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The Presidential Election of 2008

What a Difference 176 Years Makes (Or Does It?)

By Lawrence F. Morizio, YLS Chair

I am sure that most of us have a sense of relief that the presidential election of 2008 is now history (or at least I hope it is as I finalize this draft on the eve of the election). However, educating young lawyers on the issues was a priority for our section. I was proud to have several members commit time and resources to organizing the program "Election 2008: Presidential Debate," which was hosted by the University of Hartford in mid-October. The debaters included Chris Healy, chairman of the Republican Party, State of Connecticut, and State Representative William Tong (D-Stamford). Laurie Perez, news anchor at Fox-61 in Hartford, moderated the debate.

The questions for the debate were prepared by Executive Committee members from the section. I was shocked to see the debaters sift through the questions and provide insightful answers that focused on the issues. I admittedly learned significant details about each candidate's platform by listening to both of these guys thrust and parry for more than an hour. There were times during the live presidential debates between Barack Obama and John McCain when I would scream at the television and wonder how far off point the candidates could get from a particular question before being reeled in by the moderator. William Tong and Chris Healy provided a more comprehensive explanation about the respective tax plans of each party's candidate than was espoused from the two presidential candidates after three debates. (And Joe the

Plumber wasn't mentioned once in our debate session.)

I was very thankful that each of our volunteers came to share their respective political parties' views on the issues that mattered to young lawyers and to Americans. The most surprising aspect about the debate was that most of our membership wasn't there to witness such a quality discussion about issues relevant to their future. In addition, there were not many students from the university present to catch a glimpse either. I wondered why not? I was a history major and studied the history of the presidential elections while in college. I wasn't a fair barometer because I loved the political arena and especially presidential politics.

But why wouldn't young lawyers, or any lawyer for that matter, enjoy a debate of this level with a historic presidential election about to take place? As a matter of trivia, I figured out that 25 presidents of the United States were lawyers. So there is a common nexus between what we do and the person that we elect a majority of the time. (If you are interested, the American Bar Association has an exhibit in the Museum of Law in Chicago, Illinois, that explores the legal careers of America's lawyer-presidents. You can search for further information on the exhibit and the companion book online at www.abanet.org.)

I initially surmised that it was simply too late in the process and that voters may have had their minds made up already. As refer-

enced above, I also recognized that Americans were feeling "burned out" by the onslaught of campaigning, advertisements, and *Saturday Night Live* specials devoted to an event that happens once every four years.

I don't have the answer. What I did come away with after going through the process of speaking with people—lawyers and non-lawyers—leading up to the election was that there was not a clear understanding of the core issues on each side of the political aisle. Both Republicans and Democrats alike spent lots of money smearing the other side into oblivion. But after two primaries, two conventions, three debates tolling 270 total minutes, and thousands of advertisements, what did we learn about the issues that mattered most to us? I know how much Governor Palin spent on her wardrobe during the campaign. I know how that Senator Barack Obama was heralded on the cover of my *Men's Health* magazine (ironically, the November edition) as a champion of health and fitness. But how will each party's plan affect me as a tax-paying American or a lawyer of a small firm in southeastern Connecticut?

Before the election, I spent some time reviewing each candidate's Web site and reviewing the platforms proposed on key issues that I thought affected me most. There were no links on either site pertaining to the betterment of lawyers once elected. In fact, both sites failed to even mention the word lawyers in any of the subheadings listed consistent with "People" or "Issues."

In 1832, the first election in this country was held in which the candidates were nominated by national nominating conventions. Democrats met in Baltimore and overwhelmingly nominated President Andrew Jackson of Tennessee. Senator Henry Clay of Kentucky was nominated by the National Republicans at their convention in Baltimore. The major issue in the campaign was Jackson's determination to eliminate the Bank of the United States. Jackson had vetoed the bill reauthorizing the bank shortly before being re-nominated. Senator Clay decided to make the veto the major issue in the campaign, but it worked very much in Jackson's advantage as the bank was considered a tool of the rich. Jackson won by an overwhelming margin and many of his policies concerning the federal banks and the Electoral College still stand today.

The major issue in the presidential election of 1832 doesn't sound too far off from what we are dealing with today during this period of economic instability. We certainly have better tools to communicate the importance of today's issues and the money spent on these campaigns is astronomical. Whether

we are actually better informed is debatable. As lawyers, we cannot afford to be lax in our approach when so much is on the line with respect to our future.

Whoever is elected (and by now you know), I hope that Americans, and particularly young lawyers, made the best decision based on the information provided. We cannot ignore how important it is to shape the direction this country is taking by getting out to vote. And it doesn't stop after the presidential election. Lawyers are advocates. We should feel some responsibility to better ourselves and those we represent by being educated about the political arena that surrounds us. I'm not saying that because you are a lawyer you should run for public office. But you should be informed about what issues matter to you and how you can become involved to shape the ideals that are important to you.

I again leave you with a quote, this one from Daniel Webster, a notable statesman who argued significant cases before the Supreme Court, such as *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.)

518 (1819) and *McCulloch v. Maryland*, 17 U.S. 316 (1819) during Andrew Jackson's presidency:

Impress upon children the truth that the exercise of the elective franchise is a social duty of as solemn a nature as man can be called to perform; that a man may not innocently trifle with his vote; that every elector is a trustee as well for others as himself and that every measure he supports has an important bearing on the interests of others as well as on his own.

I cannot forget the importance of Election Day for two reasons. November 4th happens to be my wife's birthday. By the time you read this, I am hopefully not in the doghouse and have picked out for my wife a great birthday gift. I can assure you that I also headed to the polls shortly thereafter to vote. If you know anybody whose birthday falls on Election Day, I hope you got them a nice gift and reminded them to vote. I also hope you made an informed decision and voted as well. That's a gift that we have earned and should not be taken for granted. CL

Highlights from Recent Superior Court Decisions

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court has no discretion to deny a timely objection to the late filing of an appeal from probate. The 30-day time limit is a matter of personal rather than subject-matter jurisdiction and therefore may be waived, but a timely objection requires dismissal.

The "trade or commerce" requirement for a claim under CUTPA is satisfied by allegations that the defendant, while acting as executor for a deceased parent's estate, fraudulently induced the plaintiff, another family member, to decline appointment as a co-executor, failed to disclose estate assets in probate filings, and diverted estate assets to personal use. The opinion notes that the mere passive distribution of estates in accordance with the terms of a will do not involve the executor in "trade or commerce"; however, the fraudulent diversion of estate assets does occur in "trade or commerce" and therefore may be remedied under CUTPA. *Daniels v.*

Herrscher, 46 CLR 57 (Robinson, Angela C., J.).

Gates v. Gates, 46 CLR 102 (Tyma, Theodore R., J.), holds that failure to file an appeal from probate with the court within 30 days of the mailing of the notice of the decision, as required by Conn. Gen. Stat. § 45a-186 (as amended by Public Act 07-116, § 2), is a subject-matter jurisdictional defect requiring dismissal; service on the parties within the 30-day period, followed by filing in court after the period has expired, does not comply with this jurisdiction requirement. The opinion notes, however, that a probate appeal may be first filed in court within the period, followed by service on the parties after the period has expired.

Workers' Compensation Law

D'Amico v. Ace Financial Solutions, Inc., 45 CLR 810 (Gilligan, Robert G., J.), holds that the Supreme Court's 2005 ruling in *DeOliveira v. Liberty Mutual*, that the exclusive remedy provision of the Workers' Compensation Act bars a claim by an employee against an employer's

insurer for the bad faith handling of a claim for benefits, and the appellate court's extension of that rule to self-insured employers in *Yuille v. Bridgeport Hospital*, also applies to third-party administrators hired to administer a self-insured employer's workers' compensation program.

The legislature's elimination of emotional distress claims unaccompanied by physical injury from the type of work-related injury for which the Worker's Compensation Act provides relief, by amending the Act's definition of "personal injury," Conn. Gen. Stat. § 31-275(16)(B)(ii), also eliminated the protection from common-law actions for employee negligent infliction of emotional distress claims previously provided by the exclusive remedy provision of the Act, Conn. Gen. Stat. § 31-284(a). Therefore an employee may now recover in common-law negligence against an employer for emotional distress resulting from sexual harassment and assaults inflicted by co-employees during the course of employment. *Perez v. Jobin Machine, Inc.*, 45 CLR 852 (Wagner, Jerry, J.T.R.). CL