier this year. Here, one of them captures Robert Clifford questioning Rachel Barton on the witness stand, using the bags and violin case she was carrying on the day of the train accident.

Bill of Particulars

Survey of Civil Justice System



The American public has mixed opinions about the justice system, according to a recent survey conducted by the American Bar Association.

Only 30 percent of the respondents were "extremely or very confident" in the U.S. justice system, while 27 percent were no more than "slightly confident" in the system.

Just 14 percent of those responding gave a high confidence rating in lawyers, putting it slightly lower than those in Congress and slightly above members of the press who were rated high by only 8 percent of the respondents.

But the perception of American justice is stellar compared to other countries, with 80 percent of the respondents ranking it the best in the world as well as indicating strong support for the jury system.

Doctor Should Refer Patient

An Illinois appellate court recently found that a physician could be sued for "breach of fiduciary duty" for not revealing that his HMO rewarded him for limiting referrals.

The court also allowed the widow's separate medical malpractice claim based on the doctor's failure to order more tests, despite advice to the contrary of other doctors.

Neade v. Portes, No. 2-97-1099, ___ Ill.App.3d ___ (2d. Dist., decided March 31, 1999).

HMO Liability

Legislators and courts around the country are tightening controls of health maintenance organizations.

The Illinois legislature recently passed a compromise package bill which established independent patient appeals procedures on HMO decisions as well as forcing HMOs to pay for out-of-network specialists in the absence of comparable specialists in the network.

Knocked down, though, was a provision to allow patients to sue their HMOs for damages.

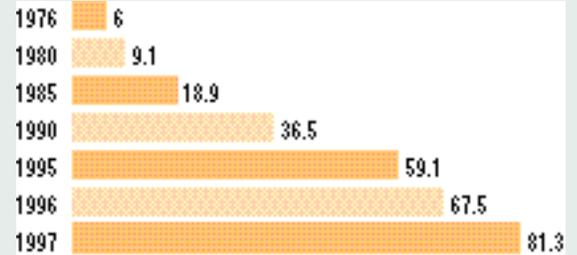
The courts, though, have allowed patients to sue HMOs directly.

A Chicago judge ruled earlier this year that an HMO could be sued for negligence in state court over a doctor's decision to deny extended hospital care to a woman suffering from depression.

Michael Allred v. Green Spring Health Services, Inc., et al., No. 98 L 0591, ___ Ill.App.3d ___ (1st. Dist., decided March 9, 1999).

Corporate Care

The number of people, in millions, receiving health care through HMOs, by year



Source: American Association of Health Planners

Proceed with Caution

Emergency vehicles rushing through traffic lights to enforce the law have come under criticism in recent years.

A case in Illinois involved a sheriff's deputy travelling through an intersection against the traffic light and on the wrong side of the road in DuPage County when he struck down a 48-year-old woman.

Section 11-206 of the Vehicle Code provides that the driver of an emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected lawbreaker may proceed past a red light or stop signal but only after slowing down as may be necessary for safe operation. The emergency unit may exceed speed limits as long as it does not endanger life or property.



The appeals court refused to uphold the dismissal of the case and found that a question of fact exists as to whether the deputy was enforcing or executing the law at the time of the accident.

Dawn E. Carter v. DuPage County Sheriff, et al., No. 2-98-0147, ___ Ill.Ap.3d ___ (2d. Dist., decided May 12, 1999).

Municipalities Not Immune

A municipality faces exposure to liability for negligently maintaining sidewalks, streets and alleys.

An Illinois appellate court recently ruled that the city of Berwyn is not insulated from liability after a 48-year-old woman fell and severely broke her ankle. She died less than two months later from hypertensive cardiovascular disease, but it is unclear whether the ankle injuries contributed to her death.

Berwyn allegedly failed to properly maintain a crosswalk area. Northern Illinois Gas also is a viable defendant for failing to repair and restore the crosswalk area after the company had laid a pipe.

The appeals court, in holding that the lawsuit may proceed, found the decedent an intended pedestrian user in the area where she was walking.

Rose Kavales v. City of Berwyn, No. 1-97-4181, ___ Ill.App.3d ___ (1st. Dist., decided May 24, 1999).



APPROACH THE BENCH

Thomas K. Prindable was destined to be a great listener of people's problems.

As a young man, for 12 years he pursued the priesthood, reaching the final stages as a deacon in the Roman Catholic Church in Chicago.

But, then, just months before he was to be ordained, he decided life held different roads for him to follow. Instead, he chose law, graduating from the Illinois Institute of Technology, Chicago-Kent College of Law in 1973, because he thought it was another field in which he could help the greatest number of people.

And that's just what he does every day as managing partner at Clifford Law Offices. He's the hub for all those who initially call the law firm for help.

"One of my more pleasant tasks is to personally meet with most of the new clients to ensure that their files are opened as accurately and expeditiously as possible," Tom said in a recent interview in his office next to principal partner Robert Clifford. "I inform them of the office and court procedures that will follow in the handling of their causes of action."

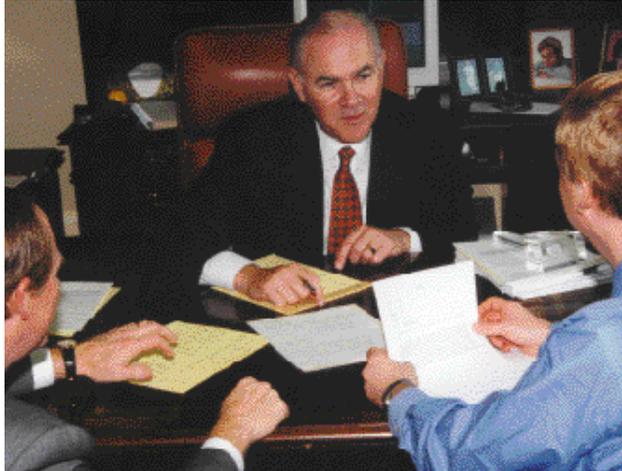
As part of his busy work schedule, Tom also administers the legal staff. "My main objective is to provide the most effective and satisfying environment for the cases of the clients to be completed successfully and as efficiently as possible."

Tom also leads the call every day at 4:30 p.m. at the office and is reminded of television shows like *L.A. Law* and *Ally McBeal* when he sits down at the mahogany oval table in the large conference room.

"It's a time when I ensure that every court call, deposition, client interview and any other calendar event for the next day is covered," Tom said. "It's a special time as well when the lawyers get to discuss significant legal issues each day, map out case strategy and develop collegiality."

The gathering each late afternoon of the firm's legal staff and assistants must be reminiscent of the crowd around his dining room table each day as a child. The seventh of ten children, Tom recalls his fondest childhood memory: "My mother and her

sister would begin cooking every Sunday at 7 a.m. and the cooking would go until noon. There always was ham, fried chicken, roast beef and a cast of thousands," as Tom puts it. "My dad would invite neighbors and friends and we would have to eat in three shifts." Everything, even the desserts, he recalls, would be made from scratch.



an attorney to discuss a possible cause of action." Tom then sees to it that every inquiry is followed up with either a phone call, an office conference, a review of documentation, or all of the above.

"Tom is an invaluable person at our office," said Robert Clifford. "He is one of the most kind-hearted, sincere people I know and he tries to be as helpful as he possibly can to each client at our office. He's a real asset."

Tom also supervises the firm's probate matters where the victim is deceased or disabled, and the family's interests must be protected.

Tom has a strong sense of family and is devoted to his wife, Judy, and their two children Andy and Becky, both college students.

As to what the future holds, Tom reflects, "As for now, I thoroughly enjoy my job and I feel I am very lucky to have the opportunity to do what I do. As for the future, one day I hope to have the pleasure to retire with my wife to a life of golfing and sports cars, maybe even some grandchildren."

Professional Activities

Illinois Trial Lawyers Association (ITLA)

• Legislative Committee, 1991-present

Chicago Bar Association (CBA)

Kane County Bar Association

• Civil Procedure Committee, 1990-present

Illinois State Bar Association (ISBA)

Association of Trial Lawyers of America

"There would be three to four cakes. I remember the biggest angel food cakes you ever saw, double what you see now in the stores. I don't know what my mom would put in them to get them to rise so high."

It must be from growing up with a dozen people in the house that Tom perfected his art of listening because at Clifford Law Offices he spends most of his day listening to clients' problems and trying to figure out a solution.

Although Tom has removed himself from the day-to-day trial practice, he says he enjoys his work immensely because of the number of people he can help each day.

"In being in charge of the intake process at the firm, I ensure that every person who contacts Clifford Law Offices has access to



CLIFFORD LAW OFFICES

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Robert A. Clifford
Keith A. Hebeisen Kevin P. Durkin

Managing Partner:

Thomas K. Prindable

Associates:

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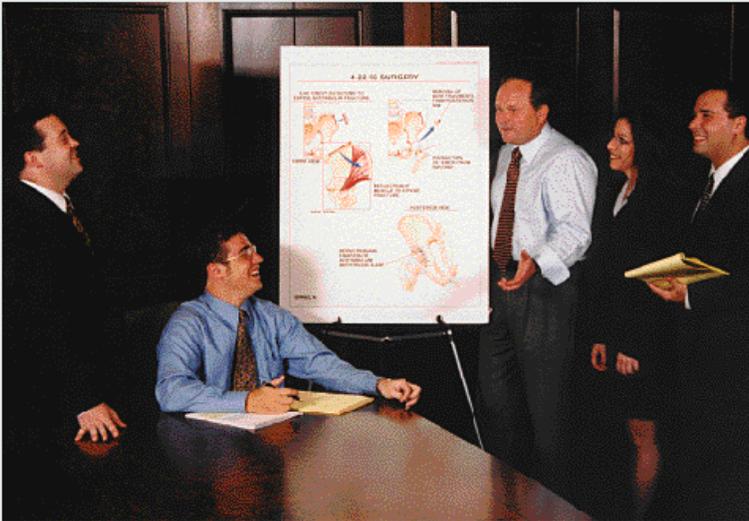
Robert P. Sheridan

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• ON THE DOCKET •

Clifford Law Offices has been recognized as one of the leading personal injury firms garnering multi-million dollar awards. Some of the verdicts and settlements attained this year include:

Case	Attorney	Date	Description	Amount
Epping v. Commonwealth Edison	Robert Clifford	5/28/99	West suburban mother is severely injured in a head-on collision	\$14 million (verdict)
Moore v. Anchor HMO	Robert Clifford Matthew Baker	3/5/99	Defendant failed to timely diagnose and treat plaintiff's arachnoid cyst in his lower back resulting in paraplegia	\$4 million
Grzywaczewski v. Rush-Presbyterian St. Luke's Medical Center	Keith Hebeisen Susan Capra	5/27/99	39-year-old woman died during procedure to remove gallstone due to inadequate monitoring	\$1.5 million
Hartman v. Alexian Brothers Medical Center, M. Lee Kang, M.D. and Allied Ob-Gyn, Ltd.	Keith Hebeisen Susan Capra	4/15/99	Two-day-old Trevor Hartman died following negligent obstetrical care by defendants	\$1.3 million
Nissen v. Boyer	Robert Walsh	5/13/99	Defendant turned left in front of oncoming car of plaintiffs; male plaintiff died and 70-year-old wife suffered ankle and knee injuries	\$1.23 million
Allowe v. Ganna Construction Co., et al.	Jeffrey Kroll	5/7/99	Mother and son die in car accident in negligently-kept construction zone	\$1 million



Clifford Law Offices is pleased to welcome four new associates pictured here with partner Robert A. Clifford (center at easel): (left to right) Brian T. Nash, Donald J. Storino, Jr., Sheri L. Tarr, and Michael S. Krzak.

Trial Attorneys Gather in New York

Top aviation attorneys from around the country gathered in New York earlier this year for the American Bar Association's 5th Annual Aviation Litigation Seminar.

Robert Clifford, along with a host of nationally-renowned trial attorneys, addressed various aspects of an aviation case, from opening arguments to mediation. Mr. Clifford's topic dealt with "Closing Arguments."

Mr. Clifford has been nominated as the Chair of the ABA's Section of Litigation in 2001.



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This newsletter should not be considered as an offer to represent in any legal matter, nor should it be the basis of legal hiring decisions. Thus, the reader should not consider this information to be an invitation for an attorney-client relationship, should not rely on information provided herein, and should always seek advice of competent counsel.

All lawsuits are different, and Clifford Law Offices makes no representation or promises that it can obtain

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the same results as reported in this newsletter in other legal matters. Nothing in this newsletter constitutes a guarantee, warranty or prediction regarding the outcome of any future legal matter. Further, it should be noted that even where the fee arrangements are on a contingency basis, clients will still be responsible for payment or reimbursement of the costs and expenses of litigation.

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Finally, this newsletter is disseminated to our many friends around the world. We hope you find the information here useful and informative. Anyone, however, who does not wish to receive future newsletters can contact us at the numbers or locations listed here, and the matter will be promptly attended to.

Very Sincerely Yours,

Thomas K. Prindable
Managing Partner
Clifford Law Offices, P.C.



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