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ILLINOIS STATE BAR ASSOCIATION

THE CHALLENGE

The newsletter of the ISBA's Standing Committee on Minority and Women Participation

Voice of the co-editor

By Vickie Gillio

The true richness in both talent and concern for women and minority and issues close to their hearts is demonstrated in this issue. Judge Patricia Holmes' article on Benchmark Hearings describes the Court's demonstrated concern that minors obtain the necessary life skills to succeed after case closure. Professor Lorraine Schmall, in looking at the issues in Social Security reform, closely looks at how they may adversely affect women and minorities.

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Juvenile Court Benchmark Hearings "A local strategy for a national problem"

By Hon. Patricia Holmes

Thousands of children across the country have been found to be abused or neglected and are placed in foster care on a yearly basis. Large numbers of these children are returned home safely when the issues that brought their case into the court system are resolved. Many more are not returned home, but are adopted by loving and caring foster families. Nationally, still more remain in the system well past puberty and must work to achieve independence through the foster care system. To address the growing needs of teens in the child welfare system in Cook County, there needed to be a local strategy focused specifically on this growing concern. In 2001, Judge Patricia Martin Bishop, supported by Chief Judge Timothy Evans, piloted a program to address the needs of teens growing up in foster care. This program, the first of its kind in the country, is called "Benchmark Hearings."


Judge Holmes

These special hearings have received attention from the National Council of Juvenile and Family Court Judges as well as that of many jurisdictions throughout the country for their groundbreaking strategy and success in helping teens transition into adulthood. These hearings, currently conducted by Judge Patricia Brown Holmes, allow the youth in care to discuss their goals and understand the actions needed on their part to achieve these goals. Since implementation, these highly successful hearings have involved over 750 youth aged 16 to 21 and have helped them focus on completing various educational and economic endeavors.

Benchmark hearings began as a pilot project involving teens from one residential facility. The hearings were timed to coincide with Illinois Department of Children and Family Services' (DCFS) mandated dates for life skills testing of the teen (no later than 30 days after the 16th birthday and 60 days prior to the youth's planned discharge). Later, the program expanded to include all eligible youth in care aged 16 through 21 whose statutory permanency goal was independence.

These very intense and informal hearings are designed to focus on the needs of the youth. The teen is allowed to express his or her opinions, needs, desires, goals and aspirations to the judge directly. The minor's assistant public guardian/guardian *ad litem* is present for consultation, if necessary. A representative of the Chicago or local Public Schools is present for each Benchmark Hearing to provide detailed information about the teen's educational history, including enrollment, attendance, academic performance, public service requirements and extracurricular achievements. The school liaison provides information on appropriate programs and services offered by the local school system and how to access these programs.

A caseworker is also present and has the responsibility of bringing the minor to court and preparing supporting documentation for the hearing. The caseworker also helps ensure that the minor has given adequate thought to the issues that will be raised and that the minor brings to court a responsible

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adult/mentor, if available. This adult/mentor is integral to the continued development and maturity of the minor and provides continuity of authority between hearings. The court is concerned that there is a responsible adult/mentor involved in the life of every child who leaves the court, someone who will maintain contact with the teen and offer support in times of need. Also present are a supervisory assistant state's attorney, a supervisory representative from DCFS, an attorney for DCFS, and other agency personnel.

Part of the court's concern during these Benchmark Hearings is that the child has obtained the actual life skills necessary to prevent homelessness, joblessness, and/or economic failure following case closure. Toward that end, the court seeks information from the minor and caseworker regarding the minor's proficiencies and life skills training including: ability to budget money, vocational and career planning, health care, counseling, housing, financial assistance benefits for youth with special needs, and federal benefits and other public funding. The court is also concerned that the minor has all of the documents necessary to function as an independent adult including: social security card, driver's license or state identification card, library card, voter's registration card, medical records and documentation, birth certificate, list of known relatives with addresses and telephone numbers, educational records, and documents or information on religious background.

At the conclusion of the Benchmark Hearing, the minor and the court agree on various tasks to be performed by the minor prior to the next court date. These tasks are designed to help the minor on the road to independence. The minor participates in setting these goals to ensure they may be achieved. Goals may include obtaining a high school diploma or GED prior to the next court date, enrolling in a college or university, reading various books designed to help the minor focus on making mature and responsible decisions, participating in cultural and educational outings, and writing a "five-year, 10-year or life plan" designed to help the minor focus on the future.

Throughout the nation, teenagers have begun to comprise an increasing percentage of child protection caseloads. These teenagers present unique needs and challenges that are not amenable to cookie-cutter solutions. The Benchmark Hearing program allows the court the flexibility to tailor proceedings to the individual needs of its teenage wards. This perhaps best explains the support that Benchmark Hearings have garnered among state agencies, attorneys, child welfare advocates, and most importantly, the teenagers for whom the program was created.

Judge Holmes has been an associate judge of the Child Protection Divison of the Juvenile Justice Center in the Circuit Court of Cook County for the past eight years.

Above: A photo from The Lawyer's Workshop, sponsored by the Standing Committee on Minority and Women Participation, held in Collinsville on April 15th. From left to right: Andrew P. Fox, Chicago; Jennifer A. Shaw, Edwardsville; Ole B. Pace; Jorge L. Montes, Chicago; Robert Downs; and Dennis Orsey, Granite City.

The Challenge

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Social security reform: Bad news for the distaff side

By Lorraine Schmall, Professor of Law, Northern Illinois University, Visiting Professor of Law, Florida International University

President George W Bush wants to reform Social Security. His team of professional writers and partisan advocates explain his program at such government Web sites as Treasury's <strengtheningsocialsecurity.gov> and the Social Security Administration's obliquely-named <forourgrandchildren.org>. His plan is to allow the entrepreneur within us to take an active part in providing for our own retirement security. He touts partial privatization of the national old-age insurance plan begun in 1937 by Franklin Delano Roosevelt. As it is now, workers and their employers each contribute a percent of earnings up to a maximum (in 2004, 6.2 percent on earnings up to $87,900; the self-employed pay the whole 12.4 percent). Beyond what is needed for current benefit payments, contributions are held in a trust account, the corpus of which is invested in United States Treasury bonds, which, in turn, finance loans to the rest of the federal government. The benefits are guaranteed, and have never gone anywhere but up. While hardly regal, Social Security benefits are moderately generous; the average disabled worker gets $895 month; the median monthly income for all retirees is $955; a retired married couple over 65 nets $1,574; and, a widow with two children receives approximately $1,979. There is little doubt that the program cannot continue as it has without finding more money or paying less out in benefits. Jeanne Sahadi, CNN/Money senior writer, neatly summarizes a number of options to plug up the anticipated shortfall for Social Security: reduce benefits for future retirees; raise the retirement age; increase payroll taxes; get a large infusion of cash from other sources, which could mean an increase in the deficit. She calls privatization "the most fundamental overhaul of the System." I call it the most harmful. It will arguably be solvent another 70 years, but the retired and retiring among us greatly outnumber the younger workers who keep supporting the program. And miracles of modern science keep us alive and receiving SSA benefits longer. It is a simple math problem.

Social Security was designed to transfer money from the richer to the poorer. It helps women more than men. Women are 58 percent of the population over age 65; and 69 percent of the population over age 85. It has, among its virtues, a near-absence of racially discriminatory impact. The American Association of Retired Persons reports that among women aged 65 and older, 91 percent of whites, 88 percent of blacks, and 76 percent of Hispanics receive Social Security.

It is patently unfair to the young, whose current contributions are not saved for them but literally support present retirees, and actually has a disparate impact upon men and other wealthier workers by redistributing wealth. I have always liked the Program for those reasons.

Social Security's benefit formula ensures that lower-wage workers and their families receive a higher return relative to their contributions than high-wage workers. It, therefore, makes little economic sense to more affluent investors. At the normal retirement age, Social Security replaces approximately 56 percent of the average lifetime earnings of low-wage workers, 42 percent of the average lifetime earnings of median-wage workers, and 35 percent of the average lifetime earnings of high-wage workers. Most in the latter group have private pensions and other assets.

According to a special Winter 2005 report from the Women's Institute for a Secure Retirement low and middle-income workers, particularly women, rely heavily on Social Security for income. In 2002, older Americans in the lowest income group relied on Social Security for about **83 percent** of their income while the upper income group relied on it for only about **20 percent** of income. In 2000, unmarried women relied on Social Security for **51 percent** of their income compared to **37 percent** for unmarried men. Black women living alone relied on it for **57 percent** of their income and Hispanic women for **60 percent**. Social Security is the cornerstone of a woman's economic safety net—without Social Security, more than half of elderly women would live in poverty. Data gathered in March 2002 by the US Census Bureau reveal that, even with Social Security benefits, which are paid only to eligible, contributing employees and their families, 12.4 percent of all women live in poverty. Black women are the poorest, with 26 percent considered poor; followed in number by Hispanic women, at 24.4 percent; and, white women, of whom about 10 percent fall below federal poverty levels. About a third of African-Americans rely on Social Security as their only source of income, with 40 percent of older Hispanics in the same spot. Widowed, divorced, and never-married women, in particular, depend heavily on Social Security. Social Security accounts for half or more of the income of nearly three-fourths of these non-married female recipients of Social Security. For one in four, it is the only source of income.

These are some staggering statistics, and suggest why, separately or together, young capitalists, racists, sexists, the well-off, and many within the financial planning industry want Social Security to change. It does not explain the motivation of other proponents. The federal program is socially desirable, if not economically efficient. On the plus side for the haves, it creates consumers out of poor old ladies. That is good for business. Changing Social Security by creating individual accounts would not help most the poorest among us. And the plans to reform our old-age income program would have awful effects upon women, especially women of color, who will be our poorest cohort for years to come.

Privatization typically refers to proposals that would allow workers to divert a portion of their current payroll taxes into accounts invested in the stock market. Thus, some part of Social Security taxes would be returned to each individual employee to invest in her own, private account, rather than be pooled into a common fund for the good of all potential recipients. Individual accounts can be analogized to "An Army of One." The guaranteed benefit under Social Security would be reduced and workers would rely on their accounts to make up the difference. The government, like employers who allow their workers to establish defined contribution pension plans like 401(k)s, would pass the thrill and the risk of investment onto the worker. Moreover, individual accounts would lack any type of earnings redistribution.

Privatization—of even a small portion of Social Security—is not the way to go for several reasons. Women are too poor—generally—to risk the loss of any income in old age. Women are the most likely to have no private pensions. Social Security reform will cost women money. Privatization shifts the risk of getting a return on investments to the potential beneficiary. Enron, Worldcom, and other business failures where employees wildly over-invested in their own companies demonstrate that Americans generally (and women especially) are bad investors. Privatization will increase the costs of managing our private accounts disproportionately—as it has in the U.K., Chile and other countries where it has been tried. Finally, privatization will increase our deficit; that percentage of stock market play money that comes out of the trust fund has to, somehow, be replaced.

Women earn less money and will have less money than men to invest in private accounts under privatization proposals. In 2004, the median earnings for women were **$30,724** while men's median earnings were **$40,668**—a difference of **$9,944** or about **25 percent** less than men earn. Some college-educated women, with hefty salaries, and some white males who comprise some percent of the poor, contributed to that average. Median incomes in 1994 based upon household type were radically meager for women alone. The median income for married couples was $45,041. Male householders with children and an absent wife had a median income of $ 30,472. Female heads of households with children had a median income of $19,872. Female householders living alone earned the lowest median income in 1994. Their median income, $14,948, was significantly less than the median income, $24,593, of a similarly situated male. Families maintained by women tend to be poorer during the woman's working life, and this situation is exacerbated as the woman ages. This is more common among minority populations, but is fairly predictable across races, counting for gender alone.

Because of their work patterns/care-giving, women are less likely to earn a private pension than men. Only **30 percent** of older women receive a pension compared to **47 percent** of men. Never-married women are poor; divorced and widowed women are even poorer. Despite the myth that divorce enriches women at the expense of their ex-husbands, and regardless of the existence of laws that allow for the division of marital property, including spouses' pensions, many ex-wives fare badly financially. The National Center on Women and Family Law in New York reports that in the first year of divorce, women generally suffer a 73 percent reduction in their standards of living while their ex-husbands typically enjoy a 42 percent increase. Older housewives and women who are married the longest experience the greatest downward mobility and the greatest relative deprivation after divorce.

Women's poverty seems to be one of the most intractable elements of the American workplace. Most women earned significantly less than 75 percent of what most men earn; women of unique (and overlapping) subsets present an even starker contrast. Half of all women work in traditionally female, low-paying jobs without pensions. In fact, the majority (59 percent) of low-wage jobs are held by women who are likely to receive lower wages than similarly situated males. Not all women who are paid low wages work part-time, nor are they all young: 31 percent of women of prime working ages (between 25 and 45) worked full-time and were paid low wages.

Those of Hispanic descent are slightly over-represented among low wage workers, constituting 10 percent of the female work force, but 14 percent of the low-paid female work force; for example, over one-half of female Hispanic workers are in low-wage jobs. Although the greatest number of low-wage workers (41 percent) are concentrated in the service sector, this is because that sector employs the largest share (47 percent) of all female wage and salary workers, rather than because low-wage workers are over-represented within the industry... 39 percent of all female workers are low paid and only 34 percent of all service workers are low paid. Sixty-eight percent of women who received low wages were not covered by employer-provided health insurance during 1997, and, starkly, one-third of women who are paid low wages live below 150 percent of the poverty level.

A study done in 1991 by the Economic Policy Institute and the Institute for Women's Policy Research showed that 58 percent of the 11.8 million workers who would receive a pay increase as the result of a higher minimum wage would be women. Even more current data show that 15.3 percent of married females with children, and 9.2 percent of single working mothers would benefit from an increase in the minimum wage. The added tragedy of the less-than-equal-wage is that women make up 76 percent of single-parent families. Almost 40 percent of minimum wage workers are the sole generator of income for their households. A 2000 study by Lake, Small, Perry and Associates concluded: "With equal pay for equal work, the average family would witness an increase in income of more than $4,000 per year: more money than any tax cut proposal can optimistically promise."

Women's poverty is often exacerbated by the fact that they must be stay-at-home care-givers. An average woman spends 15 percent of her career out of the paid workforce caring for children and parents, according to the Women's Institute for a Secure Retirement. By its count, the average woman spends 11.5 years out of the workforce and over 50 percent of wage-earning women have reported dropping out of the labor force for family and care giving reasons as opposed to 1 percent of wage-earning men. Care-giving individuals lose more than $659,000 in wages, Social Security, and pension contributions because they temporarily or permanently take time off from their jobs; consequently, they miss opportunities for career training, promotions and rewarding assignments. Moreover, a woman's financial position is difficult whenever she leaves the work force to rear a child. A woman must work an extra five years to recover the lost economic opportunities for each year she tends to childcare.

One measure of economic security is participation in a pension plan. Despite all the talk about Social Security insolvency and fears of aged poverty, over the last 15 years, the private supplemental pension coverage rates have remained fairly stable; just short of 50 percent for all workers. However, alleging that one-half of all American employees participate in pension plans is less than an ingenuous statement; it is the ultimate essentialist conclusion. Most recipients are men. Most women are white. Accordingly, most women who get pensions are probably white. Through pension coverage through their spouses, some women have in effect two pensions. However, most women have no private pensions. The "average" pension-holder connotes and denotes a majority—white and male—while the many subsets of women, divided by race, ethnicity, social and economic class, and age, continue to fare poorly.

In typical government understatement, the Department of Labor notes: "while all workers need to save more for retirement, women face additional challenges because they have lower earnings, experience higher job turnover, and are employed in industries with low or no pension coverage." There is a plethora of research regarding the inequity of pensions for women, both in their availability and in their degree. Those with the greatest participation in pension plans tend to be richer, or at least not poverty-stricken, employees. At last count, among those earning less than $200 each week, only 6 percent participated in a plan compared with 54 percent of workers earning $500-$599 per week and 76 percent of workers earning $1,000 or more per week.

Social Security privatized accounts could parallel the abysmal performance of employee-managed private pension plans. The enormous concentration of 401(k) assets in employer stock demonstrates either complete lack of savvy or total indifference to investment risk. And employer stock is not the only problem. A recent article in the *Washington Post* reports that a staggering 97.5 percent of all 401(k) assets were invested in a single asset category, large-capitalization growth stocks; only half of 401(k) participants have any sort of asset allocation plan; and only one-third of that group do anything to maintain this mix, according to studies by John Hancock Financial Services, Fidelity and Putnam Investments. Despite the promises of personal ownership and, as the *Post* writers say, the jingoistic appeals to individual initiative and paeans to the glories of personal choice, the fact is that most employees have neither the training, the interest, nor the desire to become competent money managers.

On average, individually managed retirement accounts yield less return than professionally managed accounts, often by significant margins. For a myriad of reasons too complex for exploration here, women are worse investors than men. And men are not that great. Another recent survey showed that Americans scored an average of 42 percent on a 14-question test of basic knowledge of personal finances. For instance, two-thirds falsely believe there is an organization that insures you against losing money in the stock market or as a result of investment fraud. More shockingly, 45 percent of Americans incorrectly believe diversification will guarantee that investments will perform well even if the stock market does not, and 63 percent of those surveyed do not understand the basic concept of inflation. AARP advises that choices among investment instruments are critical, too. Because the private market can consider gender when calculating annuities, the same accumulation of savings in individual accounts would purchase lower monthly benefits for women than for men, even though payments over a woman's average longer lifetime may be the same. The American Institute of Certified Public Accountants complains that Personal accounts expose account holders to uncertainty about their future benefit levels because of market performance risks. Although some of this risk can be eliminated through diversification, the rest may be transferred to the federal government in the form of minimum benefit guarantees.

In addition, transaction costs, and the potential for a financial industry rife with mismanagement and misleading taking advantage of this new class of Social Security stock traders, can reduce or eliminate the private account corpus, as it has in other contexts. The American Institute of Certified Public Accountants (noticeably a group without a partisan axe to grind) warn us that the costs to administer private accounts have a large impact on the benefits ultimately available to retirees. For a worker earning $30,000, and contributing 2 percent of earnings to an individual account, administrative costs of .1 percent of assets could allow an accumulated balance of $125,430 by retirement; if administrative costs were 1.0 percent, the accumulated balance would be approximately $98,000—a 22 percent reduction. Costs are difficult to understand, and easy to hide.

Other countries have tried privatized pensions. For example, the AARP Public Policy Institute reports that many United Kingdom workers are worse off by having opted for a voluntary private account like the one the president is advocating. Because of pension service providers with a financial interest in workers choosing accounts, even when those accounts are inappropriate for the individual worker, more than two million people bought accounts when they would have been better off remaining in Social Security. Account holders' lack of sophistication with investments, and bounded rationality regarded the personal cost of being an investor had bad results: in 1998, the combined effect of the fees charged on individual accounts equaled an average reduction in yield of 3.2 percent per year for people in these plans for 10 years and 1.7 percent per year for people in plans for 25 years.

Pollsters in the U.S. now tell us that, after initial supporters had been exposed to all of the consequences of diverting payroll taxes to fund private accounts; only 10 percent still favor them. So I may be preaching to the saved. But put your faith in the New Deal, not the new plan, and watch your pocketbooks, ladies.

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Useful websites:

American Association of Retired Persons online at <http://www.aarp.org/research/socialsecurity/reform/problems_encountered_with_private_accounts_in_the.html>.

The American Institute of Certified Public Accountants at <http://www.aicpa.org/about/index.htm>.

Women's Institute for a Secure Retirement, online at wiserwomen@aol.com • <www.wiserwomen.org>.

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