The 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

(Charity begins at home, and justice begins next door.)
- Charles Dickens

Like him or not, read him or not, few writers — few people, rather — have changed the world as dramatically as Charles Dickens. At a time when adventurous Britons were planting their flag in the soil of nations all across the world, and nearly-as-adventurous writers were beginning to chronicle these grand exploits abroad, Dickens spent a lifetime writing about home. He wrote of exceedingly English characters doing exceedingly English things in exceedingly English places.

In this, he was able to write his novels and stories in a way that reflected English life back to English people, much like a mirror, showing all of its faults and trivialities. While other writers introduced a generation of Londoners to exotic life in Burma and Cathay and the Congo, Dickens introduced that same generation of Londoners to themselves — and to their own London. Many did not like what they saw.

Nevertheless, as a result of his effort in drawing attention to critical social issues at home, Dickens was able to help put an end to worker exploitation, the imprisonment of debtors and the growing power of slumlords and criminal enterprises in the poorest parts of London. What is more, without his social commentary and literary advocacy for the poor, there would have likely been no Upton Sinclair to write about the same exploitation of the poor in the United States, and in Chicago specifically.

At the Public Interest Law Reporter, we would not be doing what we do if we did not believe that writing can change the world. Humbly tracing our own heritage to this great literary tradition of seeking to spur social change through the power of words, we offer this issue as an introspective on our country, region, state and city. We sincerely hope that you too will not like what you see — but will go change it.

Gratefully,

Justin McDevitt
Editor in Chief
WITH CHARTER SCHOOL POPULARITY ON THE RISE, ILLINOIS TAKES STEPS TO ENSURE CHARTER SCHOOLS ARE OPEN TO ALL

by Lynsey Stewart

Although charter schools in Illinois serve just fewer than 50,000 students, there are more than 19,000 applicants currently on waiting lists for charter schools in Chicago alone, demonstrating their abundant popularity. With charter schools among the fastest growing segments in K-12 education, ensuring that all students have equal access to these innovative schools has become increasingly important.
Charter schools are public schools governed by an independent board of directors that come into existence through a contract, or charter, with an authorized public chartering agency. Each charter school has complete autonomy over its educational plan and operations, provided that the school adheres to the terms and conditions of the approved charter agreement.

Key components of the charter school's education plan, such as curriculum, staff, length of school day and year, professional development and "seat time" are left to the discretion of the charter school. In this way, charter schools serve as a testing ground for innovative educational approaches that address the unique needs of students who may not succeed in a conventional educational environment. There is concern, however, that students with special needs are not benefitting from states' substantial investment in charter schools.

**Underrepresentation of Special Needs Students in Charter Schools**

To partially address this fear, the Southern Poverty Law Center is suing the Louisiana Department of Education on behalf of thousands of disabled students in New Orleans who, according to the complaint, have been completely denied enrollment and forced to attend schools lacking the resources necessary to serve them.
Additionally, in May 2011, the Bazelon Center, a nonprofit legal advocacy group, filed a complaint with the U.S. Department of Justice claiming that some of Washington, D.C.'s charter schools openly discourage parents from enrolling disabled children, especially those with the most significant needs.\textsuperscript{5} Statistics in Bazelon's complaint reveal that while 18 percent of the city's traditional public school population receives special education services, only 11 percent of the charter population is comprised of special education students, and this gap only grows as the students' needs become more severe.\textsuperscript{10}

The underrepresentation of students with disabilities in charter schools is not limited to Washington, D.C., however. Charter schools in Illinois also typically serve a smaller proportion of special needs students than the school district in which the charter is located.\textsuperscript{11} For instance, in the 2010-2011 school year, 13.1 percent of students in Chicago Public Schools were students with disabilities, compared to 11.8 percent of students in charter schools.\textsuperscript{12}

However, when these numbers are broken down according to the severity of the disability and the amount of services required, charter schools in Illinois are serving roughly half as many students with severe disability classifications than traditional public schools.\textsuperscript{13} Furthermore, in the category of students requiring the most services, the proportion of disabled students receiving these services in public schools is more than 5 times greater than the number of students receiving services in charter schools.\textsuperscript{14}

**Charter Schools and the Law**

While there is no definitive evidence as to why many charter schools serve so few students with disabilities, there is some anecdotal evidence that the parents of children with special needs are often discouraged from applying for admission, and that some students with complex needs are counseled back to traditional public schools.\textsuperscript{15} There are also reports that some charter schools simply do not provide comprehensive special education services, which would be a violation of federal law.\textsuperscript{16}

While state charter laws enable charter schools to create educational models and practices free from local and state regulations, these statutes cannot grant exemptions from any federal special education or federal disability laws.\textsuperscript{17} These federal mandates include Section 504 of the Rehabilitation Act of 1973,
Title II of the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA).\textsuperscript{18}

Under IDEA, charter schools are required to provide the same supplemental services as all public schools.\textsuperscript{19} Charter schools must also satisfy the requirement to educate children with disabilities in the same classes as children without disabilities to the maximum extent appropriate.\textsuperscript{20} Accordingly, it is illegal for charter schools to direct children with disabilities who are difficult or costly to serve away from charter schools and toward traditional public schools, or for charter schools to fail to provide adequate services to children with disabilities.\textsuperscript{21}

**Planning Ahead: Safeguarding School Choice for Disabled Students in Illinois**

Avoiding disability discrimination means ensuring parents of children with disabilities have the same choices of either charter or non-charter schooling that parents of other children enjoy.\textsuperscript{22} For Hillary Coustan, Associate Director of the ChildLaw and Education Institute at Loyola University Chicago School of Law, it begins with the application to open a charter school.\textsuperscript{23} “Charter schools should have IDEA in mind from the front end,” said Coustan.\textsuperscript{24}

“Special education needs to be a more integral part of the charter application process,” remarked Coustan.\textsuperscript{25} “It comes down to planning and training, and these things have to happen before the doors open.”\textsuperscript{26}

The Illinois State Board of Education (ISBE) agrees with Coustan, and in November 2011, ISBE promulgated the Special Education Services and Implementation Rubric required for approval of new charter school applications as well as renewal applications for existing charter schools.\textsuperscript{27} The rubric compels charter schools to identify the procedures and practices they will use to ensure the successful implementation of services to disabled youth.\textsuperscript{28}

Thus, in the future, charter proposals must demonstrate that the school will comply in all material respects with state and federal special education laws as a condition of approval and certification, and that the charter school will not discriminate on the basis of need for special education services.\textsuperscript{29}
Constan believes that by implementing the new rubric requirements, ISBE has taken a big step toward ensuring that disabled students in Illinois have equal access to charter schools. Constan remarked, “Charter schools are going to have to think about special education services and IDEA from the front end. It's going to make a big difference.”

NOTES

2 Kevin Booker, Brian Gill & Tim R. Sass, ACHIEVEMENT AND ATTAINMENT IN CHICAGO CHARTER SCHOOLS 1 (RAND Education 2009), available at http://www.rand.org/pubs/technical_reports/2009/RAND_TR585-1.pdf (Nationally, more than 4,000 charter schools have been established since the 1990s, and they serve more than 1 million students; but see Thomas Hefir, Charters: Students with Disabilities Need Not Apply, EDUC. WEEK, Jan. 26, 2010, available at http://www.edweek.org/eov/articles/2010/01/27/19hefir_ep.h29.html?tkn=QQNCGAY9%2Bi0179%2Bu4uwLxiofY%2BAwDdbAhU.
3 ILL. STATE BD. OF EDUC., supra note 1, at 2.
4 Id.
5 Id.
6 Id.
10 Id.
11 ILL. STATE BD. OF EDUC., supra note 1, at 20.
12 Id.
14 Id.
15 Hefir, supra note 2.
16 Id.
18 Id. at 155.
20 Id.
22 Id.
23 Interview with Hillary Coustan, Associate Director, ChildLaw and Education Institute at Loyola Univ. Chi. Sch. of Law (Mar. 14, 2012).
24 Id.
25 Id.
26 Id.
28 Id. at 2.
29 Id. at 1-2.
30 Coustan, supra note 23.
31 Id.
FEATURE ARTICLE

THE BROKEN SAFETY NET: HOW THE PROPOSED RISE OUT OF POVERTY ACT MAY PATCH IT UP

by Lindsey C. Johnson

Since 1996, the year Congress initiated the Temporary Aid for Needy Families (TANF) program, the number of children in families living below the poverty line that actually receive welfare has decreased by more than half. Despite a growing need, data indicate that fewer and fewer children in need of assistance have received welfare benefits each year since the passing of TANF.
Although this problem has steadily been building since TANF’s inception, the economic recession that began in 2008 has only exacerbated the situation.\(^5\)

In light of this growing problem, a legislative solution is needed to address the shortcomings of the welfare system in general and TANF in particular. One such proposed solution, the Rewriting to Improve and Secure an Exit (RISE) Out of Poverty Act was introduced in Congress on Dec. 6, 2011, to address this and other problems.\(^4\)

LEGISLATIVE SOLUTION AIMS TO MEND TANF’S HOLES

In 1996, with support from a Republican-controlled Congress, President Bill Clinton signed TANF’s authorizing act into law in an effort to “end welfare as we know it.”\(^5\) The creation of TANF, as part of the Personal Responsibility and Work Reconciliation Act of 1996, ended 61 years of welfare as an entitlement program.\(^6,7\)

The previous program, Aid to Families with Dependent Children, which was passed as part of the New Deal, had no time limits and provided cash assistance to 80 percent of poor families that qualified for assistance in the 1980s and early 1990s.\(^8\) TANF drastically reduced this percentage and, as of 2005, only 40 percent of eligible families received cash assistance.\(^9\) This decline, by approximately half, was due in part to the stringent eligibility and work requirements of the new program.\(^10\)

As more and more Americans today slip deeper into poverty, many wonder how to fix the growing tear in the welfare safety net. Proponents of the RISE Out of Poverty Act say that it has several provisions to remedy the parts of TANF that inadequately address the needs of those in poverty. Democratic Congresswoman Gwen Moore introduced the RISE Out of Poverty Act not only to reauthorize TANF, but to amend it.\(^11\)

One amendment would render the 60-month time limit that TANF imposes on recipients inapplicable during a recession.\(^12,13\) Further, it would prohibit states from imposing a time limit of less than 60 months on any recipient family, as states now have the ability to do under TANF.\(^14\) By eliminating this time limit during times of high unemployment, TANF would have the ability to be the safety net that it was originally intended to be.
Beyond amendments to the 60-month time limit, the RISE Out of Poverty Act also seeks to amend the stated goals of TANF. Currently, these goals do not mention poverty reduction. The RISE Out of Poverty Act would change the first goal simply to “reduce poverty among children.” This straightforward goal may help to redirect focus away from welfare’s negative stereotypes to what is really important: providing financial assistance to families with children.

FURTHER FIXES TO TANF

The RISE Out of Poverty Act also proposes that the work requirements outlined in the TANF program be substantially changed. For example, the RISE Act seeks to eliminate the caseload reduction credit. Currently, to avoid a financial penalty, states must achieve a minimum participation rate in TANF-mandated work programs. The caseload reduction credit reduces a state’s required work participation rate if the state decreased its caseload from the previous year.

This caseload reduction credit, in practice, incentivizes states to reduce caseloads by cutting individuals who are most difficult to serve in order to avoid financial penalties. Additionally, the proposed changes would strike TANF’s present 12-month limit on vocational educational training in favor of an indefinite time period. By providing extended opportunities for education, the RISE Act would be making an effort to meet one of TANF’s stated goals: to end dependence on government assistance by promoting job preparation.

Moreover, the RISE Out of Poverty Act aims to amend TANF’s general childcare entitlement, which currently provides a fixed amount of money to states to use toward childcare. The RISE Act would create mandatory childcare as an open-ended matching grant, rather than a capped entitlement as is now in place, which ultimately could provide more funds to pay for childcare if those funds were needed.

Beyond the funding of the childcare entitlement, the RISE Out of Poverty Act would guarantee childcare to TANF “work-eligible” families that are participating in work activities, TANF-funded subsidized employment or are employed with a total income of less than 250 percent of the poverty line.
could provide a substantial improvement in the support needed for parents to get back to work.

SAVING THE HEART OF TANF

Although the previously discussed amendments are important, one of the most pressing issues with TANF is that it is decreasingly able to provide sufficient assistance for families to meet their basic needs, let alone pull families out of poverty. Currently, a family of three receiving the maximum TANF benefit levels will still find themselves at or below 50 percent of the federal poverty line in all states.27

The RISE Act seeks to improve these dire benefit levels by requiring states to calculate, and include in their TANF plans, a family budget that would cover basic needs.28 Each state's plan must describe the relationship between the amount of benefits provided to each family and the calculated amount of the family budget.29 If a state fails to provide benefits at the level required to meet the basic needs for their location, its TANF block grant, which it receives from the federal government, will be reduced by 5 percent.30 This penalty provides an incentive for states to provide adequate benefit levels.

The RISE Out of Poverty Act would also amend the TANF block grants, distributed from the federal government to the states, to be annually indexed for inflation.31 Furthermore, under the RISE Act, child population growth would be factored into each state's grant.32 These amendments would provide increased federal funding that could help states better serve poor families by, among other changes, increasing benefit levels to meet families' basic needs.

However, one large obstacle to change remains. In the current political climate, Liz Schott, senior fellow at the Center on Budget and Policy Priorities, says the Act "is not a vehicle that is likely to move – but that doesn't mean it's not important."33 Schott goes on to say, "[The RISE Act] is both too big and not big enough. There are some things in it that for political or other budgetary reasons have no chance of passing in the current Congress, but [the Act] could be a vehicle for framing future reauthorization discussions."34

Without any change in the law, however, Schott sees the future of the program as a "dwindling pot of money being used for a lot more things and it is going
to continue to diminish in its capacity to provide either work support or a safety net for the neediest families."

In the event that the political climate remains the same and the RISE Out of Poverty Act does not pass, the Act could still provide the blueprint for future amendments to TANF that will provide much needed improvements to the standard of living for America’s growing population living in poverty.

NOTES

2 Id.
7 An entitlement program is defined generally as the granting of government assistance to individuals as mandated by law or by need. Recipients of such assistance may be entitled to it by virtue of their status, without otherwise having to qualify for it. See generally “Entitlement,” http://www.britannica.com/E2BcheckedTopic/1556409/entitlement.
9 Id.
10 Id.
12 Id.
13 A state would be considered to be in a recession when the state’s unemployment rates are higher than 6.5%. See RISE Out of Poverty Act, supra note 11.
14 Id.
15 Id.
16 These goals currently include: "(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families." 42 U.S.C. § 601.
17 RISE Out of Poverty Act, supra note 11.
18 Id.
22. RISE Out of Poverty Act, supra note 11.
24. A matching grant requires partial state funding with matching federal funding. An open-ended matching grant means there is no limit on the matching funds from the federal government. Therefore, a state can invest as much as it wants in a program, and that amount is guaranteed to be matched by the federal government.
26. RISE Out of Poverty Act, supra note 11.
28. RISE Out of Poverty Act, supra note 11. Basic needs would include food, clothing, shelter, utilities, household goods, personal care items and incidental expenses.
29. Id. Included in this calculation will be all earned and unearned income and the value of the state’s Supplemental Nutrition Assistance Program (SNAP) benefits.
30. Id.
31. Id. The program would be indexed for inflation based on the Consumer Price Index for all Urban Consumers. The inflation adjustment would compare prices over the 12-month period ending in June of the prior fiscal year with the 12-month period ending in June of 1996.
32. Id. Child population growth would be measured by the U.S. Census Bureau.
33. Telephone interview with Liz Schott, Senior Fellow, Ctr. on Budget & Policy Priorities (Apr. 3, 2012).
34. Id.
35. Id.
THE ILLINOIS EAVESDROPPING STATUTE: CONSTITUTIONAL RIGHTS VERSUS FELONY CHARGES

by Corinne Koopman

In July 2010, Chicago police responded to reports of domestic violence at the home of Tiawanda Moore.1 The investigation took an unthinkable turn when, according to Moore, an officer groped her breast and gave her his phone number.2 In response to this incident, Moore attempted to file a complaint with the Chicago Police Department.3 However, officers there tried to dissuade her from reporting the incident.4

At that moment, Moore hit the "record" button on her Blackberry.5
When the police discovered that Moore was recording them, they arrested her and kept her in jail for two weeks. Though a victim of sexual assault, Illinois law dictates that Moore is a criminal.

THE ILLINOIS EAVESDROPPING STATUTE: STATEWIDE PROBLEMS AND CHALLENGES

Along with Oregon and Massachusetts, Illinois has the strictest eavesdropping laws in the nation. According to the Illinois Eavesdropping Statute ("the Statute"), eavesdropping on a conversation "between any law enforcement officer...while in the performance of his or her official duties...is a Class 1 Felony," punishable by up to 15 years in prison.

A jury ultimately acquitted Moore. With such a harsh statute in place, however, cases like Moore’s are somewhat commonplace throughout the state.

For example, Chicago artist Christopher Drew was arrested in 2009 for selling art on the street without a permit. Drew was ultimately charged with eavesdropping after he recorded his arrest with a recording device in his pocket.

And in Crawford County, Michael Allison was arrested for bringing a recording device to his trial for other charges. The judge invoked the Statute and had him arrested him for “violating her privacy.” Allison faced five counts of eavesdropping after recordings of his initial arrest were also found on the device.

Likewise, Tyrone Gillet began recording a video when he and a friend saw officers arresting another individual. The police politely asked his friend, who is white, to stop recording, while they assaulted Gillet, who is black. Gillet is now suing the City of Chicago, seeking to introduce his video as evidence, despite the fact that the Statute makes the recording illegal.

SUPPORT FOR THE STATUTE

Despite some degree of outrage regarding these cases, there is still support for the Statute, rooted chiefly in the right to privacy. In a hearing before the Seventh Circuit Court of Appeals, Judge Richard Posner articulated these con-
cerns about eavesdropping on police, stating, "Yes, it's a bad thing. There is such a thing as privacy."¹⁹

Some police officers also believe the law allows them to do their job safely and effectively. "Someone coming up shoving a camera in your face... I can see how that would endanger lives," says Sheriff Bennie Vick of Williamson County, Illinois.²⁰ In spite of this support, others present numerous reasons why it should be repealed.

**Challenges to the Law**

The American Civil Liberties Union ("ACLU") of Illinois has challenged the law, filing a suit against Cook County State's Attorney Anita Alvarez.²¹ The ACLU claims that the law unconstitutionally burdens the First Amendment right to gather, receive and record information.²² Further, the ACLU asserts that the Statute does not advance privacy interests or the interests of law enforcement enough to warrant a violation of First Amendment rights.²³

Beyond First Amendment issues, the Statute faces other challenges. Joshua Kutnick, the attorney for Christopher Drew, argues that the Statute could also criminalize innocent conduct.²⁴ Kutnick provides the example of a lost motorist who asks an officer for directions and records the conversation.²⁵ Despite innocent intention, this motorist has committed a Class I Felony.²⁶

**Curbing Police Misconduct**

Perhaps the most compelling reason for repeal of the Statute is that it may place a critical check on police misconduct. Torrey Hamilton, Tyrone Gillet's attorney, suggests that Illinois residents need to have the option to "police the police" and document any potentially insidious motives for how the police treat citizens.²⁷

Flint Taylor, an attorney instrumental in the conviction of Chicago police torture ringleader Officer Jon Burge, agrees.²⁸ Taylor cites the fact that cameras mounted on squad cars already videotape officers and have been helpful in catching assaults on everyday citizens.²⁹ According to Taylor, audio recordings would further hold officers accountable for their actions and prevent future abuse.³⁰
LOCAL OPINION CALLS FOR CHANGE

Anecdotal evidence indicates that the people of Illinois may want the Statute repealed. One of the jurors that acquitted Tiawanda Moore called the trial "a waste of time."31 The jurors added, "If what those two investigators were doing wasn’t criminal, we felt it bordered on the criminal, and she had a right to record it."32

Even Chicago Police Superintendent Garry McCarthy suggests that the Statute should be repealed.33 McCarthy states that the Statute "obstruct[s] transparency," creating an unclear account of events by prohibiting audio recording.34 McCarthy also suggests that allowing recordings would help benefit the police by preventing police brutality suits with concrete recordings of good police conduct.35

WHAT COMES NEXT?

In March 2012, House Bill 3944, which would have made it illegal to record police in public, failed its third reading in the Illinois House of Representatives, essentially "killing" the bill.36 Despite this failure in the House, the Illinois Eavesdropping Statute may still be on its last leg.37

Mere weeks after this bill failed, Chicago corporate legal counsel announced that police would not enforce the Statute during the May 2012 NATO summit taking place in the city.38 This is considered the city’s first acknowledgment of the “potential legal pitfalls” of trying to prevent recordings of police conduct and is viewed as a “blow” to the Statute.39

Moreover, in the weeks and months preceding the publication of this article, two state judges found the Statute unconstitutional. A Crawford County judge in the case of Michael Allison found that the Statute violated the First Amendment, as well as the Due Process Clause.40 The judge then added, "A statute intended to prevent unwarranted intrusions into a citizen’s privacy cannot be used as a shield for public officials who cannot assert a comparable right of privacy in their public duties."41

In the case of Christopher Drew, Cook County Judge Stanley Stacks ruled that the Statute is too broad and criminalizes "wholly innocent conduct."42
According to the ACLU, these decisions have given those opposing the Statute momentum, but total clarity on the issue remains elusive.43

In early May 2012, the Seventh Circuit Court of Appeals issued its ruling in the case of ACLU v. Alvarez, finding that the Illinois Eavesdropping Statute "likely violates" the First Amendment, and issuing a preliminary injunction banning enforcement of the Statute.44 The Court found State's Attorney Alvarez's argument for privacy concerns unconvincing, holding that privacy interests are not implicated when police officers perform their duties in public.45

As of the publication of this article, there is no word on plans to appeal the ruling. For now, only time will tell how this battle between constitutional rights and felony charges plays out.

NOTES

2 Id.
3 Id.
4 Id.
5 Id.
9 720 ILCS 5/14-4 (1961); Tiawana Moore, supra note 1.
10 Tiawana Moore, supra note 1.
12 Id.
14 Id.
15 Id.

17 Id.

18 Id.

19 Berg, supra note 13.


22 Id. at 2.

23 Id. at 8.


25 Id.

26 Id.

27 Tyrone Gilles, supra note 16.

28 Interview with Flint Taylor, Founding Partner, People’s Law Office, in Chi., Ill. (Mar. 16, 2012).

29 Id.

30 Id.

31 Tiawan Moore, supra note 1.

32 Id.


34 Id.

35 Meiner, supra note 11.


37 Id.


39 Id.

40 Berg, supra note 13.

41 Id.

42 Meiner, supra note 11.

43 Id.


45 Id.
HOW THE PURSUIT OF THE AMERICAN DREAM TURNED INTO CHICAGO’S HOUSING NIGHTMARE

by Laughlin Cutler

In 2006, a web of questionable lending practices came to light following the end of a housing boom.\(^1\) As mortgage rates increased, more borrowers defaulted on their loans, sending home values plummeting and driving even more homes into foreclosure.\(^2\) Since that shift began, nearly 100,000 homes in Chicago have gone into foreclosure.\(^3\) The Chicago rental market has also suffered, with foreclosures affecting almost 81,000 apartment units since 2008.\(^4\)
In the wake of scrutiny by Congress, courts and various administrative agencies, many banks put their foreclosure procedures on hold. Now, following a settlement with five major lending banks, foreclosures have surged again in many major markets, including Chicago. The government is now addressing ways to combat this housing nightmare and restore the American dream of home ownership. Unfortunately, it may be several years until this lofty goal is realized.

**The $26 Billion Settlement**

In late 2010, evidence emerged that some foreclosure proceedings had been improper. Among other practices, banks were signing off on foreclosures without first verifying the documentation. This led to charges against several large banks for negligent foreclosure servicing practices. After 16 months of negotiating, 49 states, numerous federal agencies and the five largest bank servicers—Bank of America, Wells Fargo, J P Morgan Chase, Citigroup and Ally Financial—reached a settlement of $26 billion.

As part of this settlement, Illinois Attorney General Lisa Madigan advocated for as many as one million homeowners to see a reduction in their mortgage principal. A $17 billion portion of the settlement will be used to reduce the principal on loans over the next three years. Another $3 billion will go towards refinancing for qualified borrowers.

In addition, those who were improperly foreclosed upon will receive close to $2,000 each, reflecting compensation for improperly-charged fees and delayed processing times. However, if a homeowner suffered more than several thousand dollars in damage—such as the loss of a home—these homeowners can still go to court and seek full compensation from the banks.

According to Michael Nixon, a policy advisor to U.S. Housing and Urban Development (HUD) Secretary Shaun Donovan, the deal is meant to soften the financial blow to homeowners as much as possible. In addition, the standards and procedures set forth in the settlement deal reflect the current reigning authority on mortgage servicing standards, which Nixon believes will eventually become published regulation. For its part, the Obama Administration’s goal is to make sure that people have every opportunity to stay in their homes.
THE CHICAGO FORECLOSURE LANDSCAPE

The Chicago housing market is particularly fragile, burdened by a high number of distressed properties, foreclosed homes and short sales.\(^{20}\) For example, in February 2012, foreclosure notices in the Chicago area totaled 11,582: a 42 percent increase over 2011.\(^{21}\) During roughly that same period, Illinois as a whole reached a 15-month high, with home auctions up by 141 percent over the previous year.\(^{22}\) This is all evidence of the reactivated wave of foreclosures.

As a result, the “shadow inventory” of homes in foreclosure presents a huge concern for the stability of the Chicago housing market.\(^{23}\) Due to a substantial backlog, the average foreclosure process in Illinois takes 575 days, nearly 8 months longer than the national average, which often creates an excruciatingly slow process for families in financial straits.\(^{24}\)

A further concern for Chicago, again echoed nationwide, is increasing rental rates, which showed an annual increase of more than 9 percent.\(^{25}\) This is particularly disturbing because as home-ownership becomes more difficult to attain financially, the demand for rental properties will likely increase.\(^{26}\) All of these factors combined have created a “perfect storm” of an unfavorable housing market in the Chicago area.
MOVING FORWARD: MITIGATING THE CRISIS

In the midst of this storm, the need to stabilize Chicago's housing market is great. Fortunately, several government agencies and public interest groups are stepping in to help mitigate the financial burdens facing many Chicagoans.

First, under a program spearheaded by Fannie Mae, the government-sponsored mortgage finance company, qualified investors are able to convert foreclosures to rental properties, keeping critical units out of limbo and on the market.27 Chicago is one of the first cities to participate in this scheme, with 99 properties (comprising of 120 units) sold to private investors.28 As part of the program, these investors agree to assume any current leases in the properties and must continue to rent out the units for a specified number of years.29

In addition, local nonprofit organizations, namely the Community Investment Corporation and the Building Blocks Pilot Program, are working to convert vacant or foreclosed homes to prevent economic blight in Chicago neighborhoods.30

In addition, since 2009, the City of Chicago has received $169 million from the federal government under the Neighborhood Stabilization Program.31 This program is designed to help neighborhoods recover from the housing crisis, and has proved successful in turning around foreclosed-upon Chicago buildings.32 With this funding, the city is able to purchase buildings in foreclosure and create apartments for low- and moderate-income tenants.33 Focusing on rental apartments that average people can afford acts as a way to restore balance to the housing market.34

Furthermore, individuals can strategically participate as investors in the rental market by using retirement funds instead of cash or financing.35 With a self-directed Individual Retirement Account (IRA), an individual can invest retirement funds in rental properties as long as the property is used solely for investment purposes and the investor does not personally occupy the home.36 There is also a federal tax exemption in place for debt forgiveness that allows taxpayers to benefit fully from debt forgiveness.37

Additionally, private consulting companies are working to review foreclosures and evaluate potential modification plans to many of them.38 If any issues arise
in the foreclosure review, individuals are able to file suit against the lender, regardless of whether it is one of the five banks involved in the aforementioned settlement.39 The government, too, is working with individual homeowners to provide modification programs.40 An affordable modification program may be obtained after providing an affidavit of hardship, at which point the government provides a borrower with a trial plan for repayment and helps the borrower determine a permanent modification plan.41

Though several major obstacles still exist, it is evident that Chicago is taking steps to repair the damage of the mortgage crisis and restore public confidence that the American dream is worth pursuing.

NOTES

2 Id.
4 Id.
7 Interview with Michael Nixom, Policy Advisor to the U.S. Dept’ of Hous. and Urban Dev. Sec’y (Mar. 16, 2012).
8 Foreclosures, supra note 1.
9 Id.
11 Id.
12 Id.
14 Id.
15 Id.
17 Nixon, supra note 7.
18 Id.
19 Id.
22 Podmolik, supra note 6.
23 Podmolik, supra note 20.
24 Podmolik, supra note 21.
29 Id.
31 Gross, supra note 3.
32 Id.
33 Id.
34 Id.
35 Olick, supra note 30.
36 Id.
39 Nixon, supra note 7.
40 Anonymous, supra note 38.
41 Id.
FEATURE ARTICLE

UNANSWERED QUESTIONS: TRANSSEXUAL PARENTS LACK EQUALITY UNDER THE ILLINOIS RELIGIOUS FREEDOM PROTECTION AND CIVIL UNION ACT

by Brittany Francois

Marriage equality continues to be a highly debated issue in America, gaining nationwide attention, as several more states voted to recognize same-sex marriages. So where does Illinois stand in the matter?
Though Illinois still does not recognize same-sex marriage, it has taken steps to recognize same-sex relationships with the Illinois Religious Freedom Protection and Civil Union Act ("Civil Union Act"). The Civil Union Act, which went a long way toward allowing same-sex couples many of the same legal rights as married couples, "was widely seen by LGBT advocates to be an important political victory."

**Defining Marriage**

The Civil Union Act has also fallen short of its goals in many ways. Bernard Cherkasov, CEO of the LGBT advocacy group Equality Illinois, stated that the Civil Union Act "has already proven to have substantial weaknesses." The Civil Union Act's failures are especially apparent when considering how it affects transsexual Illinoisans.

In 1996, Congress passed the federal Defense of Marriage Act (DOMA). Section 3 of DOMA defines "marriage" as a "legal union between one man and one woman as husband and wife." It also defines "spouse" as "a person of the opposite sex who is a husband or a wife."

A majority of states, including Illinois, define marriage similarly. For its part, Illinois refers to marriage as a relationship "between a man and woman." In fact, the Illinois Marriage and Dissolution of Marriage Act (IMDFA) goes even further when it states that "a marriage between 2 individuals of the same sex is contrary to public policy."

**Same-Sex Marriage in Illinois Courts**

In *In Re Marriage of Simmons*, a case of first impression in 2005, Illinois courts determined how state marriage laws applied to transsexuals. The petitioner, a transsexual male, and respondent, his female wife, were married and issued a marriage certificate. After some time, the couple decided to have a child through artificial insemination. The petitioner later filed for dissolution of the marriage and custody of their child.

The Illinois Appellate Court ruled the marriage an invalid same-sex marriage by law. Although the petitioner had taken considerable steps to be recognized as male, the court found the marriage invalid and held that the peti-
tioner lacked standing under the Parentage Act of 1984 to seek custody of his child.\(^{18}\) The rationale, like in many other cases, was that sexuality is determined by genitalia, not preference.\(^{19}\) Most courts rely on Corbett v. Corbett, a 1970 British case that introduced the “true sex” model of sexuality for the purposes of marriage.\(^{20}\) Under this model, each party has a “true sex” of either male or female.\(^{21}\)

*Simmons* exemplifies a primary problem faced by transsexuals, which remains unanswered by the Civil Union Act. The Civil Union Act states that its purpose is to “provide adequate procedures for the certification and registration of a civil union (a legal relationship between two people of the same or opposite sex) and provide persons entering into a civil union with the obligations, responsibilities, protections and benefits afforded or recognized by the law of Illinois to spouses.”\(^{22}\)

While the Civil Union Act can be used as a vehicle for transgender individuals to enter into a legal relationship, it still falls short in dealing with important related issues. For example, the Civil Union Act does not address the parental status of transsexual persons.

Transsexual parents fare even worse under the Illinois Parentage Act. Under this Act,

- a man is presumed to be the natural father of a child if:
  1. he and the child’s mother were married when the child was born or conceived,
  2. after the child’s birth, he married the child’s mother and he is named with written consent as the father on the child’s birth certificate,
  3. he and the child’s mother signed an acknowledgement of paternity, or
  4. if the child’s natural father is someone other than the presumed father and an acknowledgement of parentage and denial of paternity is signed.\(^{23}\)

Because a transsexual man cannot legally be “married” to a woman in Illinois, nor be the biological father of her child, the Illinois Parentage Act is not applicable to a relationship like that of the parties in *Simmons*. Under the language of the Illinois Parentage Act, transsexuals may be considered their child’s parent and enjoy the privileges that come with that title. However, they may still not have standing to assert those parental rights in court. This is particularly troublesome should conflict arise between the parents or should one of the natural parents die.
Thus, while the Civil Union Act is a step in the right direction towards equality for transsexuals, it simply is not enough. There are several ways in which Illinois can move to mend the problems faced by transsexuals.

Courts all over the nation have dealt with transsexual marital issues in many different ways. For example, in *M.T. v. J.T.*, the Superior Court of New Jersey rejected the *Corbett v. Corbett* rationale and emphasized the surgery and sexual functioning of an individual in determining how they should be treated for marriage purposes.\(^{24}\) Likewise, North Carolina recognizes transsexual marriages as heterosexual marriages.\(^{25}\) Maryland law permits a change of a person’s legal sex on the basis of sex reassignment surgery, and thus apparently recognizes a marriage between two people born with the same sex, where one has had gender reassignment surgery.\(^{26}\)

**MOVING TOWARDS EQUALITY**

To provide equal rights for transsexual persons, Illinois must make substantial changes in the current law. It must join those states that recognize same-sex marriage and must apply those rights equally among all married couples. Illinois can also amend other related statutes to afford transgender individuals the same privileges granted to heterosexual married couples. Transsexuals are suffering by the application of current Illinois law with respect to parentage, and Illinois legislators must take action in order to apply the law equally to them.

Sacha Coupet, Associate Professor of Law at Loyola University Chicago School of Law, would advise legislators to adhere to the spirit of the law by focusing on the relationship between the “parents” to determine parental status.\(^{27}\) She believes “the marital presumption of parentage should extend to same-sex as well as transgendered partners who consent to the conception of a child.”\(^{28}\) Prof. Coupet also proposes that the gendered terms of the Parentage Act of 1984 be removed and be combined with the Illinois Parentage Act and the Gestational Surrogacy Act, which taken together would “produce a comprehensive set of rules that would favor intended parents.”\(^{29}\)

Thus, all considered, there are several ways Illinois can ensure its transsexual citizens are afforded equal rights. It should explore these options in order to truly provide marriage equality.
NOTES


3 "LGBT" stands for "lesbian, gay, bisexual, and transgender."


5 Id.


7 Id.

8 Id.


11 Id.; 750 ILLCS 5/121.1.


13 In re Marriage of Simmons, 355 Ill. App. 3d. 942, 945 (2005).

14 Id.

15 Id. at 946.

16 Id. at 948.

17 The petitioner had taken testosterone since he was 21 years old, looked like a man, underwent a total abdominal hysterectomy, had his female organs removed and was issued a new birth certificate designating his sex as "male in October of 1994." Id. at 944-48.

18 Id. at 950-52. The petitioner in this case argued that the Illinois Parentage Act of 1984 granted a presumption of parenthood, as a child born from artificial insemination of two married parents retains rights to parenthood with both parents even if the marriage is subsequently held invalid. Id. at 951.

19 Indeed, the Simmons Court emphasized the fact that the petitioner did not complete reassignment surgery and possessed his external female genitalia as a basis for finding the marriage invalid. Id.


26 Id.
27 Email interview with Sacha Couper, Assistant Professor of Law, Loyola Univ. Chi. Sch. of Law (Mar. 19, 2012).
28 Id.
29 Id.
PROFESSIONALISM DOWN THE TUBE: THE USE OF SOCIAL NETWORKING BY AND AGAINST LAWYERS

by JANE RAINES

#127409 - This stupid kid is taking the rap for his drug-dealing dirtbag of an older brother because he's no slouch. . . My client is in college. Just goes to show you that higher education does not imply that you have any sense.

- The Bardd Before the Bar: Irreverent Adventures in Life, Law, and Indigent Defense

Kristine Ann Peshek used to be an assistant public defender in Winnebago County, Illinois, protecting indigent clients accused of crimes.1 Based on
her experiences as a public defender, she authored a blog—"The Bardd Before the Bar: Irreverent Adventures in Life, Law, and Indigent Defense"—which she published for a little less than a year. In April 2008, when her supervisor discovered her blog, along with its stories about her difficult clients, she was fired. 

Peshek’s license to practice law was also suspended until June 8, 2010. That same year, the Illinois Supreme Court suspended 26 other attorneys, for infractions ranging from illegal drug use to fraud to theft. The inclusion of Peshek’s online statements with this list of crimes only illustrates how seriously the legal disciplinary authorities are taking social media indiscretions.

SOCIAL MEDIA CAN PLACE CLIENT CONFIDENCE IN JEOPARDY

More attorneys are using the rich archives available on social networking sites such as Facebook, Twitter and blogs to investigate the backgrounds of parties, witnesses, opposing counsel, jurors and judges.

However, the same tools that lawyers are using to win cases are also being used against them in ethics violation investigations. New technologies force attorneys to a crossroads where professional responsibility, discovery, evidence and privacy converge. As this convergence continues to surface, the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC) has had to combat unprecedented ethical issues.

For example, on Feb. 6, 2012, the ARDC filed a complaint against Jesse Raymond Gilford, an attorney that represented a client charged with the unlawful delivery of a controlled substance in Pike County, Illinois. Within a month of receiving a DVD copy of a video of his client engaged in an undercover drug buy from the state’s attorney, Gilford showed it to 20 people unrelated to the case.

He then uploaded the two-part video, entitled “Cops and Task Force Planting Drugs - Part I and II,” to YouTube. Shortly thereafter, Gilford posted a link to the YouTube video on his Facebook page.

Melissa Smart of the ARDC observes that this form of attorney misconduct is appearing more and more often. “It’s one thing that the misconduct is hap-
pening, but the only reason it has come to light is because it is done in such a public medium.\textsuperscript{13}

\section*{The Legal Professional Privilege Calls Client Rights into Question}

The misuse of social networking by attorneys begs the question: If clients cannot trust their lawyer, who can they trust? A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation.\textsuperscript{14} This contributes to the trust that is the hallmark of the client-lawyer relationship.\textsuperscript{15}

Legal professional privilege, as it is now called, has its origins in the concept of confidence.\textsuperscript{16} A person or his legal counsel should be free to speak about matters regarding their litigation without fear that it will subsequently be used against him.\textsuperscript{17} This legal professional privilege is an important safeguard of a client's legal rights.\textsuperscript{18}

Misconduct like blogging about a client or posting a revealing video on YouTube is a clear violation of not only the client's trust, but also the client's legal rights.

In reality, the privilege to defend the client is eliminated if the client's secrets are disclosed in public without the client's approval, because it a breach of the mutual agreement to keep the client's secrets entrusted to the lawyer absolutely confidential.\textsuperscript{19} Not only does such a breach of client confidentiality undermine the importance of the relationship between attorneys and their clients, it undermines the professionalism of the law.

\section*{Conclusion for Illinois}

As the popularity of social networking sites like Facebook and Twitter grows, so does their importance in litigation.\textsuperscript{20} Not only has the law had to advance to permit using social media as tools on behalf of clients, but now ethics enforcement agencies must use these mechanisms to ensure good behavior among practicing attorneys.
Loyola Public Interest Law Reporter

As the ARDC's Smart advises, "While Illinois has not yet affirmatively outlined this particular area, don't be the test case." What Illinois has outlined within its Professional Code of Ethics is that, "even when not acting within the scope of your profession as a lawyer, you are always an attorney."22

Nevertheless, the ARDC has increasingly had to discipline Illinois attorneys for publicly revealing the private information of their clients. In the cases of Peshek's blog and Gilsdorf's video, what they released into cyberspace was used against them in a court of law.

Given the pervasive nature of social media, explicit guidance about how social media sites can be used by Illinois lawyers, as well as against Illinois lawyers, is critical. Without it, a lot more lawyers may find themselves with a suspended license — and a lot more time on their hands for blogging about new hobbies instead of clients.

NOTES

2 Id.
3 Id.
6 Id.
7 Smart, supra note 4.
8 In re Jesse Raymond Gilsdorf, No. 6225020 (ILL. ARDC, filed Feb. 6, 2012).
9 Id.
10 Id.
11 Id.
12 Interview with Melissa Smart, Litigation Manager, Attorney Registration & Disciplinary Commission of the Supreme Court of Illinois (Apr. 19, 2012).
13 Id.
15 Id.
17 *Id.*
18 *Id.*
19 *Id.*
21 Interview with Melissa Smart, Litigation Manager, Attorney Registration & Disciplinary Commission of the Supreme Court of Illinois (Mar. 5, 2012).
22 *Id.*
FEATURE ARTICLE

TRUE EQUALITY IN ILLINOIS EDUCATION: WILL THIS BE THE YEAR?

by CYNTHIA Y. HERRERA

Later this year, the Illinois Supreme Court will hear a new lawsuit challenging the constitutionality of Illinois's school funding system. This lawsuit is based on a novel legal theory, one never before heard by Illinois courts. “This is a taxpayer lawsuit,” says Hoy McConnell of the Business and Professional People for the Public Interest (BPI), who filed this suit along with the law firm Sidley Austin.
The Status Quo

As a point of reference, Illinois is ranked 49th out of 50 states in the percentage of state revenue allocated to support public schools. Schools in Illinois, therefore, must rely heavily on local property taxes for funding. As a result, disparities in per-pupil expenditures among school districts in Illinois rank among the largest in the nation. These facts are disconcerting considering the backdrop of acutely concentrated poverty and segregation of racial minorities in Illinois, resulting from a history of discriminatory housing practices.

Parties seeking to challenge the constitutionality of school funding schemes have generally used two types of legal theories. The first type seeks equity in funding, while the second asserts an implied right to an adequate education. Such claims have found success in other states, but courts in Illinois have not embraced them.

The Illinois Constitution reads, "The State shall provide for an efficient system of high quality public educational." Nevertheless, the Supreme Court of Illinois has held this language does not obligate the General Assembly to guarantee a high quality of education, or even an "adequate" one. The Court reasoned that this language was intended to express a general goal, not to impose a specific obligation.

Carr v. Koch: A Challenge to the System

The case challenging Illinois's school funding system this year is being brought by two taxpayers that argue the system discriminates against them based on where they live. Plaintiffs Paul Carr of Chicago Heights and Ron Newell of Cairo claim their properties are taxed at a higher rate than properties in Chicago's suburbs with similar values. As defendants, the suit names State Superintendent of Education Christopher Koch, the Illinois State Board of Education ("Board of Education") and Gov. Patrick J. Quinn.

Each fiscal year, the General Assembly sets the minimum level of per-pupil financial support that state and local entities should provide for the basic education of each pupil. This standard is based on recommendations presented by the Education Funding Advisory Board and specifies the amount of fund-
ing to be allocated to each school district as well. But, as the Board of Edu-

tion notes, the General Assembly always sets the Foundation Level — the level

at which it funds each student — "artificially low" due to current financial straits. The reality is that, even at this lowered rate, the State is unable to

cover its mandated obligation.

The plaintiffs claim the current school financing system violates the Illinois Constitution, because "some property owners are forced to pay higher school property tax rates than similarly situated taxpayers, in order to reach the state-
designated Foundation Level." They likewise point out that districts with mostly high-valued properties are able to tax themselves less and still generate more than required by the state. Despite this, the State still rewards those wealthier districts with an extra $218 per pupil. Residents of low-property-

wealth districts pay higher tax rates yet have lower per-pupil spending.

In their ongoing litigation, the plaintiffs argue that this unequal treatment is not rationally related to any legitimate legislative purpose. In the past, courts have declined to rule against laws allowing uneven education funding, reasoning that maintaining local control of education constituted a legitimate legislative interest. However, the plaintiffs in this case argue that core education functions in Illinois public schools are no longer locally controlled, with the imposition of federal and statewide mandates.

For its part, the Board of Education has acknowledged that the federal No Child Left Behind Act has imposed several new requirements, namely proficiency tests and standards by grade. But it also argues that these changes are not enough to find that there is now universal, statewide control over schools. The Board of Education also maintains that the only significant difference is that there is now a more objective and accurate means for the State to assess school performance.

While the State is able to impose sanctions based on these assessments, it had already reserved — and exercised — this right prior to the enactment of No Child Left Behind. Therefore, the Board of Education anticipates that the Court will reject this new case, just like past equity claims.

Nevertheless, Alex Polikoff of BPI argues that these new standards "essentially demand [a designated] curriculum," because their specificity simply does not
allow much room for variation, and because they are imposed under the threat of sanction.\(^{37}\)

**THE REMEDY**

In the end, Polikoff and the plaintiffs are asking the Illinois Supreme Court to declare the current school funding system unconstitutional.\(^{38}\) The Board of Education criticizes this and other suits, stating that “none of these lawsuits really proposes a remedy.”\(^{39}\) But BPI is hoping that a verdict in its favor will result in the Court directing Gov. Quinn and the Legislature to come up with a new system.\(^{40}\)

The new system, BPI proposes, should be “[o]ne that is fair to taxpayers and addresses the inequities of the current system.”\(^{41}\) However, the fact that two taxpayers — and no students or parents — are plaintiffs in the case may mean that any relief resulting from the case could go solely to the taxpayers in property-poor districts, and not to students.\(^{42}\)

If their bet pays off, this education finance claim could be a more far-reaching claim than those previously argued, says Adam Schwartz of the American Civil Liberties Union of Illinois.\(^{43}\)

This new taxpayer element to the case, Schwartz claims, has the potential to provide a more equitable distribution of funds across school districts, perhaps resulting in much more than a minimally adequate educational standard.\(^{44}\)

**BEYOND THE COURTS**

While it is impossible to predict whether this new legal strategy will prevail, the persistent filing of new suits challenging Illinois’s system of school funding is a testament to the need for change. Illinois’s Board of Education argues that even the uniform need for a more equitable system would not justify overturning current laws.\(^{45}\) The “way the money is dispersed is set out by the Legislature.”\(^{46}\) This suggests that the war for equal education opportunity will likely only be won if fought beyond the limited confines of the courts.
NOTES

2 Id.
6 Id. at 38.
7 Id. at 3.
10 See, e.g., Lewis E. v. Spagnolo, 186 Ill.2d 198 (1999).
12 Edgar, 174 Ill.2d at 40; Spagnolo, 186 Ill.2d at 235.
13 Ill. Const. art. X, § 1.
15 Spagnolo, 186 Ill.2d at 227.
16 Baze, 55 Ill.2d at 100 (turning to legislative history, the Court found that the conversations discussing the amendment indicated that the purpose of including the statement was to "put the Convention on record with [the] feeling widely held by the delegates to this Convention that the state, indeed, has the primary responsibility for financing the public school system," but that "[i]t is not a legally obligatory command to the state legislature.").
17 McConnel, supra note 4.
18 Weinhold, supra note 1.
19 Id.
21 Id.
23 Id.
24 Ill. Const. art. I, § 2 ("No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.").
25 McConnel, supra note 4.
26 Business and Professional People for the Public Interest, Frequently Asked Questions Regarding the BP/Sidley School Funding Lawsuit (Mar. 24, 2010) [hereinafter Frequently Asked Questi-
27 Id.
28 Id.
30 Id.
31 Id.
32 Reisberg & Snopek, supra note 22.
33 Id.
34 Id.
35 Id.
36 Id.; See generally Edgar, supra note 9.
37 Interview with Alex Polikoff, Director of Public Housing Program, Business and Professional People for the Public Interest (Apr. 10, 2012).
39 Reisberg & Snopek, supra note 22.
41 Id.
43 Interview with Adam Schwartz, Senior Staff Counsel, American Civil Liberties Union of Ill. (Mar. 14, 2012).
44 Id.
45 Reisberg & Snopek, supra note 22.
46 Id.
VINDICATING VULNERABLE VICTIMS: ILLINOIS’S EFFORTS TO PREVENT ELDER FINANCIAL EXPLOITATION

by Ashley Jaconetti

A 91-year-old woman residing at an assisted living facility in Illinois is now one of the latest victims of egregious long-term financial abuse – and at the hands of her two cousins.¹

After an employee at the assisted living facility noticed financial discrepancies and contacted police authorities,² investigators discovered that, from 2005 to 2011, the two individuals held the woman’s power of attorney and allegedly stole $462,686 from the victim.³ On Feb. 2, 2012, a Madison County grand
jury indicted the two on multiple counts of financial exploitation of an elderly person.⁴

Unfortunately, this elderly woman’s story is not unique. According to the Illinois Department on Aging, financial exploitation is the most common form of elder abuse reported in the state, constituting 58 percent of reported elder abuse cases.⁵ In 2010 alone, there were 5,953 reports of suspected elder financial abuse cases in Illinois,⁶ and each year financial exploitation costs victims an estimated $2.6 billion nationally.⁷

The Department on Aging estimates that elder financial abuse incidents remain largely unreported,⁸ especially when the offenders are family members, friends or caregivers.⁹ AARP’s Associate State Director of Advocacy and Outreach Ryan Gruenenfelder explained that elderly persons that are victimized by family or friends are often hesitant to report the financial abuse, whether out of love for the person committing the crime or dependence on him or her for care.¹⁰

**ILLINOIS’S LEGISLATIVE INITIATIVES TO PROTECT THE ELDERLY**

Illinois legislators and lobbyists have taken several steps in the past year to combat financial exploitation of the elderly, including amendments to the Illinois Power of Attorney Act¹¹ and revisions to the criminal statute for financial exploitation of the elderly.¹²

First, the Illinois Power of Attorney Act ("the Act") allows an individual to appoint a person as his or her agent to make property, financial, personal or healthcare decisions for the individual (or principal).¹³ Further, the execution of a power of attorney agreement forms an agency relationship, one in which the agent is bound by a legal duty to act in good faith, in accordance with the principal’s expectations and in the principal’s best interest.¹⁴
The Act’s amended provisions, which took effect July 2011, provide additional requirements to prevent elder financial abuse. To ensure that both the principal and agent understand the terms of the agreement, the parties must sign a statutory short form cover sheet and notice to agent, which clearly list the principal and agent’s respective rights and responsibilities under the power of attorney relationship.

The Act’s new liability provision provides that an agent that violates the Act can be held liable and face financial consequences to restore the value of the principal’s property to the amount it would have been had the agent not violated the Act.

Although the new provisions in the Illinois Power of Attorney Act are a step in the right direction, financial institutions, which are often named as agents for a principal in a business agreement, have raised concerns that the Act’s requirements would adversely impact current contracts with their clients.

To alleviate financial institutions’ concerns and still provide protections against elder financial abuse, a newly revised amendment to the Act states that it does not apply to certain agreements where the financial institution is named as an agent for a principal. However, if the agreement between the financial
institution and the person includes an ironclad power of attorney that remains in effect despite the principal's incapacity, then the Act's provisions apply to the financial institution that is acting as an agent under the agreement.\textsuperscript{22}

While the Act clarifies the liabilities under such an agreement, the amendment to the criminal statute regarding financial exploitation of the elderly imposes harsher penalties on a broader class of persons that commit financial crimes against an elderly person.\textsuperscript{23}

Prior to these revisions, most offenders charged with financial exploitation of an elderly person received only probation.\textsuperscript{24} The amendment lowers the property value threshold from $50,000 to $5,000 for elderly financial exploitation that constitutes a Class 2 felony, which also carries a prison sentence.\textsuperscript{25}

Under this scheme, the two individuals who allegedly misused a power of attorney and stole money from their 91-year-old cousin face imprisonment because they are each charged with financial exploitation of the elderly, which is now a Class 1 felony, as the value stolen was over $50,000.\textsuperscript{26}

COMMUNITY EFFORTS TO EMPOWER THE ELDERLY

The recently enacted laws help ensure offenders are held liable for financial elder exploitation, but community efforts can also be effective to prevent elder financial abuse. Most of the current community programs, including the Illinois State TRIAD and the Elderly Service Officer program, are focused on providing officials and community members with adequate training to recognize elder crimes.\textsuperscript{27}

TRIAD started as a national program sponsored by AARP, the International Association of Chiefs of Police and the National Sheriff's Association.\textsuperscript{28} The Illinois Attorney General's office is also a founding member of Illinois TRIAD.\textsuperscript{29} In Illinois communities, local TRIADS bring together law enforcement officials, senior citizen community activists and community members to create programs to protect the elderly from financial exploitation.\textsuperscript{30} For example, the Knox County TRIAD program offers a class to teach elderly individuals how to recognize scams and frauds.\textsuperscript{31}
Police departments can also choose to enroll officers in the Illinois Attorney General’s Elderly Service Officer training program. Although these elective police training programs have proven effective in educating some authorities about elder abuse issues, the next step is to make the police training mandatory.

On March 6, 2012, the Illinois General Assembly unanimously passed a bill that requires police training for recognition of elder financial abuse. AARP’s Gruenenfelder explained that this bill was created to address complaints from several victims’ family members that financial exploitation was being treated by law enforcement as a civil issue rather than a crime, thus making it difficult for prosecutors to bring criminal charges against the offenders.

**Knowledge Is Power**

Although there were more than 5,000 reported cases of elder financial abuse in Illinois in 2010, recently enacted legislation and community-based groups hope to decrease this number. The Power of Attorney Act amendment seeks to clarify the agreement so that both the principal and agent are knowledgeable about their respective rights and responsibilities.

In addition, training programs teach police officers and citizen advocates how to recognize warning signs of elder financial exploitation so the offenders can be criminally charged. These initiatives demonstrate that adopting local training programs and disseminating information about the revised civil and criminal legislation is the key to preventing elder financial exploitation.

**Notes**


3. Piper, supra note 1.


6 Id.
7 All Durham, New law toughens penalties for senior fraud, MEDILL NEWS SERV. (Jan. 22, 2012),
8 Id.
9 Telephone interview with Ryan Gruenenfelder, Assoc. State Dir. of Advocacy and Outreach,
AARP (Mar. 16, 2012).
10 Id.
11 Robert Rodriguez, New Law Shields Elderly Against Power of Attorney Abuse, NBC News
99.html; Civil Law — Power of Attorney, ILL. COMP. STAT. ANN. 755 § 45 (West 2010).
12 Mary Anne Meyers, New law goes tough on elder abuse, ILL. NEWS CONNECTION (Jan. 11,
2012), http://www.illnewsconnection.com/articles/mor-37559-better-law.html; Criminal Law —
13 III. COMP. STAT. ANN. 755 § 45/2-1.
14 III. COMP. STAT. ANN. 755 § 45/2-7.
15 Rodriguez, supra note 11.
16 Gruenenfelder, supra note 9.
17 III. COMP. STAT. ANN. 755 § 45/2-7(f) ("An agent that violates this Act is liable to the
principal or the principal’s successors in interest for the amount required (i) to restore the value
of the principal’s property to what it would have been had the violation not occurred, and (ii) to
reimburse the principal or the principal’s successors in interest for the attorney’s fees and costs
paid on the agent’s behalf. This subsection does not limit any other applicable legal or equitable
remedies.").
18 Gruenenfelder, supra note 9.
agreements to which the Power of Attorney Act does not apply when the financial institution is
named as an agent for the person:
"(1) a proxy or other delegation to exercise voting rights or management rights with
respect to a corporation, partnership (general or limited), limited liability company,
condominium, commercial entity, or association; (2) an agreement or contract given
to a financial institution to facilitate a specific transfer or disposition of one or more
identified stocks, bonds, or assets, whether real or personal, tangible or intangible; (3)
an agreement or directive authorizing a financial institution to prepare, execute, de-
liver, submit, or file a document or instrument with a government or governmental
subdivision, agency, or instrumentality, or other third party; (4) an agreement or con-
tract authorizing a financial institution or an officer of a financial institution to take
a specific action or actions in relation to an account in which the financial institution
holds cash, securities, commodities, or other financial assets on behalf of the principal
or (5) acts as an investment manager with a third party serving as the custodian of
such cash, securities, commodities, or other financial assets on behalf of the principal;
(5) an agreement or contract authorizing a financial institution to take specific actions
with respect to collateral in connection with a loan or other secured credit transaction
other than a mortgage; (6) an agreement or contract given to a financial institution by
an individual who is, or is seeking to become, a director, officer, stockholder, em-
ployee, partner (general or limited), member, unit owner, equity owner, trustee, man-
ger, or agent of a corporation, a partnership (general or limited), a limited liability
company, a condominium, a legal or commercial entity, or an association, in that
individual’s capacity as such, including an agreement or directive contained in a sub-
scription agreement; (7) an authorization contained in a certificate of incorporation,
bylaws, general or limited partnership agreement, limited liability company agreement, declaration of trust, declaration of condominium, condominium offering plan, or other agreement or instrument governing the internal affairs of an entity or association authorizing a director, officer, shareholder, employee, partner (general or limited), member, unit owner, equity owner, trustee, manager, or other person to take lawful actions relating to such entity or association; or (8) an agreement authorizing the acceptance of the service of process on behalf of the person executing the agreement." Id.

20 Id. defining financial institution as "(l) bank, trust company, savings bank, savings and loan, or credit union holding a federal charter or a charter from any of the states that is subject to regulation by the Illinois Secretary of Financial and Professional Regulation or (ii) broker-dealer registered with the United States Securities and Exchange Commission.").

21 Id.

22 Id.

23 Meyers, supra note 12.

24 Gruenfelder, supra note 9.

25 Id. The statute now provides that: "(1) a Class 4 felony if the value of the property is $300 or less, (2) a Class 3 felony if the value of the property is more than $300 but less than $5,000, (3) a Class 2 felony if the value of the property is $5,000 or more but less than $50,000, and (4) a Class 1 felony if the value of the property is $50,000 or more or if the elderly person is over 70 years of age and the value of the property is $15,000 or more or if the elderly person is 80 years of age or older and the value of the property is $5,000 or more." Criminal Law – Financial Exploitation Elderly, ILL. COMP. STAT. ANN. 720 § 5/17 56 (b) (West 2010).

26 ILL. COMP. STAT. ANN. 720 § 5/17 56 (b).

27 TRIAD program, http://illinoistreasurer.com/seniors/triad.html (last visited Mar. 18, 2012); see also TRIAD, http://www.aurora-il.org/policedepartment/triad.php (last visited Apr. 27, 2012) ("The original choice of the word 'TRIAD', which means 'group of three', was chosen because it represents the National Sheriff’s Association, the International Association of the Chiefs of Police, and the American Association of Retired Persons").

28 Id.

29 Id.

30 Id.


32 Gruenfelder, supra note 9.

33 Elderly Service Officers Training, http://illinoistreasurer.com/seniors/eso.html (last visited Apr. 23, 2012) (stating that in Illinois, there are approximately 1,200 law enforcement officers and advocates who have completed the Elderly Service Officers Training program).

34 Gruenfelder, supra note 9.


36 Gruenfelder, supra note 9.

37 Rules to Protect Seniors from Financial Exploitation Adopted During Elder Abuse Awareness Month, supra note 5.
CAUSE AND EFFECT: CRIMINALIZING THE AMERICAN DREAM

by JESSICA SANCHEZ

As one famed American lawyer writes, "[W]hen we, as a nation of immigrants, debate the immigration issue, we are defining our very identity as Americans."¹ And if one paid close enough attention, one would see anti-immigrant laws popping up in states across the nation in an attempt to criminalize one particular group of people pursuing the American Dream.²

For example, in 2006, the town of Hazleton, Pennsylvania, passed two such ordinances, provisions of which included showing proof of legal residency in order to rent housing, sanctioning landlords for renting to undocumented per-
sons and revoking business licenses for employers hiring undocumented workers.5

Not long after, Farmers Branch, Texas, adopted an ordinance with comparable landlord and tenant provisions.6 In 2010, Valley Park, Missouri, and Fremont, Nebraska, followed suit, along with a spate of other towns and cities.5

A BUMPY ROAD FOR ANTI-IMMIGRANT LAWS

Proponents of such laws argue that they are necessary, especially in tough economic times, because of the financial burden that undocumented immigrants allegedly place on municipal infrastructures such as schools, law enforcement and hospitals.6 One proponent argues, "People often see federal immigration policy as a dichotomy between amnesty and deportation. But the most rational approach is a third one: you ratchet up the enforcement so that people make their own decisions to start following the law."7

Ironically, these laws failed to make much of an impact on the problems they aimed to address, instead creating a pattern of financial strain, legal misfortune and a torn sense of community.8 They are also the frequent targets of court challenges. In Pennsylvania, both the federal district and appellate courts found Hazleton’s ordinances unconstitutional, and the City incurred $2.8 million in legal costs defending the ordinances in court.9

Likewise, a federal judge in Texas issued a permanent injunction against the Farmers Branch ordinance, even after the City amended it three times in hopes of withstanding legal challenge.10 And though it has appealed the ruling, Farmers Branch owes approximately $3.7 million in legal fees as of January 2011.11

From these examples, it is clear that anti-immigrant ordinances can have serious detrimental effects on towns that adopt them, as divided communities are left to bear the burden of founding legislation followed by skyrocketing legal fees.12 As one attorney puts it, "Across the country even the most conservative judges are seeing through these misguided attempts to legislate in a federal area of law and are striking down the laws."13
In addition to having questionable constitutional validity and proving to be troublesome public policy, these laws have one more striking element in common: the same author, advisor and often litigator: Kansas Secretary of State Kris Kobach, a man who refers to himself as the "intellectual architect of the fight against illegal immigration." 

**THE MAN BEHIND THE LAWS**

"America’s Deporter in Chief," as one reporter titled him, Kris Kobach has forged a strategic position on anti-immigration legislation using towns like Hazleton and Fremont as proxies for a larger debate. As Aaron Siebert-Llera, opposing counsel to Kobach in the ongoing Fremont litigation, states, "It is much easier to play on people’s fears of the other . . . when you are dealing with a smaller population. All that has to be done is to find a few people to hand out petitions and scare the voters about the ‘invading illegals.’"

A troubling illustration of this is drawn by a town that decided against hiring Kobach. In 2010, the town of Albertville, Alabama, sought to retain counsel on possible immigration proceedings. After meeting with Kobach, the town’s City Council cited his 46 percent success rate defending anti-immigration legislation in its decision not to hire him as legal representative. Ben Shurett, resident of Albertville and publisher for the local reporter succinctly summed up the town’s judgment:

"I fear Kobach is a very good lawyer and a terrific salesman. I think he has identified a niche market for his services," adding, "But I fear Mr. Kobach targets towns like ours . . . as financial windfalls . . . I think he preys on the legitimate concerns, the irrational fears and even some bigoted attitudes to convince cities to hire him to represent their interests in lawsuits that may not be winnable."

More telling than Kobach’s pre-packaged inventory of laws, however, may be how he defends them. Assigned to work for then-Attorney General John Ashcroft at the Department of Justice (DOJ) in 2001, Kobach later became Ashcroft’s chief advisor on immigration and border security, though he was not a specialist in immigration.

In 2002, Kobach authored a memo for the DOJ’s Office of Legal Counsel, introducing an unprecedented interpretation regarding the preemption of state
and local law enforcement to make arrests on immigration grounds.\textsuperscript{24} The memo not only took a position at odds with previous opinions issued by the same office, but this memo laid the groundwork for Arizona’s notoriously harsh anti-immigrant law, S.B. 1070.\textsuperscript{25} Startlingly, it is the same memo Kobach cites as authority in support of the anti-immigration laws he defends in court.\textsuperscript{26}

**Next Stop, Illinois?**

Confident in his politics, Kobach’s message is blunt: “If you want to create a job for a U.S. citizen tomorrow, deport an illegal alien today.”\textsuperscript{27} And it seems Kobach’s message might soon spread, as he has aligned himself with likely Republican presidential nominee Mitt Romney as an immigration advisor.\textsuperscript{28}

As Nebraska, Missouri, Indiana and Ohio contemplate similar initiatives, Illinois should be mindful of the ills felt by other states, as it could be next to face the corrosive effects of Kobach’s policies.\textsuperscript{29} As one Chicago attorney predicts, “The long term ramifications of these laws is going to be very detrimental for all of us because the laws are only alienating the workers that drive this economy.”\textsuperscript{30}

In Illinois, the immigrant population is roughly 13.6 percent of the state’s total population.\textsuperscript{31} This number rises to 26 percent when including the children of these immigrants.\textsuperscript{32} In February 2011, Illinois Rep. Randy Ramey proposed House Bill 1969.\textsuperscript{33} This bill maintains a close likeness to Arizona’s S.B. 1070,\textsuperscript{24} and would afford law enforcement officials the authority to determine a person’s immigration status where there exists reasonable suspicion upon any lawful stop, detention or arrest.\textsuperscript{35} As of March 2011, the bill had been referred to the Illinois Rules Committee.\textsuperscript{36}

In light of this, Illinois might consider heeding Phoenix Mayor Bill Gordon’s statements in opposition to Arizona’s S.B. 1070: “What good has this divisive law accomplished? I’ve seen firsthand the way it’s torn apart our state, the way it’s hurt us economically and hurt us in terms of security by diverting valuable resources away from catching real criminals. The only people better off for Kobach’s efforts are people like him - political opportunists who want to use stereotypes and distortions to make a name for themselves.”\textsuperscript{37}
NOTES

4. SPLC Report, supra note 2, at 22-23.
5. Id.
8. SPLC Report, supra note 2, at 5.
9. Id. at 10.
10. Id. at 23.
11. Id. at 12.
12. Id. at 22-23.
13. Email interview with Aaron Siebert-Llera, Staff Attorney, MALDEF (Apr. 13, 2012).
20. Kobach in Albertville, AL, supra note 18.
21. Shureet, supra note 19.
23. SPLC Report, supra note 2, at 8.
25. Id.
26. Id.
30 Siebert-Luera, supra note 13.  
32 Id.  
34 Otherwise known as the "Support Our Law Enforcement and Safe Neighborhoods Act," Arizona Senate Bill 1070 was introduced in Jan. 2010, "requiring local and state officials to try to ascertain the immigration status of anyone they come into 'legitimate contact' with if they have a 'reasonable suspicion' that the person is not a legal resident. It makes it a crime for undocumented workers to seek work or trespass on private or public lands, and also criminalizes hiring workers from a stopped car. The law makes transporting or harboring undocumented immigrants a misdemeanor punishable by a fine of at least $1,000; if the offense involves 10 or more immigrants, it becomes a felony." SPLC Report, supra note 2, at 24.  
35 HB 1969, supra note 33.  
36 Id.  
37 SPLC Report, supra note 2, at 8.
FEATURE ARTICLE

ABUSE IN ILLINOIS IMMIGRATION DETENTION CENTERS: DOES THE CURRENT SYSTEM GRANT HUMAN RIGHTS TO ALL HUMANS?

by NORMA E. LOZA

Raquel Gomez was held in solitary confinement in immigration detention centers in Illinois and Wisconsin for 15 months before being given asy-
lum. During that time, she was permitted to have contact only with jail officers, who abused her both mentally and physically because she was transgendered. The officers physically assaulted Gomez on numerous occasions and only referred to her through homophobic slurs and other degrading names. At times, she was even forced to sleep on toilet paper in a cold, dark room.

Upon her release, she discussed her treatment with reporters of the Chicago RedEye and the major Spanish network, Univision, in an effort to reveal the egregious human rights violations that occur in many immigration facilities across the country.

ILLINOIS’S IMMIGRANT DETENTION PROBLEM

Nearly 400,000 immigrants each year are incarcerated in immigration detention centers throughout the United States. In December 2011, the National Immigrant Justice Center (NIJC) and the Midwest Coalition for Human Rights (MCHR) released a report in opposition to a newly proposed, 700-bed, private detention facility in Crete, Illinois. The report also called on the Obama Administration to close three current immigrant detention facilities they allege have a record of the most severe human rights violations, two of which are in Illinois: Jefferson County Jail and Tri-County Detention Center.

Many of the immigrants in the Jefferson County Jail and Tri-County Detention Center belong to the low-risk population, meaning they either have no criminal records or have committed only minor offenses. Additionally, although strongly discouraged, authorities detained many inmates with mental and medical health issues.

Detainees are frequently denied legal counsel, communication with their families, consistent hot meals, medication, clean clothing and medical services. The report indicates that lax standards and improper oversight would allow for even greater abuses in the proposed private detention facility.

Overall, the NIJC/MCHR report advocated for the reduction of mass immigration detention, in favor of alternatives including the use of electronic ankle bracelets and curfews. Such alternatives would prevent detainees from suffer-
ing the abuses outlined above, as well as greatly reduce the spending of billions of taxpayers' dollars used to detain immigrants.\textsuperscript{14}

NIJC has also filed a claim against the Department of Homeland Security (DHS) Office of Civil Right and Civil Liberties and the Office of Inspector General demanding that the Obama Administration investigate abuse allegations and take action to protect lesbian, gay, bisexual and transgender (LGBT) immigrants in DHS custody.\textsuperscript{15}

Jane Zurnamer, the Director of Policy at NIJC, highlights the particular vulnerability of the LGBT community, stating, "Many [LGBT individuals] have fled their countries because of hostility due to their sexuality or sexual orientation. They come to the U.S. for protection, only to find that they are abused here."\textsuperscript{16}

Ms. Gomez is just one of seventeen LGBT detainees represented by NIJC.\textsuperscript{17} The complaint describes violations including sexual assault, sexual harassment, denial of medical and mental health treatment, arbitrary long-term solitary confinement and frequent harassment by officers and facility personnel.\textsuperscript{18}
A POSSIBLE REMEDY: PREA IMPLEMENTATION

As an initial step to remedy abuse, one suggested solution is to expand the reach of the Prison Rape Elimination Act (PREA). The PREA sets a “zero-tolerance standard” for prison rape and creates guidelines to hold correctional facilities accountable for protecting inmates. If local authorities and facility operators fail to comply with PREA provisions, federal funding would be cut.

The term “prison” in the PREA includes “any federal, state, or local confinement facility, including local jails, police lockups, juvenile facilities, and state and federal prisons.” By defining prison broadly, short-term lockups, such as holding facilities and small local jails, are also subject to the provisions of PREA. For some reason, however, immigration detention centers have never been included.

Why has the federal government has worked so hard to prevent PREA implementation in immigration facilities? That is “the million dollar question,” according to Jane Zurnamer. No one can confirm the rationale for the policy, but Zurnamer suggests that, because immigration has always been a controversial topic, perhaps politicians are afraid of how their constituencies will react if they show any leniency.

Nevertheless, expanding PREA to include immigrant detention facilities would allow for proper oversight of the detention population and staff to prevent assaults. It would establish internal protocols for responding to reported abuse, require the investigation of reports filed through advocacy groups or counsel, create protocols to prevent retaliation to detainees who report assaults and allow independent organizations to audit PREA compliance.

In statements made by the U.S. delegation to the U.N. Committee against Torture in 2006, Thomas Manheim, Associate Deputy Attorney General, responded that there was simply no need for PREA expansion to immigration detention centers because of DHS’s steps to post instructions on reporting sexual misconduct and PREA training for detention officers.
Yet, those steps, as well as all subsequent reforms, have proven insufficient to stop human rights violations. Zurnamer explains that "they are aspirational standards without any oversight or legally binding provisions."30

RENEWED EFFORTS TO IMPLEMENT REFORM

After criticism about the treatment of immigrant detainees, the Obama Administration pledged to reform the immigration detention system in 2009.31 Homeland Security Secretary Janet Napolitano responded by announcing a series of initiatives aimed at transforming the system.32 However, as of October 2010, a year after the administration’s announcement, none of the promised reforms had taken place.33

The December 2011 report advocating the closing of these three immigrant detention facilities in Illinois and Kentucky is the most recent attempt by groups like NIJC and MCHR to call attention to the problems of the immigration detention system.34

Recognizing the inadequate federal response, several politicians decided to show their own support for NIJC and MCHR efforts. U.S. Representatives Michael Quigley (D-IL) and Jared Polis (D-CO) wrote a letter asking the U.S. Government Accountability Office to conduct a detailed audit of immigration detention facilities. In the letter, they implored the government to examine the incidence of sexual violence, identify what steps DHS is taking to rectify the problem and suggest actions that would eliminate sexual violence from the immigration detention system.35

The letter, signed by 30 members of Congress, cited the complaints NIJC submitted to the DHS Office of Civil Rights and Civil Liberties in 2011 on behalf of the seventeen LGBT immigrants.36

Only after the publication of this letter did the U.S. Government Accountability Office announce plans to investigate complaints of sexual violence against immigrants in the custody of DHS.37 However, there are no new plans from the DOJ for the expansion of PREA or any other policy changes, even after the congressional letter’s mention of PREA standards.38
In light of the continual reports of the sexual violations in immigration detention facilities, the federal government should enact a stronger and more effective policy. The government must protect the human rights of all those on American soil by expanding PREA to immigration detention centers, closing the facilities in Illinois and administering alternative solutions.

NOTES


3 Id.

4 Garvey, supra note 1.

5 Id., e.g., id; Zunnamer, supra note 2.


8 Id.

9 Id.

10 Id.

11 Id.

12 Not Too Late for Reform, supra note 6.


14 Id.


16 Zunnamer, supra note 2.

17 Id.
20 Id.
21 Id.
24 Zurnamer, supra note 2.
25 Id.
26 Policy Brief, supra note 19.
27 Id.
29 Zurnamer, supra note 2.
30 Id.
32 Id.
33 Id.
36 Id.
37 Id.
38 Zurnamer, supra note 2.
THE EFFECT OF AMERICAN SABER-RATTLING ON IRANIAN STUDENTS IN CHICAGO

by Laura Knittle

As politicians continue to raise the specter of military conflict with Iran in response to its nuclear ambitions,¹ the effects are also being felt by Iranian expatriates in America.² For some Iranians here, the United States’ most recent engagement with the Middle East, though peaceful at present, highlights years of negative feelings surrounding U.S. interventions in the region.³ This is especially true for Iranian students studying in the United States, who face an increasingly difficult life in America.⁴
RECENT TENSIONS WITH IRAN

The recent discord with Iran comes as the Israeli government has urged the United States to take preemptive action against a potentially nuclear Iran. The conservative Israeli government argues that Iran cannot be allowed to achieve nuclear capability and is calling on its ally the United States to be ready to take action. The United States, for its part, has also voiced its concern that there is a "profound danger" an Iranian weapon could end up in the hands of a terrorist organization.

As a result, the United States has declared it will not tolerate the possibility of Iran possessing a nuclear weapon. The United States, its allies in Europe, Russia and China have all asked Iran to halt its enrichment of uranium, to export the enriched uranium it has already made, to close its once secret nuclear facility and to give the United Nations access to its sites. Iran, however, has maintained that its pursuit of nuclear technology is purely peaceful and a means to provide new sources of energy.

In response to Iran's refusal to comply with calls to end its nuclear program, President Obama has moved to enforce tightened sanctions against the country. These include freezing all property of the Central Bank of Iran, other Iranian financial institutions and the Iranian government in the United States.

The effect of this economic pressure is already strongly felt in Iran. Inflation is severe - nearly 10 times that of the United States - and domestic tension runs high as a result. The cost of utilities and day-to-day expenses like bread have risen substantially, even though wages have remained the same. Further, Iran's currency, the rial, fell to a historically low level against the dollar in January 2012. Adding additional pressure, the European Union agreed not to sign a new oil contract with Iran and to end existing contracts on July 1, 2012. These sanctions will deepen Iran's financial isolation and further impair Iran's ability to finance its nuclear program.
IMPACT ON IRANIAN STUDENTS IN AMERICA

Many Iranian students choose to study in Chicago, attracted by its wealth of high-quality universities.¹⁹ Iranian students who study in the United States see themselves as analogous to children from the United States who attend prestigious colleges overseas, such as Oxford University or Exeter College.²⁰

Troubling to many students, however, is that the embargo by the West has worsened the exchange rate in Iran.²¹ As a result, Iranian students studying in Chicago are feeling increased pressure to pay for educational expenses, even though most students attending college in the United States are from wealthy backgrounds.²²

The Society for Worldwide Interbank Financial Telecommunication (SWIFT) handles international electronic transactions and recently blocked 30 Iranian banks from using the service.²³ For Iranians who are receiving financial support from home, this means two things. First, due to devaluation stemming from SWIFT’s action, tuition and living expenses have effectively doubled.²⁴ Second, the ban makes it impossible for families in Iran to transfer funds to the United States to support their student children.²⁵

The implications of this depressed exchange rate are compounded by the fact that there are no banks in the United States that have a relationship with Iran, due to pre-existing embargos.²⁶ Further complicating the situation of Iranian students in the United States, Iranian students are not eligible to work.²⁷

Many have expressed concern that these sanctions are counterproductive. As one observer noted, sanctions “risk alienating a post-revolutionary generation of Iranians likely to serve as a catalyst for change.”²⁸ Or as one Iranian student living in the United States bemoaned, “given the impossibility of transferring funds from Iran to the United States, our study is very likely to come to an end, and we have to drop out without a degree.”²⁹

There is no doubt that any conflict stemming from the recent tensions with Iran will have grave consequences in the Middle East. But, even absent war, prolonged tension may in fact spell the end for Iranian students not just in Chicago, but in the entire United States.
NOTES

3 Interview with Mahdis Azimi, Student, at Chicago, Ill. (Mar. 14, 2012).
4 Interview with Claire Rahn, Student, at Chicago, Ill. (Apr. 21, 2012).
6 Id.
7 Id.
8 Id.
11 McManus, supra note 9.
12 Id.
13 Azimi, supra note 3.
15 Azimi, supra note 3.
18 Id.
19 Rahn, supra note 4.
20 Id.
21 Id.
22 Id.
24 Id.
25 Id.
26 Id.
27 Id.
29 Id.
BIG BROTHER HAS BIG SHOULDERS: DEFINING PRIVACY IN THE FACE OF E-DISCOVERY EXPANSION AND FOIA REFORM

by Natnael Moges

Privacy and Discovery Challenges

In mid-April, Bradley Van Hoose filed suit against the Village of Caseyville, Illinois, after a prolonged battle to access public records. Seeking attorney’s fees as well as civil penalties, Van Hoose is accusing the Village of refusing to disclose hotel meeting minutes and records related to the Village’s hotel fund, some of which may be electronic.
At the heart of the confrontation is Van Hoose’s claim that the Village willfully and intentionally failed to comply with the Illinois Freedom of Information Act (FOIA) requests he filed more than six months earlier. If the case proceeds, the main issue both parties must address will be whether the Village’s particular documents are considered private under current Illinois privacy laws, rendering them immune even from discovery in litigation.

Caseyville is only one example highlighting the growing concern of allowing courts to define privacy. The security of private information, whether electronic or not, is of national importance. With new expansion of electronic discovery, or e-discovery, courts have started to refine their guidelines delineating just which electronically stored information (ESI) can be discoverable.

To narrow the scope of what ESI might be privileged, judges focus on the end result by evaluating the burdens extensive discovery may place on a party if a set of documents is not granted protection.

Privacy and discovery have had a tumultuous legal relationship, one that has grown even more contentious throughout the past decade. In December of 2005, the Federal Rules of Civil Procedure were amended to include discovery of ESI. With revisions to Rules 16, 26, 33, 34, 37 and 45, the amending of the rules was a watershed moment that marked the importance of digital data discovery. This expansion, however, created unease that the inclusion of ESI would lead to a broadening of how courts define privacy, ultimately creating a hardship for the disclosing party.

Anticipating this concern, the Illinois Supreme Court created a heightened standard for parties seeking disclosure, requiring that they demonstrate the necessity of any ESI discovery requested. There must also be a clear showing that the requested discovery does not place an undue burden on the disclosing party. Despite this standard, and owing to the increasing use and reliance on ESI, courts have struggled to identify what constitutes an undue burden in discovery.

**FOIA’s Shifting Costs**

According to Illinois public interest groups, such as the Citizen Advocacy Center, the crux of the problem facing the courts is how to find a balance
between privacy and discovery interests that does not disadvantage the public.\textsuperscript{16} Nowhere is this more apparent than in Van Hoose's case, where an individual or a group files suit against state agencies or municipalities.\textsuperscript{17}

As part of the democratic tradition of the United States, private citizens like Van Hoose can use FOIA to request access to government documents.\textsuperscript{18} The problem arises when the individual files suit against an agency to compel disclosure of records. In such scenarios, the court must take into account a state's privacy laws, precedent case law on ESI and applicability of FOIA exemptions — three elements that typically lean heavily in the government's favor.\textsuperscript{19}

Illinois, for its part, has worked to safeguard the privacy of its own departments at a significant cost to the public.\textsuperscript{20} As a result of new amendments to FOIA, the public now must bear a greater burden to access information the State deems private.\textsuperscript{21} Under FOIA, records in possession of public agencies may be accessed by the public upon written request.\textsuperscript{22} While this provision ensures public access, it also limits the disclosure to certain types of information and records.\textsuperscript{23}

In 2011, however, Governor Pat Quinn signed into law SB-2203, which created significant changes to FOIA.\textsuperscript{24} SB-2203 elevates the financial considerations of agencies in the calculus of considering FOIA requests.\textsuperscript{25} Additionally, the amendment extends the deadline by which a public body must act on a records request.\textsuperscript{26}

With the new changes, Illinois has been criticized for shifting the burden to the public in regards to record request and disclosure.\textsuperscript{27} Attorney General Lisa Madigan's office, for one, views the SB-2203 amendments as a "step backward for open government."\textsuperscript{28}

**Implications for Illinoisans**

Fortunately for Van Hoose, he has found an ally in Attorney General Madigan.\textsuperscript{29} In February, she ordered Caseyville to turn over the requested documents, dismissing the Village’s attempt to use a FOIA exemption and label Van Hoose a "recurrent requester."\textsuperscript{30}
Still, others like Van Hoose are in need of protections that place them on equal footing with the government during a FOIA dispute. Whether pursuing disclosure of an agency’s ESI through e-discovery or FOIA, the problem remains in determining what documents or records may be privileged and merit protection.\(^1\)

There is a pressing need for the State to appropriately define privacy in both the e-discovery and FOIA context. Illinois’s SB-2203 is criticized for discouraging public participation because it returns substantial burdens back to the public.\(^2\) These increased burdens mark the State’s failure to better protect the public’s rights.

Van Hoose’s circumstances demonstrate that citizens wishing to dispute FOIA denials have no other recourse but litigation – a move that may well prove fruitless if courts do not begin to challenge the State’s definition of privacy regarding records.

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NOTES

2. Id.
3. Id.; see also Sammy Caiola, Evanston city clerk staff will expand to handle increased FOIA requests, DAILY NORTHWESTERN (Apr. 18, 2012), available at http://www.dailynorthwestern.com/city/evanston-city-clerk-staff-will-expand-to-handle-increased-foia-requests-1-2731082 (noting that it takes between 10 to 15 minutes to process and deliver a FOIA request).
4. See generally Chad Howell, Qualified Discovery: How Ashcroft v. Iqbal Endangers Discovery when Civil rights Plaintiff File Suit Against Government Officials, 21 GEO. MASON U. CIV. RTS. L.J. 299 (2011) (arguing that the doctrine of qualified immunity from discovery for government agencies and actors is in need of review by the Supreme Court).
7. See Patricia Geoghegan, Electronically Stored Information: Balancing Free Discovery With Limits on Abuse, 2 DUKIE L. & TECH. REV. 12 (2009) (examining the steps courts have taken to protect ESI related discovery abuse).
9 See Jeff Kosseff, The Elusive Value: Protecting Privacy During Class Action Discovery, 97 Geo. L.J. 289 (2008) (discussing the California Supreme Court’s ruling in Pioneer Electronics (USA), Inc. v. Superior Court and the privacy related compromises the Court considered).
11 Id.
12 Vargas, supra note 8, at 405.
14 Vargas, supra note 8, at 398.
15 See John Markoff, Armies of Expensive Lawyers, Replaced by Cheaper Software, N.Y. Times, Mar. 4, 2011, available at http://www.nytimes.com/2011/03/05/science/05legal.html wanted-all (showing that in the past, it was not uncommon for a large trial to require examination of millions of documents at high cost - a problem solved by more efficient modern software).
18 Id.
21 Id.
22 5 ILCS 140.
24 Griffin, supra note 20.
25 Id.
27 Griffin, supra note 20.
29 Maher, supra note 1.
30 Id.
31 National Ass’n of Criminal Defense Lawyers, 399 Ill.App.3d at 17.
32 See FOIA, supra note 23 (citing burdens such as raising the standard that citizens must meet in order to receive information from government agencies).
FEATURE ARTICLE

CHARITY CARE: HOW MUCH OF A GOOD THING?

by GRAHAM BOWMAN

If there is one lesson that Illinois hospital administrators have learned lately, it has been not to take their tax-exempt status for granted. Historically, many not-for-profit hospitals in Illinois have been exempted from paying property tax. In return, they are required to provide a loosely defined amount of free or discounted healthcare to the poor, known as “charity care.”

Low-income Illinois residents rely on charity care to obtain healthcare they cannot otherwise afford. In addition, non-hospital providers of healthcare to
the uninsured rely on free or discounted care from hospitals to provide testing, inpatient and specialty care that is beyond their capability to provide.²

Recently, however, the Illinois Department of Revenue has signaled that some hospitals may not be providing enough charity care to justify their generous tax exemptions, estimated to be worth nearly $490 million annually in total.³ Illustrating this is a 2009 study of 27 not-for-profit hospitals in the Chicago area, which showed these hospitals received "annual tax breaks worth nearly three times the cost of charity care provided."⁴

A year later, the Illinois Supreme Court upheld the Department's decision to revoke Urbana-based Provena Health's tax-exempt status for failing to provide enough charity care.⁵ The Provena case – and its aftermath – leaves an uncertain future for free healthcare for those who need it most.

Charitable in Name Only?

Provena Covenant Medical Center is a 205-bed medical facility⁶ offering a variety of medical services ranging from an emergency department to cancer treatment.⁷ In 2002, Provena applied for an exemption from paying property tax under Section 15–65(a) of the Illinois Property Tax Code, which states, "All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit: (a) Institutions of public charity. (b) Beneficent and charitable organizations."⁸ In 2004, the Department denied the tax exemption, forcing Provena to pay $1.1 million in property taxes.⁹

In addition, according to the Illinois Supreme Court, "[E]ligibility for a charitable exemption under section 15–65 of the Property Tax Code requires not only charitable ownership, but charitable use."¹⁰ This use requirement stems from the Illinois Constitution, which authorizes the General Assembly to exempt only property used exclusively for charitable purposes from paying property tax.¹¹ The ownership requirement, on the other hand, is imposed by the Illinois Property Tax Code, which adds the requirement that property be owned by "beneficent and charitable organizations."¹²

Unfortunately for Provena, it was unable to demonstrate that it qualified as a charitable organization for three essential reasons: it does not receive its funds
mainly from private and public charity, it did not dispense charity to all who needed and applied for it and it placed obstacles in the way of those who needed free care.\textsuperscript{13}

In addition to failing the ownership requirement, Provena could not show that it was used exclusively for charitable purposes.\textsuperscript{14} As the Court explained, "[t]he reason for exempting certain property from public taxes arises from the fact that such property, in its use for charitable purposes, tends to lessen the burdens of government and to affect the general welfare of the public."\textsuperscript{15} Therefore, any reduction in the clinic's taxes must be offset by "some compensatory benefit in exchange."\textsuperscript{16} This exchange must be the primary purpose for which the property is used.\textsuperscript{17}

Like most hospitals, Provena served three kinds of patients: those with private insurance, those with Medicare or Medicaid and the uninsured.\textsuperscript{18} The Supreme Court found that care provided to either publicly or privately insured patients did not count as charitable, even if Medicare and Medicaid did not adequately compensate the provider.\textsuperscript{19} Services to insured patients were provided for a fee, not as a benefit to the public that offset an exemption from property tax.\textsuperscript{20}
The Court also failed to find the uncompensated care Provena provided charitable. Rather than being forgiven by Provena, uninsured patients' bills were typically sent to collection agencies and only eventually written off as bad debt. Nor did the hospital advertise the possibility of free care to uninsured patients.

Although some care was offered at a reduced rate, that discounted care was still profitable for Provena. The Illinois Supreme Court was clear: profitable care is not charitable care.

The Next to Fall

After the Provena decision was handed down, other hospitals were next in line. Northwestern Memorial's Prentice Women's Hospital in Chicago, Edward Hospital in Naperville and Decatur Memorial Hospital were all denied property tax exemptions in 2010.

In September 2011, Governor Quinn issued a moratorium on further revocations of hospital tax exemptions to allow the Illinois General Assembly time to pass legislation better defining what constitutes charity care. However, the deadline for the moratorium lapsed on March 1, 2012, and the Department resumed scrutinizing hospitals' exemption applications in accordance with the Provena decision.

Little Room to Maneuver

According to Margaret Stapleton of the Sargent Shriver National Center on Poverty Law, the General Assembly is still attempting to find a legislative solution, as more than 16 hospitals are in danger of having their tax exemptions denied. If denied, these hospitals will lose a major financial incentive to provide free health care to the poor and uninsured.

With no resolution in sight, five Illinois hospitals withdrew their applications for exemptions during the final week of March 2012.

According to Stapleton, "It will be very hard for the legislature to find a solution that fits within the Provena decision's parameters. Modern healthcare does not fit the 1970 Illinois Constitution." As Stapleton sees it, the inherent
problem with a legislative solution is that the General Assembly has limited authority to change hospitals’ obligations. The charitable ownership requirement is imposed by the tax code, which the General Assembly is free to amend.32 However, the General Assembly cannot redefine the charitable purpose requirement that is imposed by the Illinois Constitution.33

Absent a constitutional amendment, hospitals will be forced to adhere to the Provena decision’s directive that free care be provided in greater amounts. Care provided below market rate or the write-off of bad debt will not suffice. Low-income patients may find themselves with fewer options if hospitals find these new rules too burdensome and decide instead to pay property taxes, freeing themselves of the requirement to provide charity care.

NOTES

4 O’DONNELL & MARTIRE, supra note 3, at 4.
5 Provena, 236 Ill.2d at 373.
7 Provena, 236 Ill.2d at 375.
8 Id. at 383.
9 Id.
10 Id. at 394.
11 ILL. CONST. art. IX, § 6; Provena, 236 Ill.2d at 389.
12 35 ILCS 200/15–65(a); Provena, 236 Ill.2d at 390.
13 Provena, 236 Ill.2d at 392-93.
14 Id. at 394.
15 Id. at 395 (quoting People ex rel. Carr v. Alpha Pi of Phi Kappa Sigma Educ. Ass’n of the Univ. of Chi., 326 Ill. 573, 578 (1927)).
16 Id.
17 Id. at 394.
18 Id. at 397.
19 Id. at 392-93, 401-02.
20 Id.
21 Id. at 392-93.
22 Id. at 398.
23 Id.
24 Id. at 400.
25 Id. at 397.
28 Johnson, supra note 26.
29 Telephone interview with Margaret Stapleton, Director of Community Justice, Shriver Center, & Caitlin Padula, Staff Attorney, Shriver Center (Mar. 14, 2012).
31 Stapleton & Padula, supra note 29.
32 Prowna, 236 Ill.2d at 398.
33 Id.
POLICING IN SCHOOLS: TOO MUCH LAW ENFORCEMENT?

by Colleen Thomas

Today, police officers can be found in 35 percent of elementary, middle and high schools across the country. As the presence of law enforcement officers in schools has increased, so too have arrests and referrals to the juvenile justice system.

One reason for the increase is the vast implementation and strict adherence to “zero-tolerance” policies by public schools nationwide. These policies allow no exceptions and therefore require punishment for every infraction of a rule. William Hook, principal of the Chicago High School for Agricultural Sciences, notes, “At our school, we have a zero-tolerance [policy], but we employ it with common sense and with a purpose in mind.” Not all schools take that same approach.
As applied, some zero-tolerance policies treat every infraction and violation the same, whether major or minor, and often without consideration of context. This means that a student could face suspension, expulsion or even arrest for an act as simple as overturning a classroom desk, participating in a food fight, or dyeing his or her hair an uncommon color—situations that could easily and effectively be handled by school administrators. Ultimately, researchers say, such “harsh school discipline policies and law enforcement policies intersect to feed young people into the prison system.”

THE “SCHOOL-TO-PRISON PIPELINE”

A recent study by Project NIA, an advocacy center working to end youth incarceration, suggests that Chicago is a prime example of this alarming trend, often referred to as the “school-to-prison pipeline.” In 2010, there were 5,574 juveniles arrested at schools, accounting for 20 percent of all juvenile arrests that year in Chicago. These arrests were conducted by the more than 1,700 security officers staffing Chicago Public School (CPS) campuses, and stemmed in large part from offenses such as simple battery and disorderly conduct. These statistics are an increase from the nearly 3,200 juvenile school-based arrests in 2003 for simple assault or battery with no serious injuries, most of which were ultimately dismissed.

Similarly, a study by Texas Appleseed, a nonprofit public interest advocacy group that promotes social and economic justice, noted that the increase in the number of police officers assigned to campuses in Texas’s largest school districts has increased the amount of misdemeanor citations issued to students for offenses like disrupting class, misbehaving on the bus and using profanity. These “[s]chool discipline issues quickly turn into police records” and can have serious, long-lasting effects.

For most students, missing school for court appearances and paying legal fees are the least of the problems stemming from school disciplinary issues. Youth engaged with the law “consistently struggle with school, have higher levels of mental and emotional trauma.” There is also evidence that they are more likely to commit crimes in the future as a result.

In some school districts, arrest or referral to the juvenile justice system can lead to suspension or even expulsion—but even if it does not, the consequences of
juvenile arrests can still cause these students to miss out on important social, educational and developmental experiences that promote positive life outcomes.20 Additionally, those who enter the juvenile justice system face an increased likelihood of dropping out of school altogether, which in turn can lead to a higher risk of future incarceration.21

Unfortunately, this seeming “cycle” of juvenile incarceration does not stop once students reach adulthood. According to an Illinois Juvenile Justice Commission study, the state’s juvenile justice system serves as a “feeder system” to the adult criminal justice system and a cycle of crime, victimization, and incarceration.”22

THE QUESTION OF AUTHORITY

With so much at stake, the question of whether police officers and school resource officers should be in schools continues to be a controversial issue. While many school officials maintain that there is a great need for police and security in schools, the extent and scope of their authority has been questioned.23

Recently, Chicago Police Superintendent Garry McCarthy expressed his reservations about having police officers inside schools, saying, “I’m not a big proponent of having cops in schools . . . discipline within the school becomes the responsibility of the school principal.”24

Principal Hook agrees with this sentiment, noting that “there are rare occasions when our assigned police officers intervene in situations but we do NOT delegate our authority to the police. Situations that should be handled by the school are handled by the school.”25

Although police officers will be posted at Chicago’s public schools for the foreseeable future,26 the question of what can be done to create safe schools without law enforcement remains a pressing question. Options include hiring more counselors and psychologists to mentor and work with students, striving to build quality relationships with students and their families, training staff on behavior management so they can more safely and effectively manage their classrooms and promoting conflict resolution as a guiding principle for dealing with problems.27 Through peer mediation, conversations and meetings of
those involved, students can be empowered "to resolve conflict or harm themselves, without involving law enforcement or the justice system."28

While having police and other law enforcement officers in schools can serve to promote safety and prevent crime, the reality is that police presence in schools is also having serious and long-lasting effects on students. With no apparent evidence that the school-to-prison pipeline will soon be broken, consideration must be given to the many plausible alternatives to policing in schools, and a more effective and less harmful solution must soon be reached.

NOTES

3 Id. at 145.
7 Petteruti, supra note 2, at 15.
9 Kaba & Edwards, supra note 1, at 5.
10 Id. at 3.
11 Id. at 9.
12 Id. at 5.
13 Id. at 11.
14 Petteruti, supra note 2, at 14.
15 Id.
16 Kaba & Edwards, supra note 1, at 5.
17 Petteruti, supra note 2, at 17-19.
19 Id.
20 Petteruti, supra note 2, at 18.
21 Id. at 17-19.
23 Id.
25 Hook, supra note 5.
26 Sarah Karp, Citing Safety, Most High Schools Keeping Police, Catalyst Chi. (Oct. 28, 2011), http://www.catalyst-chicago.org/ntevervid/2011/10/28/citing-safety-most-high-schools-keeping-police/. Recently, Tim Cawley, Chief Administrative Officer for Chicago Public Schools, expressed reservations about having police and other security officers in schools, especially given the high price: about $75,000 annually per officer. Still, during the summer of 2011, over 100 Chicago public schools refused to give up their police officers in exchange for a hefty sum of money.
27 Pittreotti, supra note 2, at 24-28.
28 Id. at 28.