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Perspectives on Race, Communities and Policing in 21st Century America

Fellows CLE Seminar | July 31, 2015

The Fellows CLE Perspectives on Race, and Policing

In the aftermath of violence in communities such as Ferguson, Baltimore, and Cleveland, the Fellows of the American Bar Foundation's CLE seminar at the ABA Annual Meeting examined the roots of problems in relations between police and minority communities and considered proposals for change. Anchored by a research presentation by Yale Law School Professor and former ABF Research Professor Tracey Meares, the CLE program was co-sponsored by the ABA Criminal Justice Section, the ABA Judicial Division and the ABA Section of Individual Rights and Responsibilities. In addition to Meares's presentation, the panel featured comments from several different perspectives; from police officials, to police officers' unions, to community activists and educators. Three of the panelists, Tracey Meares, Brittany Packnett, and Sean Smoot, served on President Obama's Task Force on 21st Century Policing, which published its report in May of 2015.

The panel's moderator, **Peggy Davis**, Chief Officer of Programs and Strategic Integration for the Chicago Community Trust, began the seminar by acknowledging the persistence of issues surrounding race, communities and policing, and the deep historical and cultural roots that feed those issues. Recent high-profile clashes between law enforcement and communities, however, have focused the nation's attention, creating a window of opportunity, Davis said, to come together in search of solutions. She mentioned that her own organization would announce in October "its enhanced focus on these issues,

examining how the race narrative in Chicago impacts them." She also announced that the American Bar Foundation would lend its research expertise and partner with Chicago Community Trust on this new project, with ABF Director Emeritus Robert Nelson spearheading ABF's efforts on the initiative. She also urged audience members and lawyers in general to work to "find ways that the legal profession can be part of the solution."

Tracey Meares spoke about what social science research can tell us about building trust between law enforcement and communities.

Meares started her research on policing and communities while a Research Professor at the ABF (1999–2006), collaborating with psychologist Tom Tyler who was also affiliated with the ABF. Over the years she has developed the concept of "rightful policing" as a way of evaluating police. Unlike the two dominant criteria by which police have traditionally been evaluated—lawfulness and effectiveness—Meares's "third way" acknowledges the ways that ordinary people evaluate police conduct. "Rightful policing ... attempts to account for what people say they care about when they assess individual officer

Seminar: Communities in 21st Century America

behavior as well as agency conduct generally,” Meares said. Key to Meares’s research over decades is the finding that ordinary people are constantly evaluating what they perceive to be the legitimacy of police actions. This assessment is based on several factors:

- 1) do the police treat the “target” with dignity and respect?
- 2) are police decisions “legible” to the target?
- 3) is the target given the opportunity to tell their side of the story during a police encounter?
- 4) can the target expect police to treat them well in the future?

These factors make up what psychologists call “procedural justice,” Meares commented.

When people believe law enforcement procedures to be fair, they are more likely to voluntarily defer to law enforcement. This kind of compliance is “legitimacy-based,” Meares said, and “rightful policing leverages these ideas.”

In essence, “research shows that people are motivated more to comply with the law by the belief that they are being treated with

dignity and fairness than by fear of punishment.”

According to Meares, factors three and four are particularly important, not because people are trying to control the outcome of an interaction with police, but because they are trying to assess their status, both as an individual and as a member of a group, based on how they are treated. “How I’m treated by the police gives me information about my status and the status of my group, within the community and within the broader society. How those in legal authority treat a person gives that person information about his or her status as a citizen in a democracy...That is what procedural justice is about,” Meares said.

As Meares pointed out, research shows that “how people evaluate police officers depends much more on these kinds of factors, factors of procedural justice, than whether police are necessarily good at crime fighting.” In fact, Meares showed, over the last 30 years the rate of crime has gone down nationally, but the public’s rating of police

has remained essentially flat. As Meares said, “if police have chosen methods of crime reduction that actually undermine public trust as opposed to promote it, then it’s not surprising that there has not been an increase in public confidence and trust, even while crime has gone down.”

At the same time, “the determinants of legitimacy aren’t completely aligned with lawfulness [either],” Meares explained. As she elaborated, “that is because there is nothing in the constitutional

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law, there's nothing in the Fourth Amendment that requires police officers to ... explain why they stopped someone, or requires that they necessarily treat people with dignity and respect, or requires that they give members of the public the opportunity to tell their side of the story in a particular interaction and so on." Research that Meares conducted with Tom Tyler, which was supported by the American Bar Foundation, suggests that when the public is trying to assess the lawfulness of an interaction they don't actually know what "lawfulness" consists of. "What they look for are these factors of procedural justice, and to the public their assessment of whether something is lawful actually is much more about whether the police officer shows indications of a commitment to procedural justice as opposed to law," Meares said.

Thus, "if a police officer acts in ways that are consistent with procedural justice, the public is going to think that the police officer is acting lawfully," Meares stated. That being the case, rather than teaching the public more about the law and what constitutes

lawfulness, a better course would be to "actually encourage police officers to treat the public in ways that are consistent with procedural justice." The Chicago Police Department is a leader in this effort, Meares noted, with over 11,000 officers having received a day's training in procedural justice, with a second day of training now in progress, and a third planned for the future.

Meares closed by discussing briefly the recommendations of the President's Task Force on 21st Century Policing. The report was divided into six "pillars," the first pillar being building public trust and legitimacy, Meares said. This pillar was the foundation for the Task Force's first recommendation, which states that "law enforcement culture should embrace a guardian mindset to build public trust and legitimacy. Toward that end, police and sheriff's departments should adopt procedural justice as the guiding principle for internal and external policies and practices to guide their interactions with the citizens that they serve." Other recommendations that the Task Force offered were related to ways to actualize that starting point,

whether they were about police training or changes in social media, or guidance about wearing body cameras or recommendations about how police executives ought to treat the officers that work inside agencies. "The bottom line is that treating people fairly is, itself, a crime fighting strategy," Meares said, "but, more importantly, treating people fairly gives the public important signals and information about what it means to be a citizen in this country and that's a lesson that we really need to be committed to teaching right now."

Sean Smoot, Director and Chief Counsel for the Police Benevolent & Protective Association of Illinois and Police Benevolent Labor Committee, focused on a number of issues that affect police as they interact with citizens, "the baggage" that they bring to encounters. First, he outlined how work conditions may affect police, noting the deleterious psychological and physiological effects of night shift work, on the job traffic accidents, and the stress of working an essentially sedentary job that is punctuated by extreme situations where adrenaline surges. The

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Left to Right: Craig Futterman, Brittany Packnett, Garry McCarthy, Sean Smoot, Tracey Meares, Peggy Davis

three top causes of occupational death for police officers are traffic accidents, homicide and suicide, Smoot noted.

When officers themselves are questioned about their top job stressors, however, they do not cite these factors, Smoot said. Rather, they report, the biggest job stressor for police officers is how they are treated by their employer. Officers say they receive mixed messages about how to engage with citizens (e.g. ‘enforce aggressively, but don’t make anyone mad’), that they don’t feel like they have their employers’ support, “and that is a huge, huge cause of stress,” Smoot said.

The State of Illinois is working to institutionalize training in procedural justice and internal legitimacy, Smoot noted, a development that may help clarify the message sent to police officers. Smoot reported that the Illinois General Assembly had passed a bill to Governor Rauner for his

signature that takes significant steps toward improved police accountability, by mandating training in procedural justice for both new and established officers, creating clear policy guidelines on the use of police body cameras, and ending discriminatory stop and frisk practices, among other changes. The bill, the Police and Community Relations Improvement Act, which was signed into law about two weeks after the Fellows CLE Seminar, situates the procedural justice training within a broader legal and human rights context, including “constitutional and proper law enforcement authority, procedural justice, civil rights, human rights, and cultural competency.” The bill also mandates instruction in “implicit bias and racial and ethnic sensitivity” for probationary police officers (State of Illinois Public Act 99-0352).

Smoot also called for officers to be trained in the history of minority groups in the United States.

“...I think it’s important that we acknowledge that, and that we teach [it to] young officers,” Smoot said, “and I think it’s incumbent on us in basic training, when officers first enter service, for them to learn those lessons so they can come to an understanding and acknowledgement of what others have gone through.”

The next panelist, **Garry McCarthy**, Superintendent, Chicago Police Department, spoke about the Department’s efforts to improve police-community relations. McCarthy recounted how, when he took on the job in 2011, “we had a completely... dysfunctional method of policing in Chicago, where all the enforcement was done by a couple of citywide task forces that roamed around the city. They could be on the West side one day, on the South side the next day, on the Northwest side the next day. Since the task forces moved around so much, they did not know the communities in which

The presence of illegal guns on the streets...complicates enormously the task of improving police-community relations.

they worked,” McCarthy said, contributing to distrust between police and residents. “And...they were using those heavy-handed police tactics that we’re always criticized for and creating the unintended consequences that we leave behind when we do that. So creating legitimacy in policing starts with a very fundamental understanding that that’s not what we need to reduce crime,” McCarthy said.

One of McCarthy’s first actions as Chicago Police Superintendent was to break up the citywide taskforces. “...I broke up the taskforces, we put them into the districts, we put them on the beats and we demand something called beat integrity, which means you get the same officers on the same beat every single day and we hold them accountable for what’s happening.” Thus, Chicago under McCarthy’s leadership

is relying more on officers who are intimately familiar with neighborhoods, rather than special units to fight crime.

The department has also employed alternative crime reduction strategies, including a program called Cease Fire. Cease Fire brings gang members who are on parole to meetings with the police department and the community. At these face-to-face meetings police tell gang members that they will be held responsible for the actions of their fellow gang members. Under this policy of “group accountability” all gang members will pay for the crimes of their fellows. The focus, however, is not on getting gang members to personally pay for the actions of their comrades, but rather for members of the group to pressure each other to be law abiding, McCarthy said. A further component of the meetings is called “The Voice of Pain,” where gang members must listen to the testimony of the families of residents murdered by gangs. Finally, participants in these meetings are offered social services and other forms of help, including drug and alcohol counseling, and GED completion.

McCarthy also brought Tracey Meares and Tom Tyler to Chicago

to develop training courses that emphasized legitimacy and accountability, McCarthy said.

“It is my belief that we have to be legitimate internally before we can push that out in a method that we actually operate by,” McCarthy said. McCarthy took steps to create a performance-based meritocracy to the overly-politicized police department. “And we’ve been able to stick to that. This is a critical part of internal legitimacy, as is our promotions, as is our disciplinary system, which, by the way, we’re still working on and struggling with, because it reflects our values.”

The city is starting to see results, even in the face of its ongoing struggle with gun violence. According to McCarthy, in 2014 the city “had the lowest shooting and murder rate since 1965.” Over the last two years officers have made about 20,000 fewer arrests, and there has been a 40% reduction in complaints against officers in the same period. “That has to do with procedural justice, police legitimacy and internal legitimacy,” McCarthy said.

In response to a question from the audience, McCarthy commented that the presence of illegal guns on the streets ties in with all the

The biggest stressor for police officers is how they are treated by their employer.

issues covered in the seminar and complicates enormously the task of improving police-community relations. Every time a police officer makes an arrest for illegal firearms possession, “they are in an armed confrontation with a criminal,” McCarthy said. This reality adds to the cycle of tension in police/community encounters. The problem is especially acute in Chicago, where police seize three times as many illegal firearms as Los Angeles and seven times as many as New York.

Current Illinois gun laws have minimal impact on an individual for the illegal transfer of a firearm, which results in straw purchasing, “which is how those guns reach the street,” McCarthy said. The State of Illinois should stiffen the penalties for illegal gun possession, he stated. When New York State stiffened illegal gun penalties and repealed the Rockefeller drug laws, “gun violence, gun seizures and incarcerations rates went down all at the same time.”

But the gun industry should be taken on as well, McCarthy said, as the tobacco industry was. “In the end it’s about money,” McCarthy said. “Too many elected officials are beholden to the gun industry...[and]...gun manufacturers are making billions of dollars...by filling up both the legal and illegal markets for firearms...Americans are dying as a result of that. Americans are dying and who is it? In the city of Chicago it’s almost 80% African

American males, almost 80%. I think there’s about another 20% that happens to be Hispanic and a small minority of white folks. I think that’s quite an issue and I think that that has to be brought to the forefront. And...and if we believe that our history is relevant to where we’re going, it’s right in front of us, right now and something needs to be done about it.”

The next speaker, **Brittany Packnett**, an educator, Ferguson activist, and a member of the President’s Task Force on 21st Century Policing, shared her insights on what it will take for communities to engage with law enforcement and the justice system. “I want to make sure that we are grounded in some realities,” Packnett said. “I want to acknowledge the idea that if we are going to be building safe communities from the ground up, that it will absolutely require community collaboration at all levels.” However, because minority communities have been telling stories of police mistreatment for a long time, but have seen little change, their ability to trust and energy to come to the table to collaborate have been diminished, Packnett explained. Thus, she acknowledged, “trust and legitimacy [will] take a very, very long time to develop.”

Packnett first relayed some statistics about the current reality facing communities in the United States. By late July, 2015, 669

people had been killed by police in the United States, Packnett reported (see The Counted project of *The Guardian*—<http://www.theguardian.com/us-news/series/counted-us-police-killings>). “You can take several countries in the European Union, add up their totals over the last decade and still not reach the number that we’ve reached in...six months...We have to acknowledge that, as we call out that number, all of those folks are people. That’s somebody’s son, somebody’s daughter, somebody’s father, somebody’s uncle, somebody’s nephew...This year alone there are only twelve days where the police in the U.S. haven’t killed someone. And if you believe in democracy, which—given the fact that you all participate in our legal system—I assume that you do, that should shock and frustrate you,” Packnett said.

Packnett suggested two steps that can be taken to establish more trust and to begin to engage communities of color. First, local governments and police need to validate the skepticism that minorities have about law enforcement and the justice system by “learning the history that feeds that skepticism,” Packnett said. “Make sure that as you are training young lawyers or young officers in that history you are also recognizing that people’s own narrative is a part of that history. So don’t just read textbooks; get out into the community and talk to these grandmothers that have lost children. Talk to these pastors that

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have congregations that are feeling this all of the time. Talk to the 18- or 17- or 16-year-old that is tired of being stopped and frisked,” Packnett said.

Secondly, Packnett said, “It’s really critical that in training and developing officers that we are both rigorous and vigilant toward the end of not just cultural

competency, but what we in education circles call cultural responsiveness and anti-racism. That is a high bar; it is a rigorous bar.” Packnett called for not only the development of a “clear rubric” by which to measure those traits in police officers, but also the requirement that officers be continuously recertified in

anti-racism and cultural responsiveness. Training encompasses more than just mindsets, however. It should also include deeper knowledge about the cultural backgrounds and histories of communities in which police operate, as well as the skills to operate in new ways that incorporate this knowledge. “It will be critical that law enforcement takes very seriously the charge to make that training and development very rigorous,” Packnett said.

Packnett concluded her talk with the reminder that “those 669 people [killed] this year and

hundreds of people last year are real people and so I will call out the name of Mike Brown, I will call out the name of Tamir Rice, I will call out the name Sandy Bowes, I will call out the name of Eric Garner, I will most certainly call out the name of Rekia Boyd and I will urge all of us to have the urgency such that no more names will become hashtags.”

The final speaker was **Craig Futterman**, Clinical Professor of Law at the University of Chicago. Futterman reported on interviews he and his students have been conducting with black high school students about their everyday encounters with police. As part of the Youth Police Project, which is a collaborative project between the Mandel Legal Aid Clinic of the University of Chicago Law School and the Invisible Institute (<http://invisible.institute.org>), Futterman and colleagues spent almost three years listening to and talking with inner city high school students about their experience with police. After conducting preliminary workshops on the South and West sides of Chicago, Futterman’s team spent the last two years of the project building conversations with youth at Hyde Park Academy, a public high school in the Woodlawn community, on the city’s South Side. As Futterman explained, the researchers focused not on terrible high-profile, obviously violent incidents, but rather on “everyday encounters, and the countless interactions that

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occur between black kids and the police every day in the city and every day around the country. This wasn't about Ferguson, this was about the everyday stuff."

Again and again, the researchers asked students to describe in their own words their encounters with police and how those encounters affected their behavior and feelings about themselves and their community. As one boy described a police encounter, "It made me feel like less than...you know, I'm almost a man, but it made me feel less than a man, you know, them stopping me and...somebody going through my pockets..." Another boy said, "It just makes you feel bad, like you ain't nobody. They make you feel like that because... they're the police and they got all the power. They're over you and you're under them, therefore you don't matter. Their word will prevail over yours."

Futterman summarized the researchers' findings in four major points. They found that the young people they interviewed:

- 1) feel they are operating under a different Constitution "than what we teach in our law school classrooms. In contrast to most of my law students at the University of Chicago, kids saw police as an ubiquitous presence...they each lived with the ever present possibility of being stopped or searched by police in a manner that feels like police have all the power;"

I'm almost a man, but it makes me feel less than a man, them stopping me and...somebody going through my pockets.

- 2) won't see police as legitimate, much less rightful, without accountability;
- 3) feel that police have power that is unchecked; thus, every encounter with the police has the potential to escalate, even to the point of kids losing their lives. This unchecked power eclipses everyday examples of respectful policing; young people view the "real police" as those who are protected from discipline, not those who try to be nice to them;
- 4) are extremely alienated from the police, experiencing a fundamental distrust of them. Virtually none of the kids would call the police if they or their families were in trouble or if they witnessed a crime.

The researchers found that while procedural justice is necessary, it is not a sufficient condition for police legitimacy in black communities. Rather, rightful policing also has

to include accountability and transparency or it's not going to be effective. "Without accountability, the police will not be seen as fair, they will not be seen as just, they will not be seen as legitimate," Futterman said. "As we consider rightful policing and legitimacy, we've got to ask this question and that is, how do we want our kids to see the police?" Futterman concluded. "High school kids have taught us that accountability is a necessary component of rightful, or what I like to call righteous, policing that Tracey Meares so eloquently described. Accountability is a necessary component for kids to see police as legitimate."

If you are interested in supporting research on policing or other important ABF initiatives, please contact Lucinda Underwood at 312.988.6573.

High school kids have taught us that accountability is a necessary component of rightful...policing.

Panelist Bios



TRACEY L. MEARES is the Walton Hale Hamilton Professor of Law at Yale University. Before arriving at Yale, she was Max Pam Professor of Law and Director of the Center for Studies in Criminal Justice at the University of Chicago Law School, and held a joint appointment as a Research Professor at the American Bar

Foundation. In addition to her scholarship on crime prevention and community capacity building, Professor Meares has been engaged in a number of action-oriented research projects in Chicago, Northern California and several sites across New York State focused on violence reduction through legitimacy-enhancing strategies. Together with Tom Tyler, she directs the Justice Collaboratory at Yale Law School, which plays a central role, along with John Jay University and the Center for Policing Equity at UCLA in a new federal initiative to build trust and confidence in the criminal justice system.

Professor Meares has served on the Committee on Law and Justice, a National Research Council Standing Committee of the National Academy of Sciences from 2004–2011. Additionally, she has served on two National Research Council Review Committees: one to review research on police policy and practices, which produced the book, “Fairness and Effectiveness in Policing: The Evidence” (2004, Skogan and Frydl, eds.) and another to review the National Institute of Justice, “Strengthening the National Institute of Justice,” (2010, Welford, Chemers and Schuck, eds). In November of 2010, Meares was named by Attorney General Eric Holder to sit on the Department of Justice’s newly-created Science Advisory Board; in December 2014, President Obama named her as a member of his Task Force on 21st Century Policing. She has a B.S. in general engineering from the University of Illinois and a J.D. from the University of Chicago Law School.



PEGGY DAVIS is Chief Officer of Programs and Strategic Integration for The Chicago Community Trust. She is responsible for programmatic leadership and grant making that reflect the organization’s commitment to service. In this role, she provides leadership integrating

services to better connect donors with expertise and local knowledge to power more meaningful philanthropy. Davis is an experienced leader and a legal professional with a range of experience across the private, public and nonprofit sectors. Most recently she served as Executive Director for the Chicago Committee, a membership organization advancing racial and ethnic diversity in the legal profession. Prior roles include General Counsel for the Metropolitan Pier and Exposition Authority in Chicago, Vice President for diversity and staffing at Exelon Corporation, Trustee of the Chicago Public Schools Board of Education and Chief of Staff to former Chicago Public Schools CEO and current U.S. Education Secretary Arne Duncan. Davis is also a former partner at Winston & Strawn LLP. Her prior civic service includes terms on the boards of the Chicago Bar Foundation, the Lawyers Trust Fund, including as president, and the National Association of Women Lawyers. Davis received her J.D. from the University of Wisconsin Law School, and her B.A. from the University of Wisconsin Milwaukee.



CRAIG B. FUTTERMAN is a Clinical Professor of Law at the University of Chicago Law School. He founded and has served as the Director of the Civil Rights and Police Accountability Project of the Mandel Legal Aid Clinic since 2000. Before his appointment to the Law Faculty, Professor Futterman was a Lecturer

in Law and Director of Public Interest Programs at Stanford Law School. He previously joined Futterman & Howard, Chtd., a boutique law firm concentrating in complex federal litigation. There, Professor Futterman specialized in civil rights and constitutional matters, with a special focus on racial discrimination, education, and police brutality. Before that, he served as a trial attorney in the Juvenile Division of the Cook County Public Defender’s Office. Mr. Futterman received his J.D. from Stanford Law School and his B.A. from Northwestern University in Sociology and Economics.



SUPERINTENDENT GARRY MCCARTHY began his career in law enforcement with the New York Police Department in 1981. He rose steadily through the ranks to eventually become Deputy Commissioner of Operations in 2000. In September 2006, McCarthy was chosen to lead the Newark

Police Department. Within his first year, the Department achieved a 9 percent reduction in murder, marking the first reduction since 2002. In 2011, McCarthy was chosen to be Superintendent of the Chicago Police Department by Mayor Rahm Emanuel. As Chicago Police Superintendent, McCarthy works to reduce violence and crime by using proven crime fighting and prevention strategies that helped reduce crime in other cities including New York and Newark. Among these strategies is the CompStat program, which involves a weekly meeting with District Commanders to discuss how they are addressing crime in their districts and what their plan is to further reduce crime. Superintendent McCarthy stresses the integral relationship between the community and the beat officer to work together to report, solve and prevent crimes.



BRITTANY PACKNETT currently serves as Executive Director for Teach For America in St. Louis, Missouri. She began her affiliation with Teach For America by teaching Third Grade in Southeast Washington, DC in the 2007 corps. Following her time in the classroom, Packnett worked in federal education

policy and advocacy for low-income students around the nation as a Capitol Hill staffer and a director of government affairs for Teach For America. She has been working to amplify the voice of young people in Ferguson, Missouri through national and international press and open letters, facilitating the #FergusonFireside Conference Calls with America, engaging students in critically conscious leadership development, and helping lead Teach For Ferguson during unexpected school closings. In 2014, Packnett was appointed to the Ferguson Commission and to President Obama's Task Force on 21st Century Policing. Packnett was named by TIME Magazine as one of 12 New Faces of Black Leadership in January 2015. She is a proud alum of the John B. Ervin Scholars Program at Washington University in St. Louis and American University in Washington, D.C.



SEAN MICHAEL SMOOT serves as Director and Chief Counsel for the Police Benevolent & Protective Association of Illinois (PB&PA) and the Police Benevolent Labor Committee (PBLC). In those capacities he is responsible for administering the provision of legal services for over 7,500 legal defense

plan participants. As the organizations' primary legislative advocate, Mr. Smoot writes legislation, testifies before legislative bodies, and speaks often regarding police related topics such as Public Employment Labor Law, Pension & Benefits Law, Section 1983 Civil Rights Litigation, and Police Use of Force. Mr. Smoot also serves as the elected Treasurer of the National Association of Police Organizations (NAPO), a national law enforcement advocacy group representing over 250,000 police officers. He has served on the Advisory Committee for the National Law Enforcement Officers' Rights Center in Washington, D.C. since 1996. Mr. Smoot is a Member of the Executive Session on Policing and Public Safety at the Kennedy School of Government, Harvard University. He also holds several Certificates in Police Union Leadership from the Harvard Law School. He served as a police and public safety policy advisor to the Obama-Biden Presidential Transition Team, and on December 18, 2014, he was appointed by President Obama to the President's Task Force on 21st Century Policing. Mr. Smoot received his Bachelor of Science degree in Criminal Justice Sciences from Illinois State University and his Juris Doctor degree from the Southern Illinois University School of Law.

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