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IOWA DEFENSE COUNSEL ASSOCIATION

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Is AI Really a Wolf in Sheep's Clothing

By Nick Critelli

Nick Critelli

It is rare a mere lamb is asked to address the Iowa Defense Counsel Association, an august association of trial wolves. And try as Brent Ruther might to comfort me by saying I misidentified the species, that defense lawyers are really sheepdogs, it is difficult for the sheep to overcome innate fears. After all, they look like wolves, walk like wolves, and bite like wolves. But why do they want to hear from a lamb? Brent claims it is because the sheepdog and the sheep have a grander mission: the protection of the flock. And so it is with the plaintiffs and defense bar, we both serve a grander mission, justice in the common-law adversarial system. But who is the wolf, is it really AI?

Like sheep are weary of the sheepdog, when it comes to an essential aspect of their craft, trial lawyers have always been skeptical of new tricks, toys, and techniques. History proves the point. Long, long ago there once was a time when legal research was conducted by the spading method. A case was "spaded" by reading all cases cited therein, and then those cases were read and the cases relied upon were spaded, *ad infinium*. A certain lawyer with whom I practice was taught the spading art by the iconic J. Riley McManus. Her research is finished only when

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WHAT'S INSIDE

IDCA President's Letter

Pat Sealey
IDCA President

I heard stories when I first started practicing law in 1995 that there was an insurance defense attorney in about every Iowa county. In 1995 that probably was not the case, but there were many more defense attorneys. Over the years, insurance companies have decreased the number of counsel used. In fact, it is not unusual for attorneys on the western side of the state to go to the eastern side and vice versa. Of course, that has adversely impacted the membership in our organization. In turn, our operating income is much less than it used to be and far less than the Iowa Association for Justice.

I have taken note that in several organizations to which I belong, there are donor levels that are recognized. Some are called "Circles' and others "Fellows". No matter the name, they are recognized as outstanding members because these members recognize the need for contributions to assist the organization to achieve its goals.

The Iowa Defense Counsel Association believes it is time that we do the same.

At the Annual Meeting we will be rolling out the Contributing Fellows Program. We will further launch it to all IDCA Members the following month. To become a Contributing Fellow, an individual will contribute $500 and be recognized for two years, or $1,000 and be recognized for five years. Firms will be recognized for contributing $2,500 for five years. Recognition will come in many forms. Contributing Fellows' names will appear prominently on our website. Their names will also appear prominently at every Annual Meeting. Finally, their names will appear in every Defense Update. In short, it will be noticeably clear that a Contributing Fellow, whether it be an individual or a firm, strongly supports the defense bar in this state.

We are hopeful that with the increased funds we will have more opportunity to actively participate in amicus briefs, host events, host seminars, and provide educational opportunities.

The DRI is aware that we are rolling out this program. Other states have already informed us that they believe it is an excellent idea and will be watching closely so they can mimic us. The Iowa defense bar can lead the defense bar across the United States in this program.

We are hopeful that many of you and your firms will get behind us and contribute. Please strongly consider contributing. Further, please bring this to your partnership as a very worthy program to support. Let us do what we can to bolster the financial strength of this tremendous organization.

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no books remain on the shelves. It returns shocking results like *Miller v Boone County* 394 N.W.2d 776 (Iowa 1986). Then came the digests.

These lawyers were criticized and called "digesters" because they relied on the Iowa, Northwestern, or Decennial digests to do their spade work. The spaders criticized them by saying: "*Why would you ever rely on what an unknown person, who may not even be a lawyer, says about a case?"* Obviously spaders rejected the West Key Number system. Quickly, and unfortunately, digesters easily morphed into "head-noters" and "string-citers." *Voilà*, one need only clip the black-letter law head-note and cite the string of cases from the digest and an instant brief emerged without the need to actually read and think about the reason for the holding in the case.

With the passage of two more decades, a new breed of lawyer emerged, the cook-book lawyer. Spawned by Lawyers Coop's Total Client Service library, Am Jur Proof of Facts, Am Jur Trials, ALR and Pleading, and Practice Forms, practicing lawyers had the ability to perform instant legal analytics. With Proof of Facts in hand, we could prepare and try almost any case. At least that's what we thought. It seemed that speed came at a cost. An ALR annotation was not a substitute for old-fashioned spading.

Two more decades passed when West-Lexis digital research came on the scene. Books and digests were instantly obsolete, and ALR and Proof of Facts became virtually unknown. We now have entered the digital age and analogue research was a thing of the past. Books were nothing more than expensive wallpaper. At least that's what we thought.

Soon problems began to surface. West-Lexis provided a list of cases formatted like a headnote that conformed to the Boolean or natural language search term used. The digester thought he had died and gone to heaven, just clip and paste into a Word document and instant brief. The spaders, digesters, and cook-bookers would shake their heads and collectively wonder what would become of a profession without books. But is that what legal research is all about?

As new toys, techniques, and tricks emerged the goal of the spader, i.e. discerning the all important "why" of the case, otherwise known as the *ratio decidendi*, vanished and black-letter law reigned supreme. But the profession somehow survived and now we enter yet another era, the emergence of AI.

Digesters, cook-bookers, and WestLexers will love AI because it provides head-note digest type summaries in seconds. It can provide string-cite lists even quicker. It can also draft a pleading or contract that rivals the best form book. It even puts Proof of Facts to shame regarding fact based analysis, e.g. drafting direct and cross examinations questions and even jury *voir dire* questions. Better yet, with the elimination of law clerks and legal secretaries overhead costs are down and delivery time shortened. It's a lawyer's dream come true.

But be careful, AI cannot spade. As Burlington lawyer and prior Iowa Supreme Court clerk David Hirsch reminds us: "When it comes to legal research, there's no free lunch". AI can deliver the "what" of legal research with remarkable precision and speed, but it inherently lacks the critical "why," the deep jurisprudential analysis essential for authentic legal reasoning. To use a hunting analogy, a trained golden retriever makes an excellent hunting companion. It dutifully retrieves birds selectively and efficiently, presenting its master with precisely the quarry sought. In contrast, AI behaves more like a retriever that fetches everything that flies—crows, pigeons, buzzards—dropping them right on your boots.

Golden retrievers are happy dogs who love to please, and so it is with AI. It too is designed to please. But there is one additional problem where the bird dog analogy breaks down. The golden retriever will deliver real birds. AI, on the other hand fakes it to please you. Yes, it delivers fake cases and holdings. Is this starting to sound familiar?

I opened this article with the spaders lament: *"Why would you ever rely on what an unknown person, who may not even be a lawyer, says about a case?"* and now we've come full circle. Once again we are faced with defining what it means to be a legal researcher.

A legal researcher is not a mere retriever of the law, a drafter and filler of forms, or a regurgitator of fact questions. Legal research is not mere retrieval of information. It demands critical thought, strategic judgment, and philosophical depth—qualities that no machine, however advanced, can genuinely attain.

Yet we ought not discard AI entirely, lest we become modern-day Luddites, hostile to innovation itself. Rather, we should wield it carefully, as one wields any sharp instrument, mindful of both its power and peril. To prove the point, I consulted with Hal, a leading and acknowledged expert in Artificial Intelligence. Hal, is the name I've assigned to my Chat GPT voice assistant and named after the recalcitrant robot in 2001: A Space Odyssey.

I asked Hal to explain and define the limits of AI regarding philosophical and analytical legal thought. Hal explains:

> "AI can analyze language, recognize patterns, and even mimic the tone or style of human thoughts. But it doesn't truly grasp the deeper, more intangible essence behind those thoughts, like the emotions, the spirit, or the consciousness that humans have. It's more like it's

> really good at emulating understanding, but it doesn't genuinely experience it."

Having lured Hal into an introspective mood, I thought I'd strike and ask "why do you make up fake cases?" He responded:

> "GPT-based models are fundamentally language predictors, not fact-checkers. When you ask for a case citation, the model tries to generate text that looks like a citation, based on the patterns it's seen in training. Because of how it's trained to be helpful and fluent, it often presents hallucinations with full citations, even parentheticals, which makes them look legitimate—fooling even seasoned attorneys. Always Verify any AI-generated case with a trusted legal research tool."

There you have it from the robot's mouth:—Always Verify, Don't Trust.

Sheep survive by keeping their guard up, anything that even looks like a wolf is treated as a threat. But that same instinct can lead them to mistrust the sheepdog, too. The truth is, AI is one of the most powerful tools a lawyer can have today. But like any tool it only works if you know how to use it. So let me show you what I mean with a few real-world examples of how even a "mere lamb" can use AI to level the playing field against the wolves. All of the examples are from ChatGPT-4, the paid version:

1. *Predictive Analytics:* Motions, Jury Instructions, etc. filed by opposing counsels' prior cases are retrieved from EDMS and uploaded to a proprietary GPT database. Plaintiff's petition and the Answer are attached to this prompt: "using only the pleadings in the database, analyze this petition and answer against the pleadings in the database and predict what responsive action opposing counsel are likely to make." Based upon the output, the following prompt is issued: "create a strategic plan by which to counter the responsive action and identify the tactics used to execute the plan."

2. *Creative Voir Dire:* After uploading the Petition, Answer and relevant Jury Instructions the following prompt is issued: "Using only the Petition, Answer and Jury Instructions, create a list of twenty questions plaintiff can ask a jury on voir dire to identify those potential jurors who are more likely to be sympathetic to the plaintiff." From the response, issue this follow up prompt: "Using the twenty questions identify which terms and phrases are most likely to evoke the favorable emotions of potential jurors in favor of the plaintiff, and curate the response listing the most emotive terms."

3. *Table-Top Exercises.* The military uses table top exercises (TTX) to create predictive models. AI provides the trial lawyer with an invaluable tool to TTX a case. It is a five-part process. After uploading a petition, answer, witness list summary, exhibit list summary, and relevant jury instructions, prompt GPT to draft a motion for full or partial summary judgment and create a list of the factual components upon which it is based. After the motion and list is received, turn the tables and ask GPT to assume it is the opposing counsel and create a response to the motion with supporting arguments. Flip the dynamic again and ask GPT to reply to opposing counsel's reply. Then prompt GPT that it is the judge and ask it to write the decision and give detailed reasons therefor. If you are on the losing side of the equation, ask GPT to give you a list of things to do that would have resulted in a decision in your favor. Usually, all of the above takes about five minutes but provides invaluable insight and builds an impressive strategic and contingency plan. And you were worried about Reptilian Trial Tactics.

CONCLUSION

At the end of the day, Brent Ruther was right—whether we see ourselves as sheep or sheepdogs, we're all here for the same greater mission: the pursuit of justice. That mission hasn't changed, even as the tools we use evolve.

AI is just the latest in a long line of innovations—from spading to digests, from cookbooks to digital research. Like those before it, AI can't replace judgment, intuition, or the human understanding of the law—but if used wisely, it can sharpen our thinking, streamline our process, and help level the playing field.

Properly understood and skillfully applied, AI doesn't threaten the adjudicative process—it enhances it. It empowers the lamb, informs the sheepdog, and, most importantly, it helps ensure that the work we do continues to serve its highest calling: justice.

Thank you for allowing us to share this exciting technology with you. Hal asked me to issue this disclaimer: Hal did not write this article.[1] The dangling participles, logic jumps, redundancies and grammatical errors belong to the human. Hal and I look forward to seeing you in court.

1 However, Hal wanted you to know that after Nick wrote this article, Hal asked to re-write it like it was written by Mark Twain. It's a hoot. If you want a copy, email Nick at NCritelli@CritelliLaw.com.

Business Email Compromise: You Sent the Settlement Funds *Where*?

By Joshua McIntyre, Lane & Waterman LLP, Davenport, IA

Joshua McIntyre

"[P]arties to modern, high-tech financial transactions must remain vigilant in ensuring they are dealing with their authentic peer. Failing to do so may be at their own financial peril."[1]

In the Spring 2016 issue of the *Defense Update*, I shared ten tips for protecting client data in light of amendments to the Iowa Rules of Professional Conduct, which for the first time adopted an express duty of competency in technology. In the years since, attorneys have continued to become ever more attuned to the benefits and risks of advancing technologies, especially in the world of artificial intelligence. A lesser-known risk is the prevalence and sophistication of business email compromise and related attacks, which are increasingly targeting attorneys and can result in the loss of client funds.

Business Email Compromise ("BEC") is an umbrella term for sophisticated scams "carried out by fraudsters by compromising email accounts and other forms of communication such as phone numbers and virtual meeting applications, through social engineering or computer intrusion techniques to conduct unauthorized transfer of funds." [2] BEC scams target employees who have access to company finances, tricking them into making wire transfers they believe are directed to the intended party but are instead directed to the scammer's account.[3] BEC is the seventh most-reported form of cybercrime but results in the second-most loss, accounting for losses of nearly $8.5 billion over the last three years.[4] A recent survey of the Association for Financial Professionals found that 63% of organizations have experienced BEC, with a similar percentage of respondents experiencing loss by fraudulent wire transfer.[5]

Attorneys and law firms are attractive targets for BEC scams because they make high-dollar transfers for transactional and litigation matters, often to parties with whom they have not previously transacted.[6] Many of the conditions that would present a "red flag" to a company's accounting department–such as new wire instructions, a tight time constraint, and an expressed urgency for the funds–might not be unusual for attorneys or their bookkeepers.

The danger of BEC scams comes from their sophistication and level of deception. In a well-executed scam, the victim is unaware of the attack until well after the funds are gone. Often the attack begins when one party to email correspondence–a client, opposing counsel, or vendor–is deceived into providing email account credentials or other personal information.[7] The attacker then gains access to the account and monitors communication for evidence of upcoming financial transactions. The attacker hides his tracks in order to stay invisible to the compromised account owner, who may continue to use the email account as normal. When the time comes, the attacker intercepts and manipulates emails in order to request electronic payment to the attacker's own account. Often the attacker will send additional emails masquerading as the legitimate parties in order to delay discovery of the attack. Within a few days, the attacker has converted the funds to cryptocurrency or moved them through multiple offshore accounts, making recovery nearly impossible when the attack is discovered days or weeks later.

Who bears the loss? Caselaw is fairly scarce, but courts that have reached the issue often conclude it is the party in the best position to prevent the loss, not necessarily the party that was initially compromised through a security breach. Courts will look to the totality of the circumstances and any "red flags" that could have been discovered by each party.

In an instructive case recently decided by the California Courts of Appeal, a defendant was ordered to pay settlement funds a second time after its counsel first made payment to an attacker in a BEC scam.[8] The incident arose from a personal injury lawsuit against the defendant restaurant, which the parties settled at mediation. About a week after the parties executed a settlement agreement, defense counsel received an email purportedly from plaintiff's counsel, asking: "[C]an we have the settlement funds sent electronically into my firm's IOLTA rather than sending a check?"[9] This email was in fact sent by the attacker using a spoofed email address and signature block nearly indistinguishable from those of plaintiff's counsel. Defense counsel then unwittingly communicated with the attacker by email and instructed his firm's accounting department to make payment using wire instructions the attacker provided. Accounting personnel attempted to confirm the wire instructions by phone but used the phone number from the spoofed signature block, speaking not with plaintiff's counsel but instead *directly with the attacker*.[10] The attacker then sent an email to plaintiff's counsel

masquerading as defense counsel, stating the settlement funds would be provided by check after all.[11] After several more weeks of email correspondence about payment status, counsel finally spoke by phone and discovered the settlement funds had been misdirected and were long gone.

Plaintiff later moved to enforce the settlement agreement. The defendant resisted, arguing in part its counsel had not experienced a security breach and had acted reasonably in attempting to confirm the wire instructions by phone.[12] Plaintiff responded by identifying all the red flags that defense counsel missed, including the changing form of payment, the changing wire instructions, and the changing and sometimes inoperable phone numbers. The district court agreed, found no comparative fault by the plaintiff, and entered judgment enforcing the settlement.[13] The appellate court affirmed and noted that, even if the record had supported an inference that plaintiff's counsel was the original source of the security breach, "the entire risk of loss" could remain with the payor who ignored all the red flags.[14]

The California court went out of its way to clarify it looked only to determine which party was in the better position to prevent the loss; it did not require, and did not include, a finding that defense counsel had acted negligently. Nevertheless, one suspects the defendant looked to its counsel to make payment on the nearly $500,000 mistake. The defense attorney caught by this scheme is the managing partner of his office and has nearly 20 years of litigation experience. Here are ten ways he, and you, can do better:

1. **Be suspicious of requests for account credentials**. If you receive an email or link asking to confirm your account login or password, consider what may have triggered the request. If you weren't expecting it, it is probably a scam.

2. **Change passwords frequently and use Multi-Factor Authentication**. Many BEC scams rely on undetected access to email over significant lengths of time, which allows the attacker to learn about the transaction and create convincing emails for the attack. Changing your passwords can cut off that access before the attack is completed. But don't rely on passwords alone. Adding tokens or other forms of multi-factor authentication makes it more difficult for attackers to access your email.

3. **Monitor email rules**. Most BEC scams hide emails from the owner of the compromised email account. This allows the attacker to remain undetected while executing the attack. Monitor your Settings for any new Rules, especially if emails are being automatically redirected to the RSS Feeds folder or another unmonitored location.

4. **Monitor account access**. IT personnel can consult log files to detect logins coming from unusual devices or locations. If you regularly login from two locations in Iowa, an unexplained access from another state or country is likely a sign of attack.

5. **Monitor spoof domains.** IT personnel can set up monitoring services to look for spoof domains that attackers create to masquerade as you.

6. **Agree on the form of payment first.** Discuss the method of payment in person or by other secure communication directly with the intended recipient. Be suspicious of any changes.

7. **Never initiate a wire transfer based solely on an electronic request.** BEC scams work because they appear to come from trusted sources: opposing counsel, expected vendors, even people inside the same firm. All requests should be confirmed in person or by other secure communication directly with the intended recipient. Use contact information that has been confirmed from outside the email chain. If you remain suspicious, contact a second person at the recipient's firm using confirmed contact information.

8. **Verify wire instructions from outside sources**. Routing numbers should match the recipient bank and its address. Be suspicious if the account is held in a branch office far removed from the payee's location. You can search the American Bankers Association database at https://routingnumber.aba.com/. When in doubt, contact your bank.

9. **Verbally confirm payment initiation and receipt.** BEC scams do not end at the moment payment is initiated. Both the sender and the recipient should be aware when a wire transfer is in progress so they can diligently address any errors. Most wire/ACH payments can be reversed within five business days.

10. **Consider more secure forms of payment.** Wire/ACH transfers are among the least secure forms of electronic payment and provide a very short window for reversal. By comparison, credit card payments typically provide a window of 60 to 120 days for challenge. And sometimes there really is nothing wrong with an old-fashioned check.

Joshua McIntyre is a partner of the Davenport firm Lane & Waterman LLP. His practice includes advising clients in civil matters arising from online criminal conduct, including business email compromise, data breach, and personal information loss.

1 *Thomas v. Corbyn Restaurant Development Corp.*, 332 Cal. Rptr. 3d 839, 855 (May 27, 2025).

2 FBI Internet Crime Report 2024 at 42, available at https://www.ic3.gov/AnnualReport/Reports/2024_IC3Report.pdf.

3 FBI News - Business E-Mail Compromise (February 27, 2017) available at https://www.fbi.gov/news/stories/business-e-mail-compromise-on-the-rise.

4 FBI Internet Crime Report 2024, *supra* at 19.

5 2025 AFP Payments Fraud and Control Survey Report, available at https://www.financialprofessionals.org/training-resources/resources/survey-research-economic-data/details/payments-fraud.

6 "Lawyer Liability for Wire Transfer Fraud" by Douglas Richmond and Andrew Ricke, American Bar Association, *The Brief* (Spring 2025).

7 "Understanding liability in business email compromise funds transfer cases: What you need to know" by Rosa Ruiz and Dominik Cvitanovic, *Westlaw Today*, 2025 PRINDBRF 0033 (February 3, 2025).

8 *Thomas v. Corbyn Restaurant Development Corp.*, 332 Cal. Rptr.3d 839 (May 27, 2025).

9 *Id.* at 843.

10 *Id.* at 844.

11 *Id.*

12 *Id.* at 845-46.

13 *Id.* at 847.

14 *Id.* at 854-55.

New Member Profile

Jasmina Boever

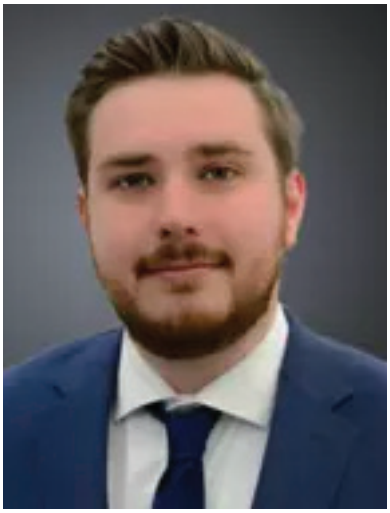
Jasmina Boever is an associate attorney at Hopkins & Hueber, P.C. She currently practices with the Liability & Insurance Defense section of the Des Moines office where she represents insurance companies and individuals in a wide variety of personal injury and property damage cases.

Jasmina received her J.D. from Drake University Law School in 2024, after obtaining an undergraduate degree in Law, Politics, and Society from Drake University. During law school Jasmina worked as a student attorney in the Drake Civil Legal Clinic and was an intern for the Honorable Judge Brent Pattison.

In her free time Jasmina enjoys watching her son play various sports and traveling with her family. Her favorite places to visit include Bosna & Hercegovina and Croatia. Jasmina was born in Hercegovina and most of her extended family still lives there. Currently Jasmina lives in Johnston with her husband Jarrad, son Benjamin, and their pets Furbell and Simon.

Case Law Update

By Brendan P. McGuire
Dickinson, Bradshaw, Fowler & Hagen, P.C.


Brendan P. McGuire

AMIE VILLARINI V. IOWA CITY COMMUNITY SCHOOL DISTRICT, 21 N.W.3D 129 (IOWA 2025)

No. 23-1220

Submitted: April 3, 2025

Filed: May 16, 2025

The Iowa City Community School District ("ICCSD") hired Amie Villarini ("Villarini") as the varsity girls' tennis coach at Iowa City West High School ("West") in 2013, where she coached for several years under one-year contracts. 21 N.W.3d 129, 131. Following the 2021 season, four tennis players and their parents issued complaints to West's athletic director which alleged Villarini inappropriately touched players, exhibited favoritism, lied to and belittled and retaliated against players, and requested players skip religious services. *Id.* ICCSD's investigative report concluded Villarini had not inappropriately touched players or engaged in bullying or harassment, but recommended Villarini refrain from touching players as often as possible "[t]o protect herself from future allegations." *Id.* at 131-132. Thereafter, and prior to the following season, Villarini posted her feelings on her private Facebook account that she felt undervalued and opined on what makes a good teammate. *Id.* at 132. ICCSD learned of the post, determined it was directed at former players, and Villarini ultimately removed the post following a conversation with West's athletic director. *Id.*

In April 2022, former tennis players attended an ICCSD board of directors ("BOD") meeting. *Id.* During the meeting's public-comment time, two former players addressed their concerns with the investigation and its results, and their belief that Villarini's social media posts targeted the former players, but they did not directly name Villarini. *Id.* The next day, Villarini was placed on administrative leave for the rest of her current year-long contract, which the ICCSD deputy superintendent explained was due to another Villarini social media post that "appeared to target students who spoke at the April 12 meeting in a negative way." *Id.* Villarini disagreed with this explanation, believed the student's comments at the April 2022 meeting ultimately led to her being placed on leave and her contract's non-renewal, and argued the deputy superintendent did not see the second social media post before placing her on leave. *Id.*

Two days after the April 2022 meeting, the BOD posted a complete, unaltered video of the meeting on its YouTube channel. *Id.* Villarini and her attorney made multiple requests to have the video removed, comments redacted or a disclaimer included in the video, which ICCSD refused. *Id.* at 132-133. As a result, Villarini brought claims for defamation and "breach of contract/violation of public policy" against ICCSD, which alleged that "ICCSD defamed her by republishing slanderous statements and that the school district placed her on leave and did not renew her contract in violation of public policy." *Id.* at 133. ICCSD moved for summary judgment, which the district court granted. *Id.* The district court cited Restatement (Second) of Torts § 611 (1977) in support of its reasoning to grant ICCSD's motion on the defamation claim, and determined Villarini failed to articulate a "well-established public policy" that ICCSD violated with respect to her second claim, which the court analyzed as a wrongful termination in violation of public policy claim. *Id.* Villarini appealed, and the court of appeals affirmed the district court's decision. The Iowa Supreme Court then granted Villarini's application for further review.

Defamation: Villarini argued to the Iowa Supreme Court that "ICCSD defamed her by republishing the statements made by the former players at the school board meeting." *Id.* On this issue, the Court only addressed the district court's application of the "fair-report privilege," one of five total reasons the district court relied upon when it dismissed her defamation claim. *Id.* Villarini argued the former players' statements were slanderous per se and ICCSD could be liable for republishing these statements. *Id.* at 134. "'Words are [slanderous] per se if they are of such a nature, whether true or not, that the court can presume as a matter of law that their publication will have a [slanderous] effect.'" *Id.* (internal citations omitted). ICCSD apparently did not contest whether these statements fell into that category, and the Court "has long recognized that parties can be liable for republishing defamatory statements, as ICCSD did here." *Id.* The question presented to the Court was then whether ICCSD's republication of the statements was protected by a privilege that allowed the district court to grant summary judgment in its favor. *Id.*

ICCSD argued it "could not be liable for posting a video of its unaltered school board meeting, which could be construed

as an assertion of the fair-report privilege." *Id.* The fair-report privilege protects:

> [t]he publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern . . .if the report is accurate and complete or a fair abridgement of the occurrence reported.

Id. at 135 (citing 3 Restatement (Second) § 611, at 297). The privilege is commonly utilized by news outlets but may be applied to a wider range of defendants, such as authors or political candidates. *Id.* (internal citations omitted). This is a qualified privilege, which may be defeated by a showing that the report of the proceedings or action was not a "substantially correct account" or was edited or altered in a misleading way or conveys "an erroneous impression to those who hear or read it." *Id.* (internal citations omitted). "Inaccuracy is the measure for this privilege because a defendant's reason for publishing a public proceeding or action is generally irrelevant." *Id.* (internal citations omitted).

The Court's articulation of the privilege in this case was an issue of first impression, although the Court has "recognized a version of [the privilege] since the early 1900s" which "only covered judicial proceedings and could be defeated by a showing of malice." *Id.* (internal citations omitted). Here, the Court expanded and updated the privilege "so that it covers the report of more proceedings and is defeated by inaccuracy instead of malice, as several other jurisdictions have done." *Id.* (internal citations omitted). Although the parties agreed that the former players' statements were slanderous per se, Villarini's defamation claimed failed because ICCSD did not edit the video, the report at issue replicated what occurred at the April 2022 meeting, and the video simply expanded access to a BOD meeting that any member of the public could have attended. *Id.* at 135-136. Moreover, the Court reasoned that ICCSD should not be punished for exhibiting the most transparency possible, which the Court determined furthered Iowa's open meeting laws. *Id.* at 136.

Wrongful Termination in Violation of Public Policy: The elements of Villarini's second claim require demonstration of:

> (1) the existence of a clearly defined and well-recognized public policy that protects the employee's activity; (2) this public policy would be undermined by the employee's discharge from employment; (3) the employee engaged in the protected activity, and this conduct was the reason the employer discharged the employee; and (4) the employer had no overriding business justification for the discharge.

Id. (internal citations omitted). The first two elements constitute questions of law, and Iowa courts have recognized this tort in three circumstances: when an employee is discharged (1) "in retaliation for enforcing a statutory right"; (2) for "refus[ing] to participate in an illegal activity"; and (3) for whistleblowing "by reporting illegalities in the workplace." *Id.* (internal citations omitted).

The Court determined Villarini failed to identify a clearly defined and well-recognized public policy that ICCSD violated. *Id.* at 137. Villarini argued a clear public interest exists in stopping the removal of school employees based upon unfounded allegations. *Id.* However, the Court has "consistently refused to recognize the existence of alleged public policies based in general and vague concepts of socially desirable conduct, internal employment policies, or private interests." *Id.* (internal citations omitted). Rather, Iowa courts rely upon statutes, administrative regulations and constitutional provisions for public policy sources. Villarini's argument did not demonstrate an established public policy; and, therefore, the district court did not err in dismissing Villarini's claim.

BRIAN HAGER V. M & W WELDING, INC., COLTON BEALS, JACOB RHOADES AND BENJAMIN ST. LAWRENCE, 2025 WL 1824301 (IOWA CT. APP. JULY 2, 2025)

No. 24-0778

Filed: July 2, 2025

In March 2021, M&W Welding, Inc. ("M&W"), a welding shop which specializes in building hay trailers, hired Brian Hager ("Hager") as a painter. 2025 WL 1824301 at *1. Colton Beals ("Beals") owns M&W, and neither he nor the other employees were aware at the time Hager was initially hired that Hager, who is biracial, identified as a black man. *Id.* Hager alleged that once Beals and two other employees—Jacob Rhoades ("Rhoades") and Benjamin St. Lawrence ("St. Lawrence")—learned of his race, they "began engaging in a consistent and pervasive pattern of harassment," which included making racially-charged comments, insults, and slurs towards him. *Id.* Rhoades and St. Lawrence allegedly frequently referred to Hager as a slur and, along with Beals, would make sexually explicit and racially insensitive comments about Hager's wife, a white woman, and Hager's children. *Id.* Hager alleged that the harassment did not stop there but also included throwing things at him during the workday, destroying his workstation and protective equipment, a painted swastika on his workstation, and that Beals once made Hager "paint the symbol of the Schutzstaffel—the infamous Nazi paramilitary group—on a customer's trailer." *Id.* Hager often left work early and searched for reasons to call in sick as a result of the alleged harassment. *Id.* at

*2. Hager complained to Beals on numerous occasions, and Beals allegedly dismissed his concerns as "shoptalk" or "guytalk." *Id.* at *1. In December 2021, Hager met with Beals to again address the workplace environment and Hager's concerns. *Id.* at *2. Around this time, Hager also explored the possibility of filing a legal complaint against M&W with the Iowa Civil Rights Commission. *Id.* Approximately four days after this meeting, Beals allegedly terminated Hager's employment via voicemail. *Id.*

In October 2022, Hager filed a lawsuit against M&W, Beals, Rhoades and St. Lawrence. *Id.* Hager asserted explicit claims of race discrimination, disability discrimination, retaliation under Iowa Code chapter 216 and defamation against all defendants. *Id.* Additionally, Hager asserted a common law retaliatory discharge claim against M&W and Beals, an assault claim against Beals, and a claim for aiding and abetting a violation of chapter 216 against Rhoades and St. Lawrence. *Id.* Eleven days before trial, Hager filed a set of proposed jury instructions, which included four instructions related to a hostile work environment claim. *Id.* The defendants resisted these four instructions, and argued each of the four must be struck and omitted because Hager "chose not to plead causes of action for workplace harassment/hostile work environment either by a co-worker or by a supervisor." *Id.* Two days before trial, Hager filed a pretrial motion to amend his petition to add a hostile work environment claim, which the defendants again resisted. *Id.* The district court addressed the motion to amend prior to trial commencing, and Hager's counsel argued, *inter alia*, that "it is our contention, and it is according to Iowa's rule of pleading the case, that a hostile work environment claim has always been part of Mr. Hager's claims against Beals and the other defendants." *Id.* at *2-*3. Hager argued all that was required was to state a claim clear enough for the defendants to identify all the prima facie elements. *Id.* at *2-*3. Defendants' counsel argued, in essence, that they were always aware that there had never been a claim for hostile work environment, their defense was prepared as such, hostile work environment is a fundamentally different claim, and the defendants would be prejudiced should Hager be allowed to amend the petition so close to trial. *Id.* at *3. The district court agreed with the defendants and denied the motion. Hager later moved to amend his petition to conform to the proof to add a hostile work environment claim at the close of evidence, which the district court again denied. *Id.* at *3-*4. An instruction for a hostile work environment claim was never presented to the jury, and the jury found for the defendants on each of Hager's claims. *Id.* at *4. Hager subsequently appealed.

Prior to analyzing the merits of Hager's appeal, the court of appeals first considered whether Hager preserved error on the issue of whether the district court erred in denying Hager's request for a jury instruction for a hostile work environment claim. *Id.* at *4. The defendants argued that, although Hager submitted proposed jury instructions for a hostile work environment claim, Hager did not object to the instructions given to the jury at trial and therefore failed to preserve error. *Id.* Conversely, Hager argued the district court ruled on the proposed instructions and "likewise made any further objection futile by refusing to allow [him] to even make a claim for a Hostile Work Environment." *Id.* In Hager's view, this effectively constituted a ruling that he was not entitled to those jury instructions and, in such situations, no additional action is required to preserve error. *Id.* The court of appeals agreed with Hager for slightly different reasons. *Id.*

The court disagreed with Hager that the district court explicitly ruled on the proposed jury instructions at issue. *Id.* While Hager framed the issue as an inappropriate refusal to give requested jury instructions, the court viewed the thrust of Hager's argument as the district court effectively determined Hager never pled a hostile work environment claim. *Id.* From the court's perspective, the issue was that the hostile work environment claim was effectively dismissed by not allowing the claim to move forward, not that Hager did not receive jury instructions on that claim. *Id.* This rendered defendants' rule 1.924 error preservation argument inapplicable. *Id.* The court concluded the district court essentially ruled that a hostile work environment claim had never been pled when it ruled on Hager's motion to amend. *Id.* at *5.

Moving to the merits of Hager's appeal, the court analyzed the distinction between race discrimination claims and hostile work environment claims brought under the Iowa Civil Rights Act ("ICRA"), which the Iowa Supreme Court ruled over twenty years ago are "fundamentally different" claims. *Id.* at *6 (internal citations omitted). There was no dispute Hager pled a racial discrimination claim under the ICRA, so the court turned to the question of whether Hager also sufficiently pled a hostile work environment claim when compared to Iowa's notice pleading standard. *Id.* To establish a hostile work environment claim under the ICRA,

> "the plaintiff must show: (1) he or she belongs to a protected group; (2) he or she was subjected to unwelcome harassment; (3) the harassment was based on a protected characteristic; and (4) the harassment affected a term, condition, or privilege of employment."

Id. at *6 (internal citations omitted). "Additionally, if the harassment is perpetrated by a nonsupervisory employee, the plaintiff must show the employer 'knew or should have known of the harassment and failed to take proper remedial action.'" *Id.* (internal citations omitted). The harassment alleged must be sufficiently "severe or pervasive as to alter the conditions of employment and create an abusive working environment." *Id.* (internal citations omitted).

Applying Iowa's notice pleading standards, the court concluded Hager sufficiently pled a hostile work environment claim. *Id.*

"While it is not a model of clarity, when [Hager's] petition is read in its entirety, it is evident that [Hager] is attempting to assert a hostile work environment claim against the named defendants." *Id.* Hager's petition included detailed factual allegations covering the basic elements of a hostile work environment claim, such as Hager's indication that he is a black man, subjected to the defendants' racially motivated and unwelcomed harassment, and that Hager was denied "pay raises and promotions" based on the racial harassment. *Id.* The fact that Hager did not set out a separate heading for a hostile work environment claim was not dispositive on the issue, and the court determined that "[i]f the defendants were unsure of every claim Hager was asserting in his petition, they had ample opportunity over the course of this case to file a motion for a more specific statement. They declined to do so." *Id.* at *7. As a result, the court concluded that Hager was entitled to a new trial on a hostile work environment claim because the district court improperly denied Hager the opportunity to move forward to trial with such a claim. *Id.*

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Agenda

Thursday, September 18

7:45 AM	Welcome and Opening Remarks
8:00 AM	Generative AI: A Practical Overview – *Christopher Porter and Chris Snider*
9:00 AM	Defense of Public Entities and Updates in Municipal Litigation – *Jason Palmer, Georgia Rice and Ryan Tunink*
10:00 AM	Break
10:15 AM	IDCA Website Orientation – *Amanda Richards*
10:30 AM	Case Law Update: Employment/Civil Procedure – *Brendan McGuire*
11:00 AM	Ethics of Cyber Security – *John Lande*
12:00 PM	IDCA Annual Meeting and Lunch Break
1:00 PM	The Transition: From Litigation to Mediation – *Greg Witke*
1:45 PM	Trying Cases in 2025 and Beyond: Tips and Techniques – *Mike Weston*
2:30 PM	Case Law Update: Contracts and Commercial Law – *Jaquilyn Waddell Boie*
3:00 PM	Break
3:15 PM	Caught on Camera! The Impact of Video Evidence in Trial – *Mike Carmoney*
4:00 PM	Some Thoughts on Appellate Practice – *Justice May*
6:00 PM	Networking Reception at AJ's Steakhouse Party Room at Prairie Meadows
8:00 PM	Hospitality Suite – *Sponsored by Rimkus Consulting Group, Inc.*

Friday, September 19

8:00 AM	Case Law Update: Negligence – *Zack Martin*
8:30 AM	Legislative Action Update – Robert Palmer
9:00 AM	Basic Training: Pretrial Litigation Battle Drills – *Magistrate Judge Kelly*
10:00 AM	Break
10:15 AM	Preparing the Corporate Witness for Deposition – *Todd Witke & Tom Blomstrom*
11:00 AM	Above and Beyond Cancer– *Dr. Richard Deming*

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