

Remedies for Reform

Improving Medicaid services for Illinois children

Imagine you are the loving parent of two wonderful children. One of them gets sick. You call the pediatrician to make an appointment. During your office visit, the doctor reminds you of preventive measures to assure the best health for your offspring: immunizations, eye exams, hearing tests, and regular well-child checkups, among others. You schedule your child's next checkup before you leave the office. You are comfortable knowing that, should there be a crisis—even in the middle of the night—you can call your pediatrician's office for help.

It is a different story when your second child becomes ill. You call eight local pediatricians. Not one will see your child. You're resourceful so you check with referral agencies, hotlines, and any other source you can think of. You call

twenty more doctors, some as far as thirty miles away. None will see your child. You end up holding your sick child in your arms for hours at a clinic or emergency room, hoping you won't be told that the staff doctors are too busy and you'll have to return tomorrow. You have no assurance that this same nightmare won't occur the next time your child needs medical attention. Worse, you know there's no physician you can call in an emergency.

Same parent, two stories. The difference is that the first child is your natural child, covered by your family's private medical insurance. The second child is a foster or an adopted child whose medical treatment is provided through Medicaid.

For years, many pediatricians in private practice in Cook County refused to see children covered by Medicaid. Some would, but their appointments were severely rationed. Obtaining an appointment with a pediatric specialist was nearly impossible. Most of the nearly 600,000 Medicaid-eligible children in Cook County—entitled by federal law to equal access to all forms of medical care, including preventive care under Medicaid's Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program—received very little of that care. (see sidebar)

COHEN AND CHIZEWER

In 2000, Fred Cohen, '90, a principal at Goldberg Kohn in Chicago, set out to change the situation. He was spurred by a request for pro bono services received relating to a suit filed in 1992 by public-interest groups challenging the way Medicaid services were provided to children in Cook County. "This was not just a matter of equitable enforcement of a law," Cohen said. "The pediatricians had a pretty good reason for providing so few services to children on Medicaid [since] reimbursement rates were so low—less than half of what private insurance pays. Pediatricians actually lost money every time they saw a child on Medicaid. To make things worse, Medicaid paid very slowly and created plenty of other administrative hassles for doctors. At the same time, there were mountains of evidence describing the long-term harm to children of not receiving adequate care for even the most basic things like their teeth, their eyesight, and their hearing. Not only can the denial of such care create larger and more complicated medical problems later (which the Medicaid system is even less able to handle)



David Chizewer and Fred Cohen

there's also a terrible cycle in which preventable health conditions can injure these kids—school performance, their social relationships, and their lives at home, and that can spiral into all sorts of later problems for the kids and, ultimately, for society.”

David Chizewer, '91, who is also a principal at Goldberg Kohn, joined the litigation team for this case in 2003. “I knew Fred at the Law School and we had become friends here at the firm, but we hadn't had a chance to really work together before this,” Chizewer said. Chizewer's interest in this case sprung from his concern for disadvantaged children. He is a founding board member and vice president of the Chicago Charter School Foundation, which runs the largest charter school in Illinois, serving over 5600 students at nine

“There's a terrible cycle in which preventable health conditions can injure these kids.”

Chicago campuses. Roughly eighty percent of these students are Medicaid-eligible. Chizewer is also a founding member of the Illinois Network of Charter Schools, has served on the board of directors and the executive committee of a scholarship fund supporting economically disadvantaged children attending private high schools, and he was one of the original directors of College Bound, which helps economically disadvantaged students attend private and public colleges and universities.

When Chizewer signed on to Cohen's project, neither of them imagined how much they would be working together in the years to come. Combined, the two of them have committed nearly three thousand billable hours to this case. Goldberg Kohn's total investment stands at over 9500 hours.

THE SUIT

The state of Illinois administers and sets policy for Medicaid through the Illinois Department of Public Aid, or IDPA. The 1992 suit resulted in a stay to permit IDPA to improve children's access to services, but by 1999 it was apparent that satisfactory progress would not be made and the stay was lifted. Cohen and the other attorneys working on the case would have to persuade a federal judge that Illinois had

not provided true equal access to Medicaid services, as required by law, to “assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.” Four years of discovery, motion practice, and trial preparation followed. “We were asking a federal judge to order the Illinois legislature to spend more money in Cook County,” Chizewer recalled. “We didn't want any holes in our case.”

Over the course of four weeks in the courtroom of Judge Joan H. Lefkow in May 2004, Cohen, Chizewer, and the other attorneys presented testimony from seven pediatricians, six Medicaid recipients, several medical administrators, and experts in statistical analysis. In August Lefkow ruled in their favor in a 102-page decision, concluding: “[T]he plaintiffs have met their burden of establishing that the defendants

Evidence presented at trial by Fred Cohen and David Chizewer demonstrated large gaps between children's Medicaid rights and the actual services those children received in Cook County. Among them are the following:

All of the children should have received a screening test to evaluate the level of lead in their blood between the ages of 11 months and 23 months; 77.9 percent did not.

Medicaid-enrolled children are more likely than young children not on Medicaid to have elevated blood lead levels.

All of the children should have received a hearing exam between 47 months and 59 months of age; 93.6 percent did not.

67% received fewer than the three required diphtheria/tetanus vaccinations. 57% received no MMR (measles mumps rubella) immunization.

Although Medicaid allows for six doctor visits for health screenings in the first eleven months of life, 43% had no screenings at all and 61% had two or fewer such visits. Just 8% received all six examinations.

have violated their rights by failing to provide them with equal access to medical services. Plaintiffs simply do not have access to medical services which is equal to that of privately insured children.” Lefkow also held that Illinois had failed to establish programs and practices to assure that all EPSDT services were available to all Medicaid-enrolled children on a timely basis.

The decision made for a banner headline in the Chicago Tribune. Similar suits have been brought in several states, and other states have revised their Medicaid policies relating to pediatric care to bring them more into line with Lefkow’s ruling.

REMEDIES

Courtroom victory had to be turned into practical action by hammering out an agreement regarding remedies. Although the state had relied on counsel from its Attorney General’s office to argue its court case, it retained Skadden Arps to handle the subsequent negotiation, which lasted

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nearly a year. A consent decree that took effect on the first day of 2006 included the following provisions:

- An increase of nearly 100% in Medicaid reimbursement rates for pediatric medical and dental care
 - Increased funding of qualified inner-city clinics
 - Bonuses for pediatricians who act as a medical “home” for Medicaid children and insure that those children receive regular, consistent well-child care
 - Better communication with recipients about their entitlements and an improved referral system for those seeking care
- Illinois is also required by the consent decree to prepare regular reports on its progress in implementing the agreed-upon changes and on the actual impacts those changes have had on service to the Medicaid-eligible children. Cohen and Chizewer monitor the state’s actions and they are also preparing further action. Cohen said, “The case established that, across the board, IDPA wasn’t doing enough to get care to these children. But the consent decree focused

primarily on preventive care, which is just one step along a path. We’re committed to working with the state to make sure that it complies with the full consent decree and that we reach the end of that path.” Better access to care from specialists is the next step.

As a direct result of their work on this case, they have taken on a new project: a whistleblower action against one of the State’s largest Medicaid HMOs, alleging illegal discrimination against Medicaid recipients on the basis of their health status. Initially, both the Illinois Attorney General and the U.S. Attorney declined to take up that case, but Cohen and Chizewer’s expertise encouraged them to take a second look, and now they’re joining with Goldberg Kohn in bringing the suit.

There’s a bit of additional good news for Goldberg Kohn in the fact that federal law permits reimbursement of the expenses the firm incurred in securing the rights of children under Medicaid. “The firm has been great [throughout] the entire case,” Chizewer said. “There never was a question about the amount of resources we could devote—and our ability to recover our fees never entered the analysis at any time. We thought these children were not receiving the care that was promised to them by the Medicaid Act and our goal was to rectify that situation. Luckily, it wasn’t until after the case was decided that we learned that practically the entire medical community of Illinois thought we didn’t have that proverbial snowball’s chance of prevailing.”

Cohen added, “It turns out to be a great win-win for everyone, including Illinois taxpayers, because six hundred thousand healthier children—more than a million children, really, since these reforms will go into effect statewide—is a huge plus for the state in the long run.”

Books by Alumni

Robert Bork, '53, ed. *A Country I do Not Recognize: The Legal Assault on American Values*. September 2005 (Hoover Institution Press).

Martha Albertson Fineman '75, and Terrence Dougherty, eds. *Feminism Confronts Homo Economicus: Gender, Law, and Society*. April 2005 (Cornell University Press).

Marc Galanter, '56. *Lowering the Bar: Lawyer Jokes and Legal Culture*. September 2005 (University of Wisconsin Press).

Gary A. Haugen, '91. *Terrify No More*. January 2005 (W Pub Group).

Anna Ivey, '97. *The Ivey Guide to Law School Admissions: Straight Advice on Essays, Resumes, Interviews, and More*. April 2005 (Harcourt).

Jathan W. Janove, '82. *Managing To Stay Out of Court: How To Avoid the 8 Deadly Sins of Mismanagement*. January 2005 (Publishers Group West).

Phillip E. Johnson, '65. *Constitutional Criminal Procedure: From Investigation to Trial*. September 2005 (Thomson/West).

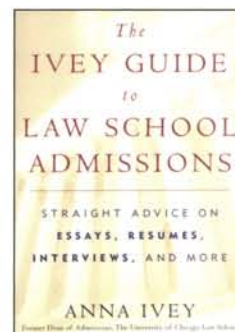
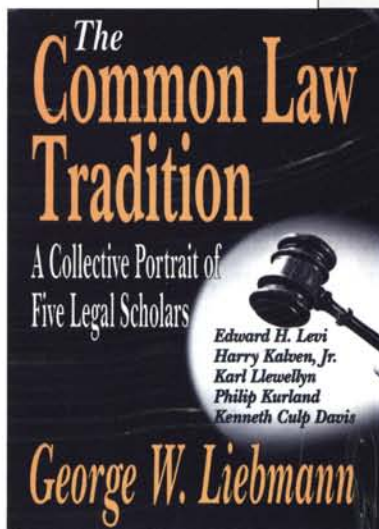
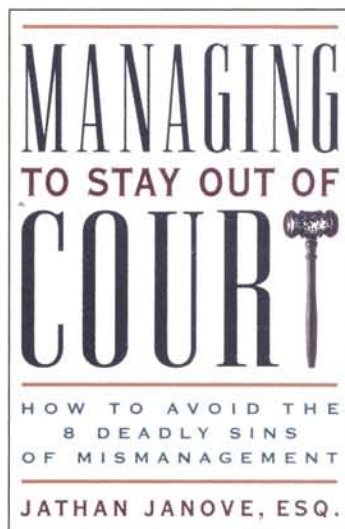
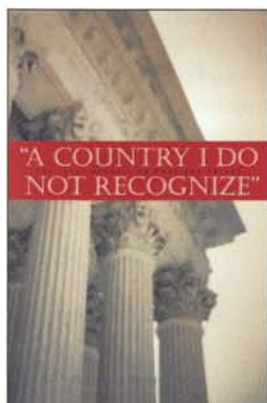
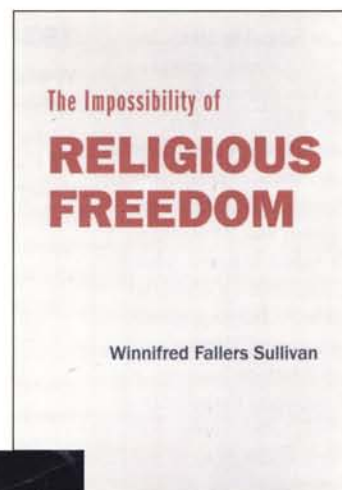
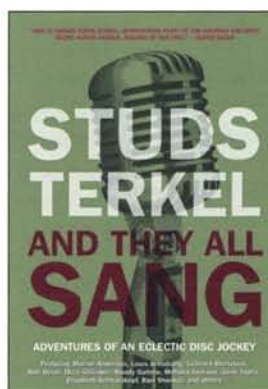
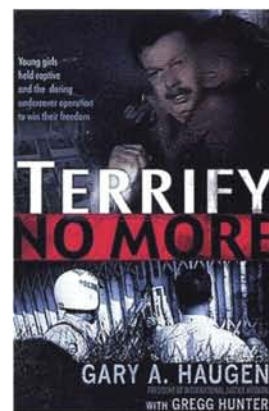
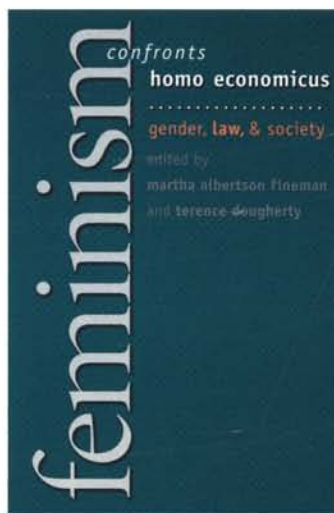
Henry Krasnow, '66. *Your Lawyer: An Owner's Manual*. October 2005 (Agate).

George W. Liebmann, '63. *The Common Law Tradition: A Collective Portrait of Five Legal Scholars*. May 2005 (Transaction Publishers).

Peter Schlechtriem, MCL '65, and Ingeborg Schwenzer, eds. *Commentary on the UN Convention on the International Sale of Goods (CISG)*. June 2005 (Oxford University Press).

Winnifred Fallers Sullivan, '76. *The Impossibility of Religious Freedom*. May 2005 (Princeton University Press).

Studs Terkel, '34. *And They All Sang: Adventures of an Eclectic Disc Jockey*. September 2005 (New Press).



Alumni

In Memoriam

1933

David Krichiver
January 2006

Krichiver practiced law in Chicago from 1933 until 1995, and was a long time resident of Highland Park, IL. He was a member of the Illinois State Bar Association, the Trial Lawyers Association, the Matrimonial Lawyers Association, and the Decalogue Society.

1935

Truman Gibson, Jr.
December 23, 2005

Gibson graduated from the University of Chicago College in 1932, and the Law School in 1935. In 1940, Gibson became a civilian aide to Secretary of War Henry Stimson, investigating issues related to the African American troops during WWII. In 1946, Gibson was appointed to President Truman's Advisory Committee on Universal Military Training, greatly influencing Truman's landmark decision to desegregate the military. In 1947, Gibson became the first African American to be honored with the Medal of Merit Award for Civilians. After helping Joe Louis with tax problems, Gibson took on the role of director and secretary of Joe Louis Enterprises and entered the world of professional boxing as a manager and promoter.

Robert B. Shapiro
October 5, 2005

As a student at the College, Shapiro was a wrestling champion and played on the football team coached by Amos Alonzo Stagg. Upon graduation from the Law School, Shapiro specialized in labor relations. After WWII, he received a degree in mechanical engineering and held several leadership positions in the printing business. He loved to travel and experience the cultures of the world. He established the May and Ben Shapiro Loan Fund at the Law School.

1936

William B. Graham
January 24, 2006

Graham graduated from the University of Chicago College in 1932 and continued on to the Law School, graduating in 1936. He joined Baxter International, a medical device and pharmaceutical company, in 1945 as a vice president and manager, and later served as CEO of the company from 1953–1980 and senior chairman from 1985–96. Graham was a board member of the Chicago Lyric Opera for more than forty years. In addition, Graham served as a University of Chicago life trustee since 1981 and supported many areas of the University. In 1980, he established the William B. Graham Professorship Chair at the Law School, a position that is currently held by Dean Saul Levmore. Graham was also instrumental in expanding the University's continuing studies program, which is now named the William B. and Catherine V. Graham School of General Studies in their honor.

Edwin F. Zukowski
January 1, 2006

Zukowski was the founder and senior partner of Zukowski, Rogers, Flood and McArdle Law Firm, from which he retired in 1980. Edwin was a member of the Illinois State Bar Association and honored in 1986 as an ISBA Senior Counselor.

1938

Joel L. Alexander
August 23, 2005

A WWII Army veteran, Alexander worked for Spiegel, Inc. and the Chicago Metallic Corporation before going into business as a metal broker, retiring in 1980.

Maurice Rosenfield
October 30, 2005

Rosenfield graduated from the University of Chicago College in 1936 and continued on to the Law School. In 1941, Rosenfield wrote an important article, "The Contemporary Function of the Class Suit," that paved the way for class action lawsuits. In 1964, Rosenfield represented Lenny Bruce before the Illinois Appellate Court, winning the controversial comedian an acquittal on obscenity charges. In addition to his legal practice, Rosenfield produced movies (*Bang the Drum Slowly* starring Robert DeNiro) and Broadway plays (*Barnum*, *Singing in the Rain* and a revival of *The Glass Menagerie*). He was the founding partner and general manager of WAIT 820AM in Chicago in the 1960s and 1970s. His son Andy is a 1978 graduate of the Law School, a University Trustee and a Senior Lecturer in Law at the Law School.

1940

Daniel C. Smith
September 25, 2005

Smith moved to Tacoma, WA, in 1950 to join the Weyerhaeuser law department, where he served for twenty-five years. In 1975, he moved to Chicago to become general counsel and VP of FMC Corporation. After retirement from FMC he moved back to Tacoma and founded the firm of Smith Alling Lane.

1944

Sol Appelbaum
September 14, 2005

Appelbaum was President of Allied Glove Corp. in Skokie, IL, a company founded by his father during WWI. The company manufactures and supplies gloves and safety gear to a variety of industries.

1948

Mollie A. Kealy
March 5, 2006

Kealy served as a Wisconsin State Public Defender and social worker for Native Americans at the Ethan Allen School for Boys for decades. Her dedication to issues of social justice led her from 1960s peace marches in Washington, DC, to demonstrations at the 1968 Democratic Convention in Chicago, to the movement to ban nuclear testing. She was also active in the 1970s in Milwaukee in redeveloping the East Side from an abandoned freeway corridor to a now flourishing residential and business complex.

Judge Robert W. Malmquist
October 22, 2005

Judge Malmquist served in the U.S. Army Air Corps during WWII prior to attending the Law School. He served as a family court judge in Morris, IL for twenty-one years, and then formed the firm of Malmquist and Malmquist with his son. As a child he participated in the Boy Scouts, and as an adult served as a committee chairman and Scout Master. He was also an active leader of the Morris (IL) Rotary Club, Grundy County (IL) Bar Association, and the Morris Country Club.

1952

Harry Golter
February 8, 2006

Golter served in the administration of Illinois Governor Adlai Stevenson and became a partner at Overton Marx and Schwartz which later merged with Wildman Harold Allen & Dixon. A liberal political activist, he supported many causes and was the lead ACLU attorney in *Briscoe vs. Kasper*, the first successful voter fraud case brought against the Richard J. Daley administration. Later in his career, he specialized in real estate law.

1958

Richard Hemstad
December 12, 2005

Hemstad moved to Seattle after Law School and worked in the public, private and academic sectors. He was proud of his service as legal counsel to former Governor Dan Evans during the late 1960s and early 1970s, when he shaped the administration policies that helped integrate labor unions, police and fire departments and the state prison system. Hemstad was elected to the Washington State Senate in 1980 for one four-year term. He worked for twelve years on the Washington Utilities and Transportation Commission until his retirement in February 2005.

1959

Professor William C. Jones
September 16, 2005

Jones received his LLM from the Law School in 1959, followed by a JSD degree in 1961. He was the Charles F. Nagel Professor Emeritus of International & Comparative Law at Washington University School of Law. He worked in the area of Chinese and comparative law for more than thirty-five years.

1961

William P. McCulloch
February 2006

For many years, McCulloch worked as a lawyer at the International Bank for Reconstruction & Development, now known as the World Bank, renovating slum housing in southeast Asia. In the late 1970s while on leave from the World Bank, McCulloch was involved in aiding tenants in the redevelopment of the McLean Gardens apartment complex as a mixed income housing community in northwest Washington, DC.

1968

Roger W. Johnson
May 21, 2005

Johnson had practiced law in Seattle since 1969, providing a broad range of legal services to families and businesses. He enjoyed sailing, fly fishing, wood working, hiking, and kayaking.

1979

Judy Hartmann
December 30, 2005

Hartmann was the first woman in Oregon to have her maiden name legally restored in a time when married women could not legally use their maiden names without a judge's approval. After graduating from Stanford University, where she met her husband Jere Webb, '69, she received her doctorate from the University of Chicago and taught at the college level. Discontent with teaching, she decided to return to the University of Chicago for her JD and MBA. She practiced law for several years, and then joined Hewlett-Packard in their corporate training department. For the past ten years, she had been actively involved in breast cancer research fundraising and clinical trials.

John A. Mennite
February 21, 2006

Mennite had his own criminal defense practice in Woodbury, NJ. From 1981-98, he served as an assistant Gloucester County, NJ prosecutor. He was an accomplished jazz pianist, performing at weddings, clubs and bar mitzvahs throughout the Delaware Valley.

1990

Shawn M. Bentley
September 29, 2005

Bentley became corporate counsel to Time Warner AOL in 2002 and served as vice president for intellectual property and global public policy. For nearly ten years, he worked with Senator Orrin G. Hatch (R-Utah) as chief intellectual property counsel on the Senate Judiciary Committee. He played a key role in crafting the Technology, Education and Copyright Harmonization (TEACH) Act of 2001, which gave accredited nonprofit educational institutions the right to freely use copyrighted works in distance education, and the Satellite Home Viewer Improvement Act, which allowed satellite companies to offer local broadcast channels.

