



ILLINOIS STATE
BAR ASSOCIATION

THE CATALYST

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

(Notice to librarians: The following issues were published in Volume 13 of this newsletter during the fiscal year ending June 30, 2008: November, No. 1; January, No. 2; March, No. 3; June, No. 4).

Chair's Column

By E. Lynn Grayson

It is my distinct pleasure to serve as Chair of the Women and the Law Committee this year. While I have actively participated in the ISBA for many years, leading this committee always was the position of greatest interest to me. The focus of this committee's work—addressing critical issues and concerns affecting women—is important to women attorneys, personally and professionally. This committee has a rich history of undertaking this important work and I look forward to continuing this tradition during the coming year. I also would like to recognize

this committee's past chairs identified herein that each worked diligently during their terms to advance the interests of women attorneys.

It is a common saying, often repeated, that you cannot know where you are going unless you know where you have been. This sentiment is ever true as it relates to women's issues and more globally, the never-ending pursuit of equal rights for all. On August 26th, Women's Equality Day once again will be celebrated—an annual day of recognition designated by Congress in 1971 to commemorate the 1920 passage of the 19th Amendment to the U.S. Constitution granting women the right to vote. Women's Equality Day not only recognizes the past achievements of women but also the challenges confronted by women today in seeking equal rights at home, work and in society overall. There is much we can learn from the spirit and personal commitment of past women leaders that successfully fought for and won our right to vote. I challenge you to take the National Women's History Project quiz appearing later in this newsletter and test your knowledge of the 19th Amendment history and the women that secured its passage.

We are blessed once again this year to have a wonderful group of women attorneys on this special committee. Our work together will be managed by the following subcommittees: programs; newsletter; outreach and partnering; leadership opportunities and recognition of women; strategic planning; and, legislation. Our first program, co-chaired by Amie



E. Lynn Grayson, Chair

Sobkoviak and Nikki Carrion, addresses the important issue of managing cases involving impaired clients and will be held in conjunction with the ISBA Mid Year Meeting. We also are planning our first International Women's Day program to be held in March, 2009. The committee is continuing to evaluate its plans for the coming year, hopefully including some special outreach to women law students.

We welcome your thoughts, comments and suggestions on what you would like to see the committee address this year. Please consider joining us for one of our committee meetings, attending a program we sponsor or writing an article for our newsletter, *The Catalyst*.

I look forward to serving as Chair of this special committee and continuing to advance the interests of women attorneys within the ISBA and the Illinois legal profession overall.

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Women Everywhere: Partners in Service —Agency Service Day, June 13, 2008

By Amanda Jones

On June 13, 2008, Women Everywhere held its annual service event, in which volunteers from bar associations, law firm and individual attorneys provide service to agencies across the Chicago area that serve women and children. Women Everywhere is a collaborative effort of several women's bar groups, including the ISBA Committee on Women and the Law.

This year, 20 agencies participated in the service project, including several first-timers, and our volunteers came from more than 20 firms or bar organizations, along with a dozen or so individual volunteers. In total, we placed more than 125 volunteers to perform painting, gardening, cleaning, and to participate in activities with women and children served by the agencies.

Participating agencies were:

Center on Halsted; Connections for Abused Women and their Children (formerly Chicago Abused

Women's Coalition); Family Rescue; Gilda's Club; Girls in the Game; Good News Partners; Grace House; Grateful House; Hephzibah House; Housing Opportunities for Women; Hull House; Joseph's Workshop; Kids Off the Block; Korean Women in Need; New Moms; Metro Family Services; Project Hope I (Adelante Center); Sarah's Circle; Sarah's Inn; and WINGS.

The photos at right show some of our volunteers hard at work.

Members of the ISBA Committee on Women and the Law who served on the 2008 Women Everywhere Planning Committee are Roberta Conwell, Sharon Eiseman, and Amanda Jones. To find out how you can participate next year, please visit <www.women-everywhere.org> or contact one of our sub-committee co-chairs on Outreach and Partnering, Amanda Jones (amanda.jones@dlapiper.com) or Stephanie Nathanson (skn@fandn-law.com).



An overview of TIF districts

By Leslie Hairston

The stated purpose of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.* (West) hereinafter referred to as the TIF Act, in the State of Illinois is to provide a mechanism for local governmental units in Illinois to spur economic development, in specific geographic areas that are deteriorating and/or declining, by providing gap financing for projects that would not occur without such public assistance. In the firsthand experiences of this author, there appear to be several ways in which the City of Chicago, in its practical utili-

zation of TIF, is failing to adhere to this fundamental purpose for the program and actually may be undermining potential economic development in Chicago's poorest neighborhoods. First, the City may be creating such a plethora of TIF Districts, and providing TIF assistance to



Leslie Hairston

projects that have no true "gap," to the point where watchdog groups, other taxing bodies, and the general public are increasingly opposed to the continuation of TIF altogether. Similarly, the City may be favoring the creation of TIF Districts and the implementation of TIF-assisted projects in areas of Chicago that are less blighted, rather than more blighted. Third, the City of Chicago appears to be rapidly launching a defensive strategy against the resulting backlash, a strategy of utilizing TIF funds for projects that are popular with TIF opponents but are *not* directly related to economic develop-

ment of Chicago's more distressed neighborhoods.

Section One: The City of Chicago may be creating such a plethora of TIFs, and providing TIF assistance to projects that have no true "gap," to the point where watchdog groups, other taxing bodies, and the general public are increasingly opposed to the continuation of TIF altogether.

In the City of Chicago, there are 158 established TIF Districts, with approximately fourteen waiting to be approved. (*City of Chicago Department of Planning and Development records, March, 2008*). Of those 158 Districts, 77 were created as a "conservation" area; 59 were created as a "blighted" area; and 22 were created as both "conservation" and "blighted" areas. (*City of Chicago Department of Planning and Development records, March, 2008*).

The TIF Act states:

...; that as a result of the existence of blighted areas and areas requiring conservation, there is an excessive and disproportionate expenditure of public funds, inadequate public and private investment, unmarketability of property, growth in delinquencies and crime, and housing and zoning law violations in such areas together with an abnormal exodus of families and businesses so that the decline of these areas impairs the value of private investments and threatens the sound growth and the tax base of taxing districts in such areas, and threatens the health, safety, morals, and welfare of the public....

65 ILCS 5/11-74.4-2(a) (West). For purposes of this article, I will examine those TIF districts that are created on the basis of such districts being either "blighted" or "conservation" areas. For an area to qualify as "blighted" area under the TIF Act, five of the following factors must be "present to a meaningful extent and reasonably distributed through out a proposed TIF district so that reasonable persons will conclude that public intervention is necessary." ILCS 5/11-74.4-3 (West). Those factors are:

- (A) Dilapidation
- (B) Obsolescence
- (C) Deterioration
- (D) Presence of Structures below minimum code
- (E) Illegal use of Individual Structures
- (F) Excessive Vacancies

- (G) Lack of Ventilation, light or sanitary facilities
- (H) Inadequate Utilities
- (I) Excessive land coverage and overcrowding of structures and community facilities
- (J) Deleterious land use or layout
- (K) Environmental clean-up
- (L) Lack of Community Planning
- (M) The total equalized value of the proposed redevelopment project area has declined for 3 of the last 5 calendar years prior to the year in which the redevelopment project is designated or is increasing at an annual rate that is less than the balance of the municipality for 3 of the last 5 calendar years for which information is available..."

65 ILCS 5/11-74.4-3(a) et seq. For "conservation" areas, the TIF Act requires that 50% or more of the structures in the designated area are 35 years of age or more and that although it has not yet become "blighted", three or more of the following factors are present and detrimental to the public safety, health, morals and welfare.... 65 ILCS 5/11-74.4-3(b):

- (1) Dilapidation
- (2) Obsolescence
- (3) Deterioration
- (4) Presence of Structures below minimum code
- (5) Illegal use of individual structures
- (6) Excessive vacancies
- (7) Lack of ventilation, light or sanitary facilities
- (8) Inadequate utilities
- (9) Excessive land coverage and overcrowding of structures and community facilities
- (10) Deleterious land use or layout
- (11) Lack of community planning
- (12) The area has incurred Illinois Environmental Protection Agency or United States Environmental Protection remediation costs.....
- (13) The total equalized assessed value of the proposed redevelopment project area has declined for 3 of the last 5 calendar years.

65 ILCS 5/11-74.4-3(b) et seq. (West). The first issue is whether the TIF Act as applied, can be manipulated by municipalities to the extent that almost any area could possibly be classified a TIF District, rendering its initial purpose ineffective for those areas that it was intended to help. The TIF Act was established in January 1977 to "provide municipalities with the means to eradicate blighted conditions by developing

The Catalyst

Published at least four times per year.

Annual subscription rate for ISBA members: \$20.

To subscribe, visit www.isba.org or call (217)525-1760

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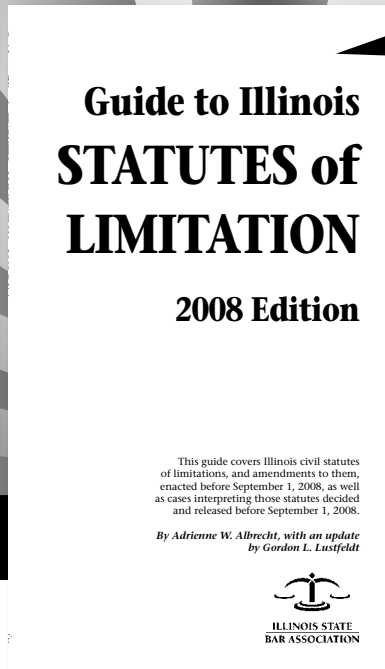
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or redeveloping areas so as to prevent the further deterioration of the tax bases of these areas and to remove the threat to the health, safety, morals, and welfare of the public that blighted conditions present." 65 ILCS 5/11-74.4-2(a),(b),(c) (West). Recently, the use of TIF as a development tool in municipalities has been growing rapidly, increasing the likelihood for abuse. For example, in the City of Chicago, reassessments occur every three years by the Cook County Assessor. It appears there has been an increase in the number of TIFs created in the City just before reassessments take effect. The effect is to potentially understate the true value already present in those Districts and thereby capture the increase as "increment" in the subsequent reporting periods.

The statutory criteria are currently broad enough so that with a little creativity, municipalities and private property owners can manipulate the factors to the extent that areas that should not qualify as TIF districts are qualified as such. It also allows for the creation of TIF districts in areas that are already growing in economic development. *Neighborhood Capital Development Group, "Who Pays for the Only Game in Town?"* (2002). Even though the TIF Act was amended in 1999, to clarify definitions of "blight", it did not reach far enough to capture and protect the growth of truly blighted areas.

There are at least two obstacles to judicial oversight of TIFs. Because of high transaction costs of litigation, collective action problems among those who are affected by unwarranted TIFs, it is extremely rare for suits to be brought alleging that TIFs have been improperly formed or administered. And, if judicial challenges are brought, there appears to be great judicial deference to the legislative decisions of municipalities that have formed TIF districts. Because of this deference for the municipality's decisions, the criteria for formation of a TIF District may not be thoroughly examined. There is, effectively, a judicial presumption that the municipality is appropriately analyzing the factors of blight, while there is growing public scrutiny, suspicion and concern that these factors are not being adequately analyzed and that areas are being designated as TIF Districts where the statutory elements are not truly satisfied. Greater judicial scrutiny would provide a needed check and balance and provide greater assurance that the data relied upon by the municipality to justify the need for a TIF is legitimate.

Board of Education, Pleasantdale

School District No. 107 v. The Village of Burr Ridge, 793 N.E.2d 856, 341 Ill. App. 3d 1004 (Ill. App. 2003) provides a useful example of the type of judicial scrutiny that should be more widely implemented. Here, at least, the Court found that although the Village of Burr Ridge approved the establishment of a TIF district based upon "blight" factors, the Village's findings of fact were insufficient to meet the "blighting" factors necessary to qualify the property for a TIF. The facts in the case were undisputed. The Village created a TIF and redevelopment plan on 85 acres of vacant land in one of the wealthiest neighborhoods in the State. Id. At 859. At one time, the vacant land had been occupied by a corporate park with infrastructure improvements. In approving the creation of a TIF, the Village found that the statutory criteria necessary to establish the property as "blighted" had been met. The Board of Education, Pleasantdale School District No. 107, challenged the Village and requested injunctive and declaratory relief. The Court granted the Board's motion for Summary Judgment which was affirmed on appeal. The Village asserted that the development area met four of the statutory requirements for "blight." Id @ 861-862. The four factors that the Village relied upon in creating the TIF were diversity of ownership, flooding, obsolete platting and tax delinquencies. Id @ 861. The Court found that the Village's explanation for meeting the statutory criteria was "weak" and "marginal." Id @ 860. The Court further found that the four conditions of "blight" relied upon to fit the statutory criteria were not supported by the facts of the case. Id@862. The Court rejected the Village's expert's assertion that seven vacant parcels could not be subdivided because it would be "inconvenient" and expensive" as a basis for meeting the obsolescence requirement. The Court concluded that the Village's argument ignored the statutory guidelines and would lead to the finding that everything could be determined to be "blighted." Id. @ 863. The Court also found that the Village failed to meet the diversity of ownership requirement because there were only two owners of the property that the Village sought to include in the TIF. Id. @ 864. There was additionally no evidence of flooding. The Court rejected the Village's argument that since the property was located on a flood map, it was sufficient evidence to meet the criteria. Id. @ 865-66. Further there was no evidence of tax delinquencies for an "unreasonable" period of time

hindering development and that when the TIF was established, there were no delinquencies. Id. @ 866. The Court disagreed with the Village's assertion at oral argument that the municipality's legislative body's finding of "blight" was sufficient evidence of "blight." Id @ 863. The Court stated, "The Department of Revenue guidelines suggest that the qualifying statutory blighting factors should be present to a meaningful extent and reasonably distributed throughout a proposed TIF district so that reasonable persons will conclude that public intervention is necessary. Id@ 863 citing, *Henry County Board v. Village of Orion*, 278 Ill. App. 3d 1058, 1063; 663 N.E.2d 1076 (1996). Finally, the Court found that the TIF district failed to meet the "but for" test. The Court noted that there must be a showing that the property "would not reasonably be anticipated to be developed without the adoption of the redevelopment plan." Id @ 867; 65 ILCS 5/11-74.4-3(n) (J) (1) (West 2002). There was evidence of growth and development in the immediate area as well as developers who were interested in developing the property without TIF financing. Id. @ 867. The Court concluded the property would have been developed without the TIF, and the record reflected that developers were interested in developing the property without the TIF, thus failing to meet the "but-for" test. Id @ 868.

The *Village of Burr Ridge* case exemplifies why the Act needs to be more specific. There should not have to be litigation to ensure that the creation of a TIF district and its justification is credible. It is doubtful that TIFs are not more readily challenged in Court because there are no objections; it is more likely that the costs of litigation are too high. If the Act required that each TIF District had more specific, demonstrable and measurable goals when created, the public might have greater confidence that the creation of the TIF is a good development tool for truly "blighted" areas. There needs to be definitive plans for creating each TIF district. This could be accomplished by establishing measurable goals for development and a plan for how the increment would be used to meet those goals. Creating more detailed plans would also decrease the need to terminate TIF districts that have had no redevelopment after seven years. By having demonstrable goals established at the onset, communities could view whether the goals were being met early on, and determine whether adjustments needed to be made. It could also allow for the City to

focus on development recruitment at a higher level.

Section Two: Is the City of Chicago favoring the creation of TIF Districts and the implementation of TIF-assisted projects in areas of Chicago that are less blighted, rather than more blighted?

As noted above, TIF Districts may be formed on the basis of being either “blighted” or “conservation” areas. Upon review of the TIF Districts generating the most revenue for the City of Chicago, they were the TIF Districts that were established as “conservation” areas. *SEIU Illinois Council, “16 Largest TIF Districts in 2006” (City of Chicago TIF Report, September 2007)*. Critical questions that demand greater research and scrutiny are whether, and to what extent, there is a disparity between the rate of economic redevelopment in those areas that were created as “blighted” and those created as “conservation” areas. The City of Chicago’s own preliminary experience has been that growth and tax increment have developed faster in those areas designated “conservation” than they have in those areas designated “blighted.” Id. The logical question becomes whether that growth in conservation areas is related to the natural growth of property tax revenues that would have occurred even without TIF designation and whether this devotion of attention and resources to conservation districts is distracting the City from encouraging economic development in areas that truly would not be developed without TIF assistance. Likewise, are approved TIF projects in conservation areas more likely to substantively fail the but-for test, furthering the diversion of resources from projects in truly “blighted” areas. Each of these circumstances would create an even *greater* market advantage for those areas that can be readily developed without TIF over those that really need TIF assistance in order for redevelopment to occur.

In those areas where the property tax revenues would naturally grow, the TIF standards should be reviewed with greater scrutiny. It is possible that the establishment of a TIF would result in additional growth that would not have occurred otherwise. This is the purpose for establishing a TIF. It seems easier to spur growth that’s legitimate “but for” in those districts that are less deteriorated. Although it could be conveniently be classified as a “conservation” district, there should be stricter guidelines. It is possible that a “conservation” designation can result in additional growth

that would not otherwise occur. This too, meets the purpose of the Act. The goal should be to prioritize those areas designated “blighted” with impaired growth instead of those with substantial value as determined by the “but for” test. Although this should be applied to each project, there should be some demonstrable goals. In addition to a demonstrable goal, there should be a reporting requirement more frequently than annually. This would provide an opportunity for review and oversight.

A related and highly significant concern is that by generating a disproportionate and inappropriate amount of TIF in conservation areas (relative to truly blighted areas), the City then has, at its disposal, greater resources to expend in those conservation areas. There would be, in effect, an exponential effect of favoring conservation areas over truly blighted areas, because the blighted areas would have less increment with which to promote additional development projects.

Additionally, the growing trend in the City of Chicago for providing TIF assistance in conservation areas that appear to fail the but-for test increases the hostility against TIF on the part of other tax bodies who take the position that TIFs permit an unnecessary diversion of their tax revenues. As discussed in the following Section, the City of Chicago’s apparent policy response to this hostility may be *further* undermining redevelopment in truly blighted areas. Specifically, the City’s concession for diverting tax increment from school, park, library and other districts for during the twenty-three year period of each TIF District are to utilize TIF increment for projects that benefit the most vocal of those other taxing bodies rather than utilize increment for true economic redevelopment projects in the City’s most blighted neighborhoods.

Section Three: The City of Chicago appears to be rapidly launching a defensive strategy against this resulting backlash, a strategy of utilizing TIF funds for projects that are popular with TIF opponents but are not directly related to economic development of Chicago’s more distressed neighborhoods.

In its most basic elements, the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.* (West) permits one hundred percent of incremental real property tax revenues that are generated during a 23-year period from properties within a designated TIF District to be allocated to a separate fund

that would ostensibly be used to finance improved infrastructure within the District and to generate economic development within the District that would not occur absent the TIF assistance. Again, under TIF’s most basic format, the municipality approves the TIF District (for example, the City of Chicago) entirely controls the fund into which all of the incremental tax revenues are directed and does *not* share any portion of those incremental tax revenues with other taxing bodies that receive a portion of real property taxes in the absence of a TIF. These taxing bodies, of course, include school districts, library districts, park districts and other governmental entities. And while there is debate among economists and industry groups as to whether (or to what extent) the existence of TIF financing increases the tax burdens for City taxpayers as a whole, there is strong popular sentiment that TIF does, in fact, require the “rest of the City” to pay more in taxes. *Illinois Civic Federation, “Civic Federation Urges TIF Disclosure in Municipal Budgets” (November 2007)*.

Perhaps in response to growing public opposition to TIFs, the City of Chicago appears to be increasing the use of incremental tax revenues from TIF Districts to finance projects both within and outside of the District that are unrelated to economic development. One manner in which this is conducted is “porting” TIF increment from one TIF District to another. What is particularly troubling to this author is that the City’s Department of Planning and Development appears to be undertaking such “porting” without public oversight or notice. The TIF Act allows for the use of incremental property taxes from one district to be used to pay for costs in other contiguous districts. 65 ILCS 5/11-74.4-4(q). This is often referred to as “portability.” It is possible that there can be “porting” from an increment rich conservation district to an increment poor or blighted district. I commonly refer to this as the “Robin Hood” porting. There becomes a problem with how the increment is allocated and used. With the creation of many TIFs in one city, the potential for abuse increases as taxes are transferred without oversight or additional notice. They are “ported” on an “as needed” basis. For example, the City of Chicago’s population is roughly evenly divided into Wards. These Ward boundaries change every ten years based upon the United States Census data. Even though the Ward boundaries change every 10 years, the established TIF District remains unchanged. If one TIF

boundary encompasses more than one Ward, and both areas use the same increment for development without notice to the other, then the actual amount of increment available for use by each is distorted. This is dangerous on many levels. If many Wards are using the increment from the same TIF, then each Ward has no true accounting. Without a notice requirement, those Wards that are politically "favored" stand to benefit more than the other Ward(s) in the TIF District. It is possible that the favored Ward can use the increment for development to the exclusion of the other Ward and sometimes the creating Ward. Additionally, if there are government agencies monitoring the revenue to divert the increment for its own use, this undermines the community planning process and what the community decided would be its priority in redevelopment. When a TIF District is created there are public hearings, planning sessions and other opportunities for citizens and community organizations to voice their support, concern and/objections. During the creation of a TIF District, the community is intimately involved. After the TIF District has been established, there is no such process for inclusion and input. As there are no concrete guidelines for additional hearings or community approval after the TIF has been approved and before the revenue is "earmarked" for expenditure, projects that were the basis for the creation of the TIF and supported and approved by the community are either put at the end of the expenditure list or ignored altogether. Often when government agencies identify an increment for its own use, it takes priority over the community plan. This is a slap in the face to the community process that was used to establish the TIF and the people that supported it. There need to be rules for "porting" increments from one district to another. The community and the community process should not be used just to meet the criteria for establishing a TIF. The projects identified at the onset should be funded through the increment when that increment is generated. The only way that this author sees to avoid this problem is to spend against the increment before it is generated. This too, can be a problem if there is insufficient revenue to support the levy. The City of Chicago should not be allowed to intercede and supersede the community earmark or have bonds levied against the TIF before the community plan is implemented.

There also needs to be a method for repaying TIF increments that were

ported, or an exception for those districts that fail to generate enough increment to support the district. Many costs associated with a TIF are paid to consultants. This should be repaid. There should be some standards established that guide when "porting" can occur and a time frame for doing so. There should also be a limit on the amount of TIF increment that can be utilized for "porting." Further, the determination of who makes the decision can create a conflict when other governmental bodies seek to use the tax increment for expenses outside of those approved through the community planning process. Often, when TIFs are created, the community planning process allows for the community to have meaningful input as to how the increment will be used. However, the portability clause of the TIF statute bypasses this process and allows for political/governmental intervention. The question then becomes what happens when various governmental bodies earmark uses for the increment that conflict with uses created through the community planning process? Is there an order of priority and who decides? What happens when development designations exceed the proposed increments over the life of the TIF? What happens when the municipality issues bonds based upon those designations that exceed the proposed increments?

The affected citizens and their elected representative should have the right to decide what public improvements the increment will be used for. The affected citizens and taxpayers are an imperative part of the TIF process while it is being created, yet, they are ignored when expenditures occur over the life of the TIF that controvert their stated plan. For those municipalities created with a strong council and weak mayor, the council member should make the determination. They were the ones elected to represent the interests of their area. For those who are critical of the council member prerogative, their electorate has the ability to exercise their power at the polls. Moreover, council members side on behalf of their constituencies over administrations. Either way, clearer reporting and notice requirements would provide some transparency into an otherwise unclear process.

The municipality should be required to make public the list of proposed public improvements and an order of succession should be established. If changes are to be made, there should be notice,

at least, to the elected representative. Currently, community-driven plans for TIF funds are diverted to government-driven plans; there are no guidelines for notice to the elected representative when revenue from one area is diverted to another area and the local government halts or ignores local community supported projects in favor of its own projects.

While TIFs are a good development tool for those communities that have failed to attract development, a closer look must be taken as to why that development has not occurred in those areas. By creating too many TIFs, its effectiveness as a development toll is weakened. The vagueness and breadth of the Act allows for TIF to be manipulated without any demonstrable goals or plans for how those goals are to be met and measured. Finally, there must be frequent reporting to provide greater transparency in how tax dollars are being spent.

Three-term 5th Ward incumbent Leslie A. Hairston was first elected to the Chicago City Council in 1999. She currently serves on the Committees on Finance; Buildings; Energy, Environmental Protection and Public Utilities; Rules and Ethics; Human Relations; Parks and Recreation; and Special Events and Cultural Affairs.

A Chicago native and fierce community advocate with deep roots in the South Shore and Hyde Park neighborhoods, 5th Ward Ald. Hairston has built a professional career dedicated to public service. She is a strong litigator and has served as assistant attorney general for the state of Illinois and was staff attorney and special prosecutor for the State's Attorney's Appellate Prosecutor's Office, where she argued before the Illinois State Supreme Court. She remains an active member of the Illinois State Bar Association and she has practiced law publicly and privately.

**For copies of bills,
amendments,
veto messages
and public acts,
contact the
ISBA Department
of Legislative Affairs
in Springfield**

Home is where the court is

By Attorney Heather M. Fritsch, The Law Office of Heather M. Fritsch, Sycamore, Illinois

It occurred to me the other day that we, as lawyers, spend a great deal of our time at the courthouse. Well, let me take a step back. To tell this correctly, I must give you the entire story. I was walking the one block to the DeKalb County Courthouse for a Monday morning status call when this thought occurred to me. I was actually in the midst of one of those small moments of disenchantment and burn-out that occur way too often in this profession. Although it was only 8:45 a.m., it had been one of those mornings that left me wondering why I would truly want to do this for the rest of my life. As I was lamenting my plight and carrying on quite a vivid discourse in my own head, I looked up to cross the street and my gaze landed on the beautiful and historic DeKalb County Courthouse. And that's when it hit me.

We, as lawyers, should be proud of our profession. Although this fact often gets forgotten when we are focusing on the day-to-day grind, the legal profession has a very long and rich history that should be celebrated. And where has the majority of that very long and rich history occurred? Well....at the courthouse, of course. There are so many historic and regal courthouses in the State of Illinois that should be celebrated as these courthouses also show the history of our profession. And that, my friends, was the inspiration for this column. So, without further delay, on to the first courthouse.....

DEKALB COUNTY COURTHOUSE Sycamore, Illinois

In 1837, the State of Illinois passed an Act to create DeKalb County and the area of the county that is now Sycamore was chosen as the county seat. In 1839, court was first held in DeKalb County. This first courthouse was a two story 20' x 30' building located south of the current public square. In 1850, the second courthouse was built on the public square. By the late 1890s, almost every surrounding county had replaced their earlier courthouse buildings with new facilities and there were many in DeKalb County who wanted to do the same with their court-

house. On October 29, 1903, the cornerstone of the new building was laid. In 1904-1905, after a long battle over whether the new courthouse should be built in DeKalb or Sycamore, the third court-

house was completed. The three-story stone building boasts a facade that includes a two-story colonnade above the main entrance that was intended to resemble the front of an ancient Greek or Roman temple. This is the DeKalb County Courthouse that still stands in Sycamore today.

In the 1980's, there were some individuals in the county who wanted to destroy the historic courthouse and build a new, modern judicial complex somewhere on the outskirts of the county. However, the historic DeKalb County Courthouse had become an important landmark to many individuals in the community and they fought to keep the old courthouse. After a long hard battle, the DeKalb County Courthouse was remodeled in 1984 and all efforts were made to maintain and preserve the history of the building, while also making sure that the courthouse functioned appropriately and efficiently in the modern world. For example, a good portion of the furniture in the building has been in the courthouse since 1905. The light fixtures in the old courtrooms are the original gas fixtures that have now been rewired for electricity. In fact, many of the courtroom fixtures still have the original components for when they functioned as gas lights. The existing wood doors and trim were restored and reused in the courthouse.

Some changes have had to be made



in order to accommodate the modern world, but for the most part those in charge have been able to blend history with everyday functionality. Maureen Josh, DeKalb County Circuit Clerk, and the Honorable Judge Klein, Chief Judge in DeKalb County, are two of the individuals who should be given credit for preserving the historical integrity of the courthouse. When asked why she fights for preserving the courthouse, Maureen Josh stated that it is "the People's building and it is our responsibility to care for it and preserve it as others did for us." Both Maureen Josh and Judge Klein frequently participate in school tours of the building in which they teach young children and high schoolers about the history of the courthouse. During these tours, Judge Klein often tells the story about why the short railing was added in front of the jury box in Courtroom 300. Apparently, when women wearing skirts began to sit on juries, the short railing (also called a "modesty bar") was added to avoid any embarrassment when female jurors sat in the front row of the jury box in their skirts.

When you walk into Courtroom 300, Judge Klein's courtroom, you get a true sense of what it means to be in this profession. The courtroom itself simply demands respect. It still has its original plasterwork, chandeliers and other light fixtures, wainscoting, beveled glass doors, and turn of the century decorative details. There is also a stained glass sky-

light in the ceiling of this courtroom. In short, it is what every courtroom should look like. When Judge Klein was asked to comment on the courthouse, he stated: "The County has made a 104 year commitment to the courthouse and has done a terrific job of maintaining the People's building. I hope their commitment will continue for another 104 years. It's a great symbol for the center of our judicial system."

And the courthouse has become a

great symbol for the community, as well. In fact, many feel that it has become the center of Sycamore and most of the community events throughout the year are held on the courthouse lawn. Maureen Josh explained this sentiment when she stated: "...the citizens of DeKalb County are very grateful to those people before us who took such courageous stands to preserve the existing courthouse...I believe the courthouse is the most beautiful courthouse in the State of Illinois..."

Although I may be biased, I would have to agree with her.

For more information and more historical photographs of the DeKalb County Courthouse, please check out the DeKalb County Circuit Clerk's Web site at www.circuit-clerk.org.

If you think your county courthouse has a unique or interesting history, please contact me at heather@hfritschlaw.com.

Class action challenging unconstitutional DCFS practices concludes after 11 years

Diane L. Redleaf and Angela Peters

In 1997, a class of parents and child-serving professionals filed a lawsuit against the Department of Children and Family Services, seeking extensive reform of DCFS investigations, based on violations of due process. Over 150,000 Illinois families and professionals are members of the certified class. The case has resulted in sweeping changes in the investigations of child-service professions, *Dupuy v. McDonald*, 141 F. Supp.2d 1090 (N.D. Ill. 2001), implementing injunction of July 2003 *affirmed in part and reversed in part sub nom Dupuy v. Samuels*, 397 F.3d 493 (7th Cir. 2005). This aspect of the litigation was finally settled on March 9, 2007, with the terms of the settlement subject to a two-year monitoring period. At the same time, in a separate second phase of the *Dupuy* litigation, terrifying practices involving a basic question of family liberty and state authority to intervene in family life have not yet been remedied. The issues in the case involve a basis of due process and the rule of law. This gave rise to a petition for certiorari in the United States Supreme Court which was supported by 21 groups including the Illinois State Bar Association. Unfortunately, on June 16, 2008, the Court denied the petition despite significant media speculation that the Court might well accept it (including from Linda Greenhouse, *New York Times*, June 17, 2008, who referred to it as a "closely watched" case).

Since 1995, State child protection authorities have compelled an estimated

10,000 Illinois parents to move out of their homes or have their children leave their homes at the outset of investigations on the basis of an uninvestigated Hotline call reporting "mere suspicion" only. The State forces this action upon families by threatening to take children into foster care if parents do not leave their homes or relocate the children to a relative's home. If they do comply (as all reasonable parents do), the State labels their decision a "voluntary choice" and denies the parents any opportunity to challenge the basis for imposing this "choice" upon them. Similar policies and practices are in place in other states, as the ISBA's counsel Jenner and Block has learned. In fact, the Third Circuit Court of Appeals outlawed similar practices in *Croft v. Westmoreland County Serv.*, 462 F.3d 859 (7th Cir. 2006), creating a split between Third and Seventh Circuits on exactly the issues the *Dupuy* case presents. This split, however, apparently was not sufficient grounds for the Supreme Court to accept review in *Dupuy*, leaving intact in Illinois the same policies and practices that the Third Circuit outlawed.

While *Dupuy II* has a huge trial record (based on a 22 day trial in 2002), the essential facts can be easily summarized. One example from the record demonstrates the basic fact pattern.

Dr. S. and his wife are the parents of an eight-year-old who they had adopted when she was three years old. On Friday, May 12, an anonymous call was made to the Illinois Department of Children and

Family Services ("DCFS") Child Protective Services Hotline alleging a sexual act between Dr. S. and a "small female." The same day, a DCFS investigator came to the family's home and demanded that Dr. S. leave immediately or, the investigator threatened, his daughter would be taken into foster care. Terrified, Dr. S. complied and left his home over the weekend, uncertain when next he would be allowed to see his wife and daughter. On Monday, May 15, a DCFS investigator decided to allow him to be "supervised" by his wife during the day until the investigation was complete. One week later, after vigorous legal advocacy (which most parents subjected to these practices do not have), the case against Dr. S. was declared "unfounded," following an interview with Dr. S.'s daughter, in which she denied her father had ever inappropriately touched her. Only then did the State drop its demand that the family live under the restrictions it had imposed.

The forced "agreement" Dr. S. made to leave the home is termed a "safety plan" in Illinois. Dr. S. is one of dozens of identified parents (among the thousands of members of the certified class in *Dupuy*) who are challenging the DCFS safety plan policy as depriving them of their family liberty interests without due process of law. All parties acknowledge that DCFS policy authorizes safety plans based solely on "mere suspicion" and provides no opportunity for parents to challenge the basis on which safety plans are imposed. *Dupuy II*, 462 F. Supp.2d at 865, 871, 887.

The majority of the safety plans at issue in this case last much longer than Dr. S's: most common are 30- to 60- day plans, which are in effect during the initial investigation period, but some plans last 12 to 18 months.¹ See 465 F. Supp. 2d at 869, 881-82 (citing examples of 11- and 18-month plans, respectively).

While the Supreme Court has repeatedly declared that "familial association" is a fundamental liberty interest that cannot be abridged without a "compelling state interest," the Supreme Court has *never* decided a case concerning the standards a state investigator must apply to remove a child or parent from his or her own home in a non-criminal child protection case. DCFS does not dispute that the plaintiff parents have a liberty interest in remaining together as a family, but claims instead that its safety plans do not deprive families of that interest, because *all* safety plans are voluntary, and therefore, no "process" is "due."

The federal trial court (Pallmeyer, R. J.) squarely rejected DCFS's position argument, finding that safety plans were routinely coerced from parents by the State's threats to take children into protective custody, 462 F. Supp. 2d at 891. The trial court also found that the State demanded safety plans on the basis of "mere suspicion" and prior to gathering any evidence of parental wrongdoing. Id. at 887. During the lengthy trial, DCFS acknowledged that it never secures credible evidence of abuse or neglect against the majority of parents who are subject to safety plans (making its threat of taking protective custody a bluff). The trial court found that oral threats had been made to every plaintiff parent who testified; each of them confirmed that they had been told that if they did not agree to a safety plan, their children would be taken into foster care. Id. at 893. The trial court found that parents are not told the basis for the safety plan demand, and once they entered into a safety plan, the State provides no available means for parents to challenge it. Id. at 869. Because of the presence of threats in the safety plan process, the trial court concluded that safety plans are not voluntary, and therefore they constitute a "deprivation" of family liberty interests. Id. at 893.

The Seventh Circuit (Posner, J.) disagreed with the trial court's conclusion that the circumstances under which DCFS requires safety plans make them involuntary. It held that the plaintiffs had no constitutional grounds for complaint, because voluntary agreements do not deprive families of any protected liberty

interest in familial association. While it did not dispute any of the trial court's findings of fact or declare them to be clearly erroneous, it reached a legal conclusion that safety plans are voluntary agreements and concluded that the plaintiffs therefore had no grounds for relief. 465 F. 3d at 760-63.

The Seventh Circuit's legal conclusions and analysis, as well as the language it uses to describe safety plans, contrast sharply with the trial court's findings of fact:

1. The court of appeals repeatedly labeled safety plans "choices" or "options," 465 F. 3d 760, 761, 762, or even a "boon" to families, Id. at 763. In contrast, the trial court found that the threats of protective custody DCFS routinely makes are threats "sufficient to deem the family's agreement coerced and to implicate due process rights." 462 F. Supp. 2d at 893.
2. The court of appeals assumed parents would reject safety plans if they thought the State had no case against them. The trial court found, however, that DCFS does not tell parents either why it has concluded a safety plan is necessary, nor what evidence it has gathered against them. Id. at 869. Moreover, DCFS does not require that any evidence be secured before it tells parents they must have a safety plan or face their children's removal to foster care. 462 F. Supp. 2d at 865. For these reasons, parents have no basis for reason to believe it is safe for them to reject a safety plan.
3. The court of appeals declared that parents "have only to thumb their nose" at a safety plan offer or "reject" it. 465 F. 3d at 761. Yet, the trial court pointed out that DCFS had not "identified a single family that, faced with such an express or implied threat of protective custody, chose to reject the plan," and the trial court relied on this fact in concluding the safety plans were coerced, not voluntary. 462 F. Supp. 2d at 893.
4. The court of appeals treated the parents' alternatives of having their child removed to foster care or leaving the home as an innocuous choice, akin to being offered a "Martini v. Manhattan" (commenting that it is surprising that people complain about having "more rather than fewer options"), 465 F.3d at 762. In contrast, the trial court found that the "option" of a safety plan separating children and parents or restricting their contact with each other irreparably injures families by

disrupting family life for an indefinite period of time., 462 F. Supp. 2d at 896.

The Seventh Circuit took its analysis even further. It held not only that safety plans are "voluntary," 465 F. 3d at 761, so that no parent subject to a plan suffers any deprivation of their liberty interests in familial association, Id. at 761-62, but it also declared that threatening a parent with their child's removal into state protective custody is not unconstitutional unless the state *deliberately* misrepresents the evidence it has against the parent. Id. at 762-63. In practice, this aspect of the Seventh Circuit opinion authorizes State authorities to threaten parents at the outset of any investigation. As long as the investigators do not lie about the evidence they have gathered, they can make whatever threats they choose.

In one central respect, the trial court and the Seventh Circuit agreed about the law (and disagreed with the plaintiffs' position throughout this case): both courts have declared that "mere suspicion" is an adequate basis for requiring parents to abide by a safety plan. See 462 F. Supp. 2d at 887 and 465 F. 3d at 761. But, DCFS *always* has "mere suspicion" when it investigates Hotline calls; it commonly forces safety plans upon families even before it has done *any* investigation into the merit of those calls. The plaintiffs' contention throughout this case is that "mere suspicion" cannot be a constitutional basis for a severe intrusion into family life. Rather, evidence giving rise to an objectively reasonable basis for the State's intrusion into the family in order to protect a child from his or her parent is constitutionally required before any intrusive "choice" can be required of a parent, just as such evidence is required in order to take a child into State protective custody. In the plaintiffs' appeal seeking to impose on the State this constitutional burden of proof, the Seventh Circuit voiced no reservations concerning the "mere suspicion" standard. It said that even an "inarticulate hunch" sufficed as a basis for foisting the "choice" of a safety plan on a parent, because it is possible such a hunch may "ripen" into real suspicion during the Hotline call investigation, 465 F. 3d at 761.

* * * *

The petition for certiorari to the Supreme Court asked it to determine that families have the right to remain together, free of coercive threats and directives, unless the State has objectively reasonable evidence of abuse or neglect and provides the parents with the right to a meaningful hearing to

challenge the State's basis for separating families. This position encompasses several corollaries:

- (1) it is constitutionally unacceptable for a State official (that is, a DCFS investigator) to threaten any parent with the removal of their children into state custody *unless* the State has objectively reasonable suspicion of abuse or neglect;
- (2) if the State *does* have objectively reasonable suspicion and requires the parent to leave the home temporarily under a safety plan, it must provide the parent a "meaningful opportunity to be heard" to contest the safety plan. This opportunity can be provided *after* a safety plan is imposed, but the opportunity must be provided very soon after the involuntary imposition of a safety plan on a family; and
- (3) the meaningful opportunity to be heard must include a hearing before a neutral decision-maker and access to information as to the basis for the safety plan.

The plaintiffs also asserted that the threats of taking a child into protective custody (which DCFS routinely makes even when it lacks any evidence against the parents), are so coercive as to compromise the voluntariness of any safety plan. In addition, many other factors, such as the parent's intelligence, education level, access to and availability of information and counsel, and relative bargaining power, render suspect the voluntariness of any safety plan agreement with a State investigator. Therefore, the State's declaration that a plan is "voluntary" itself requires a process of neutral factual review.

Five amicus briefs were filed in support of the plaintiffs position in an effort to highlight the "exceptional importance" of the issues in the case. The

plaintiffs are represented by a team of very experienced civil rights litigators and several prominent law professors. In 2007, the new not-for-profit Family Defense Center, founded and directed by Diane L. Redleaf, took over co-lead counsel responsibilities in the case, along with Robert E. Lehrer. Lehrer and Redleaf, both of whom spent many years of their careers involved in major litigation against DCFS while at the Legal Assistance Foundation of Chicago, had filed the Dupuy suit in 1997 as private practitioners in their public interest law firm. Jeffrey Gilbert of Johnson Jones Snelling Gilbert and Davis and attorneys associated with the Chicago Lawyers' Committee for Civil Rights Under Law have been long-term co-counsel in the case. Reed Smith joined as co-counsel in the case in 2004. In the Supreme Court, professors Jeffrey Fisher (Stanford, California) Richard Epstein (Chicago) and Carolyn Shapiro (Chicago) joined the plaintiffs' effort. Amicus briefs were filed on behalf of a wide range of organizations by Jenner and Block, Sidley and Austin, Baker and McKenzie, O'Melveny and Myers, and McDermott Will & Emery.

With the denial of certiorari, the Family Defense Center plans to make legislative efforts to curtail some of the abuses challenged in the lawsuit a priority for its work in the next few years. Major law firms are assisting the FDC in developing a legislative policy agenda, and ISBA support for FDC's proposals is likely to be requested in the near future.

1. In the challenge to the blacklisting practices described in footnote 2 above, the Dupuy plaintiffs had challenged the unreliability of "guilt" findings (so-called "indicated reports") DCFS investigators render at the conclusion of investigations of Hotline calls and register in the State Central Register. The plaintiffs established that DCFS erred in 74.6% of the

indicated reports that were challenged (and overturned) on appeal. 141 F. Supp. 2d at 1102, 1137. This fact is relevant to the duration of safety plans: those with very long durations tend to involve safety plans that continue in effect after the conclusion of an investigation and while an appeal is pending from an indicated report. This high error rate for indicated reports, coupled with the fact that over two-thirds of the Hotline calls result in an "unfounded" determination at the close of the investigation, strongly suggests that a very substantial percentage of the parents subjected to safety plans would be able to show a lack of any factual basis for the plans were they given an opportunity to challenge them.

Co-author Angela Peter was admitted to the Bar in 1985. She is a graduate of the University of Illinois and IIT-Chicago Kent College of Law. She has served from many years on various ISBA Committees. She is the principal attorney of Buffalo Grove Law Offices. Practice includes full range of services with concentration in international and domestic divorce/family law, criminal, civil and criminal litigation, real estate law, animal-related law, and general practice.

Diane L. Redleaf is the Executive Director of the Family Defense Center. A child and family advocate since she graduated from Stanford Law School in 1979, Ms. Redleaf has brought more than a dozen major systemic reform cases on behalf of families, including most recently a case on behalf of over 150,000 Illinois residents (*Dupuy v. Samuels*) that has resulted in establishing basic due process procedures in DCFS investigations and administrative appeals. She has spearheaded major legislative reforms in Illinois and is directing FDC policy initiatives with national experts and major Chicago law firms. She has represented parents, foster parents, children and other family members in hundreds of juvenile court and administrative proceedings. She has brought numerous precedential appeals and led a number of amicus briefing efforts, both in Illinois and nationally. She has conducted many training programs for attorneys, social workers, and parents, and been active in numerous juvenile court reform committees.

Celebrate Women's Equality Day on August 26th

At the behest of Rep. Bella Abzug (D-NY), in 1971 the U.S. Congress designated August 26 as "Women's Equality Day."

The date was selected to commemorate the 1920 passage of the 19th Amendment to the Constitution, granting women the right to vote. This was

the culmination of a massive, peaceful civil rights movement by women that had its formal beginnings in 1848 at the world's first women's rights convention, in Seneca Falls, New York.

The observance of Women's Equality Day not only commemorates the passage of the 19th Amendment, but also

calls attention to women's continuing efforts toward full equality. Workplaces, libraries, organizations, and public facilities now participate with Women's Equality Day programs, displays, video showings, or other activities.

How much do you know about the 19th Amendment to the Constitution

granting women the right to vote? Take the National Women's History Project quiz below and test your knowledge. For more information about Women's Equality Day, visit <http://www.nwhp.org/resource_center/equalityday.php>.

1. August 26th is celebrated as Women's Equality Day to commemorate
 - a. the work women did during the Second World War
 - b. the anniversary of women winning the right to vote
 - c. the flappers of the 1920's
 - d. the contemporary women's rights movement
2. In what year did Congresswoman Bella Abzug introduce legislation to ensure that this important American anniversary would be celebrated?
 - a. 1992
 - b. 1984
 - c. 1971
 - d. 1965
3. In what year did women in the United States win the right to vote?
 - a. 1776
 - b. 1848
 - c. 1920
 - d. 1946
4. How many years did it take for women to win the right to vote in the United States?
 - a. 72 years

- b. 120 years
 - c. 20 years
 - d. 51 years
5. Women in most of the western states won the right to vote years before the Federal Amendment was secured. This is the 96th anniversary of women in Kansas and Oregon winning the vote. What other state is celebrating the 96th anniversary of women winning the right to vote in their state?
 - a. New York
 - b. Florida
 - c. Maine
 - d. Arizona
 6. What was the name given to the 19th Amendment to the Constitution which guaranteed women's right to vote in the United States?
 - a. Abigail Adams Amendment
 - b. Sojourner Truth Amendment
 - c. Susan B. Anthony Amendment
 - d. Gloria Steinem Amendment
 7. Women who worked for women's right to vote were called
 - a. radical
 - b. immoral
 - c. suffragist
 - d. all of the above
 8. The term suffragist is derived from
 - a. one who suffers
 - b. a voting tablet in ancient times
 - c. the Constitution

- d. the Bill of Rights
9. How many other countries have already guaranteed women's right to vote before the campaign was won in the United States?
 - a. 6
 - b. 2
 - c. 1
 - d. 16
 10. What was the first country that granted women the right to vote?
 - a. Canada
 - b. Germany
 - c. New Zealand
 - d. United Kingdom

Answers:

1. b
2. c
3. c
4. a (from the first Women's Rights Convention in 1848 to 1920)
5. d
6. c
7. d
8. b
9. d (New Zealand (1893), Australia (1902), Finland (1906), Norway (1913), Denmark (1915), USSR (1917), Canada (1918), Germany (1918), Poland (1918), Austria (1919), Belgium (1919), Great Britain (1919), Ireland (1919), Luxembourg (1919), the Netherlands (1919), Sweden (1919))
10. c (1893)

Difficult Conversations—Applying the principles from the best-selling book to the practice of law

By **KIM L. KIRN**, Attorney-Mediator Affiliated with US Arbitration & Mediation-Midwest and American Arbitration Association

The practice of law is filled with difficult conversations: telling someone who has been severely injured that their case is worth less than they think; explaining child custody rules to a divorcing spouse; and explaining to the senior partner who hired you why you have decided to leave your law firm. These are just a few of the tough conversations many of us face in our practice. The best selling book *Difficult*

*Conversations*¹ put out by participants in the Harvard Negotiation Project several years ago lays out useful ideas and practices for making uncomfortable conversations less painful. Here are a few of the authors' ideas you may find helpful during your next difficult conversation.

Decide what is making this conversation difficult. Usually it is one of three causes: a. there is confusion over "What Happened;" b. someone's feelings are

hurt or ignored; or c. the conversation conflicts with the speaker's personal "identity." With respect to the "What Happened" conversation, be sure you suspend your belief that you know exactly what



Kim L. Kern

happened. You know your perspective only. Stop speaking and listen. Assume good intentions or perhaps no intention on the part of the actor, but while listening suppress your natural tendency to assume bad intentions. After listening to all of the stories of what happened embrace what you heard even the parts that conflict. For example, in employment cases, the disgruntled employee is angry she was terminated but may also be embarrassed about the error, no matter how small, that led to the firing. Your summary of the story will be something like this: "Jane, it seems you are angry that you were let go by ABC Corporation for being 10 minutes tardy AND you are frustrated with yourself for being unable to shorten your morning routine and arrive to work on time." It is okay for these "What Happened" statements to conflict. We human beings are complex and to recognize that inconsistencies and outright contrary positions may exist within our stories is the first step to understanding the "What Happened" story. The authors refer to this practice as the "And Stance." Keep adding to the summary with "And Stances" to make sure you are capturing the full story.

In many difficult conversations, feelings run strong and unexpressed. Begin by recognizing feelings always exist and many times must be put out on the table to digest. A difficult conversation which ignores feelings is like watching a rock concert without music. You can see what is going on, but you have missed the point of the concert. Good people can have really bad feelings like jealousy, anger and sadness. However, Try negotiating with feelings. Feelings

are based on our perceptions, but watch what happens when you shift your perspective to that of the other person in the conversation. For example, you are telling the law partner who hired you that you are leaving the firm. You feel sad and anxious to be leaving the position but at the same time you feel excited about the new job. How will the partner respond? He may be angry, but he may also feel relief because you have seemed distracted lately. He may be considering retirement and worried about your future rainmaking abilities. The point is that you do not know what complicated bundle of emotions he will feel and you cannot control how he will feel. You can make the departure as friendly as possible but let go of the idea that you can control his response.

However, my favorite concept from *Difficult Conversations* is the conversation which conflicts with the speaker's identity. We all find it terrible difficult to admit to an act which conflicts with our self-identity. Suppose that I believe I am a competent attorney and in the midst of a mediation, I learn that my opponent is arguing that I missed the filing date for the claim. If my opponent's position has merit, I have ahead of me a tough conversation with my client, but perhaps I need to have an even tougher conversation with myself. This mediation challenges my identity; I feel the earth quake and I put up impenetrable barricades to protect my identity. Ultimately, I may have to recognize that I can be both a competent attorney and one who missed a deadline. There are a few things we all need to accept about ourselves: we will make mistakes; and rather than

finding someone else to blame, how did I contribute to the problem. My former boss used to say the only people who don't make mistakes are those who don't do anything.

Keep this mind when dealing with clients whose identities are being questioned. You may have a client whose role as a loving spouse is central to her identity and when her spouse asks for a divorce, that identity is dramatically challenged. The client needs to talk about her identity. The road to changing an identity to better reflect reality is long and hard. The passage of time can change that identity; many times counseling is helpful and a difficult conversation may also help. As long as the difficult conversation comes with the intent to help, not hurt, it can assist in creating a new identity aligned with reality.

Difficult Conversations is chock full of good suggestions for easing the pain of a tough conversation and these are just a few. Your local library's collection will include *Difficult Conversations*. Check it out!

1. By Douglas Stone, Bruce Patton and Sheila Heen - Viking Books 1999 (Hardcover) Penguin Books 2000 (Paperback).

Kim L. Kern is a graduate of University of Missouri-Columbia and University of Notre Dame Law School and lives in Glen Carbon, IL. Kim's legal practice is devoted exclusively to alternative dispute resolution; she mediates personal injury, contractual, employment and other civil disputes with US Arbitration & Mediation and the EEOC; and arbitrates cases for AAA and the Financial Industries Regulatory Authority (FINRA.)

New law adds remedies, enhances protections for DV victims

By Sandra Blake

"A life is not important except in the impact it has on other lives."

—Jackie Robinson

The life of Cindy Bishof was extremely important to victims and survivors of domestic violence. On August 4, 2008, Illinois Governor Rod Blagojevich signed leg-

islation to increase remedies available against violators of court orders of protection.

Despite an order of protection, Cindy Bishof was stalked by a former boyfriend who repeatedly violated court orders to stay away from Bishof's home and job. She asked a judge to order her stalker to wear a GPS device to notify authori-

ties if he went to either of those places. Unfortunately, the court had no authority to do so. In March of this year, in the parking lot of her place of employment, that former boyfriend shot and killed Cindy Bishof, then killed himself.

Known as the Cindy Bishof Law, PA-773 gives courts, corrections and probation officers discretion to impose

additional restrictions against violators of orders of protection.

Specifically, the new law amends the Code of Criminal Procedure sections addressing special conditions of bail and order of protection remedies. As to conditions of bail, the Cindy Bishof Law requires a court to order an individual charged with a criminal violation of an order of protection to “undergo a risk assessment evaluation at an Illinois Department of Human Services protocol approved partner abuse intervention program.” The court may then order the accused to be placed under electronic surveillance pursuant to the new 730 ILCS 5/5-8A-7 after considering the results of the risk assessment and the circumstances of the violation. See 725 ILCS 5/110-5 (f). It also amends the counseling remedy in an order of protection to allow a court to order a respondent in an intimate partner relationship to submit to a similar assessment and follow all recommended treatment, See 725 ILCS 5/112A-14 (b)(4), and adds a parallel pro-

vision in the Illinois Domestic Violence Act of 1986. See 750 ILCS 60/214 (b)(4).

The new law also allows courts to order a convicted violator of an order of protection to wear a global positioning device as a condition of probation or conditional discharge. See 730 ILCS 5/5-6-3 (l). In addition, courts are required to fine a convicted violator of an order of protection a minimum \$200. This fine will be used to implement the domestic violence surveillance program and fund the costs of supervising the offender. The fine may not be reduced by time served. See 730 ILCS 5/5-9-1.16. Furthermore, the law requires a person convicted of a violation of an order of protection to wear a global positioning device as a condition of early release from the Department of Corrections because of good time credit. See 730 ILCS 5/3-6-3 (f).

Finally, the Cindy Bishof Law establishes the domestic violence surveillance program. It suggests that the authorities supervising the offender employ global positioning technology that:

- (1) immediately notifies law enforcement or other monitors of any breach of the court ordered inclusion zone boundaries;
- (2) notifies the victim in near-real time of any breaches;
- (3) allows monitors to speak to the offender through a cell phone implanted in the bracelet device; and
- (4) has a loud alarm that can be activated to warn the potential victim of the offender's presence in a forbidden zone.” See 730 ILCS 5/5-8A-7. The Division of Probation Services is charged with developing standards to implement the domestic violence surveillance program. See 730 ILCS 110/15 (n).

The law takes effect January 1, 2009.

Apology

The article “Disparity between Women and Men’s Compensation and Leadership Responsibilities Still Significant, NAWL

Survey Concludes” printed in our last edition of the Catalyst was printed without acknowledgement of its author, Ms. Katherine Kelleher. Ms. Kelleher practices

with the firm of Francis P. Tighe III, Ltd., Ten South Riverside Plaza, Suite 1800, Chicago, IL 60606-3801.

Upcoming events and deadlines

The deadline for submission of articles for the next edition of this Newsletter is **October 15, 2008**. For information regarding submissions contact W&L Newsletter Co-Editor, Sandra Crawford.

The W&L Committee is sponsoring a MCLE program entitled “**Ethically and Effectively Representing Clients With Alcohol Abuse, Drug Dependency and Mental Health Problems**” at the ISBA Mid-Year Meeting in **December, 2008**. For information

regarding the Mid-Year meeting and registration for this program go to <www.isba.org>

The W&L Committee is planning a program especially of women attorneys to coincide with the celebration of **International Women’s Day on March 8, 2009**. For more information about participation in that event look for the next edition of this Newsletter. For more information about International Women’s Day, go to <www.internationalwomensday.com>

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Upcoming CLE programs

To register, call the ISBA registrar at 800-252-8908 or 217-525-1760.

October

Friday, 10/17/08 –“Trial Techniques: Terance F. MacCarthy on Cross Examination and Impeachment” – Master Series, Lindner Conference Center, Lombard (*Cap. 140*)

Friday, 10/17/08 –“The Decedent’s Probate Estate: Start to Finish” – Presented by the ISBA Trusts and Estates Section, Stoney Creek Inn & Conference Center, Moline (*Cap.100*)

Friday, 10/17/08 --“Hot Topics for the General Practitioner - 2008” – Presented by the ISBA General Practice, Solo & Small Firm Section, Hawthorn Suites, Champaign

Wednesday, 10/22/08 -“Real Estate Law Update - 2008” – Presented by the ISBA Real Estate Law Section, Double Tree Hotel, Bloomington (*Cap. 150*)

Thursday, 10/23/08 -“Expert Witnesses-A Primer” – Presented by the ISBA Tort Law Section, ISBA Regional Office, Chicago.

Friday, 10/24/08 –“The Climate is Changing: Current Topics on Alternative Energies and Strategies for Change” – Presented by the ISBA Environmental Law Section, ISBA Regional Office, Chicago

Wednesday, 10/29/08 -“Real Estate Law Update - 2008” – Presented by the ISBA Real Estate Law Section, Lindner Conference Center, Lombard (*Cap. 150*)

Thursday, 10/30/08 – Chicago, ISBA Regional Office
UCC, Commercial Litigation and Collection Law Refresher Course – Presented by the ISBA Commercial Banking & Bankruptcy Section

Friday, 10/31/08 -“Divorce Basics for Pro Bono Attorneys” – Presented by the ISBA Standing Committee Delivery of Legal Services, Gateway Center, Collinsville

November

Friday, 11/7/08 –“Child Interviewing: Tips, Techniques and Special Considerations to Effectively Interview children in Different Legal Settings” – Presented by the ISBA Child Law Section,

ISBA Regional Office, Chicago

Monday-Tuesday, 11/10-11/08 –“Boot Camp: Microsoft Word, Excel & Powerpoint” – Presented by the ISBA Standing Committee on Legal Technology, ISBA Regional Office, Chicago

Tuesday, 11/11/08 – Utica, Starved Rock Lodge
Expert Witnesses-A Primer – Presented by the ISBA Tort Law Section

Friday, 11/14/08 - Chicago, ISBA Regional Office
Earth(quake), Wind and Fire, Disaster Planning and the Ethical and Legal Issues Presented by the ISBA Standing Committee on Law Office Management and Economics

Monday, 11/17/08 – “Juvenile Court Practices: Critical Issues in Juvenile Abuse Cases” – Presented by the ISBA Child Law Section, co-sponsored by the ISBA Family Law Section, Heartland Community College, Normal (cap. 56)

Thursday, 11/20/08 – Bloomington, Doubletree Hotel
UCC, Commercial Litigation and Collection Law Refresher Course – Presented by the ISBA Commercial Banking & Bankruptcy Section

Thursday and Friday, 11/20-21/08 -“Attorney Education in Child Custody and Visitation Matters”—Presented by ISBA Bench and Bar Section, Co-sponsored by the ISBA Family Law Section, Northern Illinois University, Hoffman Estates

Friday, 11/21/08 –“Navigating Complex DUI and Traffic Issues” - Presented by the ISBA Criminal Justice Section Council and the Traffic Laws and Courts Section Council, Eastland Suites Hotel and Conference Center, Bloomington

Friday, 11/21/08 – Electronic Health Records: Current Legal and Ethical Issues” – Presented by the ISBA Health Care Section, ISBA Regional Office, Chicago

December

Friday, 12/5/08 - Chicago, ISBA Regional Office
Trial Practice and Advocacy – Getting

it Right – Presented by the ISBA Bench and Bar Section

Thursday, 12/11/08- Chicago, Sheraton Hotel
ISBA Midyear Meeting CLE Fest

- New Laws for 2008 and 2009 Presented by the ISBA Standing Committee on Legislation
- HB 1509: Illinois’ New Right to Sue Law Presented by the ISBA Labor & Employment Law Section
- What You Need to Know About Consular Notification Presented by the ISBA International and Immigration Law Section
- Mini Seminar on Current Traffic Law Developments Presented by the ISBA Traffic Laws & Court Section

Friday, 12/12/08- Chicago, Sheraton Hotel
ISBA Midyear Meeting CLE Fest

- Family Law Beyond Basics Presented by the ISBA Family Law Section
- Criminal Law “Constant Change” Presented by the ISBA Criminal Justice Section
- Update on Legal Developments for the General Practitioner Presented by the ISBA General Practice, Solo & Small Firm Section
- Effectively and Ethically Managing Clients With Mental Health and Substance Abuse Problems Presented by the Standing Committee on Women & the Law, the Illinois Supreme Court Commission on Professionalism and the Illinois Judges Association, Co-sponsored by the ISBA Standing Committee on Delivery of Legal Services
- Tax Aspects of Personal Injury Litigation: What Every Tort Lawyer Needs to Know Before Settlement or Judgment Presented by the ISBA Federal Taxations Section, Co-Sponsored by the ISBA Tort Law Section and the ISBA Workers’ Compensation Section