

Chicago Daily Law Bulletin

Don't bring past mistakes with you into new year

January 23, 2012

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Kroll is the principal at the Law Offices of Jeffrey J. Kroll in Chicago. He founded his firm with 17 years' experience representing victims and their families, and he has achieved settlements and verdicts in a wide range of cases, from trucking accidents to medical malpractice to sports safety cases.

Now that the Christmas decorations have been packed away and the noisemakers and party hats have been smashed and trashed, it is once again time to get down to business.

I always thought that the holiday season was a time to relax, refresh, even recharge the batteries for the upcoming year. I don't know if it is because we have young children, or the parties that we attended, but I felt anything but recharged. Now, I'm just happy to return to a somewhat normal work schedule.

One of my personal resolutions this year is to exercise more. I have probably worked out more in 2012 than I had over the entire 2011. Obviously, that is not a testament to me being a physical specimen. So far so, good.

Another one of my resolutions was to enjoy the practice of law and have a less stressful year. I really thought (hoped) I could succeed here. When I laid my head on my pillow on the evening of Jan. 1, 2012, I was excited ... I thought no more stress.

Of course, reality struck me on Jan. 2, when I walked into my office and looked at the "month at a glance." I thought, "This can't be right, could it?" I have three mediations and three jury trials set within the next 90 days? I also have two out-of-state speeches during that time period? My familiar friend, the accelerated heart beat, reared its ugly head. Here we go again. Looks like 2012 will be just like 2011, or will it?

The life of a trial lawyer is a busy one. Even though I somewhat lament all that I have to do, I am reminded why I do it. I will never forget the injured children from a fireworks accident. Viewing the children's charred bodies has been forever etched in my mind. I will never forget the young man who lost his eye in a work accident, forever changing the course of his life. In cases like these and many others that I have taken to trial, the challenge is always deciding how to articulate someone else's noneconomic injuries to a jury. Thankfully, we have case law to guide us.

I have created a system for categorizing and updating case law over the last 21 years. I have often represented clients who have suffered grotesque injuries. I often go to case law binders and look under "gruesome evidence."

The first two cases I have listed are: *Herndobler v. Goodwin*. 310 Ill. App. 267, 273 (1st Dist. 1941), and *Burnett v. Caho*. 7 Ill. App. 3d 266 (3rd Dist. 1972). In *Herndobler*, there was a photograph of a young boy, rather helplessly lying in bed with his head down and his feet up at a 45-degree angle secured by a weight and pulley contraption. The boy spent at least one month in this position while recovering from an accident. The trial court opined the photograph was proper as it showed that the child's injuries were "painful and serious" and since his treatment was discussed at trial, the introduction of the photograph was appropriate.

In *Burnett*, the plaintiff was injured in a work accident. He removed his artificial eye while on the witness stand. The appellate court affirmed the trial court in permitting the plaintiff to remove the eye at trial and noted — "just because the demonstration is gruesome or stirring to the sensibilities and apt to produce prejudice in the minds of the jury, is no reason to exclude it." 7 Ill. App. 3d at 272.

When photographs of "gruesome" injuries are depicted, the photographs will be admitted if they legitimately assist the jury in understanding a material issue. *Eckley v. St. Therese Hospital*. 62 Ill. App. 3d 299 (2d Dist. 1978) (Photographs of injuries are permitted in evidence when they might be helpful to an understanding of the facts, are material, accurate and correctly portray that which they purport to show).

Similarly, in *Carter v. Indiana Harbor Belt Railroad*, 190 Ill. App. 3d 1052 488 (1st Dist. 1989), the appellate court held that photographs depicting the plaintiff's injury were admissible although the photographs were gruesome. The *Carter* court reaffirmed the general rule that photographs "may be used to depict the existence, nature, severity and location of injuries and to show resultant of pain and suffering." More importantly, the photographs were accurate and properly identified and "the fact that [they were] gruesome does not require the trial court to exclude them from evidence." *Carter*, 190 Ill. App. 3d at 1060, 474 N.E. 2d at 494.

Securing substantial verdicts and settlements for my clients is important to our clients. We take pride in our results. There will be victories, but there will be losses too. How you handle the losses makes a difference.

The greatest thing about a year ending is moving forward. It reminds me of a story about the great golfer Jack Nicklaus, who denied missing a putt that he clearly missed at a Senior PGA tournament just a month earlier before his speech. One of the assets that makes Nicklaus a great golfer is his ability "to block from his mind all the missed putts. He keeps and replays the memories of made putts. He's able to retain a firm belief that the next one is going in the hole. He's able to think of himself as a great putter." Bob Rotella, *Golf Digest*, "How to drain

them like Jack," June 2001. My take on the story: Be the lawyer that you want to be; don't bring past failures with you into 2012.

When I was interviewing a law clerk, she asked me, "Have you ever lost a case?" My answer: "Heck yeah, I've lost cases." Of course, I don't dwell on losses, but I learn from them. That is why I like coaching baseball. If you swing and miss or make an error, you have a shot at redemption on the next pitch. One of my favorite sayings comes from a paperweight on my desk which says "Babe Ruth struck out 1,330 times.... Keep swinging." If there is one thing that I believe in it is that sentiment: Keep swinging, keep trying, keep moving forward. Learn from mistakes, but don't dwell on them. Here's to another busy year.

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