



THE CATALYST

The newsletter of the Illinois State Bar Association's Standing Committee on Women and the Law

Chair's column

By Sandy Blake

My mother, my best friend, died of cancer on March 24, 2007. Some dates of significance related to her remind me of especially happy times, while others make me feel her loss more keenly.

For example, six months to the day after she died, I began working as a staff attorney for Life Span, providing legal services to victims and survivors of domestic violence. I remain confident that my mother was looking out for me when I was offered this position.

Mother's Day is always particularly difficult. Yet every year since I lost my mom, instead of a wave or a handshake, I have received a Mother's Day hug during church services from the mother of one of my childhood friends, a woman who was never known for being especially warm.

I share this because I have learned in recent years that our support, our example, our strength often comes from unexpected quarters.

For most of my life, my mother was all of these, and more. At the age of 26, my mother had two-

year-old and six-month-old daughters (me and my sister), and a husband who was paralyzed on the left side of his body as a result of a brain tumor. With the support of family and friends, she survived my biological father's illness and death, and guided her daughters through that loss. She went back to college, worked part-time, and volunteered in the community. Several years later, she met and married my dad, gave birth to my brother, and created a family such that the word "step" was never used in our household.

Today, I have the opportunity to thank the members of this committee for your support, your example, your challenge and your dedication. Thank you for your contributions to this remarkable newsletter, for your thoughtful commentary to proposed Illinois legislation, for your support of our team in the Lawyers Feeding Illinois challenge, for your willingness to share time and talent in our CLE and cable television programming and Women Everywhere efforts. ■

Katherine Imp and *Beauty Beneath The Dirt*

By E. Lynn Grayson

In 2009, I met Kate Imp when she was a law student at University of Illinois and President of the Women's Law Society. That year, the ISBA Women and the Law Committee held its annual networking and legal community outreach reception in Campaign and coupled our meetings with a professional development program for women law students at the University of Illinois. I was impressed with Kate as a law student and continue to be impressed with Kate's accomplishments as a Chicago lawyer and filmmaker.

Most young lawyers find it challenging, and sometimes stressful, to begin practicing law and putting into action everything learned in law school. Katherine Imp, known to her friends as Kate, not only successfully embraced this challenge but emerged as a highly acclaimed documentary filmmaker at the same time. Her new documentary, *Beauty Beneath the Dirt*, was recently released to the general public in both digital and DVD format at

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Katherine Imp and *Beauty Beneath The Dirt*

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www.beautybeneaththedirt.com.

In 2010, Kate completed law school a semester early to thru-hike the Appalachian Trail (2,178.3 miles) from Georgia to Maine and, at the same time, directed, produced, and starred in a documentary film about the journey. The film, *Beauty Beneath the Dirt*, was a culmination of Kate's passions and background in filmmaking, outdoor adventure, entrepreneurship, and leadership. She managed all aspects of the film's development, secured sponsorship from 15 well-known food and outdoor clothing suppliers, launched a 50-venue national film tour, and obtained digital and television distribution. The film received critical acclaim and media coverage from numerous outlets, including the *Philadelphia Inquirer*, *Courier Post*, *Chicago Tribune*, and two articles in *The Chicago Daily Law Bulletin*.

The documentary, she said, showcases their hike, along with some of the tough challenges they encountered on their trek from Georgia to Maine. "It wasn't a vacation and it wasn't just an adventure. It was life," Kate noted in a recent interview for the *Chicago Daily Law Bulletin*. "As is in life, you live and grow and have ups and downs. I think we showed that in the film." Kate said the idea to attempt the hike came to her while taking an exam during her first semester at the University of Illinois College of Law. Kate recalled that during law school final exams she wished to be anywhere else—a sentiment any lawyer can appreciate. She decided to hike the Appalachian Trail then and there.

According to the Web site, the film is about what happens when you put a lawyer, an Ivy grad and a city chick on the Appalachian Trail concluding "... there is more to us than we know..." At the Web site, you also can see pictures of their journey, watch a trailer of the documentary, buy or rent the movie and purchase other cool *Beauty Beneath the Dirt* merchandise.

Kate is currently an associate at the Chicago firm of Segal McCambridge Singer & Mahoney, Ltd. where she specializes in toxic tort litigation. She defends manufacturers against products liability and premises liability claims arising from occupational exposures to toxic tort and hazardous substances.



Photo Courtesy of Beauty Beneath the Dirt LLC.

Her litigation practice includes a particular focus on asbestos and benzene-related matters.

Segal McCambridge also has allowed Kate's filmmaking interests to expand into a growing entertainment law practice with emphasis on branding, digital media and film production. Her clients range from musicians to producers to small-business owners. She also recently accepted a position on the Lawyers for the Creative Arts' Associates Board.

Kate is a wonderful example of the bright, energetic, progressive lawyers entering law practice every year. These young women lawyers are molding their legal careers more

effectively around their personal lives and interests confirming that perhaps you can have it all. Kate reminds me that the best and brightest are lawyers and I am grateful to be a part of the legal community with them.

Kate's next project, *Neon Picket Fence*, is set to launch this summer. The web series follows Kate and her co-host, Alisa Kolodizner, as they travel around Chicago fixing Millennial problems. Kate can be reached at kimp@smsm.com. ■

E. Lynn Grayson is a Partner in the Chicago office of Jenner & Block and former Chair of the ISBA Women and the Law Committee.

Lean In encourages women to step up to the plate

By Natalie Lorenz

Lean In by Sheryl Sandberg sends a powerful message to young women: we need you to aim high in your careers, not just for yourselves, but for the good of all women. The book's title certainly succeeds in communicating this message, asking women to "lean in" to their careers, and to be "ambitious in any pursuit." Ms. Sandberg, the Chief Operating Officer of Facebook since 2008, combines both empirical research and anecdotes from her own life to illustrate her argument for leaning in.

The book begins by laying the foundation for Ms. Sandberg's argument: we need more women in higher-level career positions before women and men will truly be equals in the workforce. Ms. Sandberg writes that she "believe[s] that increasing the number of women in positions of power is a necessary element of true equality" between women and men. As an example, Ms. Sandberg recounts a story from her days when she worked at Google. She was pregnant, had spent "a rough morning . . . staring at the bottom of the toilet," and was rushing to make an important client meeting. The only parking spot she could find was far away, and she had to "lumber[] a bit more quickly than [her] absurdly slow pregnancy crawl" to make it to the meeting, making her nausea worse. The next day, she "waddled in" to see a Google founder and announced that Google needed expectant mother parking, after which the founder immediately agreed, noting that he had never thought about it before. Having just one woman in a position to say something about the parking situation made all the difference. Ms. Sandberg argues that "[c]onditions for all women will improve when there are more women in leadership roles giving strong and powerful voice to their needs and concerns."

The remainder of *Lean In* builds on the foundation: for women to achieve these higher-level positions needed to help all women's chances for success and equality, we need women to step up to the plate and actually aim to reach those positions. Ms. Sandberg explains that women hold themselves back "in ways both big and small, by lacking self confidence, by not raising our hands, and

by pulling back when we should be leaning in." She argues that getting rid of our own internal barriers is key to gaining power. This argument is unique in that it gives women a guidebook for success based on things they can actually control, rather than focusing on societal or institutional barriers that most women can do little to redress.

Although *Lean In* was not specifically written for women in the legal community, the book is an excellent read for women at all stages in their legal careers, including those who are still in law school and have not even begun working yet. Ms. Sandberg discusses with wit and passion issues that women in legal careers no doubt face, such as working on our own self-confidence, finding and being a mentor, and asking our partners to help us out at home.

The seventh chapter of *Lean In*, entitled "Don't Leave Before you Leave," seems especially targeted to young women who are just starting out in their careers, like me. In this chapter, Ms. Sandberg argues that women may be nervous to take on certain projects, or "agree to take them on with the kind of hesitant yes that gets the project assigned to someone else" because they are afraid that establishing the reputation of someone who takes on such work projects may someday upset the work-life balance they dream of. She states that women tend to carve out a place for family in their lives before their family is even close to materializing, while men do not. For example, Ms. Sandberg recounts a time when a young woman at Facebook asked to privately speak to her about some "urgent" questions regarding work-life balance, when the woman did not even have a boyfriend yet.

This difference between men and women is detrimental to women's success in the workplace, while, of course, men tend to rise to the top due to their ambition. Ms. Sandberg argues that "the time to scale back is when a break is needed or when a child arrives—not before, and certainly not years in advance. The months and years leading up to having children are not the time to lean back, but the critical time to lean in." Ms. Sandberg states that the time before a child arrives can

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actually be a wonderful opportunity to lean in; that way, women can actually look forward to returning to a rewarding job, rather than making the non-decision of whether to return to an “okay” job, after having a child.

Ms. Sandberg’s point on this issue is well-taken. I admit that I am one of those people who plans everything far in advance, and that includes planning to have children one day. Being interested in women’s issues, I have attended my fair share of conferences and seminars with the banner topic of obtaining an ideal work-life balance. Being aware of the issues I face in my career put me on red alert for anything that might upset my goals relating to family and work. Like the young woman at Facebook asking “urgent” questions long before the time came, I have worried about work swallowing up life in the balance way too far in advance. After reading *Lean In*, I realized that Ms. Sandberg makes an excellent point, and that for now, I need not worry that leaning in at work could negatively affect time spent with my nonexistent someday-child. That child is nowhere close to being here yet, and leaning in at this stage in my career could actually be critical to happiness with the work-life balance I will have one day when that child arrives.

This example of how *Lean In* resonated with me is certainly not the only one, but there are far too many stories, anecdotes, and raw data from the book that I would love to discuss to fit in this publication. The book is filled with endnote references that back up Ms. Sandberg’s propositions; interested readers can look to the back of the book for a source, then read further on the topics that interest them.

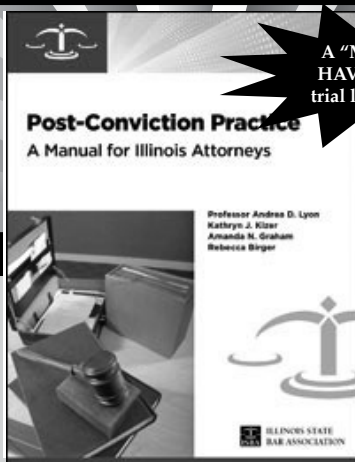
Still, there are some points Ms. Sandberg makes that, if taken too far or if not carefully thought through, could potentially harm readers, especially women entering legal careers. For example, Ms. Sandberg discusses the fact that women tend not to negotiate their salaries, encourages women to do so, and gives tips for effective negotiation as a woman. While this is an excellent discussion topic, young female lawyers and soon-to-be lawyers should take the current economic situation into consideration before employing Ms. Sandberg’s suggestions on this subject. Hard negotiation in the current economy, where there are many lawyers and not-so-many jobs available for them to fill, could be extremely risky. Lawyers (including male lawyers, in this case) should spend some time weighing the risks and benefits

involved before following Ms. Sandberg’s advice on this issue.

In conclusion, while not expressly aimed at women in the legal profession, the points Ms. Sandberg makes in *Lean In* apply to us just as well as to those other careers mentioned in the book. Many women will find themselves agreeing with Ms. Sandberg’s arguments as they read along, and many will find that she makes unique points they never thought of before. Still, as stated above, it is important for readers to remember to think critically when taking advice, and reflect on what is best in their own particular circumstances before making big decisions in their lives. In any case, *Lean In* is an excellent way to start conversation about the issues women face in their legal careers. It has the potential to prompt good mentoring on these subjects so women in our profession make decisions that lead to successful careers, and in the process, help all women in our profession reach our goal of equality. ■

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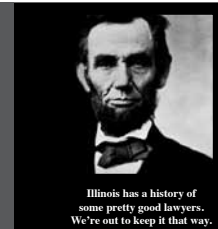
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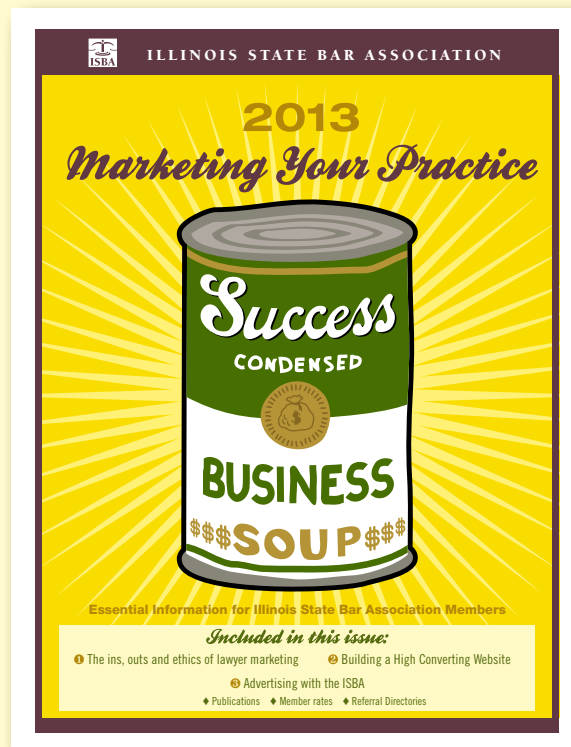


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Ever think about running for office?

By Ella York, Member of the ISBA's Committee on Women in the Law

Women make up nearly 51% of the U.S. population¹ but hold only 18% of seats in the U.S. Congress.² There are currently 20 female senators (20%) and only 78 female representatives of the 435 (17.9%).³ Things are slightly better at the state level in Illinois with women holding 32.3% of the seats in the state legislature and three of the six state executive offices.⁴ The statistics at the local level of government, however, are still abysmal. As of January 2012, of the 1,248 mayors of U.S. cities with populations over 30,000, only 217 (17.4%) were women.⁵

There are lots of reasons for these statistics but the important takeaway is that women have a long way to go in achieving equality as public office holders. Fortunately, in Illinois, there are two excellent, intensive programs that are training women how to successfully run for public office. The *Illinois Women's Institute for Leadership (IWIL)* program trains women to run for office on the

Democratic ticket while the *Illinois Lincoln Excellence in Public Service Series* trains women to run for public office on the Republican ticket. These two programs, while they reach out to opposite sides of the aisle, share the goal of increasing the number of women in public office.

If you have ever considered a run for any public office, I urge you to look into participating in one of these programs. They train women to run for all levels of government. Whether it's a state office you've considered running for or local mayor, village trustee, school board member or park board member; as a female candidate, you could benefit from the knowledge and skills taught through these programs.

The curriculum of each of these programs includes campaign planning and fundraising, public speaking and communication techniques, media relations, understanding institutions of government and public policy, and building effective support networks. The

curriculum is presented by leaders in the field and delegates have the opportunity to network with current female leaders of the party.

The application process for IWIL begins in July with a mid-September deadline. The application process for Lincoln Series has a late October deadline. To learn more about IWIL or the Lincoln Series, visit their respective Web sites at <<http://iwilinfo.org/>> and <<http://www.lincolnseries.com>>. ■

1. United States Census Bureau, 2011, Female persons, percent, 50.8% <<http://quickfacts.census.gov/qfd/states/00000.html>>

2. Center for American Women and Politics (CAWP), Eagleton Institute of Politics, Rutgers University <http://www.cawp.rutgers.edu/fast_facts/levels_of_office/documents/cong.pdf>

3. Id.

4. <http://www.cawp.rutgers.edu/fast_facts/resources/state_fact_sheets/IL.php>

5. U.S. Conference of Mayors 2012 <<http://www.usmayors.org/>>.

Girls' empowerment groups: Shaping the next generation of female leaders

By Mary F. Petrucci

"Gender equality and women's empowerment are fundamental to ... achieve equal rights and dignity for all. This is a matter of basic human rights."

—U.N. Secretary-General
Ban Ki-moon.

It's not easy for girls coming of age in today's media-saturated world to develop a healthy sense of self-worth, self-respect, and purpose as they prepare for their futures. In order to emerge from their teen years as strong, happy, and confident young women, girls must learn to successfully navigate peer pressure and negative messages about girlhood and womanhood. These influences have the potential to negatively impact their self-esteem, identity development, health behaviors and ability to make positive life decisions.

Girls' empowerment programs can substantially undercut delinquency and victimization of girls. These programs identify the risk factors associated with female adolescent problem behaviors, such as failure to complete high school, teen pregnancy and parenting, low self esteem and prior victimization, to help prevent girls from entering the juvenile justice system. Once involved in the juvenile justice system, girl offenders can be rehabilitated with a curriculum that focuses on developing girls' bonding, goal-setting skills, self-esteem, mental health, attachment to school, violence prevention, issues with authority and substance abuse prevention using such community-based programs, rather than the more intensive and restrictive institutional facilities.

Girls who are empowered with the information taught in these groups are equipped

with tools and information to make positive choices and educated decisions regarding their lives. Such groups encourage the development of critical thinking skills and academic achievement, thus discouraging delinquent behavior.

Empowering Our Girlz (EOG) is a not-for-profit mentoring organization based in Chicago that serves as resource and network of support for girls ages 10-18. The organization's goal is to empower young girls with their own potential to be leaders in their lives as well as in their communities. **EOG's** core program provides a series of seminars lead by various community leaders with a goal to boost participants' physical and social health. **EOG's** vision is to assist girls with goal setting and ultimately achieving a higher level of success when it comes to graduating from high school. **The E.O.G. Creed is:**

E-Everything around me deserves respect and will receive it starting with above all myself.

O-Obstacles are the struggles that will build my strength and see me threw to success.

G-Greatness is what I have and great is who I AM

If you would like to learn more about **Empowering Our Girlz**, you may like them on Facebook, follow them on Twitter or call 773.305.7588.

Cultured Pearls Empowerment Group for Girls, founded in 2011, has provided many services for young girls, ages 10-17 in the Chicago-land area. The participants are paired with professional business women who serve as mentors and advocates. They participate in character building series and workshops and give back to their community through community service, including volunteering at shelters, reading to children at the library and quilt-making for expectant teen mothers.

The **Cultured Pearls** Web site states the following:

"We believe that empowerment originates from education. We are grounded in love and free from judgment, with the understanding that everyone has the ability to teach. We are committed to our community; our immediate community and beyond. We are committed to helping others. We are committed to renewing the spirit of our own. We use the media and the world around us as teachable moments in order to show our youth that the world that they wish to live in already exists, but is yet to be seen because it takes action and work. Every person on the staff (including mentors) of Cultured Pearls Empowerment Group for Girls has a story that needs to be told. We identify with our participants because we have lived through various circumstances and situations, we have all "beat the odds" in some kind of way and we all understand that we are where we are in life in order to help others.

We believe that we will be influential in reversing the statistics that apply to our young minority girls, one life at a time. We are "cultivating our girls for greatness" with bi-monthly meetings that focus on self esteem, health and

wellness, higher education, and etiquette, with a foundation of service to our immediate community and those abroad."

The De Kalb County Youth Services Bureau's **Girls Empowerment Group (GEP)** encourages girls to seek and celebrate their "true selves" by giving them a safe space, encouragement, structure and support to embrace their important journey of self discovery. A strength-based approach helps girls identify and apply their power and voice as individuals and as a group focusing on issues that are important in the lives of adolescent girls. Topics include learning about self, connecting with others, exploring healthy living and planning for the future. The aim of the program is to provide education and supportive counseling geared toward the specific needs of adolescent girls.

Winnebago, De Kalb and McHenry Counties have joined "Girls on the Run of North-west Illinois," a national organization that promotes healthy eating and body image for young girls from 3rd through 8th grade, as well as teaching about cooperation. The program combines training for a 5K running event with healthy living education. It instills self-esteem through health education, life skills development, mentoring relationships, and physical training, which are accomplished through an active collaboration with the girls and their parents, schools, volunteers, staff, and the community. Girls on the Run's mission is to..."inspire girls to be joyful, healthy, and confident using a fun, experience-based curriculum that creatively integrates running."

During the 10-week program, girls learn a different lesson about topics such as self-respect, positive self-talk, healthy eating, body image, peer pressure, and bullying. Activity and team building are constant themes of Girls on the Run. The program's motto is, "Preparing girls for a lifetime of self-respect and healthy living." For more information about forming a **Girls on the Run** program in your community, please call **815.893.0259**.

In McHenry County, Spring Grove has a girls' empowerment group for 6th, 7th, and 8th graders. This program provides a small group experience and it assists girls in strengthening their personal self development through discussion and self-awareness activities. By focusing on self-esteem, personal expression, and self respect, girls gain confidence and tap into their unique potential.

Girl Talk is an Atlanta, Georgia-based

international non-profit peer-to-peer mentoring program in which high school girls mentor middle school girls to help them deal with the issues they face during their formative early teenage years. Its mission is to help teen girls build self-esteem, develop leadership skills and recognize the value of community service. Since 2002, **Girl Talk** has served more than 40,000 girls in 43 states and 7 countries.

Through weekly chapter meetings facilitated by high school **Girl Talk** leaders, **Girl Talk** helps middle school girls learn from their peer mentors and better understand and address the issues they face. The girls develop confidence, leadership skills and compassion. **Girl Talk** provides the curriculum of life lessons used to facilitate the discussions at no charge. For more information on Girl Talk, go to its website, www.mygirltalk.org.

The Internet is full of websites that reach out to girls around the world to inspire and empower them. I urge the reader to check out www.sheheroes.org, which lists its following Top 10 Websites that are helping to empower girls: 7Wonderlicious; Girls Can't What?; Girl Talk (mentioned above); Targeting Teens; Educating Girls Matters; LOreal USA for Women in Science; Hardy Girls, Healthy Women; New Moon Girls, and Girls, Inc.

What can we do? For starters, we can advocate for laws and policies that will protect girls and promote girls empowerment. By closely scrutinizing the media, we can be aware of how race, gender roles, and stereotypes shape television programs, video games, books, music videos, cartoons, blogs, and Web sites. We can make sure that we consciously purchase products and support organizations that stress inclusion and convey positive messages about women. We can also commit to volunteering to mentor a girl or young woman and/or become directly involved in one of the many programs mentioned in this article or find one of our own online.

If young women grow up instilled with positive perceptions of themselves and informed in their choices, they can be the role models for future generations! ■

Mary F. Petrucci is a solo general practitioner in Sycamore, IL. She is the incoming 2013-2014 Chair of the Standing Committee on Women & the Law. Mary is also the CLE Coordinator for the Diversity Leadership Council and a member of the Child Law Section Council for 2013-2014. She can be reached at marypet@petrucci-law.com and her website is www.petrucci-law.com.

Bill would allow courts to deny custody or visitation to rapist fathers

By Tracy Douglas

Illinois allows mothers who gave birth to their rapist's child to block custody or visitation when the rapist is criminally convicted.¹ House Bill 3128 would change that.² The proposal would allow mothers who conceived through rape to strip the parental rights of their rapists if they could prove a rape occurred that resulted in conception of the child.³ This addresses an issue that was highlighted by Shauna Prewitt in the *Georgetown Law Journal*.⁴ Illinois is among a few states that allow for different custody rules for rapists when the mothers have a criminal conviction, and this proposal would allow Illinois to become a state that allows for different custody rules in the absence of a criminal conviction but with other evidence of a rape.

Most states give the same legal rights to men who father children through rape as they do to other fathers.⁵ Only 16 states provide different custody and visitation rules for men who father through rape, and of those, ten states mandate a criminal conviction as proof.⁶ Louisiana's law specifically requires the court to terminate parental rights where a rape is proven, but it does not require a criminal conviction as proof.⁷ Nine states provide for the termination of the parental rights of rapist fathers.⁸ Six states allow the termination of parental rights without a criminal conviction, but the majority of those states do not require the court to terminate the perpetrator's parental rights.⁹

With this proposed amendment, Illinois would require not allowing custody or visitation to men when a woman can prove by clear and convincing evidence that a rape occurred that resulted in the child's conception.¹⁰ It can be asserted either in an affirmative petition or as an affirmative defense.¹¹ Clear and convincing evidence is the standard for determining unfitness as well.¹² Left undefined by the proposed amendment is what evidence would meet the standard. Courts will have to decide that in cases brought under the law.

The proposal would also allow mothers to refuse child support.¹³ However, it makes clear that stripping custody and visitation rights does not also remove the obligation of child support.¹⁴ It would also deny inheritance rights to rapist fathers.¹⁵

The proposed amendment has passed

the Illinois House and is in the Senate awaiting a vote.¹⁶ If passed and signed into law, this bill would give raped mothers another legal avenue for recourse. They would not have to have interaction with their rapist if the rapist father was denied custody and visitation, which could help in the process of healing. Colorado is considering similar legislation, but it requires a conviction whereas Illinois' proposal would no longer require a conviction where there is clear and convincing evidence that a rape resulted in conception.¹⁷ Perhaps Illinois will become a model for addressing this problem. ■

Tracy Douglas is staff attorney for the Governor's Office of Executive Appointments and a member of the Standing Committee on Women and the Law. The opinions expressed herein are solely those of the author and not those of the Governor's Office.

1. 750 ILCS 45/6.5.

2. H.B. 3128, 98th General Assembly, Reg. Sess. (IL. 2013).

3. Id.

4. Shauna Prewitt, Giving Birth to a "Rapist's Child": A Discussion and Analysis of the Limited Legal Protections Afforded to Women Who Become Mothers Through Rape, 98 *Georgetown Law Journal* 827 (2010).

5. Id. at 831 (2010).

6. Id. at 836, 855.

7. Id. at 858.

8. Id. at 854.

9. Id. at 857.

10. H.B. 3128, 98th General Assembly, Reg. Sess. (IL.2013).

11. Id.

12. 750 ILCS 50/1 (2013)

13. H.B. 3128, 98th General Assembly, Reg. Sess. (IL.2013).

14. Id.

15. Id.

16. <<http://www.ilga.gov/legislation/BillStatus.asp?DocNum=3128&GAID=12&DocTypeID=H&LegId=74983&SessionID=85&GA=98>>.

17. S.B. 227, 69th General Assembly, 2013.

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ILLINOIS STATE BAR ASSOCIATION

Prenatal drug use: Functionalistic vs. formalistic approaches

By Heather A. Abell

Will a mother's prenatal drug use result in a finding of child abuse or neglect once the fetus is born? To answer this question, it is necessary to look to the controlling statute of one's jurisdiction. In Illinois, under 705 ILCS 405/2-3(1)(c), a neglected minor includes:

any newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act, as now or hereafter amended, or a metabolite of a controlled substance, with the exception of controlled substances or metabolites of such substances, the presence of which in the newborn infant is the result of medical treatment administered to the mother or the newborn infant . . .

Illinois' Juvenile Court Act serves as a model for many jurisdictions across the United States. However, as states adopt and revise statutes, evidence of what constitutes a "child," "actual harm," "imminent danger," and "substantial risk," coupled with a state's personhood or parenthood approach not only impacts precedent, but can leave more questions than answers.

In recent years, Illinois has taken more of a parenthood stance in recognizing that life begins at conception. According to 720 ILCS §510/1, the General Assembly of the State of Illinois regulates abortion in accordance with the precedent set forth by the United States Supreme Court in *Roe v. Wade* (1973). However, the General Assembly, without restricting a woman's right to privacy or to an abortion, upholds the long-standing state policy "that the unborn child is a human being from the time of conception and is, therefore, a legal person for purposes of the unborn child's right to life and is entitled to the right to life from conception under the laws and Constitution of this State." *Id.* The intent of the Illinois General Assembly was to continue to uphold the state's policy protecting the right to life of an unborn child from the time of conception by prohibiting an abortion unless it is medically necessary to preserve and save the life of the mother. *Id.* The state's policy was restricted by the *Roe v. Wade* (1973) decision, but legislative history reveals that it is the intent of the General Assembly, if *Roe*

v. Wade (1973) is ever reversed, modified, or the United States Constitution is amended, "to allow protection of the unborn then the former policy of this State to prohibit abortions unless necessary for the preservation of the mother's life shall be reinstated." *Id.*

On the contrary, states such as New Jersey have taken more of a personhood stance. New Jersey does not provide many rights to a fetus. New Jersey's statutory definition for "abused or neglected child means a child less than 18 years of age." (N.J.S.A. 9:6-8.21(c)(4) (b)). In addition, New Jersey law places emphasis on protecting a child after birth and, as a result, focuses on a child's condition after birth. Not every instance of drug use will result in a court being able to substantiate a finding of abuse. Although this article is not a forum for an abortion debate, as *Roe v. Wade* (1973) is well settled law, clarifying and understanding whether states take a personhood or parenthood stance is a critical aspect of how state statutes are formed.

According to N.J.S.A. 9:6-8.21(c)(4)(b):

Abused or neglected child means a child less than 18 years of age whose parent or guardian, as herein defined, . . . [as] a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care . . . in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court . . .

While the Illinois statute clearly recognizes that a "newborn infant" can be abused or neglected at birth upon a finding of specific evidence, the New Jersey statute addresses harm to a child as opposed to a fetus or newborn. In a New Jersey Supreme Court case decided in February 2013, prenatal drug use by a mother may not result in a finding of abuse or neglect to a "child" if there is no evidence of "actual harm," "imminent danger," or "substantial risk" upon the birth of the child. *N. J. Dept. of Children and Families v. A.L.*, 213

N.J. 1, 8 (2013). Moreover, the court limited the conditions of abuse and neglect to applying only after the birth of the child, stating that there could be no "actual harm," "imminent danger," or "substantial risk" to a fetus. *Id.*

Although Illinois and New Jersey have statutes that appear facially similar, they each have a substantial impact on their citizenry and set public policy that can be both beneficial and harmful. The purpose of the Illinois statute is to protect the health and welfare of an unborn child or fetus. Illinois statutes, such as involuntary manslaughter and reckless homicide of an unborn child (720 ILCS 5/9-3.2(c)), and voluntary manslaughter of an unborn child (720 ILCS 5/9-2.1(b)(2)), support the state's policy of protecting unborn children. The state attempts to statutorily deter and protect unborn children by implementing severe penalties such as a Class 1 felony, which carries a possible 4 to 15 year prison sentence (730 ILCS 5/5-4.5-30(a)) for persons convicted of voluntary manslaughter of an unborn child, and a Class 3 felony, which carries a possible two- to five-year prison sentence (730 ILCS 5/5-4.5-40(a)) for persons convicted of involuntary manslaughter and reckless homicide of an unborn child.

However, in *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court set a precedent allowing women to choose whether or not to have a child and allowed states to place some regulations on abortions. If a woman were to have an abortion adhering to the statute in either Illinois or New Jersey, the state could not charge her with murder. The Supreme Court placed a great emphasis on autonomy. New Jersey law allows a woman to take drugs while pregnant or to have an abortion. Illinois law allows a woman to have an abortion, but not to take drugs while pregnant. Illinois' public policy regulates the autonomy of women by allowing them to be found abusive or neglectful if the child's blood, urine, or meconium tests positive for drugs at birth.

In the same instance, Illinois' statute can have a negative effect on women who use drugs and do not know of their pregnancy. It is widely recognized that drug use can hinder the development of a fetus, resulting in issues such as low birth weight and/or fetal movement. A woman who uses drugs at the beginning of her pregnancy, not knowing she is pregnant, and who stops using drugs

upon determining a positive pregnancy, can still lose her custodial rights to the Department of Children and Family Services if the baby tests positive for drugs at birth. In addition, a woman who has accidentally ingested drugs, such as when the mother in *New Jersey Department of Children and Families v. A.L.* claimed that she accidentally ingested cocaine when she was five months pregnant, can be found guilty of child abuse or neglect in Illinois, but not in New Jersey. 213 N.J. at 10. Therefore, Illinois can also theoretically criminally punish a woman who chooses to quit using drugs for the health of her baby in the same manner as a woman who uses drugs the day of her delivery under the Illinois battery of an unborn child and aggravated battery of an unborn child statute. 720 ILCS 5/12-3.1(a)(b). Under Illinois 720 ILCS 5/12-3.1(a)(b), "a person commits a battery of an unborn child if he or she knowingly without legal justification and by any means causes bodily harm to an unborn child," and "commits aggravated battery of an unborn child when, in committing a battery of an unborn child, he or she knowingly causes great bodily harm or permanent disability or disfigurement to an unborn child." As a result, under the Illinois battery/aggravated battery of an unborn child statute, a woman who uses drugs can receive either a Class A misdemeanor, which carries a maximum penalty of 364 days in county jail (730 ILCS 5/5-4.5-55(a)), or a Class 2 felony, which carries a sentence of 3 to 7 years in the Illinois Department of Corrections (730 ILCS 5/5-4.5-35(a)), depending on the extent of the damage to the child. 720 ILCS 5/12-3.1(c). Illinois also has laws regarding the intentional homicide of an unborn child. 720 ILCS 5/9-1.2. Specifically, a person who intentionally:

perform[s] acts which cause the death of an unborn child, [if] he without lawful justification (1) either intended to cause the death of or do great bodily harm to the pregnant woman or her unborn child or knew that such acts would cause death or great bodily harm to the pregnant woman or her unborn child; or (2) knew that his acts created a strong probability of death or great bodily harm to the pregnant woman or her unborn child; and (3) knew that the woman was pregnant. 720 ILCS 5/9-1.2(a)(1)(2)(3).

Although this statute on its face appears to be targeted more towards men abusing

pregnant women, taken literally, a woman who knowingly uses drugs or causes her own miscarriage as the result of drugs can theoretically be charged with first degree murder. 720 ILCS 5/9-1.2(d)(1). However, a woman who receives an abortion in accordance with Illinois law or who suffers a miscarriage for an unexplained reason is not charged with murder. In addition, Illinois' functionalistic approach allows all children and fetuses to have the best possible chance of being healthy. This creates productive citizens, and reduces the costs of financial support to children and adults who may suffer medical conditions as a result of the adverse effects of prenatal drug use.

On the contrary, New Jersey's statute seems to place a higher burden of proof on the state to prove child abuse and neglect, and the statute does not contain a special provision addressing newborn infants. The policy behind this statute is that women have a right to autonomy, and that it is impossible for her to commit child abuse or neglect to a fetus. This formalistic approach has recently produced the harsh result of allowing mothers to use drugs that may produce adverse effects on a fetus, and can potentially lead to costly financial support for medical treatment for these children. However, New Jersey's policy choice is to value a woman's autonomy over the life a fetus.

Neither statute is entirely right or entirely wrong. As a country, we have come a long way from *Roe v. Wade* (1973), as science has allowed for fetal viability at earlier and earlier stages of pregnancy. No matter the jurisdiction of a lawyer practicing juvenile law, the purpose of juvenile law is to protect the best interest of a child. Currently, each state must recognize and define what constitutes a child, whether the unborn are children or fetuses, and at what point a fetus is viable.

Illinois law contains some apparent contradictions in its balancing of the rights of an unborn fetus versus those of the mother. In *People v. Brown*, Cook County Circuit Court granted a petition appointing a temporary custodian and a guardian ad litem for a fetus when the pregnant appellant patient refused blood transfusions on the basis of her religious beliefs. 689 N.E.2d 397, 399 (Ill. App. Ct. 1 Dist. 1997). The State argued that it had a substantial interest in the viable fetus, and that interest outweighed the minimal invasion of a blood transfusion. *Id.* at 400. However, the appellate court held that the State could not supersede the appellant's competent refusal of medical treatment and

her right to autonomy in order to save the life of the fetus. *Id.* at 405. The appellate court concluded that the circuit court erred (1) in appointing a temporary custodian for the fetus with the authority to consent to blood transfusions for the patient, (2) in appointing the public guardian as guardian ad litem, and (3) in ordering the patient to undergo the transfusion. *Id.* at 406. The court found that (1) the case satisfied the public policy of the state mootness doctrine, (2) a blood transfusion was an invasive medical procedure, (3) as a competent adult, the patient had an absolute right to refuse medical treatment, (4) religious objections to treatment were constitutionally protected, and (5) the State's interest in the preservation of life, the prevention of suicide, the protection of third parties, and the ethical integrity of the medical profession did not supersede the patient's decision. *Id.* at 400-402. The precedent Illinois sets in the above case seems quite disparate from its statutes regarding abuse and neglect of an unborn child. By contrast, New Jersey law does not address the issue of abuse or neglect of a fetus.

There is an apparent contradiction between the idea that a woman can lose custody of her child in a neglect case if the child is born substance exposed and could also possibly face criminal prosecution for that same substance exposed infant, but she cannot be forced to undergo a blood transfusion to save the life of her unborn child if it violates her religious beliefs. One possible explanation is that Illinois, while forced to follow the decision in *Roe v. Wade* (1973), does not agree with that decision and has, therefore, created a statutory scheme which, while not in direct conflict, certainly seems to undermine the spirit of *Roe v. Wade* (1973). From a logical analysis standpoint, New Jersey has a statutory scheme most aligned with *Roe v. Wade* (1973). Illinois would argue it is more correct in its statutory scheme from a moral standpoint. In other words, New Jersey, but for *Roe v. Wade* (1973), may have provided constitutional rights to a fetus. Due to the fact that a state cannot overrule federal law, New Jersey chooses to strictly follow federal law while Illinois makes an exception to extend the state's rights to a fetus. Another possible explanation is the First Amendment issue presented in *People v. Brown*, which balanced the mother's religious beliefs and privacy rights with the state's interest in an unborn fetus, may tip the balance towards the mother's rights. 689 N.E.2d 397, 406 (Ill. App. Ct. 1 Dist. 1997). ■

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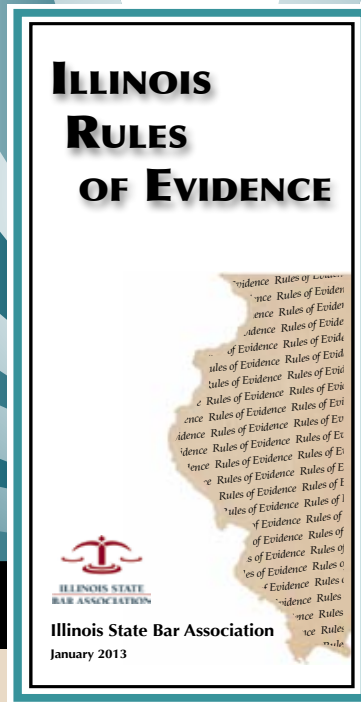
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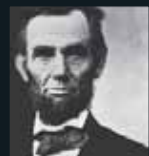
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