The Loyola Public Interest Law Reporter is an innovative legal publication that focuses on reporting the most current legal topics in a news format directed to students, educators and practitioners. PILR is edited and produced by Loyola students and is housed within the Center for Public Service Law. Founded in 1995, PILR offers feature articles and news of legal developments in the areas of human rights, economic justice, criminal justice, the environment, and governance. In addition to an editorial staff selected through a write-on process, Loyola law students direct all aspects of PILR’s research, writing, graphics, production and business management.

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Letter from the Editor

This edition of the Public Interest Law Reporter is dedicated to local issues, affecting the city of Chicago, the state of Illinois, and their surroundings.

One topic of particular importance to us is public housing. As the Chicago Housing Authority’s ten-year Plan for Transformation enters its eleventh, public housing residents still face many legal hurdles. For former residents of the recently razed projects, new living options are proving unwelcoming or unsuitable. In four articles, we look at the ways the Plan for Transformation has touched their lives and ways to more effectively address their needs.

Both residents of public housing units and Section 8 voucher recipients remain part of a very controversial population in Chicago. Housing vouchers carry a stigma that causes many landlords to balk. Despite serving one of the most vulnerable families in the city, public housing has a longstanding reputation for attracting crime. Public housing and illegal drugs have been inexorably linked since the CHA’s early days.

The CHA has instituted mandatory drug testing for subsidized residents over 18 at nearly half of its mixed-income developments. The agency has proposed to extend this requirement to all of its residents. While calls for mandatory drug tests pop up frequently in cities with public housing, Chicago would be the first to implement it for all of its public housing residents.

Under the CHA’s plan, a failed drug test would not mean automatic eviction. Offenders would be offered a place in a suitable drug treatment program. Only if they refused treatment would they face ejection.
It is tempting to demand that recipients of public funds give up certain fundamental rights for the privilege of subsidized housing. After all, if they are going to live under the city’s roof, shouldn’t they have to abide by the city’s rules? However, mandatory drug testing without regard for past criminal history is a major intrusion into the personal security guarantees of the Fourth Amendment. If the CHA is going to offer the promise of a home, it must come with a modicum of privacy.

If the Chicago Housing Authority does proceed with mandatory drug testing, the issue will almost certainly be settled by a long and costly lawsuit.

For more information, see *CHA drug tests?* Chi. Trib., June 4, 2011, at 14.

Sincerely,

Jeff McDonald
Editor in Chief
Fred Jones was convicted last summer of conspiracy to commit armed robbery and conspiracy to possess and distribute 20 kilograms of cocaine. His arrest and conviction stemmed from a plot he made with a coworker, Cliff Ingram. Fred and Cliff worked together packing boxes, an unskilled, minimum-wage job. Their employer participated in a felon reentry program, through which both Cliff and Fred were hired, Fred having been convicted of armed robbery once before. After the two men became friendly, Cliff told Fred there was a drug dealer known as “Big D” who wanted someone to do a deal with him.
Fred met with Big D, who claimed to be a drug courier who wanted payback after being shorted by some dealers. He told Fred the dealers had a stash house in Naperville that was constantly guarded by three armed men. Big D proposed to lead Fred to the stash house, where Big D would buy his usual number of kilograms from the dealers and leave. After this point, Big D instructed Fred to rush in with a heavily armed crew of at least three to rob the stash house.

Fred agreed to the scheme, even though he secretly planned to rob the unsuspecting Big D of the drugs he just bought. He took Big D for an easy mark who would be outmatched by him and his crew. Cliff had already agreed to distribute the stolen cocaine for Fred.

Fred assembled the crew and some guns and brought them to a meeting with Big D on the night of the deal. Big D, however, did not lead the crew anywhere; he was really an ATF agent who had caught Fred in a sting. Big D had worn a wire to every meeting to get the evidence needed at a later trial. Fred and his crew were arrested and their guns seized.

The ATF has run this sting so many times that Judge Evans of the U.S. Court of Appeals for the Seventh Circuit recently called the setup a “rather shopworn scenario” and added that the defendants would have benefited from reading about the sting in earlier opinions. The agent in Fred’s case, David Gomez, testified at trial that he had run this sting at least 10 times before. Attorneys at the Federal Defender Program in Chicago refer to these as the “stash house” cases, because they always involve an imaginary stash house.

Assistant Federal Defenders Imani Chiphe and MiAngel Cody see several problematic policy issues in these cases. For Cody, the most troubling is the mandatory minimum sentence triggered by the drug amounts. “In fictitious stash house cases,” said Cody, “there is one undeniable fact: no drugs exist. . . . the whole operation is theater.” The undercover agents are often the ones who fabricate the drug amount to be “robbed.” “The result,” Cody observed, is that “a defendant who actually possesses and distributes 4.9 kilos of real cocaine is not subject to the 10-year mandatory minimum, whereas a defendant nabbed in a fictitious stash house case involving 5 kilos of make-believe cocaine is subject to the 10-year mandatory minimum.” Because minimum sentences for drugs are triggered by weight, crossing certain thresholds triggers higher minimum sentences.
Chiphe sees other policy problems with the stashhouse cases. “[F]rom a public policy perspective it is a terrible use of government resources,” he said. The government is creating and managing a crime that would probably not have occurred but for the actions of government agents. In Fred’s case, those agents were Cliff, the confidential informant, and Big D, the ATF agent. The idea to rob the stash house is introduced by the confidential informant in 90 percent of cases, said Chiphe.

In addition, “the informant doesn’t begin to record his conversations with our clients until the client agrees to participate in the robbery or starts showing some interest in the robbery,” said Chiphe. ‘That move by the informant is significant because the law of entrapment is subjective, turning on the predisposition of the defendant to commit a crime.’ Since the confidential informant has no reason to turn on his recorder during conversations leading up to the formation of the scheme, possibly exculpatory evidence about the state of mind of the target will almost never be recorded.

In a recent stash house case, United States v. Farella, Cody filed a motion to dismiss the indictment based on a due process violation called “outrageous government conduct.” An agent on the case said, “I took him in, ya know . . . I whipped a game on this guy.” Cody argued that the agent had thereby admitted that the government had contacted her client with the sole purpose of arresting and convicting him. The defendant had never participated in any kind of robbery before and did not know his co-defendants before the government introduced them to each other.

The judge denied the motion, writing that the defense of “outrageous government conduct” was not recognized in this circuit as a bar to prosecution. “[T]he Seventh Circuit has noted that it has ‘never taken what [it] see[s] to be an extreme step of dismissing criminal charges against a defendant because of government misconduct,’” the decision read.

How judges view these cases may be changing, however. Though the Farella judge denied the motion to dismiss, she has granted jury instructions on the defense of entrapment for the first time in her career as a federal judge. In another case, the Seventh Circuit roundly criticized the ATF’s tactics. “We use the word ‘tawdry,’” Judge Evans wrote, “because the tired sting operation seems to be directed [at] unsophisticated, and perhaps desperate, defendants who easily snap at the bait put out for them by Agent Gomez.” Despite
recognizing the tawdriness of the sting, Judge Evans found no legal occasion to overturn the conviction and affirmed the lengthy consecutive mandatory sentences imposed by the district court.24

Fred Jones awaits sentencing. He was the ringleader of the plot and his presumably less-culpable co-defendants have received 25 years and 22.5 years, while another awaits sentencing.25

Notes

1 Testimony witnessed by the author in 09 CR 687 in the N.D.Ill. The names have been changed.
2 U.S. v. Lewis, 2011 WL 1261146 at 1 (7th Cir. 2011).
4 Id.
5 Id.
6 Id.
7 Id.
8 Cf. 24 U.S.C. § 841(b)(1)(i & ii)(possessing 5 kg or more of cocaine triggers 10-year minimum, half a kilogram or more triggers 5 year minimum).
10 Id.
11 Id.
12 Id.
13 Id.
14 Id.
15 U.S. v. Garcia, 562 F.2d 411, 418 (7th Cir. 1977). ("[T]he heart of entrapment is predisposition, which is, itself, “a subjective mental state.”")
16 Motion to Dismiss Indictment Based on Outrageous Government Conduct, docket entry 93, U.S. v. Farella, 09-CR-087, (N.D.Ill. 2009).
17 Id.
18 Id.
19 Order of 9/7/2010, U.S. v. Farella, 09-CR-087 (N.D.Ill. 2009) ("Motion to dismiss . . . is denied.") (citing United States v. Childs, 447 F.3d 541, 545 (7th Cir. 2006)).
20 Id.
21 Cody, supra note 3.
22 Lewis, 2011 WL 1261146 at 1.
23 Id.
24 Id.
25 See docket report in 09 CR 687.
On February 5, 1999, within 48 hours of his scheduled execution by lethal injection, Illinois death-row inmate Anthony Porter walked out of jail a free man. After serving 16 years on death row for a double-homicide conviction, Porter had exhausted his appeals and his family had already made his funeral arrangements.

However, two days before his execution, the Illinois Supreme Court granted Porter a temporary reprieve—not from his conviction, but because he scored so low on an intelligence test that the Court questioned whether Porter could understand his sentence. This reprieve had an unintended consequence: during the stay of execution, a journalism professor and his students were able to prove Porter’s innocence.
Porter’s exoneration has been cited as “the beginning of the end” of the death penalty in Illinois. According to former Gov. George Ryan, Porter’s case, followed by a string of death row pardons in Illinois, triggered his decision to set a moratorium on the death penalty in 2000. Gov. Ryan’s moratorium remained in force until recently, when on March 9, 2011, Gov. Pat Quinn signed a law making Illinois the 16th state to formally abolish the death penalty.

The new law commutes all sentences that previously qualified for capital punishment into life without parole. Gov. Quinn also commuted the sentences of 15 inmates already on death row. Furthermore, the law provides that state funds from the Capital Litigation Trust Fund (CLTF), which previously paid for capital trials, will instead go towards services for victims’ families and law enforcement training.

The decision to abolish the death penalty in Illinois was not a thoughtless one. According Richard Dieter, Executive Director of the Death Penalty Information Center, “No state has studied the death penalty more than Illinois. . . For a Midwest state that actually had one of the larger death rows in the country to come to this point, I think, is even more significant than some of the earlier states which hardly used the death penalty.” Gov. Quinn, who asserts that abolishing the death penalty was his most difficult decision as governor, stressed the impossibility of creating a capital system “free of all mistakes, free of all discrimination.”

Gov. Ryan, who entered office as a staunch defender of the death penalty but came to view the issue as “one of the great civil rights struggles of our time,” made Illinois the first state to enact a death penalty moratorium after Porter’s case— and following reports that, since Illinois’ enactment of the capital punishment in 1977, more death row inmates had been exonerated than put to death. Between 1977 and 2000, 13 inmates were exonerated and 12 were executed.

The 13 exonerated men spent up to 18 years on death row for wrongful convictions. DNA tests cleared some, while for others, the prosecution’s cases collapsed after the convictions were reversed for new trials. The number of exonerated death row inmates rose to 20 by 2009. Additionally, post-mortem questions have been raised concerning the innocence of one of these
12 men, Girvies Davies, who was executed in 1995 based on a disputed confession obtained following extended police threats. 17

Exonerated death row inmates may suffer even greater emotional trauma than others exonerated of crimes.18 Rebecca Volk, a caseworker for the Life After Innocence Project, notes a higher degree of Post-Traumatic Stress Disorder (PTSD) among prisoners released from death row than for other exonerees, stemming from “years of day-to-day knowing that you will die, but not knowing when.”19 Illinois recently passed a new law that will go into effect July 1, 2011, providing mental health services for exonerees suffering from PTSD.20

Overall, 311 inmates were sentenced to death in Illinois between 1977 and 2010. 21 Corruption and discrimination have plagued Illinois in a large number of these capital cases. 22 In one Chicago Tribune investigation of 300 Illinois death penalty cases, 33 death row inmates were represented by a disbarred or suspended attorney, 35 black inmates were convicted by an all-white jury, and 46 cases used jailhouse informant testimony as primary evidence. 23 The Illinois Capital Punishment Reform Study Committee (ICPRS) found that death sentences are disproportionately issued to the poor and ethnic minorities. 24

There were also several cases of confessions obtained through police beatings and torture. 25 One recent example is the case of Victor Safforld, released in September 2010 after serving 21 years in prison—11 on death row—after being tortured into a false confession by former police lieutenant Jon Burge. 26 Lt. Burge allegedly obtained over 200 tortured confessions over the course of his career, and is currently serving a 54 month prison sentence following his conviction of lying in a civil case about the torture and abuse of suspects by Chicago Police Department officers.27

In response to these reports, Gov. Ryan enacted capital punishment law revisions in 2003 requiring that homicide interrogations be filmed and changing of rules on informant testimony. 28 Before leaving office in 2003, Gov. Ryan commuted all 167 death sentences in Illinois to life imprisonment, stating, “Because the Illinois death penalty system is arbitrary and capricious—and therefore immoral—I no longer shall tinker with the machinery of death.”29

In addition to unfair application of capital punishment, supporters of the death penalty ban claim that Illinois cannot afford it. Over $100 million has been spent on capital cases in the last 10 years, and one study in California
showed that capital cases cost up to six times more than a non-capital murder trial. Also, over $64 million has been paid to men released from death row in Illinois as compensation and to defend against their claims.

Illinois Attorney General Lisa Madigan opposed the ban on capital punishment, along with several county prosecutors and victims’ families. They claim that the total number of prisoners exonerated from death row represents only a small percentage of capital cases in Illinois, stating at the time of Illinois’ moratorium that “in reality there have been 247 death-sentenced defendants in Illinois, not just 25. Of the thirteen “innocents,” five were acquitted on retrials... In the other eight cases, prosecutors dismissed charges without a retrial because of evidence problems. Only one of the thirteen has been clearly established to be innocent.”

Moreover, opponents argue that recent procedural safeguards are sufficient to prevent innocent people from being wrongly executed. Such safeguards include videotaped interrogations, greater access to DNA evidence, and increased oversight to prevent police confessions obtained by force.

The ICPRS also issued several recommendations which, if enacted, could greatly reduce the number of capital cases and the risk of error in capital trials. Such recommendations include the creation of a database to monitor ethnic and economic disparities in seeking capital punishment, as well as limiting the types of cases for which capital punishment may be pursued from 21 types to five types. However, opponents claim that even these added measures are not failproof. Volk states that the threat of placing an innocent person on death row “cannot be eradicated, because this is a human justice system that will always be prone to human error.”

Additionally, prosecutors complain that repealing the death penalty will strip their access to CLTF money, forcing counties to absorb the costs of all murder trials. They also claim they will lose a necessary “bargaining chip”—stating the new law will result in more trials because prosecutors lose the threat of the death penalty to get guilty pleas from suspects who opt for life in prison. According to Thomas Gibbons, State’s Attorney for Madison County, Ill., “When we go to battle in the most serious, heinous crimes, we have to have every weapon available to us.”
Others oppose the law on moral grounds, citing the value of an execution to provide justice and closure to victims’ families, and the necessity of capital punishment in the “worst of the worst crimes.” Some opponents wish to reinstate the death penalty, at a minimum, for cases of mass murder and the murder of children and law enforcement officers. According to DuPage County State’s Attorney Bob Berlin, “I firmly believe that there are certain cases that are so shocking, outrageous and have such an impact on the economy that there is no other sentence.”

Whether the death penalty could be reinstated for such extreme cases remains to be seen. For now, Illinois’ death row, with its long history of corruption and false convictions in capital trials, is no more.

NOTES

2 Center on Wrongful Convictions, supra note 1.
3 Id.
4 Id.; Mills, supra note 1.
5 Mills, supra note 1.
8 Id.
9 Mills, supra note 1.
10 Id.
11 NPR, supra note 7.
12 Id.
14 Id.
15 Mills, supra note 1.
17 Mills, supra note 1.
Telephone Interview with Rebecca Volk, caseworker for The Life After Innocence Project (May 3, 2011).

Id.

Id.


ICPRS Report, supra note 21.

Id.

Id.


ICPRS Report, supra note 21.


Equal Justice, supra note 16.

NPR, supra note 7.


Id.

ICPRS Report, supra note 21.

Id.

Volk Interview, supra note 18.

Jim Suhr, Prosecutors say Quinn move would tie hands, CHI. SUN-TIMES, Feb. 21, 2011. (However, opponents claim the CLTF offers a financial incentive for counties to pursue the death penalty.)

Id.

Id.

Id.


Id.

Suhr, supra note 38.
In 1999, Wisconsin Governor Tommy G. Thompson created the Governor’s Task Force on Racial Profiling.¹ The Task Force recommended an empirical study to measure the extent of racial bias present in traffic stops, including mandatory data collection at every stop.² Effective January 2011, every time a Wisconsin police officer stops a car, the officer is required to record the age, ZIP code, gender, and ethnicity of the driver.³
Many police officers have taken issue with the new requirements. Each traffic stop now requires more intrusive questioning and takes longer to record the required data.

In February 2011, the Wisconsin Senate passed SB 15 to repeal mandatory data collection. Despite the repeal, all agencies are still required to collect and submit the data to the Office of Judicial Assistance until the bill advances through the Assembly and is signed into law by the Governor.

Dr. Alex Weiss, the lead author of the Illinois Traffic Stop Studies at the University of Illinois at Chicago, emphasizes that “it is hard to imagine how an agency could address this issue without the data.” If SB 15 is signed into law, the Task Force will be unable to adequately assess the extent of racial profiling by Wisconsin law enforcement.

Many states have passed laws prohibiting racial profiling or requiring law enforcement agencies to collect racial data on traffic stops. By logging the data, law enforcement agencies are able to effectively address and appropriately respond to issues of racial profiling from the inside. Dr. Weiss notes that recording data allows for an objective assessment of the effects of race on police officer conduct.

The authors of the Illinois Traffic Stop Studies provided testimony about the Illinois program to the Wisconsin Traffic Stop Data Collection Advisory Committee. Wisconsin recognized the positive effects brought about by data collection and adopted its mandatory data collection provision for officers in January 2011.

The Use and Risk of Profiling

A shocking fifty-two percent of black men said they have experienced racial profiling by law enforcement firsthand.

While the term “racial profiling” is of fairly recent origin, the practice is not. In 1974, the Drug Enforcement Administration claimed that officers were seeing a pattern in the characteristics of their suspects. In response, they created the drug courier profile.
Despite its past use, profiling based on characteristics like race has come under harsh criticism in modern law enforcement. The US Department of Justice has said, ":[R]acial profiling sends the dehumanizing message to our citizens that they are judged by the color of their skin." The practice may lead to embarrassment, humiliation, fear, and even reluctance to call law enforcement officials in the affected populations.

Wisconsin lawmakers are currently faced with a question of balancing. Is mandatory data collection a necessary practice to gauge the pervasiveness of racial profiling by American law enforcement? Or is the practice too intrusive for Wisconsin residents and unfair to the police officers who object to the requirement?

**Data Collection in Wisconsin**

Under the Wisconsin Administrative Code, the chief officer of an agency must require an officer making a traffic stop to record operator data, occupant data, event data, and search data.

Kenosha County Sheriff David Beth and Racine County Sheriff Christopher Schmaling argued that whether the information is handwritten or typed, the time commitment in filling out the forms was excessive. Consequently, Wisconsin police officers have ignored the order. After hearing the response of officers, Sen. Mary Lazich (R-New Berlin) and Sen. Van H. Wanggaard (R-Racine) pursued a bill to eliminate the requirement.

In addition to the hassle, officers also feel that the mandatory data collection procedures make them appear biased. A 2001 Time article asks, "[W]hat happens when cops believe they too are victims, when they become convinced they can’t do their jobs without being called racists. . . [an offense] that could get them fired?"

Dr. Weiss notes how he countered this type of officer resistance in Illinois. "I reminded [officers] of the strong resistance to placing video cameras in police cars. At the time, everyone believed that the camera data would be manipulated and used against the police," he said. "What they found out was that more often than not the cameras were beneficial to the police. This is essentially what has happened with respect to data collection."
While the effects have been beneficial in Illinois, the reach of data collection to assess racial profiling in Wisconsin may halt with the passage of SB 15. The future of data collection as a key measure in gauging the prevalence of racial profiling by Wisconsin law enforcement relies on the new governor, Scott Walker. Without the data, one is left to wonder what the Task Force will do next to address racial profiling in traffic stops.

NOTES


4 Antifinger, supra note 3.

5 Id.


8 Email Interview with Dr. Alexander Weiss, Lead Author of the Illinois Traffic Stop Studies at the Center for Law and Justice, University of Illinois at Chicago (Mar. 22, 2011).


10 Weiss, supra note 8.

11 Id.


16 Id. at 332; Reginald Stuart, Drug Squad Tell of Success in Using Profile, N.Y. TIMES, Mar. 28, 1983.

17 Id.


19 Id.


22 Antifinger, supra note 3.

23 Id.

24 Cloud, supra note 14.

25 Weiss, supra note 8.

26 Id.

27 Id.
On June 28, 2010, former Chicago Police Commander Jon Burge was convicted by a jury in federal court of perjury and obstruction of justice. These charges stemmed from Burge’s sworn statements in Hobley v. Burge, a federal civil rights lawsuit in which he denied that he participated in, witnessed, or knew of police torture. When sentencing Burge to 54 months in prison on January 21, 2011, Judge Joan Humphrey Lefkow decried the fact
that such torture had become “widespread,” concluding that it had “irreparably” undermined and “defiled” the justice system.³

Yet despite this conviction and condemnation of Burge’s actions, the City of Chicago continues to pay top trial attorneys hefty legal fees to defend Burge in numerous civil lawsuits brought by alleged victims of his torture.⁴ As of December 31, 2010, the City of Chicago had spent $12.3 million to defend Burge, the City itself and other City employees in cases alleging torture under Burge’s command.⁵

Given Burge’s conviction, attorneys representing the alleged victims are calling for the City to stop financing his defense, arguing that it is legally, politically and morally unjustifiable.⁶ Current and former city officials argue, however, that as a result of a 1997 federal appellate court decision, the City has no choice but to pay for Burge’s defense.⁷ Meanwhile, the City’s litigation costs continue to rise and the alleged torture victims with pending lawsuits have yet to see any compensation.

**Discovery and Acknowledgement of Torture under Burge’s Command**

In February 1982, two white Chicago Police officers were killed during a routine traffic stop by two African-American men on the south side of Chicago.⁸ A five-day manhunt led by Area 2 Lieutenant Jon Burge culminated with the arrest of Andrew and Jackie Wilson, both of whom confessed and were convicted of murder.⁹

From the start, Andrew Wilson claimed that he was tortured by Burge and other detectives, alleging that they suffocated him with a plastic bag, beat and kicked him, handcuffed him across a hot steam radiator, shocked him with an electric generator, and placed a gun in his mouth.¹⁰

In 1986, Wilson filed a civil rights lawsuit, bringing to light a pattern of torture and abuse of criminal suspects by Jon Burge and detectives under his command.¹¹ When the case went to trial in 1989, Wilson’s attorneys began receiving anonymous letters which ultimately led to the discovery of evidence of numerous similar cases of torture.¹²
Reinvestigations of complaints by the Chicago Police Department’s Office of Professional Standards (OPS) confirmed this new evidence and ultimately concluded that “systematic” torture existed under Burge and that high-ranking officers were aware of the abuse and did nothing to stop it. Based on these conclusions, the City of Chicago fired him in 1993.

In addition, the Illinois Appellate Courts began ordering new hearings and trials for several alleged torture victims. In January 2003, Illinois Governor George Ryan released four of Burge’s torture victims from death row, granting them full innocence pardons.

Calls for the prosecution of Burge and his associates led to an investigation by a county-appointed Special Prosecutor. While bringing no indictments, the Special Prosecutor issued a report in 2006, concluding that Burge and his associates acted with impunity in abusing three suspects, and that the police superintendent knew about the torture of Andrew Wilson but failed to discipline Burge.

Following the report, the Chicago City Council acknowledged in 2007 that torture occurred and called for the settlement of all pending civil cases claiming abuse from Burge. Subsequently, on October 21, 2008, U.S. Attorney Patrick Fitzgerald announced a three-count indictment against Burge for perjury and obstruction of justice.

FINANCING THE DEFENSE OF THE TORTURE SCANDAL

Since 1986, eleven alleged torture victims have sued Jon Burge and the City of Chicago. These suits have alleged not only that Burge and detectives under his command physically and psychologically tortured the individual plaintiffs, but that City officials had knowledge of the practice and failed to stop or discipline those responsible. As a result, the City of Chicago and various officials in the Police Department were included as defendants in addition to Burge.

The City’s payment of legal fees to outside counsel began with the defense against Andrew Wilson’s civil lawsuit. While the City primarily defended the Wilson case and three other lawsuits filed in the 1990s through its in-house
counsel, the City approved Burge’s choice of outside counsel to represent him.25

Burge did not require separate counsel from the city until a conflict of interest arose from his firing in 1993.26 When a new wave of civil lawsuits was filed in the 2000s, beginning with those individuals pardoned by Governor Ryan, the City began hiring outside counsel to represent all of the defendants.27

As of December 31, 2010, the City of Chicago has paid a total of $11,027,489 in legal fees to outside counsel to defend Burge, itself, and other City employees in civil cases alleging torture under Burge’s command.28 When added to fees the City paid to outside counsel to represent itself in the various torture investigations, the City has paid a total of $12,382,575 to outside counsel.29 Another $21,179,000 has been approved in judgment and settlement payments to ten individuals who have alleged torture in civil suits.30

Currently, five civil lawsuits are still pending against Burge and his associates, with four including claims of torture.31 Since Burge’s conviction on June 28, 2010, the city has expended $1,225,573 on legal fees to outside counsel to defend these cases.32 In addition, approximately twelve current prisoners are seeking or have been granted new trials based on their torture allegations.33 If these individuals are released, they also could potentially sue Burge and the City for damages.34

THE CASE AGAINST THE CITY

Since the City is no longer using its Law Department to defend these cases, the legal fees to private counsel constitute an extra expense, funded by taxpayer dollars.35 So why is the City paying top dollar to defend Burge when it acknowledges that he committed these acts of torture?

Critics of the spending contend that the City should stop paying for Burge’s representation and no longer fight torture claims.36 They specifically point to pleadings filed in the proceedings to fire Burge where the City admitted not only that Burge tortured specific individuals, but that under Jon Burge’s command, it was normal practice to torture African-American suspects.37
Flint Taylor, an attorney who represented Andrew Wilson and numerous other alleged victims, claims that it is “legally, politically and morally” unjustifiable for the City to finance Burge’s defense while refusing to compensate his victims.48 Taylor indicates that while the City exercised its discretion in representing Burge for the past 20 years, it did so in an “unprincipled and disgraceful way,” given the City’s own admissions.39

Burge’s criminal conviction, however, should have been the “ultimate cut off” in the City’s payment of his legal fees.40 A Chicago ordinance, Taylor contends, prohibits the City from covering legal fees for anyone charged or indicted in a criminal case.41 It would seem that under its own laws, the City can no longer fund Burge’s defense. Yet the City continued to pay Burge’s civil attorneys following his indictment, shelling out $1.2 million to date since his conviction.42

Taylor questions not only the City’s funding of private lawyers for Burge, but its choice in lawyers to represent him.43 As Taylor points out, Burge has had “the best private lawyers that the city could buy for 22 years.”44 The growing defense costs, Taylor argues, extend beyond Burge to the outside counsel representing other City defendants in the torture cases.45

While the City has a conflict of interest and must hire outside counsel to represent Burge, no such conflict exists with the other City defendants.46 Taylor argues that the City could hire ten to fifteen new in-house attorneys with half the amount the City is paying private lawyers per year.47 The outside counsel hired by the City, Taylor states, “is an extravagance.”48

Taylor and others argue that not only should the City cut Burge loose, but it should also settle those civil torture lawsuits that remain pending.49 Taylor posits that that City’s money would be much better spent compensating the victims of Burge’s torture, both those with and without lawsuits, rather than paying legal fees.50 He points to the 2007 Chicago City Council hearing and resolution which instructed legal counsel representing the city to settle with all remaining plaintiffs in lawsuits against Burge.51
The City’s Dilemma in Defending Burge

While the City of Chicago acknowledges that it is in a tenuous position in representing Burge, it argues that its hands are tied. In *Wilson v. City of Chicago*, the Seventh Circuit Court of Appeals found that when Burge tortured suspects to obtain confessions, he was acting within the scope of his employment as a Chicago police officer. Since Illinois law mandates that the government pay any judgment or settlement for compensatory damages for which an employee acting within the scope of his employment is liable, the Court found that the City was liable for all judgments against Burge.

According to City Law Department spokeswoman Jennifer Hoyle, the City believes that the *Wilson* decision not only requires the City to pay judgments against Burge, but also imposes a duty on it to represent him. Failing to select and pay for Burge’s representation, Hoyle argues, could lead to higher judgments against him than if the City continued to represent him.

“It doesn’t make sense for us to let him pursue his own legal defense or no defense at all, not hire an attorney at all and have a ridiculously high default judgment entered against him, or have his attorney agree to some outrageous settlement,” Hoyle proclaimed.

The City maintains that it is acting in the best interest of the taxpayers by continuing to represent Burge. “As a prudent watchdog of taxpayer money, the City has no choice but to be involved,” concluded former Assistant Corporation Counsel Lawrence Rosenthal, who represented the City in the Wilson case. While the City believes it is required to represent Burge, Hoyle points out that the City is looking for other options and “continues to reserve the right to raise any additional evidence it may uncover and assert that he was acting outside the scope of his employment.”

When it comes to settlement of the torture cases, Hoyle explains that the City cannot settle every claim filed against Burge, and that a “certain amount of due diligence” needs to be expended to determine the validity of the claim. She states that settlement in these cases is “determined on a case-by-case basis, just as in any other case against the City.”
Hoyle also cautions against taking a broad interpretation of the city ordinance that Taylor claims prohibits the City from covering Burge’s legal fees.\textsuperscript{62} By refraining from paying for his defense in his federal criminal trial, she states, the City believes it has followed the ordinance.\textsuperscript{63}

**A Resolution to the City’s Dilemma**

Taylor does not see the *Wilson* decision as a hindrance to ending the public financing of Burge’s lawyers.\textsuperscript{64} He points out that *Wilson* only makes the City liable for judgments against Burge, and that “there is nothing in that decision that says you have to pay for the lawyers.”\textsuperscript{65} For Taylor, the resolution to the City’s dilemma is simple: admit liability.\textsuperscript{66} If the City admits that it is liable, it can either settle cases or attack plaintiffs’ damages at trial.\textsuperscript{67}

As a result, Taylor explained, “Burge is taken out of the equation,” and the City would not have to represent him.\textsuperscript{68} Furthermore, if the City admits liability, the case would be over, as no plaintiffs’ attorneys would insist on keeping Burge in the lawsuit.\textsuperscript{69}

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**Notes**

2. *id*.
9. *id*.
10. *id*.

12 Conroy, supra note 8.
13 Id.; G. Flint Taylor, supra note 11 at 2.
14 Conroy, supra note 8; G. Flint Taylor, supra note 11 at 3.
15 G. Flint Taylor, supra note 11 at 3.
16 Id.
17 Id.
18 Id. at 4.

20 G. Flint Taylor, supra note 11 at 5.
21 Interview with G. Flint Taylor, supra note 4.
22 Id.
23 Id.
24 Id.
25 Id.
26 Id.
27 Id.
28 Id.
29 Id.
30 Id.


32 Interview with G. Flint Taylor, supra note 4.
33 Walberg, supra note 4.
34 Id.

36 Conroy, supra note 35.
37 Interview with G. Flint Taylor, supra note 4.
38 Id.
39 Id.
40 Id.
41 Id.; CHICAGO, ILL. MUNICIPAL CODE §2-152-170 (2011).

42 Interview with G. Flint Taylor, supra note 4.
43 Id.
44 Id.
45 Id.
46 Id.
47 Id.
48 Id.

50 Interview with G. Flint Taylor, supra note 4.
51 Id.; Torture in Chicago, supra note 15 at 11.
52 Wilson v. City of Chicago, 120 F.3d 681, 685 (7th Cir. 1997).
53 745 ILCS 10/9-102 (2011); Wilson, 120 F.3d at 685.
54 Phone Interview with Jennifer Hoyle, Spokeswoman, City of Chicago Law Department, in Chi., Ill. (April 15, 2011).
55 Id.
56 Walberg, supra note 4.
57 Interview with Jennifer Hoyle, supra note 54.
58 Walberg, supra note 4.
59 Interview with Jennifer Hoyle, supra note 54.
60 Id.
61 Id.
62 Id.
63 Id.
64 Interview with G. Flint Taylor, supra note 4.
65 Id.
66 Id.
67 Id.
68 Id.
69 Id.
ADDRESSING THE CAUSES BEHIND THE CHICAGO SEX TRADE

by Andrea Callow

Sex work has often been called a victimless crime. If a woman, man or transgendered individual chooses to sell his or her body for money to another consenting adult, then where, many ask, is the problem? But in Chicago, academics, housing advocates and former sex workers, among others, have joined a movement to reveal prostitution as exploitation and human trafficking.

Chicago has seen a shift away from the criminalization of women who sell sex and a renewed focus on intervention and rehabilitation. In particular, state and federal laws against human trafficking are being used as legal tools to pros-
ecute those who exploit women and girls and offer supportive services to the
victims of the sex trade.4

THE EARLY DAYS OF PROSTITUTION IN CHICAGO

Outdoor prostitution was tolerated in Chicago for years, according to Jody
Raphael, Senior Research Fellow at DePaul University College of Law.5 However,
as areas in Bucktown and Wicker Park started to gentrify in the early 21st
century, residents began complaining.6 Homeowners initiated aggressive cam-
paigns to rid their increasingly pricey neighborhoods of the sex trade.7

In response to resident complaints, Chicago police started cracking down on
the women selling sex.8 Law enforcement employed the model used for the
drug trade, sweeping up as many prostitutes as possible and upgrading their
solicitation misdemeanors to felonies.9 Girls and women were arrested, con-
victed, and sentenced to a year in Dwight Correctional Facility, though most
only served 61 days.10

Felony records negatively impacted the women’s prospects for employment,
public housing, and other public benefits and professional opportunities.11
The felony records paradoxically made it even more difficult for women to exit
the sex trade and cease criminal behavior.12

Historically, women selling sex in Chicago have borne the brunt of the crimi-
nal justice system’s response to prostitution. A misdemeanor charge typically
given to prostitutes may be upgraded to a felony, whereas a misdemeanor
charge in Illinois typically given to customers cannot.13 In Chicago, two-thirds
of the approximately 4,000 annual prostitution-related arrests are of women
prostituting, less than one-third are of men buying sex and less than one per-
cent are of pimps.14 Community activists took note of this phenomenon, and
in reports and advocacy campaigns attempted to bring attention to the plight
of sex workers.

A SHIFT IN APPROACH: THE INTERSYSTEM ASSESSMENT

As ire mounted in communities burdened by outdoor prostitution and more
women were arrested and imprisoned, a movement spearheaded by housing
advocates sought to identify and address the needs of these women.15 In 2002,
a report on the increasing rate of incarceration of women was conducted by the Chicago Coalition for the Homeless. This report documented that 41 percent of the women interviewed in Cook County Jail had prostituted at least once and that 34 percent were regularly involved in the sex trade.

The report highlighted the victimization of women involved in prostitution. According to one interviewee, “[I got into prostitution] because I was molested, homeless, needed things that I needed to survive, and was too young to work and did not know any other way.”

In a 2003 New York Times article, Chicago was identified as a national hub for human trafficking. Chicago is an attractive location for traffickers. Access to airports and major interstates offers strategic entry points for traffickers and their victims and the city’s status as a tourist destination ensures that demand stays high. In response to growing pressure from advocates, Mayor Richard Daley commissioned an Intersystem Assessment (ISA) Work Group in 2003.

The ISA Work Group sought to document Chicago’s response to the sex trade and improve how law enforcement and other first responders interacted with sex workers. The ISA issued a comprehensive 110-page report, documenting failures in the current legal response to the sex trade industry and issuing several broad recommendations. These included the development of specialized service options and resources for prostituted women, men, and transgendered individuals, and an increased focus by law enforcement on the demand side of the sex trade industry. The “demand side” as identified by the report refers to those responsible for perpetuating the sex trade industry and includes customers, pimps/arrangers, and sex traffickers.

Human Trafficking Laws as Legal Tools

New legal strategies are being employed to prosecute those who coerce girls and women into selling sex—namely traffickers and pimps. The Trafficking Persons and Involuntary Servitude Act of Illinois, passed in 2005, is one of the country’s strictest state anti-trafficking laws. Additionally, the Federal Trafficking Victims Protection Act of 2000 provides protection and assistance for victims of trafficking by offering federally-funded social service programs such as education, health care, job training, and housing.
Recently, the Cook County State’s Attorney Office secured the first jury verdict against a pimp under the new Illinois human trafficking law. Troy Bonaparte, 46, was charged last August following a joint investigation by the States Attorney’s Human Trafficking Initiative Unit and the Cook County Sheriff’s Police Vice officers.

The unique supportive services afforded through federal human trafficking laws have likewise become a crucial component of the response strategy to the victimization of prostituted women. Fifty percent of the girls and women involved in the sex trade in Chicago were coerced into participating. According to Professor Raphael, without appropriate supportive services like those offered by the state and federal laws against human trafficking, these women would find it very difficult to safely exit the sex trade.

“We TAKE ALL COMERS”

In its 2003 report, the ISA identified the need for specialized supportive services for individuals involved in the sex trade. One such program that offers a comprehensive range of medical and psycho-social services in Chicago is the Footprints program, an initiative of the Christian Community Health Center. As Program Director Tricia Ford put it, Footprints “takes all comers.” Services are available for women trying to transition out of the trade, as well as for women who choose to continue to sell sex. Footprints also identifies women who are at risk for entering the trade and provide early intervention services.

The clients and staff of Footprints have seen a shift in the way the criminal justice system interacts with women who sell sex. According to Ford, law enforcement is seeking to do more intervention activities to address some of the underlying factors that contribute to a woman entering prostitution, rather than merely cracking down on them with felony upgrades for solicitations charges.

CONCLUSION

Over the course of the past several years, Chicago has seen a shift in the way law enforcement, the criminal justice system, and social service providers respond to individuals in the sex trade. As Ford noted, referring to women who
sell sex, “[I]t’s a complex population, with complex needs.” In recognition of this complexity, first responders in Chicago have attempted to crack down on pimps and traffickers while simultaneously providing supportive services for women seeking to exit the sex trade. Only time will tell whether this new strategy will positively impact the quality of life for the victims of the sex trade in Chicago.

NOTES


2 Interview with Jody Raphael, Senior Research Fellow and Professor of Law, DePaul University College of Law, in Chicago, Ill. (Mar. 15, 2011). There has emerged a new school of feminism which conceptualizes sex work as feminine empowerment. See WHORES AND OTHER FEMINISTS (Jill Nagle Ed., 1997). According to Professor Raphael, this school of academic thought is effective only for women with political and economic agency. According to her research on sex workers in Chicago, prostitution is rarely an affirmative choice, but rather the result of coercion or survival.

3 Interview with Jody Raphael, supra note 2.


5 Interview with Jody Raphael, supra note 2.

6 Id.

7 Id.; see also Sarah Karp & Stephanie Williams, Protesting Prostitution- Keeping Current, CHI. REPORTER, Sept. 2002, available at http://findarticles.com/p/articles/mi_m0JAS/is_8_31/ai_92527086/.

8 Interview with Jody Raphael, supra note 2.

9 Id. The model employed by law enforcement when fighting the “war on drugs” in the late eighties through the present day focused on tough sentencing and incarceration for drug users. For more information and critique on the American criminal justice system’s response to drug use. See Bryan Stevenson, Drug Policy, Criminal Justice and Mass Imprisonment (Global Commission on Drug Policies, Working Paper, 2011), available at http://www.globalcommissionon drugs.org/Arquivos/Global_Com_Bryan_Stevenson.pdf.

10 Interview with Jody Raphael, supra note 2.


13 The state misdemeanor charge typically given to individuals selling sex may be upgraded to a felony, 720 ILCS 5/11-14(b), whereas the state misdemeanor charge typically given to customers may not, 720 ILCS 5/11-14.1

15 Id.
17 Id.
18 Id.
20 Id.
21 Sweet, supra note 11.
22 Id.
23 Id.
24 Id.
25 See Human Trafficking in Illinois, supra note 19.
28 Id.
29 Sweet, supra note 11.
30 Interview with Jody Raphael, supra note 2.
31 Id.
32 Telephone Interview with Tricia Ford, Director of Programming for Footprints, Christian Community Health Center (March 21, 2011).
33 Id.
34 Id.
35 Id.
36 Id.
37 Id.
ILLINOIS NURSING HOME REFORM: SORTING OUT THE DEADLY MIX

by SONIA PIACENZA

Under the Illinois Nursing Home Care Act, nursing home residents are guaranteed certain rights, including the freedom from abuse and neglect, while staying at a long-term care facility.¹ In reality, however, some Illinois nursing homes expose elderly residents to many dangers when they are in their most vulnerable state, times when most would expect a heightened level of care and peace.²

“There is an epidemic of sub-standard care in Illinois nursing homes,” said Steven M. Levin, senior partner at Chicago’s Levin & Perconti, who represents nursing home residents and their families in personal injury and wrongful death actions.³
Though the number of people residing in nursing homes has declined across the country, Illinois maintains a higher ratio of adults over 65 in nursing homes than the national average. Illinois, more than any other state, relies on nursing homes to house mentally ill patients, including people with criminal records who previously served time in jail, people who were living on the streets, and former patients of psychiatric wards. Often, these residents are housed alongside geriatric residents with very little monitoring, posing a very real threat to the vulnerable elderly population.

“Felons are using nursing homes in Illinois as safe houses,” stated Illinois Attorney General Lisa Madigan while visiting a facility. After a Chicago Tribune investigation unearthed the realities of nursing home life, Madigan initiated Operation Guardian, a plan to conduct random and unannounced compliance checks at nursing homes. As of December 2010, the Operation Guardian initiative had conducted 23 compliance checks, resulting in 33 arrests.

When the Chicago Tribune conducted its own investigation, called “Compromised Care”, it found that most sex offenders living in nursing homes were unregistered and many cases of assault and rape went unreported.

The investigation also underscored the deeper issues of understaffing and inadequate training and reporting at Illinois nursing homes. The newspaper described the fatal beating of a 72-year-old dementia patient by a convicted felon at the Columbus Park Nursing and Rehabilitation Center, illustrating the danger of placing helpless elderly patients near the potentially violent. In this instance, the attacker had been imprisoned twice for felony convictions in Nebraska and Arkansas, but because Illinois law only required in-state background checks, the home did not know of these out-of-state convictions. Furthermore, the staff failed to monitor the attacker, even after frequent violent behavior, and failed to correctly report the incident.

A similar situation occurred at the All Faith Pavilion nursing home on Chicago’s South Side when a 77-year-old man who had been rendered helpless by a stroke was fatally beaten over the head with a clock radio by a 50-year-old man who suffered fits of delirium. The man had had a history of negative and aggressive behavior, but the nursing home still placed the two men in the same room.
“What’s wrong is that nobody was watching,” said Tribune reporter David Jackson, who spent up to a year investigating and reporting on incidences like these. They say they are watching, but it costs money to do that. These nursing homes are basically warehouses for the mentally ill that fail to provide proper treatment and then house them next to very vulnerable people.

Despite the shocking stories of neglect and violence that occur in these facilities, the nursing home operators maintain that they have kept incidents to a minimum. With limited resources and such a large demand for care, the operators argue, they are unable to do more. They claim that they offer a public service by taking in the destitute population and at the same time face the demands of government inspectors.

Beginning in the 1960s, Illinois began releasing thousands of people with mental illnesses from psychiatric institutions in an effort to de-institutionalize those in need of care. However, the state did not provide adequate programs for these displaced people, and many of them ended up in nursing homes alongside elderly residents.

“Illinois is really unique in its blurring of long-term care and mental health resources,” said Harvard Medical School associate professor David Grabowski. “Many of these patients were not appropriate for placement in a nursing home—yet Illinois didn’t have an alternative place for them.”

In 2010, a class action lawsuit was filed on behalf of mentally ill patients housed in nursing homes and institutions for mental diseases who could be living in the community. The case was settled, with the state pledging to offer community-based housing for those patients who wanted it and were capable of leaving the homes. Illinois still faces the challenge of properly segregating elderly patients from others, as well as finding the correct placement for the mentally ill.

In July 2010, Governor Pat Quinn signed the Nursing Home Safety Reform Bill into law. The law demands stricter background checks and psychological screenings of incoming nursing home residents, as well as requiring nursing homes to increase staffing levels. Nursing homes that do admit mentally ill or potentially dangerous patients are required to pass more stringent safety standards. Finally, the facilities will be subject to extensive rules and guidelines, including licensing fees and nursing staff levels. By July 2011, the state must
phase in 71 new nursing home inspectors to make sure nursing homes follow the new protocol.\textsuperscript{33}

Notwithstanding the new laws in place, Illinois has a long way to go in improving its long-term care system, especially because the current budget crisis may limit the ability to properly address the problem.\textsuperscript{34} A new bill passed in early 2011 will increase the tax per bed levied on nursing homes, which may help fund the new safety reforms without worsening the deficit.\textsuperscript{35} The money will enable homes to increase staffing, hire more inspectors, and finance other reforms.\textsuperscript{36}

For attorney Steven Levin and his clients, Illinois’ push for reform signals that there is still more to be done.\textsuperscript{37} According to him, the new law failed to address important issues such as nursing home liability insurance and proper remedies for injured residents.\textsuperscript{38} He points to nursing homes’ complex corporate structures and failure to carry liability insurance as ways of avoiding accountability for their wrongdoings.\textsuperscript{39} Ultimately, “if we want to see better care,” he warns, “we must push for further legislation.”\textsuperscript{40}

NOTES


3 E-mail Interview with Steven M. Levin, Senior Partner, Levin & Perconti (Mar. 25, 2011).


6 Id.


8 Id.


11 Id.

12 Id.

13 Id.

14 Id.

15 Jackson & Marx, supra note 2.

16 Id.

17 Telephone Interview with David Jackson, Reporter, Chi. Tribune (Mar. 24, 2011).

18 Id.

19 Jackson & Marx, supra note 2.

20 Id.

21 Id.


23 Id.

24 Jackson & Marx, supra note 2.

25 Id.

26 Williams v. Quinn, No. 05 C 4673, 2010 WL 3894350, at 3 (N.D. Ill. Sep. 29, 2010).

27 Id.

28 Jackson & Marx, supra note 5.


31 Id.

32 Jackson & Marx, supra note 29.

33 Id.


35 Id.

36 Id.

37 E-mail Interview with Steven M. Levin, supra note 3.

38 Id.

39 Id.

40 Id.
FEATURE ARTICLE

BACK ON THE BOOKS:
THE ILLINOIS SILENT REFLECTION AND STUDENT PRAYER ACT

by BRENDAN BRASSIL

The people of the United States have long struggled with the words enshrined in the First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The debate over the meaning of this clause has taken many forms throughout our nation’s history, yet much of the discussion in recent years has centered on the
role of religion in public schools. In Illinois, the Silent Reflection and Student Prayer Act is currently fueling this debate.

In 1969, the Illinois legislature passed a law allowing a “brief period of silence” in public schools.2 The statute stated, “In each public school classroom the teacher in charge may [italics added] observe a brief period of silence.”3 Originally, the statute was optional, with the decision whether or not to observe a moment of silence placed entirely within the teacher’s discretion. As a result, it was largely ignored.4

The law remained untouched and mostly forgotten until 1990, when the state legislature renamed it “The Silent Reflection Act.”5 The legislature again re-titled the act “The Silent Reflection and Student Prayer Act” in 2002.6 It also added language defining “student prayer” within the meaning of the statute, taking care to point out that the prayer would be voluntary and “not sponsored, promoted or endorsed in any manner by the school.”7

Despite these changes, the law still remained relatively inconspicuous, as observing the period of silence was still optional. Then, in 2007, the Illinois legislature overrode a veto by Governor Rod Blagojevich to pass an amendment that would immediately precipitate controversy.8 The amendment removed the word “may” and replaced it with “shall”, thereby making mandatory what was once optional:

In each public school classroom the teacher in charge shall observe a brief period of silence with the participation of all the pupils therein assembled at the opening of every school day. This period shall not be conducted as a religious exercise but shall be an opportunity for silent prayer or for silent reflection on the anticipated activities of the day.9

THE HISTORY OF SCHOOL PRAYER AND MOMENT OF SILENCE LAWS

The topic of school prayer has been a source of acrimonious constitutional debate for many years. Yet, for a long period of our country’s history, government sponsored prayer in public school was widely accepted and practiced.10 When a challenge to that tradition was finally brought before the U.S. Supreme Court, the debate that had been simmering for some time finally boiled over.
The Supreme Court has taken on the issue of school prayer multiple times throughout the twentieth century. Many of the Court’s landmark cases came during the Civil Rights era of the 1960s, such as *Engel v. Vitale* and *Abington School District v. Schempp*. *Engel* declared unconstitutional New York schools’ practice of reciting a prayer at the beginning of each school day, even though it was voluntary and non-denominational. The Court cemented its ruling the following year in *Abington*, where it declared school-sponsored Bible readings to be unconstitutional.

The ruling in *Abington* was extremely controversial at the time. For example, in 1962, a Gallup poll had shown 79 percent of the public favoring religious observances in public schools. Shortly after, “34 states, including Illinois, enacted moment of silence laws.” However, despite the perceived public fervor swirling around the issue at the time, the Illinois law eventually faded from the public consciousness.

The last of the landmark Supreme Court cases that decided this issue came in 1971 with *Lemon v. Kurtzman*. The decision produced a three-pronged *Lemon* test. First, the statute must have a secular purpose: the stated purpose must be sincere and not a “sham.” Second, it must not principally inhibit or advance religion. Third, it must not cause “an excessive government entanglement with religion.” The test has been used ever since to evaluate laws under the Establishment Clause. The Supreme Court has made its message explicit on school-sponsored prayer: it is unconstitutional.

In 1985, the Supreme Court decided its only true moment of silence case, *Wallace v. Jaffree*. The Court applied the *Lemon* test and overturned an Alabama law similar to the one challenged in Illinois because the legislative history revealed it “was not motivated by any clearly secular purpose - indeed, the statute had no secular purpose.” Since *Jaffree*, the *Lemon* test has been applied to moment of silence laws in lower courts with varying results.

Despite what many still see as a circuit split and general confusion, in 2002 the Supreme Court denied certiorari to a Virginia moment of silence law, possibly to allow the lower courts to hash the issue out amongst themselves.
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THE SHERMAN DECISION

Robert Sherman, the father of a student in Buffalo Grove, Ill., felt that the law was an affront to the separation of church and state protected by the U.S. Constitution. Sherman filed suit on behalf of his daughter, Dawn Sherman, and a certified class of students against Illinois State Board of Education Superintendent Christopher Koch and Township High School District 214.

In January 2009, Judge Robert Gettleman of the Northern District of Illinois granted Sherman’s motion for summary judgment and ordered an injunction against the law. Judge Gettleman stated, “The plain language of the Statute. . .suggests an intent to force the introduction of the concept of prayer into the schools. This is where the Statute crosses the line and violates the Establishment Clause.”

After examining the legislative history, he concluded the stated purpose was a “sham” and thus it failed the first prong of the Lemon test. He then ruled that the statute also failed the second prong of the Lemon test because “its primary effect is to advance or inhibit religion”, in part because the statute favored silent prayer over other forms of prayer from various religious traditions that require movements or speech.

In October 2010, the Seventh Circuit Court of Appeals reversed the district court in a two to one decision and lifted the injunction. The Court of Appeals, also using the Lemon test, found that there was a secular purpose, it neither advanced nor inhibited religion, and there was no entanglement with religion. Shortly after, Sherman filed a motion for an en banc rehearing of the case, which was subsequently denied. Sherman has petitioned the case to the Supreme Court and is currently awaiting their response.

THE PROONENTS AND CRITICS OF THE ILLINOIS LAW

The Illinois law was supported through court proceedings by 17 other states with similar laws, as well as the Alliance Defense Fund, the Illinois Family Institute, and WallBuilders, Inc., among others. The proponents of the law say that the law has a secular purpose of calming the children by “still[ing] the tumult of the playground and start[ing] a day of study.”
Further, supporters of the law argue that the courts should defer to the stated legislative purpose as instructed by Supreme Court precedent. And even if some legislators were motivated by religion, they claim, “[W]hat is relevant is the legislative purpose of the statute, not the possibly religious motives of the legislators who enacted the law.” As for prayer in the title, the law’s supporters insist that its function is to make it “abundantly clear to school administrators, teachers, parents, and students what they can do during the moment of silence.”

There are many critics of the law, most notably the ACLU, which has filed multiple amicus briefs in the case. The opponents say the stated purpose is a disguised attempt to bring prayer into the classroom, citing both the text’s explicit references to prayer and legislative history as evidence. The critics say the actual intent of the legislature is to promote religion to “impressionable children in a compulsory school environment.”

In the alternative, the law favors “religions that embrace momentary, silent prayer” while discriminating against religions which require either spoken words or a variety of postures, such as Islam, Buddhism, Hinduism. This would be an unconstitutional effect as it would be tantamount to a government endorsement of certain religions.

Adam Schwartz, an ACLU attorney who worked on the case, says that while there are many states with moment of silence laws, “Illinois is an outlier because it says you only have two options.” He said the legislature has “effectively told the students that we want you to think about whether to pray or undertake the very unattractive and narrow alternative and think about the anticipated activities of the day.” As for calming the kids, Schwartz said, “There is no evidence to support that claim. And even if there was evidence, it is subordinate to the primary religious purpose.”

The Law in Practice

Some of the controversy surrounding the law has been due the statute’s vagueness. The law requires a “moment of silence”, but gives no instruction on how long that period should be, how it should be implemented, or what the penalty is for the failure to comply.
At Lakes Community High School in Lake County, Ill., the moment of silence is held just after the students finish the pledge of allegiance. The moment is just ten seconds.

Sara Quinn, a 14-year-old Lake County freshman, said that she thinks about what she always does during every moment of silence: the events of September 11, 2001. Another student, Prince Miles, a 17-year-old, pondered whether “I’m missing an assignment or homework.”

Some students did, however, seize the opportunity to pray during the moment of silence. Caleb Stevenson, a senior, said, “It’s a cool opportunity to get back to thinking about God during the school day at a public school.”

As of April 2011, the law has only recently been put back into place. Principal Bill Wiesbrook at Naperville Central High said, “Most people are kind of reacting like I am; they’re just kind of shrugging their shoulders, and I mean, 10 or 15 seconds of silence doesn’t do much.” He has not yet received a complaint from any student or parent regarding the law.

WHAT’S NEXT?

The rancorous debate continues in schools and courts of Illinois and in many other states across the country with similar laws. There is currently a bill in the Illinois General Assembly that, if passed, would remove prayer from the title, make observance again optional, and leave the silent reflection activity—prayer or otherwise—up to the student. In every case, whether in opposition or in support of these laws, public opinion is not the litmus test for constitutionality.

The Supreme Court may still choose to weigh in on the issue and attempt to clear the muddied waters surrounding these moment of silence laws. Alternatively, the voters of Illinois can express their disapproval or give their endorsement of the law at the voting booth. For the time being, however, the Seventh Circuit’s decision will stand and that means the Illinois Silent Reflection and Student Prayer Act is back on the books.
NOTES

1 U.S. CONST. amend. I.
3 105 ILL. COMP. STAT. 20/1 (2007).
4 Telephone Interview with Adam Schwartz, senior staff attorney, ACLU of Illinois (Mar. 24, 2011).
7 105 ILL. COMP. STAT. 20/5 (2007)
8 The letter issued to the Illinois Senate by Governor Rod Blagojevich accompanying his veto states: "Prayer plays an important part in the lives of many people. It certainly does in mine. I believe in prayer. I believe in the power of prayer. I also believe that our founding fathers wisely recognized the personal nature of faith and prayer, and that is why the separation of church and state is a centerpiece of our constitution, our democracy and our freedoms. The law in Illinois today already allows teachers and students the opportunity to take a moment for silent thought or prayer, if they choose to. I believe this is the right balance between the principles echoed in our constitution, and our deeply held desire to practice our faith. As a parent, I am working with my wife to raise our children to respect prayer and to pray because they want to pray - not because they are required to. For this reason, I hereby veto and return Senate Bill 1463," available at http://www.ilga.gov/legislation/fulltext.asp?DocName=09500SB1463gms&GA=095&GAlD=9&SessionID=51&DocTypeID=SB&DocNum=1463. Veto overridden by Senate on Oct. 3, 2007 and by House on Oct. 11, 2007.
9 105 ILL. COMP. STAT. 20/1 (2007).
12 Engel, 370 U.S. 421; Schempp, 374 U.S. 203.
13 Engel, 370 U.S. at 425.
14 Schempp, 374 U.S. at 223;
17 Schwartz, supra note 4.
19 Id. at 612.
21 Lemon, 403 U.S. 602 at 612.
22 Id. at 613.
23 See Id.
24 See Engel; Abington, supra note 11.
26 See Sherman v. Koch, 623 F.3d 501 (7th Cir. App. 2010); Bown v. Gwinnett County Sch. Dist., 112F.3d 1464 (11th Cir. 1997) (upheld moment of silence finding violation of Lemon); (Brown v.Gilmore, 258 F.3d 265 (4th Cir. 2001) (upheld law which was found to have only slight entanglement with religion); (Craft v. Perry, 562 F.3d 735 (5th Cir. 2009) (upheld
amendments to Texas law that allow students to "reflect, pray, meditate or engage in any other silent activity"). But see May v. Cooperman, 780 F.2d 240 (3rd Cir. 1985) (invalidated law because the court found no secular purpose); Doe v. School Bd. of Ouachita Parish, 274 F.3d 289 (C.A.5 La.2001) (overturned law after amendment removed the word "silent" as an attempt to introduce verbal prayer.)

28 Sherman, 594 F.Supp.2d at 985.
29 Id.
30 Id.
31 Id. at 986.
32 Id. at 989.
33 Id. at 990.
34 Sherman v. Koch, 623 F.3d at 520.
35 See Id.
38 Brief for Texas, supra note 18; Brief for WallBuilders, Inc. as Amicus Curiae of Defendant-Appellant, Sherman v. Koch, 623 F.3d 501, (2009) (No. 09-1455). WallBuilders, according to their website, is "a non-profit organization that is dedicated to the restoration of the moral and religious foundation on which America was built."
39 Brief for Texas, supra note 18 at 1-2.
40 Id. at 2.
41 Id. at 6, citing Croft v. Gov. of Tex., 562 F.3d 735, 749-50 (5th Cir. 2009).
42 Id. at 10.
43 See Brief of ACLU as Amicus Curiae Supporting of Affirmance of the District Court, Sherman v. Koch, 623 F.3d 501 (2009) (No. 09-1455). The legislature amended the law to include prayer in the title and dropped an amendment which would have removed all references to prayer. Additionally, they cited 2007 amendment to make the law mandatory. Illinois Senate sponsor Kimberly Lightford was quoted as saying, "Here in the General Assembly we open every day with a prayer and Pledge of Allegiance. I don’t get a choice about that. I don’t see why students should have a choice." In evaluating a secular purpose, the Supreme Court has held that it "must be sincere; a law will not pass constitutional muster if the secular purpose articulated by the legislature is merely a sham." Wallace, 472 U.S. 38 at 64.
44 Amicus Brief of ACLU at 16.
45 Id. at 22
46 Schwartz, supra note 4.
47 Id.
48 Id.
49 Sherman, 594 F.Supp.2d at 990.
51 Id.
52 Id.
53 Id.

55 Id.

56 Id.


58 Id.
It Isn’t Easy Being Green: Necessary Environmental Policy in Chicago

by Tess Feldman

With Richard Daley’s term as Mayor of Chicago at an end, the city can look back on the policies he implemented over two decades of leadership.1 Perhaps Mayor Daley’s most visible legacies are the environmental programs he implemented during his tenure. These include landscaped medians2 and green roof projects on city buildings.3 Yet, some of Chicago’s environmental policies that could yield the most beneficial results have either been abandoned or need development. To increase sustainability, expand public participation in conservation efforts and create a “green” culture, Chicago needs more than green roofs.4
Attention to the environment was a clear concern to voters in the 2011 Chicago Mayoral election. But the environmentally sensitive and progressive policies that will be most beneficial to the public interest may be the programs most in danger of neglect by current Mayor Rahm Emanuel. These programs include: recycling, building reuse, and “invisible” projects.

REINSTATE A SUCCESSFUL RECYCLING PROGRAM

Although positive efforts of the current Office of the Environment include collecting unwanted phone books and encouraging residents to recycle holiday lights, Chicago still lacks a comprehensive recycling program. Chicago attempted a blue-bag recycling program, which allowed residents to dispose of both garbage and recyclables in the same bin. However, the program did not succeed, according to the New York Times, because of “Chicagoans’ unwillingness to participate.”

One unfortunate legacy of that failure is the public’s current negative attitude toward residential recycling. There are recycling centers run by private companies within the city, but consumers must access the services by bringing recyclables to the recycler. As there are few sites, residents may be required to travel long distances to drop off their recyclables. Only a handful of neighborhoods have adopted alternative recycling programs, and the city drop off centers can be inconvenient. To make a recycling program successful, the task should be made easier and promoted throughout the city.

Kevin Crist sees recycling as a way to begin public participation in conservation. He is the lead project manager for Intrinsic Landscaping, a company that installs green roofs and living walls. A green roof is a vegetated roof cover, frequently created by building a waterproofing layer and drainage system underneath plants and vegetation, all contained on the roof. Living walls are “self sufficient vertical gardens that are attached to the exterior or interior of a building. The plants root in a structural support which is fastened to the wall itself.” Intrinsic Landscaping has created projects at locations including the CTA Headquarters building, the Peggy Notebaert Nature Museum, dozens of schools, and commercial and residential buildings in and around Chicago.

Mr. Crist’s concern for the environment extends beyond his work with green roofing. He noted that while visible projects like planter parkways and living
These blue recycling carts are only available in certain parts of the city. Walls bring awareness to environmental issues, residents need to realize that their active participation in recycling fosters action and awareness.\(^\text{18}\)

Mr. Crist stressed that people need to regain confidence in a functional recycling program despite the failure of the blue bag program.\(^\text{19}\) According to
him, “Placing sorting containers at bus stops and parks in high traffic areas with tourists would not only increase awareness but also educate people how to recycle on their own.”

BUILDING REUSE

Environmentally sensitive regulations for new construction were central to Mayor Daley’s focus on the environment. For example, the City has mandated “green” policies for privately funded renovation and new construction. For most new planned developments, the City requires some type of green certification and at least part of the roof structure to be a green roof.

New construction should also include measures to recycle elements of preexisting structures. As Mr. Crist states, “The greenest thing you can do is not build a new building,” regardless of the eco-friendly measures that new building includes. Since January 1, 2007, permits issued by the City mandate “at least fifty percent of construction and demolition debris, as measured by weight, be recycled or reused.” However, the mandate is applicable to only a narrow category of residential developments. Expanding such requirements would help move Chicago toward accomplishing the larger goal of sustainability.

CONCLUSION

Mayor Daley’s environmental initiatives were both visible and extensive throughout the city. Yet, the programs our city needs most require participation at a personal level for the benefit of Chicago’s environment.

Mayor Emanuel would be well-advised to take great care to continue the momentum created over the last two decades, but should also realize that some of the most necessary changes are not as visible as landscaped medians or green roofs – they include altering public behavior and attitude toward recycling, reuse and their own property. The changes might be discreet, but the benefits will be felt by all.
NOTES


10 Mihalopoulos, supra note 8.


12 Phone Interview with Kevin Crist, Intrinsic Landscaping, Lead Project Manager and Green Roof Expert, Mar. 2011.

13 Id.


16 Crist, supra note 12.

17 Id.

18 Id.

19 Id.

20 Id.


22 Crist, supra note 12.

23 Id.

24 Id.
“He talks like a baby,” says Shavon Kalfus, mother of six-year-old Chicago Public School (CPS) student Rasheed Jackson. What does it feel like to be a six-year-old child in a kindergarten classroom who speaks to his peers “like a baby?” This is the plight of Rasheed and hundreds of young children in the CPS system with various developmental issues.

Despite his mother’s efforts, Rasheed had to wait approximately three years before CPS began a proper evaluation of him. As recently as December 2010, CPS had not completed Rasheed’s evaluation, and he is not alone. Over a thousand CPS students are in dire need of special education services but are caught in an unsettling district-wide backlog.
Last year, CPS personnel referred approximately 1,500 students for special education evaluations. Most of these students were developmentally delayed or at-risk children coming from federally funded Early Intervention programs or were referred by the service organization Head Start. However, these students have not yet received evaluations. The backlog in evaluations leaves young students without necessary special education services at critical stages in their development.

In Rasheed’s case, CPS staff told Ms. Kalfus that he would “grow out of it” when she voiced concerns about her son’s speech development. Kathleen Hirsman, professor at Loyola University Chicago School of Law, points out that although parents may be told that their children will grow out of developmental delays, they “should not be hesitant to request a ‘screening’ or more formal assessment.” As disheartening as such dismissals by school personnel may be, “regardless of the teacher’s motivation, [she or he] has obligations under federal law to have that student evaluated, rather than just dismiss parent’s concerns,” notes Hillary Coustan, Associate Director of the ChildLaw and Education Institute at Loyola University Chicago School of Law.

In fact, Illinois law requires a proper evaluation and Individual Education Plan (IEP) conference within 60 days of obtaining parental consent. The child’s school district is responsible for conducting an evaluation and designing an appropriate IEP. Richard Smith, chief of the CPS Office of Special Education and Supports says that such requirements can “put a tremendous burden on local school districts.”

However, there are strategies that can help expedite the evaluation process, especially in cases where school personnel inform parents that their children will “grow out of” a particular developmental delay. For instance, proper assistance from a variety of advocates, including nonprofit organizations like Equip for Equality, which recently reported lapses in evaluations to the state, can play an integral role in facilitating and expediting student evaluations.

Additionally, Professor Hirsman, who worked in the area of school law for 25 years, says she has “attended many IEP meetings where the parent has brought ‘representation,’ which can include a family member . . . a neighbor . . . a special education parent attorney, . . . [or] an advocate from a not-for-profit organization like Equip for Equality, Prairie State Legal Services, [or] a law school legal clinic.” In Professor Hirsman’s opinion, “Attitude, professional-
ism and knowledge about education of students with disabilities are key qualities for a parent advocate to be effective at the IEP table.”

For example, in June 2010, the watchdog group Equip for Equality identified 13 children who had been flagged by teachers for special education evaluations but were still waiting for CPS to act after the 60-day time limit.20 Furthermore, Equip for Equality projected that hundreds more students were affected by this backlog.21 The nonprofit organization’s efforts called attention to these transgressions, and in August 2010, the Illinois State Board of Education found that CPS had to continue the evaluations for those students listed in the complaint.22

As a response to current roadblocks in the evaluation process, CPS has begun to conduct evaluations around the city with an additional temporary staff.23 CPS is also tracking Head Start evaluations from local schools to better gauge its ability to address student needs within the required 60 days.24

Other effective strategies in diminishing the existing CPS backlog may include hiring more teachers with special education backgrounds.25 Professor Coustan suggests that “there needs to be a great deal more training of teachers and other school personnel on special education—both schools’ substantive obligations, as well as procedural requirements.”26 She points out, “[T]his, of course, requires more time and/or money, both of which are in short supply in many school districts.”27

Rasheed Jackson has struggled for years despite his mother’s efforts and her willingness to spend hundreds of her own dollars “getting an evaluation and speech therapy for [him].”28 In the interim, as CPS officials work on paring down this backlog, what can public school parents do to combat these issues?

First and foremost, says Amy Zimmerman, Director of the Chicago Medical-Legal Partnership for Children at Health and Disability Advocates, families should seek help from advocates and legal services.29 “[CPS] will be seeing [these students] again,” says Ms. Zimmerman.30 “These are the students who will likely need access to services when they become school-age.”31

However, early intervention during critical points of children’s developmental stages coupled with persistence and proper advocacy are the best weapons a parent has to combat current CPS shortcomings.
NOTES

2 Id.
3 Id.
4 Id.
5 Id.
6 Id.
7 Id.
8 Id.
9 Id.
10 Id.
11 Interview with Kathleen Hirsman, Adjunct Professor, Loyola University Chicago School of Law, in Chi., Ill. (Mar. 16, 2011).
12 Interview with Hillary Coustan, Associate Director, ChildLaw and Education Institute, Loyola University Chicago School of Law, in Chi., Ill. (Mar. 21, 2011).
13 School Code, 105 ILL. COMP. STAT. 5/14-8.02b.
14 Harris, supra note 1.
15 Id.
16 Id.
17 Id.
18 Hirsman, supra note 11.
19 Id.
20 Harris, supra note 1.
21 Id.
22 Id.
23 Id.
24 Id.
25 Id.
26 Coustan, supra note 12.
27 Id.
28 Harris, supra note 1.
29 Id.
30 Id.
31 Id.
Imagine being in eighth grade again, and a cute boy wants to be your friend on a social networking site. You accept, and you really like him, so you begin an online relationship. Then one day, your new boyfriend tells you that you aren’t a very nice person. He tells you that everyone who knows you hates you, the world would be a better place without you, and that he hopes you have a terrible life.

This is what happened in 2006 to Megan Meier, who, at the age of 13, hung herself in her bedroom closet 20 minutes after having such a conversation with her online boyfriend, Josh Evans. Megan had never met Josh in person be-
cause he did not actually exist; the mother of one of Megan’s classmates had created the Josh Evans persona to harass Megan.⁶

Megan’s was one of the first cyberbullying cases to attract national media attention.⁷ Although most cases of cyberbullying do not lead to suicide, they typically involve “repeated, unwanted aggressive behavior over a period of time,” causing victims to experience mood swings, depression, and general disinterest in everyday activities.⁸ Megan’s story gave the issue of cyberbullying national attention, but the number of cyberbullying cases continues to increase each year.⁹

Many children and young adults have created a virtual life for themselves through Facebook, Twitter, and dozens of other websites, and bullies have taken notice.¹⁰ These websites encourage making connections with people who share similar interests, so it is not uncommon for adolescents to become friends with someone they have never met in person.¹¹ While the child usually has good intentions, the new friend may not, and the door has now been opened for cyberbullying.
Victims of cyberbullying often feel trapped by the bully. High school senior Christopher Cottingham explains, “Since the Internet is a huge part of our lives, we can’t escape it. The only option for escape is to delete every medium the bully has acted through, like Facebook and Twitter accounts.” Because of the pervasiveness of a cyberbully’s actions in the victim’s life, it is not surprising that cyberbullying victims have reported experiencing depression at higher rates than victims of traditional, face-to-face bullying. Researchers attribute this to findings from other studies that victims of cyberbullying are more likely to feel helpless and isolated because they are being attacked by a faceless, and frequently nameless, predator.

Authorities are often unsure of how to handle cases involving online predators, and the tragic case of Megan Meier demonstrates the inherent conflict they face when trying to prosecute cyberbullies. First, the First Amendment grants even bullies the right of free speech. Second, state laws addressing cyberbullying tend to be hard to apply. For example, there were two women found responsible for the cyberbullying that lead to Megan Meier’s suicide. Ultimately, only one of these women was convicted under the federal Computer Fraud and Abuse Act. This was later overturned because the judge felt a conviction under that statute was not appropriate under the circumstances of Megan’s case.

In the five years since Megan’s untimely death, many states passed legislation in an attempt to address the prevention and punishment of online bullying. Illinois enacted two separate laws to address cyberbullying. The first, which became effective in 2001, prohibits harassment through electronic communications. Violation of this statute will result in a Class B misdemeanor, which carries a punishment of up to six months in jail and/or a fine of up to $1,500.

The second, a 2001 statute that was heavily amended in 2009, defines and prohibits cyberstalking. Violation of this statute is a Class 4 felony, which carries a punishment of between one and three years in a state penitentiary and/or a fine of up to $25,000. A 2011 amendment to both of these statutes added instant messaging, email, text messaging, and voicemail as prohibited forms of harassing communication.

In addition to defining cyberbullying and making it a punishable offense, Illinois also enacted an Internet safety curriculum as part of the School Code...
This statute requires all Illinois public schools to incorporate an age-appropriate Internet safety component into the curriculum at least once a year, beginning with the 2011-2012 school year, for students in grades 3 through 12. This safety course should address the risks and consequences of transmitting sexually explicit images, as well as safe and responsible use of cell phones, instant messaging, chat rooms, email, and social networking websites.

While some opponents of cyberbullying laws cite the First Amendment’s guarantee of the right to free speech, Illinois courts have taken a different view. In the 2010 Chicago case of People v. Zlatan Sucic, the constitutionality of the new Illinois cyberstalking law was tested. Sucic was charged with cyberstalking and harassment through electronic communications after sending threatening emails and voice messages to a former girlfriend. Sucic claimed that these statutes were overly broad and criminalized forms of expression that were protected by the First Amendment.

In upholding the cyberstalking statutes, the Illinois Appellate Court referred to the high threshold that the State must satisfy to convict a defendant. The court also noted that Sucic’s threatening language was used with the intent to cause a reasonable fear of imminent death or bodily harm and therefore was not a constitutionally protected form of speech. This effectively clarified the court’s position on the validity of the new cyberbullying statutes, creating a roadmap for prosecutor’s to convict bullies under the statute in the future.

In addition to these statewide laws against cyberbullying, many Illinois school districts have passed local ordinances to address the problem. In Park Ridge, Ill., two teenage girls were charged with violating a local harassment ordinance after they created a fake Facebook account and used it to publicly post derogatory comments about another classmate. After a police investigation revealed the identity of the girls in late December 2010, they were charged under the local cyberbullying ordinance and are currently scheduled to appear before the Park Ridge Peer Jury.

While some parents believe that schools should address online harassment through computer safety classes, legislators have tried to combat cyberbullying with various new laws making these actions criminal. However, because cyberbullying is relatively new, laws addressing this problem are still young and largely untested. Only time will tell how helpful they will be at preventing cyberbullying and protecting children. There is no doubt that the new wave of
harassment laws will have to keep up with technology to be effective in the future.

NOTES

2 Id.
3 Id.
4 Id.
5 Id.
6 Id.
12 Interview with Christopher Cottingham, High School Senior, Caddo Parish Magnet High School in Shreveport, LA (Feb. 21, 2011).
13 Id.
15 Id.
16 Id.
17 Id.
18 Steinhauer, supra note 1.
19 Id.
24 720 ILCS § 135/2 (2009).
27 Id.
29 Id.
32 Id.
33 Id.
34 Id.
35 Id.
36 Id. at 501.
38 Id.
39 Id.
"Illinois is drowning in a sea of red ink." - State Rep. Bill Mitchell (R-Decatur)¹

In 1977, Pete Tijerina sat at his desk in San Antonio, Texas, reviewing recent legislation coming out of the statehouse in Austin.² As an attorney for the Mexican-American Legal Defense and Education Fund (MALDEF), his office
kept a lookout for legislation that illegitimately targeted Hispanics.\(^3\) One provision caught Tijerina’s attention, and he forwarded it to his supervisor, who wrote a letter to the national office in San Francisco with this question: “What are your feelings on the constitutionality of such a provision?”\(^4\)

Four years later, the man who received that letter stood before the United States Supreme Court and argued that the State of Texas could not permit school districts to deny children a freely bestowed right – an education, in this case – simply because they were undocumented.\(^5\) Five justices agreed, and \textit{Plyler v. Doe} effectively erased Texas’s artificial border.\(^6\)

\textbf{IT’S THE ECONOMICS, STUPID}

From a strictly economic point of view, Texas’s argument has some merit: illegal immigrants pay little to no state taxes – especially in a state like Texas that has no state income tax – yet they have roughly the same access to social services as taxpaying citizens. In an economic downturn, that argument resonates all the more, as states are being forced to make deep cuts in services to stave off crippling budget shortfalls.

One recent study estimates that only six states are projected to break even in fiscal year 2012, while those in the red will fall nearly $112 billion short.\(^7\) Illinois alone accounts for almost $5 billion of that total, and that is without taking previous debt into account.\(^8\) By some estimates, Illinois is $9 billion behind on paying bills to vendors\(^9\) and the projected pension gap is upwards of $80 billion.\(^10\) And though newly elected Gov. Pat Quinn recently signed an income tax hike into law, the state still faces tough choices involving drastic reductions in spending.\(^11\)

Two areas frequently considered to be subject to immediate cuts are human services and education,\(^12\) areas that are particularly important to the immigrant community. The Federation for American Immigration Reform (FAIR), which advocates for lower immigration numbers, recently released a study finding that state services to illegal immigrants – there are an estimated 750,000 illegal immigrants in the state\(^13\) – make Illinois the fifth highest spending state in the country in this area.\(^14\) The bulk of these expenditures are on education and human services.\(^15\) Because only citizens may vote in elections, legislators would
have little to fear at the ballot box if they were to make decisions at the expense of non-citizens, legal or illegal.

Considering the economic situation, one provision in the statute at issue in *Plyler* would have allowed school districts to charge undocumented children for permission to attend public schools. 16 Today, according to some estimates, as many as 65,000 undocumented students graduate from high schools in the U.S. every year. 17 According to FAIR, this is costing states over $24 billion in education costs alone for immigrants. 18

RESTRICTING ACCESS TO HIGHER EDUCATION

Because *Plyler* applies only to primary and secondary schools, many states have passed legislation to prohibit those same undocumented students from accessing in-state tuition at public colleges and universities. 19 In Nebraska, for example, legislation is currently on the table to limit in-state tuition to citizens. 20 Lawmakers in a handful of other states are keeping a close watch, hoping to bring similar legislation to their own states. 21 Going still further, measures have been proposed in Virginia and Georgia that would refuse admission entirely unless applicants prove their legal status. 22 Illinois, on the other hand, is one of only ten states that does not consider immigration status in determining eligibility for in-state tuition. 23

One recent study maintains that the average Illinois taxpayer pays over $2,000 every year to educate undocumented students and the citizen children of illegal immigrants. 24 In the face of Illinois’s record budget deficit, it is understandable that some lawmakers are clamoring for tighter restrictions on state money channeled to illegal immigrants. 25 One such restriction may be a repeal of in-state tuition benefits for illegal immigrants. 26 Some proposed bills would even make citizenship – not just legal status – the prerequisite for state financial aid as well. 27 And because any state legislation involving law enforcement would be disproportionately expensive, 28 measures such as these may be the next best option both to those looking to cut spending and those determined to reduce illegal immigration.

Furthermore, although federal law already restricts federal financial aid to citizens and legal immigrants only, 29 groups like FAIR are lobbying Congress to amend the federal Immigration and Nationality Act to expressly prohibit states
from offering in-state tuition to illegal immigrants. They argue that granting state residency status to illegal immigrants takes seats in universities away from citizens and provides an incentive to circumvent the law. In addition, they argue, it means that an illegal immigrant from another country would have a substantial advantage over a U.S. citizen from a neighboring state. One influential congressman has even referred to the recently failed DREAM Act as “an American nightmare.”

There is strong evidence, however, to suggest that such bans would actually do more harm than good, even in economic terms. The College Board, an influential coalition of colleges and universities, recently published a study finding that, far from displacing higher-paying students, the enrollment of illegal immigrants actually increased revenue to universities. Still other research suggests that the chief effect of such lenient policies is to increase enrollment in universities, so that all parties seem to benefit, at least at the most basic level.

The consequences of denying illegal immigrants the right to establish state residency are such that charging them out-of-state tuition would most likely be prohibitive. For example, in-state tuition to the University of Illinois at Urbana-Champaign is roughly $11,000 per year, while non-resident tuition is almost $25,000 per year, more than double what Illinois residents pay. In other states, the difference can exceed three-to-one. In practical terms, this means that a child who was brought to Illinois illegally from Mexico when she was young, and who has attended Illinois schools her entire life, would nevertheless have to pay over $50,000 more to attend the University of Illinois for her undergraduate degree than a U.S. citizen who had only moved to Illinois during high school.

**Cutting Off the Lifeline of Human Services**

In addition to education, other social services seen as crucial to the immigrant community are likewise on the chopping block. Of these, the largest is health care, including health care to children under the All Kids health insurance program. The program has come under heavy fire from some Republican state lawmakers, including Rep. Bill Mitchell of Decatur. “We have a $13 billion deficit and owe our schools, health care providers and social services $6 billion. Why in the world are we spending hundreds of millions of dollars on health insurance for illegal immigrants? We’ve got to put a stop to this blatant
misuse of taxpayer dollars.” Rep. Mitchell cites a report by a state auditor that suggests that as many as 75 percent of the children on the rolls of the All Kids program were undocumented immigrants ineligible for Medicaid.

A survey of laws passed in 2010 in state legislatures across the country found an increase in laws that affect immigrants, some positively and others negatively. Laws regarding health and public benefits were at the forefront, as well as laws regarding access to driver’s licenses and employment. The report singles out Illinois legislation H 5053 as an example of a positive law in the area of access to health care, ensuring access to mental health services “with particular attention given to underserved populations and designated shortage areas, including migrant health centers.” But for immigrants, political and moral will can be harder to muster during budget crunches like the ones that chronically plague Illinois.

“Most of the legislation creates legal distinctions. It’s hard to square that with democracy,” asserts Rob Paral, a demographic consultant in the Chicago area. “Gov. Quinn’s budget had a very drastic cut in services to immigrants. In response to the immigrant communities organizing, I think most of them have been restored.”

The Realities of the Future

If recent census numbers showing that the Hispanic population across Illinois has grown by nearly a third in the past ten years are any indication, an ever-increasing segment of the electorate will have a connection with the immigrant experience. In fact, nearly 10 percent of all Illinois voters are immigrants or have at least one parent who is an immigrant. In Illinois alone, nearly 170,000 immigrants have become U.S. citizens since 2006. “The state essentially owes its demographic sustainability to Latinos, Asians, and immigrants,” warns Paral. “They permit the state to overcome a lot of depopulation.” Of course, this also includes illegal immigrants. By some estimates, if every illegal immigrant were removed from Illinois, the state would lose upwards of $25 billion in potential economic output.

There is no easy answer, as evidenced by the passionate rhetoric on both sides of the issue. Even the Chicago Sun-Times, which often advocates for smaller government, has advised against cuts in either human services or education.
There seems to be less political willpower for state legislation like Arizona’s highly controversial SB1070, after it provoked a national outcry and a court challenge from the White House.\(^5\) As one immigrant advocate puts it, “It is very difficult to look at the bill in Arizona objectively when there is little doubt in anyone’s mind who the law is meant to target. In many ways, the law is an admission by its proponents that our immigration system is in dire need of comprehensive change.”\(^6\)

Whether Illinois’s immigrants are invited to ride that wave of change is yet to be seen.

NOTES

3. Id.
4. Id. at 5.
6. Id.
8. Id. at 6.
12. Id.
15. Id.
19 Russell, supra note 17, at 2.
22 Id.
25 See, e.g., Freeman, supra note 14.
30 U.S. Legislative Immigration Update, supra note 26.
31 Preston, supra note 21.
32 Id.
33 Id.
39 Marimow, supra note 36.
41 In wake, supra note 1.
42 Id.
43 Id.
45 Id.
46 Id.
48 Id.
50 Rogel, supra note 23.
52 Id.
54 Editorial, supra note 11.
55 Romano, supra note 28.
56 Interview with Miguel Keberlein, Supervisory Attorney, Ill. Migrant Legal Assistance Project, Mar. 23, 2011.
Mr. and Mrs. Smith thought they were living the American dream. As immigrants to the United States, they longed to own their own home some day. The Joneses were in a similar situation. They too imagined that investing in real estate would offer some financial stability for their retirement. But when the market collapsed in 2008, their hopes were shattered as they lost what little remained of their retirement savings. The Smiths and Joneses are just a handful of stories of homeowners desperately trying to save their homes and property from foreclosure, only to find that the laws meant to help them offer little shelter.

In 2010, the Chicagoland area saw a near 16 percent increase in foreclosure related filings. In the third quarter of 2010, Chicago saw a 35 percent increase with one in 84 properties receiving a notice of foreclosure. Even more star-
tling, in 2010 Chicago had the second-highest number of bank repossessions, increasing by 20 percent from the year previous to 45,555. These statistics reveal that Chicago has not been immune to the nationwide foreclosure crisis.

Under the Illinois Mortgage Foreclosure Act (the Act), the term “foreclosure” means “to terminate legal and equitable interests in real estate” due to non-payment of a loan. The nationwide foreclosure epidemic can trace its roots back to 2008. Rising unemployment, consistent underemployment, and increasing loan interest rates due to bait-and-switch tactics of mortgage brokers were all contributory factors to the crisis.

Economists posit that the negative equity of current homeowners, or homeowners who owe more on their house than it is currently worth (sometimes referred to as being underwater), is adding fuel to the fire. In Chicago alone, nearly 386,000, or 25 percent of the area’s 1.5 million homeowners, report being underwater. These homeowners often feel that it is more economically prudent to walk away than to simply throw good money after bad.

Under the Act, a homeowner may also opt to hand the deed of the house to the lender, known as a “deed-in-lieu” or a “consent foreclosure.” The homeowner is shielded from any personal liability that may have resulted from a foreclosure case.

Many homeowners, however, attempt to mitigate any such outcome by first working with the lender. Under President Obama’s Home Affordable Modification Program (HAMP), qualified borrowers may be eligible to have their loan payments reduced to 31 percent of their gross income through interest rate reductions and an extension of the amortization period. Troubled homeowners also have the option of a “short sale.” In a short sale transaction, the homeowner places his home on the market and, if a prospective buyer offers less than the total loan due, the bank may accept the reduced settlement. Congress has also incentivized short sales by refusing to tax the principal amount that may have been forgiven—up to $2 million.
A Homeowner’s Perspective

In June of 2004, Mr. and Mrs. Smith purchased a brick two-flat building in the North Mayfair community of Chicago for $431,000. The couple had decent jobs and there was a rental unit that could help offset any expenses. In 2008, however, Mr. and Mrs. Smith started to experience difficulties. Their tenant lost her job and moved out to live with another family member. Mr. Smith was deemed disabled and had to quit his job, earning a small Social Security disability payment.

Unable to make ends meet, the couple decided to charge their nearly $3,600 interest-only monthly loan payment on their credit card. "We didn’t know what else to do . . . my English is limited and I couldn’t afford a lawyer,” stated Ms. Smith while wiping away tears. “My husband would wake up in the middle of night scared . . . ‘what about the children’s school?’” The Smiths had two children in a nearby magnet elementary school and did not want to transfer them to another general enrollment school.

Then, in January 2009, with his medical condition worsening and the household finances in turmoil, Mr. Smith passed away due to a stroke. With the assistance of a family member, Mrs. Smith contacted her lender, JPMorgan
At first, “they actually wanted me to miss some payments,” complained Mrs. Smith. Eventually she did, and formally applied for a loan modification. For a year, her lender lost documents, gave incorrect information, and rejected her trial payment plans. “I didn’t understand. First they said ‘miss some payments.’ Then, they said ‘as long as you make your trial payments, you’ll be guaranteed a permanent reduced payment.’ It never happened.”

She applied for a modification three times only to be rejected each time. No formal reason was given. She has written to the U.S. Treasury Department and Freddie Mac (the original investor of the loan) but has not received a response. Finally, on the advice of a family member, she “short-sold” her home in December 2010. “I am relieved [that the loan is gone] but upset—this was designed to help people like me. Why didn’t they help? Why did they lie to me for two years? I placed so much hope in them.”

AN INVESTOR’S PERSPECTIVE

Mr. Jones, on the other hand, is considered a strategic-defaulter. In April 2006, he and his wife purchased a one-bedroom condominium unit for nearly $300,000 in the Gold Coast neighborhood of Chicago. At the time, the developer offered to pay the first two years of the interest-only loan payment. Mr. Jones also had a tenant there. “It was great. We had no out-of-pocket cost and the market was rising,” said Mr. Jones. “The unit next door sold for $400,000 a year later.”

But, in 2009, Mr. Jones noticed values were declining rapidly. Other unit owners were selling their condos for nearly 50 percent less than what Mr. Jones purchased his unit for. “What’s the point?” said Mr. Jones. “Why should I make payments on something that is never going to come back?” Mr. Jones now claims that the price of his unit has further declined to less than $100,000. He contacted his lender, Citibank. “The bank’s response was ‘Since you don’t live there, you don’t qualify,’” said an angered Mr. Jones.

The couple submitted documentation about the situation, but the bank would not consider the information. “I told them the keys are in the mail,” said Mr. Jones. When asked about the moral hazard of strategically defaulting, he responded, “If they threw me a bone, I would have considered. But they’re not
helping anybody, even the people who are living in their houses. Why should we then care about morals? What about the bank’s morals? No doubt I was in over my head, but just give me some hope.”

LOCAL SOLUTIONS

With the national HAMP program failing to net mortgage modifications for borrowers like the Smiths or Joneses, local governments are trying to fill the gap, as foreclosures have a tremendous negative impact on the local economy. In Cook County, the Chancery Division created the Cook County Foreclosure Mediation program to bring to homeowners and lenders together to work out a solution. The program, however, has had only mild success with “less than ten percent” of eligible homeowners participating.

In the state capitol, lawmakers have proposed legislation including a “Mortgage Foreclosure Prevention Fee” applied to purchasers of foreclosed homes, known in the industry as Real Estate Owned properties (REOs). In Chicago, similar legislation was dubbed the “Sweet Home Ordinance,” which would use money from tax-increment financing districts to create affordable housing from REOs. The Community Investment Corporation in Chicago (CIC) has begun such projects, taking on large-scale REOs and converting them into affordable housing units.

CIC’s president Jack Markowski wishes to take the program further and work with struggling homeowners, lenders, and investors to convert occupied homes into affordable housing. Nonetheless, it is clear, without government support, the foreclosure crisis in Chicago and nationwide will continue to worsen.

NOTES

3 RealtyTrac, supra note 1.
4 735 ILCS 5/15-1203.


735 ILCS 5/15-1401


I.R.C. § 108(a)(1).

Interview with Mrs. N. Smith (pseudonym), Defaulting Homeowner, in Chicago, Ill. (Mar. 18, 2011).

Interview with Mr. and Mrs. Jones (pseudonym), Strategically Defaulting Homeowners, in Chicago, Ill. (Mar. 3, 2011).
48 Id.
49 Michael Powell and Andrew Martin, Foreclosure Aid Fell Short, and Is Fading, N.Y. Times, Mar. 29, 2011.
55 Id.
There are 25 Institutions for Mental Diseases (IMDs) in Illinois, serving approximately 4300 residents. An IMD is an institution with more than 16 beds that primarily provides diagnosis, treatment and care for individuals with mental diseases.

On September 29, 2010, the Northern District of Illinois approved a settlement agreement consisting of a consent decree in the class action case *Williams v. Quinn*. The consent decree, which builds on recent recommendations from the Governor’s Nursing Home Safety Task Force, lays out a framework that
gives a choice to individuals in Illinois with mental illness to transition from IMDs into a more integrated community setting.\textsuperscript{4}

Recommendations from the Governor’s Nursing Home Safety Task Force concluded that there is “remarkable consensus that many people currently admitted to nursing homes with serious mental illness would be better cared for in specially designed and monitored community residential settings.”\textsuperscript{5} Williams v. Quinn builds on these conclusions.\textsuperscript{6}

In the case, four named plaintiffs alleged that the State of Illinois has a duty under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act to provide persons with mental illness who reside in privately owned IMDs the opportunity to be placed in an integrated community setting.\textsuperscript{7}

The duty referred to is part of the underlying purpose of the ADA. Congress found that segregation and discrimination against individuals with disabilities is a serious social problem and sought to ensure that no person with a disability was denied the services or programs of a public entity.\textsuperscript{8}

The Supreme Court has said that when community residential settings are appropriate, states are required to place persons with mental disabilities in these less restrictive settings rather than in an institution because undue institutionalization qualifies as discrimination.\textsuperscript{9} These community settings include subsidized apartments and group homes that provide therapy, skills training, and case management.\textsuperscript{10}

The consent decree approved in Williams lays out a foundation for what is required for Illinois residents with mental illness residing in IMDs.\textsuperscript{11} Benjamin Wolf of the Illinois ACLU and lead counsel for the plaintiffs said that, as a result of the agreement, three of the four named plaintiffs have moved to a community setting and the final plaintiff is in the process of transitioning.\textsuperscript{12}

The members of the class not named in the case will be afforded the opportunity to move away from IMDs over the next five years when the implementation plan is finalized.\textsuperscript{13} A draft of the implementation plan, which puts the mandated terms of the consent decree into a more detailed procedural plan, is expected to be finalized by June 2011.\textsuperscript{14}
The consent decree mandates procedures for evaluating IMD residents for possible placement in community settings and for providing those placements and services to residents who want them.\textsuperscript{15} There is a timeline built into the decree in which all IMD residents are to “receive an independent, professionally appropriate and person-centered evaluation of his or her preferences, strengths and needs in order to determine the Community-Based Services required for him or her to live in PSH (Permanent Supportive Housing) or another appropriate Community-Based Setting” within two years of the finalization of the Implementation Plan.\textsuperscript{16}

The evaluations are to be performed by “Qualified Professionals”, as is defined by state law, who will develop an individualized Service Plan for each resident.\textsuperscript{17} Within five years after the finalization of the Implementation Plan, all those residents who qualify can opt for a community-based setting.

The main criticism of the Consent Decree is that it will force many, if not all, IMDs to close, leaving residents who opposed transferring to community-based settings without resources.\textsuperscript{18} These fears, however, are unfounded according to the court because it is expressly written in the Decree that residents will not be left without appropriate housing in the event that an IMD closes.\textsuperscript{19} Wolf addresses this issue by saying that it is important to remember that this Decree does not force anyone to move away from an IMD if they wish to stay.\textsuperscript{20}

The agreement is also intended to relieve much of the State’s financial burden in providing housing for residents in IMDs.\textsuperscript{21} Ed Mullen, managing attorney for community integration at Access Living, estimated that the state could save more than $50 million over the next few years by transitioning residents with mental illness from IMDs into community-based settings.\textsuperscript{22} The State could realize these savings because IMDs are more expensive to maintain than community-based services.\textsuperscript{23} In addition, the IMDs are funded by the State only, but under Medicaid laws, part of their cost could be federally funded if the services are offered through community-based settings.\textsuperscript{24}

\textbf{NOTES}

1 \textit{Williams v. Quinn}, No. 05 C 4673, 2010 WL 3894350, at 1 (N.D. Ill. Sept. 29, 2010).
2 42 C.F.R. 435.1010.
Williams, 2010 WL 3894350, at 1.

Id.

Id.

Williams, 2010 WL 3894350, at 1.


Interview with Benjamin Wolf, Associate Legal Director, American Civil Liberties Union of Illinois, in Chi., Ill. (Mar. 21, 2011).

Id.

Id.

Id.

Williams, 2010 WL 3894350, at 3.

Proposed Consent Decree at ¶ 6(a), Williams v. Quinn, 2010 WL 3894350 (N.D. Ill. Sept. 29, 2010) (No. 05 C 4673).

Williams, 2010 WL 3894350, at 4.

Id. at 5.

Id.

Interview with Benjamin Wolf, supra note 11.


Interview with Benjamin Wolf, supra note 8.

Id.
FEATURE ARTICLE

VICTIMS OF COMMUNITY VIOLENCE IN CHICAGO: THE IMPACT ON PROFESSIONAL RESPONDERS

by Lee Shevell

On January 18, 2011 Cook County Juvenile Court Judge Colleen Sheehan sentenced a 15 year-old boy for the murder of 16-year-old Derrion Albert.1 “This happened in broad daylight, on a public street, near a community center,” Sheehan reflected in open court. “That a young man could be beaten to death under those circumstances is really unthinkable. It undermines the very fabric of our society.”2
Albert, a high school junior honors student, was murdered outside of his high school on the South Side of Chicago when he was unintentionally caught in a street fight between two rival gangs. Judge Sheehan described the sentencing hearing as “the saddest day that I have ever been a part of as a judge.”

The cost of violence often extends beyond its victims. Its influence also reaches “solicitors” – those who respond to violence in communities as professionals. Police officers, doctors, social workers, lawyers, and judges experience unique harms at the hands of increasing brutality on Chicago’s streets. Solicitors working with clients exposed to violence risk a transfer of symptoms from the client to the helper. This is a phenomenon known as compassion fatigue. This article explores the effects of clients’ exposure to trauma upon three groups of solicitors: mental health providers, attorneys, and judges.

Violence in Chicago: A Consideration of What Is Being Solicited

Solicitors affected by compassion fatigue generally experience a cumulative exposure to victims suffering from trauma. For solicitors in Chicago working with clients exposed to violence, there is no shortage of work. During 2010, 510 people were murdered in the city, 80 percent by gunfire. Half were between the ages of 10 and 25 years old. One study suggests that Chicago’s increase in homicides from 2007 to 2008 reduced the population by 5,000 people. However, Judge Sheehan’s reflection demonstrates how the impact of violence extends beyond mere population reduction: the “[murder] victims aren’t the only victims.”

For residents living in high crime areas, the impact of constant exposure to violence, known as “community violence,” often results in chronic stress and post-traumatic stress disorder (PTSD). There is no respite from the heightened anxiety about one’s own safety and the safety of others in areas consumed by violence. One mother lamented, “[I]t’s 365 days a year, 24 hours a day . . . it is bad in the summer . . . in the winter . . . all the time. The drugs don’t stop. The violence doesn’t stop. We’re tired.”

As professional responders, solicitors must experience and process community violence on a daily basis. They take on clients’ burdens through fact-finding, story-telling, and occupational responsibilities that require victims to replay and relive the violent events to the solicitor.
For many solicitors, clients’ suffering comes with a personal cost. Compassion fatigue often begins when the solicitor employs “empathetic engagement with trauma survivors who relate narratives of overwhelming horror and pain.”14 Symptoms of this phenomenon include isolation from others, anxiety, problems with coping skills, a decreased sense of accomplishment, loss of confidence when working with clients, nightmares, and stomach problems.15 When solicitors consistently engage with traumatized clients, they are similarly impacted by the experience of the victim, as well as by the experience of attempting to help their client.16

Mental Health Providers as Solicitors

Mental health providers are the solicitors most recognized by the public for their work with victims of violence through therapeutic intervention to symptoms of trauma. In a study conducted to analyze the effects of traumatized clients on social workers, nearly all (97.8 percent) of the respondents indicated that their client population experienced trauma.17 The study used these results to measure impact on the solicitor, finding that 55 percent met at least one core diagnostic criteria for PTSD.18

In Chicago, research shows that community violence and chronic stress is taking a significant toll on students in the Chicago Public School (CPS) system as well.19 The main solicitor of trauma victims in schools is the school social worker. One school social worker for CPS with more than 15 years of experience explained her role as the lead responder to the social and emotional concerns of students.20 In times of violence, she manages the crisis as it unfolds.21 Later, she runs grief groups and addresses the needs of individual students and staff.22 She speaks of overwhelming stories of community violence, including a student who was “shot at the beginning of the school year, within sight of the school, while on the way in the morning.”23

When asked what compassion fatigue meant to a trauma solicitor, she replied, “[R]emaining empathic in order to address the needs of the students who are bombarded with violence, traumas and its after-effects can present unique challenges. This type of fatigue creeps up on you.”24
It is a feeling she shares with other solicitors in her school. “The fatigue affects all of us in the school. . . Staff members spend a great deal of time debriefing with other staff members as a healthy way to deal with the experience.”

**LAWYERS AS SOLICITORS**

Lawyers are also solicitors entrenched in community violence, acting as agents between a legal dispute and the justice system. In a study that surveyed 100 criminal and non-criminal attorneys, the level of vicarious trauma was higher for the criminal law solicitors. In particular, criminal law solicitors reported significantly higher levels of subjective distress and self-reported vicarious trauma, depression, stress, and cognitive changes in relation to safety and intimacy.

Criminal attorneys both defend and prosecute those accused of crimes, including crimes of violence. In criminal cases, lawyers act as officers between an act of violence and the criminal justice system – a public face that elicits stories of violence in court. Attorneys must absorb the traumatic details of cases and maintain long-term relationships with their clients and crime victims.

“Sometimes the best thing for a client is to take a plea,” said one former Cook County, Ill. Public Defender. “A defendant will plead guilty to a sentence with time served or the lowest turnaround to leave jail, whether or not guilt is a factor. The innocent get swept away in this tide, regardless of the Public Defender’s efforts.” On the other hand, the attorney said, “State’s Attorneys in some ways have it the worse. They expect that their work will make victims feel whole again. But nothing will bring back a dead father. The victim at the end cannot feel whole.”

The Public Defender believes the self-perception of the role of an attorney in criminal courts may impact the likelihood of compassion fatigue. “I don’t believe in an excess of compassion, but an attorney should not get involved in a case in a way that you are looking for a thank you,” he said. “They should keep their eyes on that service to the individual’s needs and consider ‘What am I doing for this client?’ and not ‘How am I doing as an attorney?’”

Results of a study that examined attorneys from agencies specializing in domestic violence, family law, and legal aid criminal services show that lawyers
have significantly higher rates of compassion fatigue than mental health providers do. The difference between mental health workers and attorneys appear to be related to professional expectations, such that attorneys are discouraged from showing weakness and strive to avoid vulnerability.

**JUDGES AS SOLICITORS**

For judges, there is less repetition of each particular traumatic story, but they still face a considerable incidence of compassion fatigue.

In a study of 500 judges across the United States, 63 percent reported one or more symptoms identified with work-related compassion fatigue. Judges with seven or more years of experience reported higher levels of externalized symptoms, such as anger or hostility. Further, female judges reported greater incidents of compassion fatigue, including internalized symptoms such as depression (73 percent of female judges versus 54 percent of males).

The challenges judges face are unique and individualized. Judges are the ultimate decision-maker in perpetrators' and victims' lives, meting out consequences and granting retribution for violence. Yet they must remain fair, courteous, dignified and patient at all times in the course of their duties.

Judges may have the hardest time of all finding preventative solutions for compassion fatigue. In order to combat the emotional hardship from hearing about trauma on a regular basis while staying unbiased and effective, experts recommend therapeutic debriefing and consultation. Unfortunately, much of a judge's work must remain confidential. According to one judge, “[T]he reality is that some judges work in isolation, they cannot consult about a case, they see horrific crimes, make weighty decisions and have to keep their mouths shut about everything.”

**IMPLICATIONS**

While attempting to aid the victims of violence by addressing trauma through therapeutic response and legal remedy, solicitors themselves can become victims of community violence through secondary trauma. Although mental health providers may have an understanding of how to manage this phenome-
non, the professionals in the legal system overall have yet to discuss or address such issues.

The importance of creating environments to support all types of solicitors, and specifically those who work with clients exposed to violence, is essential. Both the available research and responses from solicitors show how important it is to develop educational programs for both students and professionals on how to deal with this pressure. If these support systems are not created to counter compassion fatigue, there is a great risk of perpetuating a vicious epidemic and losing the professionals who can aid their clients.

NOTES

2 Id.
4 Meisner, supra note 1.
5 Lila Petar Vrklevski and John Franklin, *Vicarious Trauma: The Impact of Solicitors of Exposure to Traumatic Material*, 14 Traumatology 2008 at 107. If left unaddressed, compassion fatigue can “lead to a loss of effective treatment for the client; an inability to discharge professional, social and personal responsibilities for the trauma worker; detachment and emotional withdrawal from family and friends; depersonalization; and disillusionment with the organization”.
6 Id., at 106.
8 Id. at 4.
9 Id.
10 Id. at 2. The University of Chicago interviewed almost 100 residents in Chicago, including men, women, youth, students, single mothers, faith leaders, educators, teachers, police officers, emergency medicine physicians, and other medical responders on the effects of community violence.
11 N.Y. Univ. Child Study Center, *Community Violence: The Effects on Children*, available at http://www.aboutourkids.org/articles/community_violence_effects_children. “Community violence (CV) refers to exposure, as a witness or through actual experience, to acts of interpersonal violence perpetrated by individuals who are not intimately related to the victim.”
12 Id.
13 Id. at 5.
14 Vrklevski, supra note 5 at 107.
18 Id.
20 Email Interview with Chicago Public Schools School Social Worker (Mar. 3, 2011).
21 Id.
22 Id.
23 Id.
24 Id.
25 Id.
26 Vrlevski, supra note 5 at 114.
27 Id.
29 Interview with Former Cook County Public Defender, in Chi., Ill. (Mar. 28, 2011).
30 Id.
31 Id.
32 Id.
33 Id.
35 Albert, supra note 28 at 1.
36 Peter G. Jaffe, Claire V. Crooks, Billie Lee Dunford-Jackson, & Michael Town, Vicarious Trauma in Judges: The Personal Challenge of Dispersing Justice, JUV. AND FAMILY CT. J., Fall 2003 at 14.
38 Jaffe, supra note 36 at 15. “Internalizing symptoms were intended to capture those related to anxiety, depression, and somatic problems. Externalizing/hostility included strong negative emotions (anger, frustration, cynicism) and interpersonal difficulties. The unique trauma factor... (re-experiencing trauma event, avoidance/numbing, and persistent arousal).”
39 Id. at 12.
40 Id. at 16.
41 Id.
42 Id.
43 Levin, supra note 34 at 245.
"We’re almost at the end of the road," said Chicago Housing Authority (CHA) CEO Lewis Jordan, in a speech delivered to the City Club of Chicago in January 2011. The road Jordan was referring to is the CHA’s ambitious Plan for Transformation, which aims to redevelop public housing in
The CHA is 5,000 units shy of completing its goal of building or renovating 25,000 units throughout the city. According to Jordan, “81 percent of total development process had been completed before the housing market took a turn for the worse.” The CHA plans to complete an additional 1,026 units by the end of 2011. However, the Plan’s stated goal of socioeconomic integration for public housing residents within the city lags behind the pace of construction.

In 2000, the CHA launched its Plan for Transformation, touted on its website as “the largest, most ambitious redevelopment effort of public housing in the United States, with the goal of rehabilitating or redeveloping the entire stock of public housing in Chicago.” The plan, initially to be completed in 10 years, was more than a rehabilitation of distressed physical structures; it aimed to transform the lives of public housing residents through “the comprehensive integration of low-income families into the larger physical, social and economic fabric of the city.”

Integration was a key component of the Plan. According to sociologist William Julius Wilson, large public housing developments result in “overwhelmingly impoverished urban neighborhoods, not organized around lawful work.” These developments create “an urban ‘underclass’ threatened with permanent severance from the American mainstream.”

By the CHA’s own admission, crumbling infrastructure and poverty had reached critical concentrations. According to the CHA’s website, prior to the Plan’s enactment, Chicago “had some of the worst housing in America.” Former high-rise housing projects, such as Cabrini-Green and the Robert Taylor Homes, were known for substandard living conditions, plagued by gang violence, and entrenched with cross-generational poverty. Renowned public interest attorney Alexander Polikoff used the term “residential apartheid” to describe the CHA’s practice of forced separation of housing for poor black and middle class white families.

With the aim of socioeconomic integration, part of the Plan for Transformation calls for demolishing “notorious high-rise developments,” rehabilitating smaller low-density properties, and building new mixed-income developments. The CHA allocated one-third of the units as public housing, one-third as affordable housing and one-third as market-rate housing.
FAMILIES IN TRANSITION

When the demolition and renovation commenced, residents were granted a Right of Return and provided with four options as units became available: a permanent housing choice voucher, a rehabbed scattered site unit, a rehabbed unit in one of the traditional public housing developments, or a new unit within a mixed housing development.15

In the interim, residents were left to find housing through the use of Housing Choice Vouchers, or placement in yet un-rehabbed public housing units.16 As a result, some argue, residents were simply redistributed into racially segregated neighborhoods with high concentrations of poverty, counter to the Plan’s stated goal of integration.17

According to then Alderman Toni Preckwinkle (4th), the Plan resulted in horizontal concentrations of impoverished residents by neighborhood, while traditional public housing vertically concentrated the poor in high rises.18 “The problem is that it was all done at once,” Preckwinkle stated in a Medill Reports interview.19 “There wasn’t very much thought given as to what was going to happen to people between the time their buildings were torn down and the new buildings were built.”20

This sentiment was echoed by Henry Rose, law professor at Loyola University Chicago, who referenced the families in the wake of the landmark Gautreaux v. Chicago Housing Authority.21 The Gautreaux families used Housing Choice Vouchers to either relocate to integrated areas in the Chicago suburbs or remain in the city.22 The families who landed in the integrated suburbs had demonstrably better outcomes than those who stayed in the city.23

According to Professor Rose, “The families that lived in integrated settings did better. That took planning and counseling services to assist families to make that transition. It takes a lot of planning and resources to accomplish that.”24

OUTCOMES FOR RESIDENTS

But with 81 percent of the development process completed, how have residents who exercised their Right of Return to newly constructed or rehabbed units fared? Within mixed-income developments, the CHA has successfully man-
aged to physically place public housing residents into units that are architecturally indistinguishable from market-rate units occupied by non-public housing families.\textsuperscript{25}

While furthering the Plan’s goal of integration and diversity, tenant experiences in the mixed-income developments vary.\textsuperscript{26} Sara Voelker, the project coordinator for a University of Chicago School of Social Service Administration study about mixed-income developments, explained, “We’ve done interviews with residents of five of the ten sites, and there’s a mixed experience. . . There’s some tension around who has kids and who doesn’t, and how you live in a community where there’s these different populations.”\textsuperscript{27}

Public housing residents’ access to these mixed-income developments is limited, however, by the number of available units and stringent application requirements imposed by the CHA and private developers.\textsuperscript{28} The CHA adopted a “Minimum Tenant Selection Plan” in 2004 to provide consistency across mixed-income developments, including a minimum monthly rent ($25), credit and criminal history checks, and a 30-hour-per-week work requirement for all adult household members. Some developments also require drug tests for adult renters.\textsuperscript{29}

For residents who returned to rehabilitated traditional public housing units, the Plan’s goal of integration has not been fully realized.\textsuperscript{30} The CHA aimed to bring traditional properties to “a standard of quality sufficient to attract a mix of incomes so that public housing does not again become home to extreme concentrations of poverty.”\textsuperscript{31} To this end, it imposed work requirements on residents coupled with extensive support services to “ensure a better quality of life for tenants and the surrounding communities alike.”\textsuperscript{32}

In practice, however, newly rehabilitated communities like Altgeld Gardens are still plagued by violence, gang activity, and drug dealing.\textsuperscript{33} According to Business and Professional People for the Public Interest, “Families in rehabilitated units live adjacent to block upon block of ugly, boarded-up buildings.”\textsuperscript{34} As a result, CHA has encountered difficulty relocating residents to the community, and has failed to attract non-public housing residents.\textsuperscript{35}

One public housing resident considering relocation to Altgeld attended an open house and returned at night to find drug dealers operating openly, prostitutes walking the street, and “virtually no police.”\textsuperscript{36} While the CHA’s Plan for
physical transformation is nearly complete, escaping its past of concentrated poverty, isolation, and crime will prove far more difficult. The extent of socio-economic integration of public housing residents within the city will be the true measure of transformation.

NOTES

2 Id.
3 Id.
4 Id.
5 Id.
7 Id.
9 About CHA, supra note 6.
11 Id.
13 About CHA, supra note 6.
15 Lazar, supra note 10.
17 Rodriguez, supra note 14.
18 Id.
19 Id.
20 Id.
22 Telephone Interview with Henry Rose, Professor Loyola University Chicago School of Law (Mar. 25 2011).
23 Id.
Id.
25 Business and Professional People for the Public Interest, supra note 8 at 26.
26 Lazar, supra note 10.
27 Id.
28 Id.
29 Business and Professional People for the Public Interest, supra note 8 at 26.
30 Id. at 37.
31 Id.
32 Id.
33 Id. at 39.
34 Id.
35 Id.
S\textit{ince 1937, the Chicago Housing Authority (CHA) has received both praise and criticism for its self-stated efforts to “create vibrant mixed-income/mixed-finance neighborhoods, help low-income residents achieve self-sufficiency, and provide affordable housing options in a time of need.”} \textsuperscript{1} The public housing community is now looking to recently elected Mayor Rahm Emanuel,
once the CHA’s vice-chairman, to refocus the CHA and better serve residents in transition.

THE PAST

In 1937, Chicago Mayor Edward Kelly established the CHA as a means to manage and operate federally funded housing built under President Franklin Roosevelt’s Public Works Administration. The agency emerged on the progressive forefront, becoming an early advocate of housing reform and civil rights for African Americans. Between 1937 and 1945, the CHA planned nine projects totaling 6,300 units, 62 percent of which were subsequently occupied by African Americans at a time when blacks comprised of only 15 percent of the city’s population.

Even though the CHA had become the largest landlord in Chicago, by the early 1980s, “inoperable elevators, erratic heat, leaky roofs, uncollected garbage, infested apartments, darkened hallways, and unreppaired playground equipment” were normal at its properties. Chicago’s first African-American mayor, Harold Washington, considered the high-rise projects “obscene . . . an abomination,” in which no remedy was available—“Nobody can make the CHA work . . . The only solution is just to get of it.” The U.S. Department of Housing and Urban Development (HUD) subsequently gave the CHA failing grades, placing them on its troubled list.

In 1994, HUD Housing Secretary Henry Cisneros spent a night at the Robert Taylor Homes, a housing project on the south side of Chicago, and the conditions he experienced caused him to embrace a federal takeover of CHA. Cisneros lamented, “I don’t know another place in America where there are fifteen shootings and five killings over a weekend.” CHA officials voted to accept a temporary federal takeover one year later.

By 1997, the CHA received a clean audit from HUD, the first in ten years, allowing the city to regain control of its public housing and to implement an aggressive plan that called for the complete overhaul of the CHA.

However, as Mayor Emanuel has repeatedly emphasized, “While conditions have improved vastly for most, this has not always been a painless transition for residents and communities.”
THE PRESENT

Since 1995, the CHA has contemplated the mass demolition of Chicago public housing, and in 2000, it finally reached an agreement with HUD on a redevelopment plan backed by Mayor Daley, known as the Plan for Transformation.\(^{16}\) Set for a period of ten years, the Plan called for the demolition of approximately 18,500 CHA apartments and 5,800 family units, the renovation of all 9,500 senior apartments, and the constriction of 6,200 units in mixed-income communities.\(^{17}\) The Plan sought to fully integrate public housing residents into the city of Chicago—socially, economically, and physically.\(^{18}\) It was to be “a triple transformation,” reaching people, locations, and the CHA itself.\(^{19}\)

The Cabrini-Green housing development comes down as the CHA attempts to integrate its former residents into the city.

As with any ambitious goal, the Plan has faced a number of setbacks. “CHA finds itself in an interesting situation as [the Plan] was supposed to be completed in ten years,” William Wilen, an attorney with the Shriver Center, explained.\(^{20}\) “But it is now looking as though it is going to take fifteen or more.”\(^{21}\)

Nevertheless, Mayor Emanuel continues to stand behind the plan he helped create, underlining that it “has allowed Chicago to move beyond the failed
experiments of the 1950s that gave us concentrations of high rise public housing projects isolated in poor neighborhoods, plagued by crime and unsafe conditions for residents."22

“The goal is to achieve economic self-sufficiency for residents in neighborhoods that are better integrated into the broader community,” Mayor Emanuel stressed, “but this cannot solely be the government’s responsibility. We must continue to encourage and stimulate private sector investment, and wide community participation and acceptance for this to be a success.”23

THE FUTURE

With a past built on uncertainty and lack of accountability, distrust in the CHA has grown rampant among the public housing community.24 As Maria Hibbs, Executive Director of the Partnership for New Communities, stressed, “A reputation of corruption, mismanagement, and deplorable performance is difficult for any institution to live down.”25

The mayor remains confident, stating that “with any bold plan. . . there are plenty of things that need to be improved as we continue to learn from the experience, listen to the residents impacted and adjust to the market realities of the current housing crisis.”26

Mayor Emanuel has announced the next stage of the Plan for Transformation, which includes Lathrop Homes in the Roscoe Village neighborhood.27 “[W]e have only one chance to get this right,” he said. “We must continue to listen to residents and community leaders to develop the right plan that will alter the landscape for future generations and make our entire city stronger.”28

Many Chicagoans continue to be hopeful for the future of public housing. As Hibbs stated, “Given that [Emanuel] was a CHA commissioner at one time, he is familiar with its challenges. . . I think that bodes well for not only the Plan, but also for the city and the broader challenges it faces at this time.”29

Ultimately, affordable housing options will prove to be critical to the health of the city.30 Thus, while the future of Chicago public housing is still largely unknown, the plight of the public housing community remains a major issue for the new mayor. As Mayor Emanuel embraces his new authority, he is going
to be faced with the inevitable uphill battle with the issues of the city’s public housing.

NOTES

3 Id.
5 Id. at 36.
6 Id. at 65.
7 Chicago Housing Authority, supra note 4.
8 Hunt, supra note 4, at 259.
9 Id. at 261.
10 Id. at 264.
11 Id. at 277.
13 Hunt, supra note 8, at 278-79.
14 Id. at 279.
17 Id.; Hunt, supra note 4, at 279.
19 Id.
20 Phone Interview with Bill Willen, attorney with the Shriver Center (March 16, 2011).
21 Id.
22 CHI. SUN-TIMES, supra note 15.
23 Id.
25 Email Interview with Maria Hibbs, Executive Director of the Partnership for New Communities (March 15, 2011).
26 CHI. SUN-TIMES, supra note 15.
27 Hunt, supra note 4.
28 Id.
29 Hibbs, supra note 25.
30 CHI. SUN-TIMES, supra note 15.
For many, the Cabrini-Green public housing development represented a dangerous battlefield where drugs were plentiful and gangs ruled. For some, however, Cabrini-Green was home. A home that Cabrini tenants fought to stay in, despite the largest, most ambitious redevelopment effort of public housing in the United States: the Plan for Transformation.

In implementing the Plan for Transformation, Chicago officials sought to raze Chicago’s unpopular housing projects and replace them with mixed income
housing units. However, the project has proved difficult and left Cabrini tenants to deal with several issues, including the lack of affordable housing, inadequate replacement services, and unwelcoming new environments. Thus, many tenants have fought the Plan for Transformation by filing lawsuits and refusing to leave the project.

**THE PLAN FOR TRANSFORMATION**

The Plan for Transformation is a term well known to many in Chicago. The Plan seeks to demolish Chicago’s infamous housing projects and replace those projects with mixed income housing. Its goal is to build quality public housing units that can be integrated into the communities in which they are located. Those who promote the Plan describe it as an effort that “aims to build and strengthen communities.” Its opponents see it as a signal that the community has lost interest in advocating for the poor.

As the Plan for Transformation took effect in 2000, tenants of the doomed housing projects were told they would be relocated. The Chicago Housing Authority (CHA) entered into a Relocation Rights Contract with residents that promised to help displaced families move into more racially and economically integrated neighborhoods. However, due to the extensive demolition and lack of newly constructed housing, as many as 4,851 CHA residents were forced to relocate involuntarily from their units into the private market between 1995 and 2005.

In 2002, Verna Berryman was one of the first people to vacate Cabrini-Green as part of the Plan for Transformation. Berryman soon found out that, even with a housing voucher, her housing options had not improved upon leaving Cabrini. In fact, Berryman moved three times before she found a place where she felt secure. After finally finding an apartment that was safe, Berryman stated, “You move out into what’s supposed to be a better world, and there’s nothing but drama and hassle.”

**PROBLEMS WITH MIXED INCOME HOUSING**

Every year, the CHA has a waiting list that thousands of families join in hopes of finding a place to live. In 2010, 40,000 registrants were added to its wait
list. As an attempt to help residents relocate, the CHA offers mobility counseling to relocating families and encourages them to move to integrated “opportunity areas.” Yet, the programs are not universally available and people must seek them out.

For tenants leaving Cabrini-Green, there are many hurdles to moving into one of the promised mixed income housing units. The CHA’s initial idea was to have poor residents move into mixed income areas so that the more affluent residents could provide economic vitality and act as role models. In 1996, then CHA director Joseph Shuldiner announced that the mixed income areas were an “opportunity for low income families to move into new homes that are indistinguishable from others to be built. . .[t]his revitalization will also spur new educational and employment opportunities for residents, which will enhance their quality of life, and promote self-sufficiency.”

The CHA’s Plan for Transformation included building 7,697 units in mixed-income developments. However, of the approximately 18,000 new or remodeled units built under the umbrella of the Plan for Transformation, only 3,000 are mixed-income homes. Furthermore, each mixed-income development requires site-specific criteria for all tenants who want to rent or purchase a home in the area. The requirements vary by site, but usually include job/income verification, credit history screening and comprehensive background checks.

With these restrictions, the Cabrini-Green tenants can have difficulty obtaining housing in the mixed neighborhoods. For example, in the beginning stages of the Plan, over half of Cabrini-Green residents were unemployed. The stringent screening methods may be why many former tenants relocate to areas very similar to the projects they left behind.

LEAVING CABRINI-GREEN

The first steps in the Cabrini-Green exodus came amidst the worst affordable-housing crunch in recent history. The average rent for a two-bedroom unit in 2001 was $776 per month, a difficult rent for a family earning less than $28,000 annually. As the Cabrini-Green tenants were averaging about $8,600 a year, finding an apartment was nearly impossible.
Aside from the steep rent and public housing shortage, public housing residents using housing vouchers run into several more obstacles as they attempt to find homes. Some obstacles include: racist landlords, a depleted job market, wary neighbors, and a lack of experience with CHA rules and policies. Berryman explained that “[i]t’s tough dealing with landlords when they know you have a voucher.” Berryman went on to state that landlords “treat you different when they know you’re coming from the projects.”

Fear of the unknown plagued other former tenants of Cabrini-Green. For Annie Ricks, the last tenant at Cabrini, her apartment was “comfortable and safe.” Thus, Ricks lingered at the housing project where she spent 21 years of her life. For many who lived at Cabrini-Green, the projects had been their home and community for several years. Ties had developed within the community despite the tumultuous and dangerous history there. When finally forced out of Cabrini-Green, Ricks attempted to remain in the neighborhood, along with 47 percent of Cabrini’s former residents. However, Ricks was unable to find an apartment in the area. Upon leaving Cabrini-Green, Ricks stated, “I’m still going to bug them every day... until they say, ‘Ms. Ricks you can come back.’”

The Fight to Stay at Cabrini-Green

In a last attempt to halt the Plan for Transformation, several residents brought actions against the CHA for displacing tenants from public housing. Among their allegations in Wallace v. Chicago Housing Authority, the residents claimed that the CHA failed to provide adequate relocation services or offered relocation services that openly steered residents into racially and economically segregated neighborhoods. The residents complained that as a result of those policies, they are now living in neighborhoods “characterized by high poverty, high crime, poor schools and poor municipal services.”

The court found that the residents had standing and stated federal claims under various sections of the Fair Housing Act, as well as several Department of Housing and Urban Development provisions that require a “duty to affirmatively further fair housing.” In 2005, the parties eventually settled, agreeing to two relocation programs for current and former CHA residents:
(1) CHA’s current relocation program, encouraging moves to racially integrated areas of metropolitan Chicago and providing case-managed social services, would be applied to families initially moving from public housing; and
(2) An agreed-upon modified program run by CHA’s voucher administrator, CHAC Inc., would encourage former CHA residents to relocate to economically and racially integrated communities, as well as give them increased access to social services.

Even with the settlement, according to the latest information provided by the CHA, the Wallace relocation programs have achieved only mixed results. A second case, Cabrini-Green Local Advisory Council v. Chicago Housing Authority, also involved a complaint brought by several residents of Chicago’s public housing. Like Wallace, Cabrini-Green Local Advisory Council (LAC) revolved around what would happen to the current residents when the projects were demolished. Unlike Wallace, the residents in LAC were seeking to force the CHA to negotiate over the relocation of families who did not wish to leave public housing when their current homes were demolished.

The tenants in LAC claimed that the CHA’s abrupt and unilateral plan for relocating Cabrini-Green residents would exacerbate and perpetuate residential housing segregation in violation of the Fair Housing Act and its implementing regulations. The court ultimately found that the CHA’s decision to issue 180-day notices to over 300 families without a redevelopment plan in place caused threatened and actual harm.

CONCLUSION

Even with the good intentions of the over-ambitious Plan for Transformation, many tenants found themselves forced to leave their homes with a lack of affordable housing, inadequate replacement services and unwelcoming environments. With the Plan’s options often unappealing, many public housing residents hope these recent court decisions will spur the CHA into creating alternative solutions.

NOTES
4 Id.
5 Id.
6 Plan for Transformation, supra note 2.
7 Sudhir Alladi Venkatesh, American Project: The Rise and Fall of a Modern Ghetto 269 (Harv. Univ. Press, 2000). (The significance of this erasure could signal the abdication of a local and national commitment to the welfare of the poor).
8 Id.
10 Id.
12 Id.
13 Id.
14 Id.
16 Id.
18 Id.
19 Larry Bennet, Restructuring the Neighborhood: Public Housing Redevelopment and Neighborhood Dynamics in Chicago, 10 J. Affordable Housing & Community Dev. L. 54, 58 (2000).
20 Id.
24 Id.
25 Cabrini-Green Local Advisory Council et al., Cabrini-Green HOPE VI Survey available at www.luc.edu/curl/pdfs/Cabrini-Green_HOPE_VI_Survey.pdf. (2001)(According to a survey conducted in 2001, more than half (57 percent) of survey participants were unemployed.)
26 Lewis, supra note 17 at 15. (lower-income families who are relocating typically select areas very similar to those areas they are leaving).
27 Id.
28 Sieger, supra note 11.

31 Siegert, *supra* note 11.

32 Terry, *supra* note 1.

33 *Id.*

34 Lewis, *supra* note 17. (In 2000 and 2001, non-public housing resident families were significantly more likely than public housing families to feel satisfied that their neighborhood is a good place to live and raise children, and that their current neighborhood is safe at night. However, families living in public housing were somewhat more likely than those living outside of public housing to feel that in their neighborhood, people help each other.)

35 Terry, *supra* note 1.

36 *Id.*

37 *Id.*


39 *Id.*

40 *Id.*

41 *Id.*


43 Wilen, *supra* note 9 at 4.


45 *Id.*

46 *Id.*

47 Sargent Shriver, *supra* note 42.

48 *Id.*
INTRODUCTION

When many people think about “accessibility,” they think of ramps, automatic doors, and parking spaces. For people with cognitive and mental health disabilities, however, accessibility is more than physical structures. Indeed, many people with these types of disabilities have been excluded...
from schools, recreation, and housing opportunities as a result of programmatic barriers to accessibility, such as excessive paperwork requirements, inflexible deadlines, and a general lack of support in navigating complicated bureaucracies. This article explores the role these barriers play within the context of the federal Housing Choice Voucher Program, in particular, and considers potential remedies under statutes designed to combat discrimination against people with disabilities.

**MOVING PEOPLE WITH DISABILITIES FROM SEGREGATED SETTINGS INTO THE COMMUNITY**

The U.S. Supreme Court held in 1999 that people with disabilities have the right, under the Americans with Disabilities Act (ADA), to live in the community, rather than be warehoused in institutions and nursing homes. Yet, for many, affordable housing remains elusive.

The federal government implemented Supplemental Security Income (SSI), which is designed to provide stipends to people with disabilities and older adults for living expenses. However, SSI pays only $674 per month to those who qualify. With such low income, a person on SSI has limited housing options. As outlined in a 2010 report by the National Council on Disability:

No State in the United States has an average-priced one-bedroom or studio apartment that would be affordable to someone on SSI. In fact, the average rental payment in the United States for a studio would require spending 100 percent of the monthly SSI payment and renting the average one-bedroom unit would require 112 percent of a monthly SSI payment. As a result, most of the 4.2 million people receiving SSI cannot afford housing in their communities unless they receive some form of housing subsidy.

Vouchers provide people with disabilities with a housing subsidy that allows them to live in a regular apartment—and significantly, also allows them to receive services in their own home, rather than in nursing homes. The Section 8 Voucher program (now called the Housing Choice Voucher Program) was created in 1974 and is administered by local and State public housing authorities. Tenants make partial rental payments, usually one-third of their income, and the public housing authority (PHA) pays the remainder.
The voucher holder can rent any apartment as long as it is approved by the public housing authority and the size and rent is within the limit set by the voucher. The voucher holder signs a lease with the landlord, and is therefore responsible for both lease-compliance and compliance with the voucher rules. The termination of a voucher is arguably more detrimental to a voucher holder than eviction because a voucher holder’s low income makes it nearly impossible for him or her to find substitute housing.

The voucher program contrasts sharply with other forms of state-funded housing provided to people with cognitive and mental health disabilities, such as group homes, permanent supportive housing, institutions, hospitals, and nursing homes. These types of housing, with the exception of some forms of permanent supportive housing, are congregate settings that condition housing on accepting services, do not allow residents to live with their family or roommates of choice, do not provide residents with a choice of where to live, and segregate people with disabilities. State mental health and developmental disability agencies provide housing focused on services rather than choice. A residence is simply not a home when it is a place where services are required.

Unlike these programs, a person with a voucher who may need services, such as counseling, medication management, and case management, can receive them through a Home and Community Based Services Waiver.

**Barriers to Accessing the Housing Choice Voucher Program**

As we move from institutional placements to a more integrated model, the importance of the voucher program cannot be understated. Yet, the very program that facilitates this transition is failing to adequately serve people with disabilities. People with specifically cognitive and mental health disabilities face many barriers in the voucher program. Such individuals experience potential roadblocks at a number of different stages of the program, such as:

1) During the application process
2) In the waiting list and lottery process
3) During certification and annual recertification to qualify for the program
4) When responding to notices regarding their vouchers
5) When moving to another unit
6) When requesting a reasonable accommodation
7) When participating in an informal hearing
8) During the process of termination from the program.\textsuperscript{14}

The barriers that can arise include excessive documentation requirements, confusing and complex rules and procedures, and inflexible deadlines.\textsuperscript{15} In addition, people with disabilities must sometimes make repeated requests for accommodations and provide a signed statement from a medical professional before an accommodation will be considered.\textsuperscript{16} People with cognitive and mental health disabilities often become overwhelmed by the bureaucracy of the voucher program, which can cost them their vouchers. These barriers persist despite the federal requirement that housing authorities “affirmatively further fair housing.”\textsuperscript{17}

**LEGAL REMEDIES FOR DISCRIMINATION IN THE VOUCHER PROGRAM**

Given these barriers to participation in the voucher program, what legal remedies does a person with a cognitive or mental health disability have at his or her disposal? Three statutes protect people with disabilities from discrimination in this context. The Fair Housing Act (FHA) prohibits discrimination against people with disabilities by housing providers, including public housing authorities. Title II of the ADA deals specifically with discrimination by “public entities” such as state and local governments,\textsuperscript{18} while Section 504 of the Rehabilitation Act (Section 504) covers any program receiving federal financial assistance or conducted by any Executive agency.\textsuperscript{19}

Because the voucher program is funded and operated by local public housing authorities in tandem with the U.S. Department of Housing and Urban Development (HUD), a claim of programmatic discrimination relating to the voucher program could arguably be brought under the ADA or Section 504; an individual claim can be made under the FHA as well.\textsuperscript{20}

The challenge, then, becomes defining the contours of such a claim. To establish a prima facie case of discrimination under Title II of the ADA or Section 504, a plaintiff must show that:

1. He or she has a disability within the meaning of the statutes;
2. He or she is “otherwise qualified”; and
3. He or she was excluded from, denied the benefit of, or subject to discrimination under a program or activity carried out by a public entity under
the ADA, or by a federal executive agency or recipient of federal funds under Section 504.21

A plaintiff must make similar showings under the FHA.22 However, the FHA does not require a plaintiff to prove he or she is “otherwise qualified,” as required by the ADA and Section 504.23 After a plaintiff has established a prima facie case of discrimination, he or she may then propose reasonable modifications to the program to bring it into compliance with these laws; the burden then shifts to the defendant to implement those modifications, unless it can demonstrate that they would constitute a fundamental alteration of the policy or program at issue.

Each of these elements requires some elucidation.

**Defining “Disability”**

The ADA, Section 504, and the FHA do not single out specific cognitive or mental health disabilities, such as autism or schizophrenia, for protection against discrimination. Rather, these laws take an individualized approach to the definition of who has a disability. To that end, these laws define disability in generalized terms: a physical or mental impairment that substantially limits one or more major life activities.24

Under the ADA, as amended by the ADA Amendments Act of 2008 (ADAAA), major life activities include, but are not limited to, taking care of oneself, sleeping, speaking, learning, reading, concentrating, thinking, communicating, and working; further, functions of the brain are also included as a major bodily function that qualifies as a major life activity.25 Significantly, the ADAAA provides that the definition of disability “shall be construed in favor of broad coverage of individuals” to the maximum extent permitted by the statute.26

With this definition in mind, and Congress’ admonition to construe coverage broadly, it seems likely that myriad cognitive and mental health disabilities would qualify as “disabilities” under the ADA, Section 504, and the FHA. Indeed, the recently finalized Equal Employment Opportunity Commission (EEOC) regulations for the ADAAA state that autism, intellectual disability, major depressive disorder, bipolar disorder, post-traumatic stress disorder, and
schizophrenia all constitute impairments that presumptively substantially limit the major life activity of brain function.27

Even absent the EEOC regulations, however, numerous major life activities besides brain function may be implicated by these disabilities. For example, autism spectrum disorders, Down’s syndrome, and learning disabilities, depending on their severity, could substantially limit one’s ability to take care of him or herself, learn, read, concentrate, think, communicate or work. Similarly, bipolar disorder, depression, and schizophrenia could be framed as substantially limiting the major life activities of sleeping, concentrating, communicating, and working, depending on the facts of an individual case.

“Otherwise Qualified”

Assuming that a plaintiff with one of the cognitive or mental health disabilities described above has standing to bring a claim against a public housing authority (under the ADA and Section 504), the next issue becomes whether he or she is a “qualified individual with a disability.” A “qualified individual with a disability” is defined by Title II as:

an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal or architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.28

At first blush, it would seem that the eligibility criteria enumerated by HUD — income, familial status, citizenship, and criminal history — should suffice to prove eligibility for the voucher program.29 As explained above, however, numerous barriers within the voucher program render people with cognitive or mental health disabilities ineligible for benefits in the first instance, or subject to termination once in the program. Such barriers are arguably better framed as part of the discrimination/reasonable accommodation inquiry. “Many of the issues that arise in the ‘qualified’ analysis, also arise in the context of the ‘reasonable modifications’ or ‘undue burden’ analysis.”30 The Supreme Court has described this as “two sides of a single coin.”31
Exclusion from Participation or Denial of Benefits

The third requirement — that the plaintiff be excluded from participation or denied benefits in order to state a claim of discrimination — is typically the most contentious element of a plaintiff’s prima facie case. Although it is widely understood that one of the primary goals of Title II and Section 504 is to enhance access to public programs and services, universal definitions of “participation” and “denial of benefits” remain elusive. Instead, as explained below, in each case a court must undertake a fact-intensive inquiry to determine whether a plaintiff has been denied meaningful access by the public entity in question.

In *Alexander v. Choate*, the Supreme Court set forth a rubric for analyzing Section 504 claims of the sort contemplated herein. In that case, a class of Medicaid recipients alleged that Tennessee’s proposal to reduce the number of inpatient hospital days that state Medicaid would pay on behalf of Medicaid recipients violated Section 504. According to the plaintiffs, the proposed reduction of inpatient coverage from 20 to 14 days, while neutral on its face, disproportionately disadvantaged people with disabilities. The Supreme Court disagreed, however.

In rejecting the plaintiff’s claim of discrimination, the Court framed its Section 504 inquiry in terms of “meaningful access”: “[A]n otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers.” Applying that standard, the *Choate* court found that the proposed 14-day limitation did not deny the plaintiffs meaningful access to Tennessee Medicaid services, or exclude them from those services. Among other things, the Court noted that Tennessee’s program did not invoke criteria that had a particularly exclusionary effect on people with disabilities, nor did Tennessee deny coverage on the basis of any test, judgment, or trait that people with disabilities were less capable of meeting or less likely to have.

Significantly, the *Choate* court also rejected any suggestion that Tennessee was obligated to offer more than 14 days of coverage to people with disabilities:

> At base, such a suggestion must rest on the notion that that the benefit provided through state Medicaid programs is the amorphous objective of “adequate health care.” But Medicaid programs do not guarantee that each
recipient will receive that level of health care precisely tailored to his or her particular needs. Instead, the benefit provided through Medicaid is a particular package of health care services, such as 14 days of inpatient coverage. . . . Section 504 does not require the State to alter this definition of the benefit being offered simply to meet the reality that the handicapped have greater medical needs.38

Subsequent courts have elaborated on the Choate analysis. In American Council for the Blind v. Paulson, in which a class of plaintiffs alleged that the Treasury Department violated Section 504 by failing to issue paper currency that was readily distinguishable to people with visual impairments, the D.C. Circuit cited a “general pattern” in the meaningful access cases:

Where the plaintiffs identify an obstacle that impedes their access to a government program or benefit, they likely have established that they lack meaningful access to the program or benefit. By contrast, where the plaintiffs seek to expand the substantive scope of a program or benefit, they likely seek a fundamental alteration to the existing program or benefit and have not been denied meaningful access.39

Thus, the meaningful access cases fall along a continuum of sorts. At one end are cases in which plaintiffs complain about barriers to participation that are merely incidental to the program at issue; on the other end are cases in which plaintiffs seek to change the nature of the benefit or program.40 In every case, though, the parameters of the benefit or program in dispute are at the crux of the court’s analysis.

Accordingly, for a prospective plaintiff seeking to challenge the voucher program as discriminatory, a threshold issue involves defining the scope of the challenged benefit. In Liberty Resources, Inc. v. Philadelphia Housing Authority, a disability advocacy group alleged that Philadelphia’s voucher program discriminated against people with physical disabilities in violation of Title II as well as Section 504.41 The district court grappled with defining the scope of the benefit and services at issue. In that case, the plaintiff argued that the voucher program failed to provide enough accessible housing, and that it therefore denied people with physical disabilities meaningful access to the program and its benefits.

The plaintiff in Liberty Resources urged the court to define the scope of the benefit offered by the voucher program as providing affordable housing —
and, by extension, argued that because people with physical disabilities were being denied affordable housing, they were also being denied meaningful access to the voucher program. The court, however, refused to define the benefit so broadly (or, in the words of the Choate court, so amorphously), instead holding that the “benefits of the [voucher] program are a package of services that provide assistance to voucher holders in locating affordable housing.”

Among those services, the court held, were inspection of premises for compliance with quality standards, training for landlords, a service representative who may be contacted for questions, weekly landlord briefings, a list of known available units, monthly housing fairs, and various other services. Relying on this narrower, more specific definition of the benefit at issue, the court in Liberty Resources concluded that voucher holders with physical disabilities had “successfully accessed” the variety of services offered by the voucher program and granted the defendant’s motion for summary judgment.

Assuming, for the sake of argument, a similar definition of the benefits of the voucher program in the case of a plaintiff claiming discrimination arising from the barriers facing people with cognitive and mental health disabilities, the next question would be whether that plaintiff has been denied meaningful access to those benefits.

As noted above, barriers such as excessive documentation requirements, inflexible deadlines, redundant paperwork requirements for reasonable accommodations, and a lack of support, collectively, impede access for people with cognitive and mental health disabilities to numerous benefits of the voucher program. Although the specifics of such a claim would need to be teased out in substantial detail, it seems likely that a claim of this sort could be framed to meet the test set forth in Choate and its progeny, i.e. that these barriers to participation in the voucher program are incidental to the program and do not seek to change the nature of the voucher program.

Reasonable Modifications/Fundamental Alteration

Whether and how these obstacles could be accommodated within the framework of the existing bureaucracy of public housing authorities’ voucher programs remain to be seen. The regulations provide limited guidance on how to accommodate people with cognitive and mental health disabilities. Indeed, “Although Congress intended the term reasonable accommodation to provide
equality in all aspects of life for people with disabilities, it has been used primarily in the context of removing architectural barriers for people with physical disabilities.\textsuperscript{46}

Nonetheless, some more general regulations can be interpreted as providing such protections. For example, under Title II of the ADA, PHAs must provide methods of “effective communication” to voucher holders who have disabilities.\textsuperscript{47} In addition, the Section 504 regulations describing housing adjustments state that, “The [PHA] may not impose upon individuals with handicaps other policies, . . . , that have the effect of limiting the participation of tenants with handicaps in the [PHA’s] federally assisted housing program or activity in violation of this part.”\textsuperscript{48}

Moreover, guidance issued by the U.S. Department of Housing and Urban Development and the U.S. Department of Justice, two federal agencies that enforce the FHA, states that an apartment building that has a policy of requiring renters to pay their rent in person must accommodate a tenant with a mental health disability that makes her afraid to leave her unit by allowing a friend to mail her rent check.\textsuperscript{49}

Ideally, housing providers would offer voucher holders with cognitive and mental health disabilities a support person to assist with navigating through the voucher process.\textsuperscript{50} Extending deadlines is another reasonable accommodation.\textsuperscript{51} Other possible accommodations include providing note-takers at meetings or tape recording them, providing a scribe or reader to assist with written documents, and streamlining the voucher process.\textsuperscript{52} The process for requesting accommodations should also be centralized.

On the one hand, easing some of the administrative burdens and bureaucratic red tape described above seems like a modest change that would improve access for people with cognitive and mental health disabilities without substantively altering the benefits provided by the voucher program. On the other hand, a public housing authority could argue that the various requirements and deadlines are essential aspects of the voucher program, and that altering those protocols would be a fundamental alteration of the program.\textsuperscript{53} Needless to say, the reasonable modification aspect of any hypothetical case would be a fact-specific undertaking.
CONCLUSION

Although much of the legal authority relating to accessibility focuses on ramps and other physical accommodations, disability rights laws are more than merely building codes. Abundant precedent and regulatory authority support the provision of less obvious accommodations to less obvious disabilities. Within the context of the Housing Choice Voucher Program, this would include reasonable accommodations that eliminate barriers to participation faced by people with mental health and cognitive disabilities, such as unreasonable deadlines and abundant paperwork.

NOTES

1 The terms cognitive and mental health disabilities are used by the authors to incorporate the disabilities defined as “mental impairments” in the ADA, FHA, and Section 504.
5 24 C.F.R § 982.1.
6 42 U.S.C. § 1437f(o). The initial legislation providing low-income housing assistance was passed as section 8 of chapter 896 of the United States Housing Act of 1937, thus termed “Section 8.” 24 C.F.R. 982.2; 24 C.F.R § 982.1(a)(1).
7 Id. § 982.1(a)(4)(ii).
8 Id. § 982.1(a)(2).
9 Id. § 982.1(b)(2).
10 See generally, Michael Allen, Separate and Unequal: The Struggle of Tenants with Mental Illness to Maintain Housing at 3 (National Clearinghouse for Legal Services, Inc. 1996) (“... as long as MHAs [Mental Health Authorities] emphasize the administrative convenience of providing on-site mental health services, they will remain stuck on the group-home or congregate-living model, will not respond to consumer choice about housing, and will foster the kind of dependency in residents that undermines the goal of independent living.”).
11 See generally, Paul J. Carling, Housing and Supports for Persons with Mental Illness: Emerging Approaches to Research and Practice, 44 Hosp. & Community Psychiatry 439, 440 (1993) (“Historically, mental health agencies have viewed housing as a social welfare problem and have defined their role exclusively in terms of treatment. Public housing agencies, in turn, have contended that consumers need specialized residential programs and have viewed housing needs as a responsibility of mental health agencies. Thus housing needs have often been ignored.”).
12 42 U.S.C. § 1396n(c) (allows states to apply for a waiver of certain Medicaid requirements, that would otherwise require people to live in nursing homes or institutions, in order to provide long term care services in the community in their own home); Meghan K. Moore, Housing Issue: Note: Piecing the Puzzle Together: Post-Olmstead Community-Based Alternatives for Homeless People
with Severe Mental Illness, 16 Geo. J. Poverty Law & Pol’y 249, 265-266 (2009) (Assertive Community Treatment is a multi-disciplinary team of psychiatrists, nurses, social workers, and other rehabilitation specialists that works together to provide case management, medication management, counseling, assistance with shopping, cleaning, and other activities of daily living, and help with social skills.).


15 Id.

16 Id.


20 A case of employment discrimination against a public housing authority, in contrast, could be brought under Title I or Title II. See, e.g., Bd. of Tr. of the Univ. of Ala. v. Garrett, 531 U.S. 356 (2001).

21 Am. Council for the Blind v. Paulson, 525 F.3d 1256, 1266 (D.C. Cir. 2008). For the most part, claims under Title II of the ADA and Section 504 of the Rehabilitation Act are treated identically. See, e.g., id.at 1260 n.2 (“[T]he courts have tended to construe Section 504 in parimateria with Title II of the ADA” because the statutory provisions are similar in substance, and cases interpreting either are applicable and interchangeable.”) (internal citations and quotations omitted); Henrietta D. v. Bloomberg, 331 F.3d 261, 272 (2d Cir. 2003).

22 42 U.S.C. § 3604(f); Douglas v. Kriegsfeld Corp., 884 A.2d 1109, 1134-1135 (D.C. 2005) (“In Giebeler v. M & B Associates, 343 F.3d at 1148-1150, 1156-1157; the U.S. Court of Appeals for the Ninth Circuit considered both the burden of proof and the merits under ‘reasonable accommodation’ analysis applicable to the Fair Housing Act. The panel noted that courts construing that Act have drawn on case law interpreting the same requirement under the federal Rehabilitation Act (RA) and the Americans with Disabilities Act (ADA). The interpretive formulations under each, while conceivably differing in a way that could be outcome-determinative in some instances, are not significantly different from one another.”); Giebeler v. M&B Assocs., 343 F.3d 1143, 1147 (9th Cir. 2003) (To make out a claim of discrimination based on failure to reasonably accommodate, a plaintiff must demonstrate that (1) he has a disability as defined by the FHA; (2) defendants knew or reasonably should have known of the plaintiff’s disability; (3) accommodation of the disability “may be necessary” to afford plaintiff an equal opportunity to use and enjoy the dwelling; and (4) defendants refused to make such accommodation.); Colon-Jimenez v. GR Mgmt. Corp., 218 Fed. Appx. 2, 3 (1st Cir. P.R. 2007) (“In order to make out a prima facie case for failure to accommodate under the FHA, appellants bear the burden of establishing three things: that the requested accommodation is (1) reasonable and (2) necessary to (3) afford the handicapped person equal opportunity to use and enjoy the housing.”).


26 42 U.S.C. § 12102(4)(A). Congress added this provision, among others, in response to Supreme Court precedent that construed “substantially limits” and “major life activities” narrowly, thus impeding plaintiffs’ ability to bring suit under the ADA. See 42 U.S.C. §12101 note 2(a)(4) (“the holdings of the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect.”).

27 29 C.F.R. § 1630.2(j)(3)(iii) (“For example, applying the principles set forth in paragraphs (j)(1)(i) through (ix) of this section, it should easily be concluded that the following types of impairments will, at a minimum, substantially limit the major life activities indicated. . .”).


30 Andover Hous. Auth. v. Shkolnik, 443 Mass. 300, 311 (Mass. 2005) (“. . . many of the issues that arise in the ‘qualified’ analysis, also arise in the context of the ‘reasonable modifications’ or ‘undue burden’ analysis. That is, if more than reasonable modifications are required of an institution in order to accommodate an individual, then that individual is not qualified for the program. In the public housing context, a ‘qualified’ handicapped individual is one who could meet the authority’s eligibility requirements for occupancy and who could meet the conditions of a tenancy, with a reasonable accommodation or modification in the authority’s rules, policies, practices, or services.”).


32 Id.

33 Id. at 290-91.

34 Id.

35 Id. at 301.

36 Id. at 302.

37 Id. at 302.

38 Alexander v. Choate, 469 U.S. at 302.

39 Am. Council for the Blind, 525 F.3d at 1267 (emphasis added).

40 Id.; see also Dopico v. Goldschmidt, 687 F.2d 644, 653 (2d Cir. 1982).


42 Alexander v. Choate, 469 U.S. at 302.

43 Id. at 568.

44 Id.; see also Taylor v. Hous. Auth. of New Haven, 267 F.R.D. 36, 58 (D.Conn. 2010) (defining benefits of the HCV program as provision of a voucher, monthly assistance payments, and, upon request, assistance in negotiating a reasonable rent).

45 See generally, 24 C.F.R. § 8.28, the Section 504 regulations for the Housing Choice Voucher program, in which four of the six subsections focus on physical accessibility for those with mobility disabilities. The FHA regulations pursuant to 24 C.F.R. § 100.204(b) only provide two examples of reasonable accommodations: allowing service animals and reserved parking spaces. The ADA Title I regulations at 29 C.F.R. § 1630.2(o)(2)(ii) provide that: “Reasonable accommodation may include but is not limited to: (i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifi-
cations of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.” Section 504 regulations regarding employment, 24 C.F.R. § 8.11(b), provide similar examples. ADA Title II regulation 23 C.F.R. § 35.104 states that “[q]ualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators” and an example of tasks performed by service animals includes “helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors,” but do not include, “the provision of emotional support, well-being, comfort, or companionship.” However, the FHA allows for emotional support animals. U.S. v. Kenna Homes Coop. Corp., Civ. Action No. 2:04-0783 (S.D. W. Va. 2004), available at http://www.justice.gov/crt/housing/documents/kennasettle.php; Bronk v. Ineichen, 54 F.3d 425, 43 (7th Cir. Wis. 1995).


47 28 C.F.R. § 35.160.

48 24 C.F.R. § 8.33


50 Vance v. Hous. Opportunities Comm’n, 332 F.Supp.2d 832, at 837, 843 (D. Md. 2004) (Holding that the plaintiff, who had a mental health disability, had a Due Process right to be provided guidance on how to contact a legal aid lawyer and allowing that lawyer to attend an informal hearing regarding termination from a subsidized housing program. The court did not decide on the plaintiff’s request for a non-attorney support person to assist him at the hearing.).

51 24 C.F.R. § 8.28(4) (“[PHAs] shall take into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with handicaps for extensions of Housing Certificates or Housing Vouchers.”); See generally Douglas v. Kriegsfeld Corp. 884 A.2d 1109, 1127 (D. C. 2005) (landlord providing a voucher holder with extension of time to comply with housekeeping requirements is a reasonable accommodation under the FHA); McGary v. City of Portland, 386 F.3d 1259 (9th Cir. 2004) (extension of time to clean yard reasonable accommodation under the ADA and FHA); Anast v. Commonwealth Apartments, 956 F. Supp. 792, 801 (N.D. Ill. 1997) (finding that an individual with a mental health disability should have been granted an extension of time before eviction proceedings should be initiated even after judgment of possession entered); but see Russell v. Cooley Dickinson Hosp., Inc., 437 Mass. 443, 455-456, 772 N.E.2d 1054 (2002) (indefinite requests for time extensions may be deemed unreasonable).

52 28 C.F.R. § 35.160; 24 C.F.R. § 8.28(1) (“[PHAs] shall in providing notice of the availability and nature of housing assistance for low-income families under program requirements, adopt suitable means to assure that the notice reaches eligible individuals with handicaps.”); 24 C.F.R. § 8.11(b)(2) & 29 C.F.R. § 1630.2(o)(2)(ii) (reasonable accommodation may include the provision of readers or interpreters and other similar actions); Technical Assistance Collaborative, Section 8 Made Simple, 2d ed. (2003) at 57, available at http://www.tacinc.org/downloads/Sect8_2ndEd.pdf (“As a reasonable accommodation, people with disabilities can request changes in PHA recertification policies, such as: allowing more time for the recertification process, including rescheduling appointments; providing home visits to conduct recertifications; etc.”).

53 See generally Alexander v. Choate, 469 U.S. at 287
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