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Artful lawbook angling finds meaning behind fishing expeditions and discovery

Recently a good friend traveled to Alaska to fish the Kenai River. He pulled out multiple big, beautiful salmon and even brought back a fillet for me to eat. My long-suffering wife prepared the salmon on foil with lemon and herbs in the frying pan. It was delicious!

Intrigued by my friend's successful trip, I bought a fishing rod and set out bright and early (or rather dark and early) for Montrose Harbor to try my hand at salmon fishing. I went twice and came back with nothing — twice.

Then it hit me. My friend had a successful fishing expedition, and I did not. It got me wondering about the origin of the phrase, and its application in Illinois law.

This month's column discusses the origin of fishing expeditions and tells the story of two such expeditions — one successful and one not so much.

In her charming article, "Just Say 'No Fishing': The Lure of the Metaphor," Elizabeth Thornburg traces the fishing metaphor to 1752 in the case of *Buden v. Dore*, 28 Eng. Rep. 284 (Ch. 1752) (Hardwicke, L.C.) ("you cannot come by a fishing bill in this court, and pray a discovery of the deeds and writings of defendant's title").

According to Thornburg, "[t]he fishing metaphor traveled to the United States with the common law" and it was a New York judge who first spoke of fishing bills. See *Newkirk v. Willett*, 2 Johns. Cas. 413, 1800 N.Y. LEXIS 168 (N.Y. 1800) (rejecting a widow's request for discovery as a "mere fishing bill").

I've done the Illinois tracing.

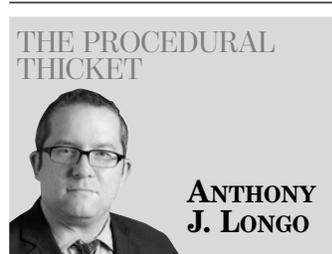
For our earliest use of "fishing bill" see *Smith v. Ramsey*, 1 Gilman 373 (1844) ("This does not even rise to the dignity of a fishing bill"). The phrase was uttered for the last time in *Krupp v. Chicago Transit Authority*, 4 Ill. App. 2d 222 (1st Dist. 1955), where the court helpfully suggested a definition of such fishing as "discovery sought upon suspicion, surmise or vague guesses ..." Id. at 226.

"Fishing bills" turned into "fishing expeditions" in *People ex rel. Metropolitan Casualty Insurance Co. of New York v. Calumet National Bank*, 260 Ill. App. 603 (1st Dist. 1931). There, a company's vice president was held guilty of contempt for failing to fully comply with a subpoena for documents.

On appeal, "[c]ounsel for respondent characterized this as a 'fishing expedition.' We do not think so. The documents and papers described in the subpoena duces tecum were all material to the allegations of the bill of complaint." Id. at 612.

[The fishing expedition metaphor] is useful shorthand to object to discovery that seems far ashore from the complaint's allegations ...

Next time you send discovery and are accused of a fishing expedition, *Computer Teaching Corp. v. Courseware Applications Inc.*, 199 Ill. App. 3d 154 (4th Dist. 1990) will provide you some protection. There, the plaintiff sued alleging that the computer company copied its computer language authoring system when designing



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and developing its own.

Plaintiff sought documents relating to design and development of the defendant company's program or any forerunner thereof. The defendant objected that such discovery was a fishing expedition into its trade secrets.

"Contrary to defendant's assertion, plaintiff's discovery request

been copied. Such information is only accessible through discovery and further serves the goals of ascertaining the truth and promoting a fair settlement or trial." *Computer Teaching*, 199 Ill. App. 3d at 157.

Next time you receive discovery that looks like a fishing expedition, consider using *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635 (1st Dist. 2002). In that case, the plaintiff sought the personnel records of certain police representatives, defendant objected, and the trial court denied the plaintiff's motion to compel. On appeal, "[t]he Fabianos ... suggest that the files 'may' contain evidence relevant to defendants' credibility or suggesting a pattern of misconduct by the defendants.

"In other words, [t]he discovery requests were merely a "fishing expedition," which would have been conducted with the hope of finding something relevant." *Fabiano*, 336 Ill. App. 3d at 659, quoting *Snoddy v. Teepak Inc.*, 198 Ill. App. 3d 966, 969 (1st Dist. 1990).

The fishing expedition metaphor is well anchored in Illinois law. It is useful shorthand to object to discovery that seems far ashore from the complaint's allegations and is instead motivated by speculation that the information sought may be relevant to the case.

A "fishing expedition" is "a recognized form of litigation abuse." *Yuretich v. Sole*, 259 Ill. App. 3d 311, 316 (4th Dist. 1994). However, if the discovery is indeed relevant to the complaint's allegations, then the fishing expedition metaphor doesn't measure up and should be thrown back.