The IMLA membership will continue to include the many existing benefits, some of which are a discount on BMI music licenses and *amicus* assistance through the IMLA Legal Advocacy program. It is that program that allows IMLA to participate in cases in support of local governments across the country in the Supreme Court, the Federal Circuits and in state supreme courts. Recently, the Supreme Court decided a case in which IMLA filed as an amicus at both the petition stage and the merits stage. The Court decided in our favor in *Integrity Staffing Solutions v. Busk*. That case leads off this week's case analysis.

The Echo Chamber - an analysis of Supreme Court practice

Thomson Reuters recently released a fascinating report titled "Echo Chamber" describing practice before the Supreme Court. The report confirms our view that the Supreme Court bar has become much more discrete and elite. While exceptions apply the report confirms that seasoned Supreme Court practitioners offer a client a better chance to have a case heard by the court. http://www.reuters.com/investigates/special-report/scotus/

Integrity Staffing Solutions v. Busk – Fair Labor Standards Act

The issue in this case is whether time spent in security screenings is compensable under the Fair Labor Standards Act, as amended by the Portal-to-Portal Act. Petitioner Integrity Staffing Solutions, Inc., required its hourly warehouse workers, who retrieved products from warehouse shelves and packaged them for delivery to Amazon.com customers, to undergo a security screening before leaving the warehouse each day. Respondents, former employees, sued the company alleging, as relevant here, that they were entitled to compensation under the Fair Labor Standards Act of 1938 (FLSA) for the roughly 25 minutes each day that they spent waiting to undergo and undergoing those screenings.

The U. S. Court of Appeals for the Ninth Circuit held that postshift activities that would ordinarily be classified as noncompensable postliminary activities under the Portal to Portal Act are compensable as integral and indispensable to an employee's principal activities if the postshift activities are necessary to the principal work and performed for the employer's benefit.

The Supreme Court unanimously reversed the Ninth Circuit, holding that the time that respondents spent waiting to undergo and undergoing security screenings is not compensable under the FLSA. The Court explained that:

> [T]he Portal-to-Portal Act exempted employers from FLSA liability for claims based on "activities which are preliminary to or postliminary to" the performance of the principal activities that an employee is employed to perform. §254(a)(2).

> Under this Court's precedents, the term "principal activities" includes all activities which are an "integral and indispensable part of the principal activities." *Steiner v. Mitchell*, 350 U. S. 247, 252-253. An activity is "integral and indispensable" if it is an intrinsic element of the employee's principal activities and one with which the employee cannot dispense if he is to perform his principal activities.

Here, the Court held that the "security screenings at issue are noncompensable postliminary activities" because "the screenings were not the principal activities the employees were employed to perform-*i.e.*, the workers were employed not to undergo security screenings but to retrieve products from warehouse shelves and package them for shipment. Nor were they 'integral and indispensable' to those activities."

http://www.supremecourt.gov/opinions/14pdf/13-433_5h26.pdf (last accessed Dec. 17, 2014)

The Court also decided another case having significant impact for local governments that fund courts.

***Warger v. Shauers*, - voir dire; FRCP, Rule 606**

In *Warger v. Shauers*, the Court held that Federal Rule of Evidence Rule 606(b) applies to juror testimony during a proceeding in which a party seeks to secure a new trial on the grounds that the juror lied during *voir dire*. The case involved a suit over an auto accident. One of the jurors responded in *voir dire* that she did not have any reason why she could not render a fair verdict in the case. The juror was made the foreperson of the jury and the trial proceeded to a defense verdict. After the trial one of the jurors approached the plaintiff's attorney and offered an affidavit that during deliberations the foreperson told the jurors that her daughter had been the driver of a car in an unfortunate accident where the daughter had killed another motorist and that a judgment against her daughter would have ruined her.

The plaintiff sought a new trial, but Rule 606 was applied to prevent using the testimony to set aside the verdict. The Court concluded that a claim that the testimony fell under Rule 606(b)'s exception for "extraneous prejudicial information" could not be supported concluding that the phrase "extraneous information" refers to information from a source "external" to the jury, such as publicity related specifically to the case under consideration. The experience jurors bring to the case is "internal" information.