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Inside this issue:

Candlelight Vigil Family Violence Symposium	2
Red Ribbon Week	3
GPS Monitoring	4
Randi Freese- Peace and Justice Award and Bio	5
<i>People v. Chapman</i>	6
Araceli Alvarez Biography Bobby Zalud AAJM Honoree	7
Susan VanDiggelen Biography	8

Newsletter of the McHenry County State's Attorney

A Message from the State's Attorney:

The extremely hot, dry summer is now behind us and we are enjoying the beauty and comfort of fall. It has been a busy summer in the McHenry County State's Attorney's Office and shows no signs of slowing down through the end of this year.

As I write this welcome message, **Domestic Violence Month** and its numerous recognitions and ceremonies are well under way. The State's Attorney's Office is proud to have been invited to and have participated in many civil functions recognizing the severity of domestic violence, the challenges of combating this societal problem, and the triumphs that can be achieved.

My office has two **Victim Services Representatives, Susan VanDiggelen and Araceli Alvarez**, who work with victims of domestic violence. Their biographies are included in this newsletter. The work they do directly with victims of domestic violence is invaluable. They, along with me and other members of the State's Attorney's Office, attended a Candlelight Vigil on the Historic Woodstock Square on October 3rd, and Chief of the Criminal Division, Michael Combs, spoke at the Family Violence Symposium on October 19th.

Additionally, **Assistant State's Attorney Randi Freese was honored by Turning Point with their Peace and Justice Award** on October 25 for her work on domestic violence cases. My office takes domestic violence issues very seriously and it is rewarding to see one of our own recognized for her hard work.

I'm also proud to announce that on October 21 **Bobby Zalud received the Outstanding Assistant State's Attorney Award from the Alliance Against Intoxicated Motorists** for his outstanding work prosecuting DUI cases.

This edition also contains articles from our Civil Chief, Donna Kelly, outlining the case of ***People vs. Chapman*** regarding the use of propensity evidence in domestic violence prosecutions, and by ASA Randi Freese regarding the **use of GPS to monitor individuals charged with violating orders of protection.**

I kicked off **Red Ribbon Week**, a community-based effort to fight the spread and usage of illegal drugs, by meeting with over 50 students, teachers and parents and listening to student presentations as to why they want to remain drug-free. Over 33,500 red ribbon bracelets were distributed to 50 McHenry County schools for their use to commemorate and inspire the message of Red Ribbon week.

Lastly, my last newsletter contained an article on the Bad Check Enforcement Program, and I am proud to say that the office has now collected almost \$300,000 in restitution through this program for local businesses.

I wish you all a safe and happy autumn.

Sincerely,

Louis A. Bianchi

Candlelight Vigil on Woodstock Square Commemorates Cause



Domestic Violence Awareness Month was first observed in October of 1987 and is a time to mourn those who have died, a time to celebrate those who have survived, and a time to connect all those who work to end domestic violence.

Locally, the event was marked by a Candlelight Vigil held in the Woodstock Square on Wednesday October 3rd. The vigil was sponsored by the 22nd Judicial Circuit Family Violence Coordinating Council, McHenry County College, Direct Counseling, and Turning Point. It featured a variety of speakers and performances designed to offer support and comfort to victims of domestic violence as well as strengthen a coordinated commitment to break the cycle of violence. For more information, visit the following websites:

[22nd Judicial Circuit Family Violence Coordinating Council :](http://dmzspdb2/familyviolencecouncil/Pages/index.aspx)

<http://dmzspdb2/familyviolencecouncil/Pages/index.aspx>

[Turning Point :](http://mchenrycountyturningpoint.org/)

<http://mchenrycountyturningpoint.org/>



Celi Alvarez, Susan VanDiggelen and Randi Freese attended the Candlelight Vigil to end domestic violence.



Family Violence Symposium

Criminal Chief Michael Combs was a featured speaker at the Family Violence Symposium held at McHenry County College on Friday, October 19. **“Not in My Backyard—Sexual Assault: Developing a Coordinated Multi-Disciplinary Community Approach”** was a day-long symposium featuring some of the Midwest’s leading experts on sexual assault.

The symposium was of particular interest to those persons who respond to the needs of sexual assault victims and their families. The program was made possible by VOICE (a Division of Pioneer Center for Human Services) and Centegra Health Systems.

Red Ribbon Week, October 20-28, 2012

By Joan Hoffman

Red Ribbon Week kicked off with Annual Ceremony held at the State's Attorney's Office

Red Ribbon Week serves as an opportunity for local communities to rally together to support efforts to fight the spread and usage of illegal drugs. The McHenry County State's Attorney's Office provided McHenry County students with over 33,500 red ribbon bracelets so that they may show their support and personal commitment for this cause. This year's theme is **"The Best Me is Drug Free"**.

On October 16, 2012 a ceremony was held where select students from area schools gave presentations on how their schools are participating in Red Ribbon Week and why they believe it is important to say no to drugs. Over 50 students, educators and parents, as well as the Regional Superintendent Leslie Shermerhorn and Ken Koehler, County Board Chairman, joined State's Attorney Bianchi in attendance.

Stew Cohen from Star 105.5 and Y103.9 was on hand to record the student speakers. He produces a public affairs show called NORTHWEST SPECTRUM as well as Stew's News on Star105.5 Monday through Friday from the hours of 5am to 9am. Visit the radio station's website to listen to Stew's audio coverage of this event.



Ken Koehler, McHenry County Board Chairman, and Lou Bianchi addressed students, teachers and parents at the Red Ribbon Week Presentation. Stew Cohen audiotaped the student presentations.

The Use of GPS to Monitor Individuals Charged With Violating Orders of Protection By Assistant State's Attorney Randi Freese



Illinois has enacted legislation which allows courts to order individuals who are charged with violating an order of protection to be placed on electronic surveillance (GPS monitoring) as a condition of their bond and/or court sentence.

GPS tracking systems have the ability to track the offender's movement and location in real time through communication with satellites via radio signals. The surveillance system will alert law enforcement when the offender has entered a prohibited area. Law enforcement can then immediately respond to the location to not only apprehend the offender, but more importantly, protect the victim.

An offender that is ordered to undergo this monitoring will meet with court probation who will set up the GPS and monitor the offender. Probation will use the order of protection to set up "exclusion zones" for the offender. These "exclusion zones" are areas that the offender is prohibited from entering. Usually they are areas such as the victim's home and work place. The circumferences of these areas can range from a couple hundred feet to many miles. The probation officer will define and map out these "exclusion zones" for the offender. The offender is then given a transmitter that is worn around the ankle at all times. Tampering with or removing the transmitter as well as entering an exclusion zone will immediately alert law enforcement. Again, once an alert occurs, law enforcement can immediately respond to the area to ensure the victim's safety.

In McHenry County, when an individual is charged with violating an order of protection, he or she is brought to the McHenry County Jail to appear before a judge and have bond set. In bond court, the judge may (and generally does) order the offender to obtain a risk assessment to determine whether the offender is an appropriate candidate for GPS monitoring. Usually, the offender is ordered to obtain the assessment within 14 days of his or her release from the McHenry County Jail. The offender's first court date is typically on that 14th day or immediately following it. At that point, the court will consider the assessment and other factors presented by the assistant state's attorney to determine whether the offender will be ordered to undergo GPS monitoring.

725 Ill. Comp. Stat. 5/110-5(f) sets out the complete list of factors the court may consider when determining whether GPS surveillance is appropriate. Some of these factors include: the criminal and mental history of the offender, whether the offender has been or is a threat to any other person, whether the person has access to or a history of using deadly weapons, alcohol or substance abuse by the offender, and whether there has been a separation or termination in the relationship with the victim. The court may also consider the facts of the present case including any information provided in police reports.

In order to eliminate the amount of time an offender is released from custody without the GPS monitoring, the assistant state's attorney may ask for GPS surveillance at bond court. Officers who believe an offender they have arrested is an appropriate candidate based on the statutorily prescribed factors should contact the on-call assistant state's attorney to inform him of the case. While the GPS monitoring does not completely protect a victim from further violations of the order of protection, it is another tool that may be used by the court to avoid further violations.

Assistant State's Attorney Randi Freese Honored by Turning Point



The State's Attorney is pleased to announce that Assistant State's Attorney Randi Freese was recently selected as the recipient of **Turning Point's Peace & Justice Award**. In 2008-2009, Freese worked as an intern with the SAO criminal division while she attended law school at DePaul University College of Law. Upon graduation from law school in 2010, Freese joined the State's Attorney's Office as a criminal prosecutor.

Freese is currently assigned to the courtroom presided over by the Honorable Michael Feetterer, where Freese handles domestic-violence related prosecutions, as well as other misdemeanor cases. Freese has tried seventeen jury trials during her career.

Freese said that the most challenging aspect of prosecuting domestic violence cases is dealing with an uncooperative victim. Among the many challenging cases she has successfully prosecuted, Freese points to the case of *People v. Timothy Schreier* as an example of a good outcome under a difficult set of circumstances. In *Schreier*, 12 CM 707, there was an extensive history of domestic violence between the defendant and victim, though some of the cases against *Schreier* had been dismissed in the past and none had resulted in a conviction.

When the *Schreier* case was set for trial, the victim was served with a subpoena, but failed to come to court. Freese answered ready for trial and planned to go forward with an evidence-based prosecution, in which she intended to present the 911 tape, photographs, and defendant's admissions in her case in chief. After the State answered ready for trial, the defendant ultimately entered a blind plea to the charge of domestic battery. At sentencing, Freese introduced evidence of each of the prior incidents of domestic violence. The defendant was sentenced to 11 days in the county jail and an additional 79 days stayed; he was also ordered to complete the 26-week partner abuse class through Turning Point. More importantly, a conviction entered on his record, making any new domestic battery charge felony eligible.

Freese said that the *Schreier* case is "unique in that we were able to prove so many instances of domestic violence without the victim and it was a great example of the ability to do an evidence-based prosecution." Freese also said that the "Algonquin Police Department did a great job documenting and investigating the abusive relationship between the parties over the span of 10 years".

As for the Peace and Justice Award, Freese said that she is "very thankful to Turning Point." She added that "Turning Point is a tremendous organization" and that "Turning Point's support is beneficial to the prosecution and to the victims."



People v. Chapman: Propensity Evidence in Domestic Violence Prosecutions By Civil Chief, Donna Kelly

Generally, under Illinois law, in the absence of a statutory exception, other crimes evidence is inadmissible to demonstrate a defendant's propensity to commit crimes.¹ In other words, the fact that a defendant has been convicted of a similar offense in the past, may not be used as evidence to persuade the judge or jury to find the accused guilty, unless the General Assembly has enacted a law allowing the use of such evidence for that purpose. For example, it would be improper to urge a jury to convict a defendant of driving under the influence of alcohol, on the basis that he had been convicted of driving under the influence of alcohol in the past.

The General Assembly has carved out an exception to this general rule for domestic violence crimes. Section 115-20 of the Code of Criminal Procedure provides that "[e]vidence of a prior conviction of a defendant for domestic battery, aggravated battery committed against a family or household member, [] stalking, aggravated stalking, or violation of an order of protection is admissible" in a subsequent prosecution "for any of these types of offenses" if the victim is the same victim of the previous offense.² The State is obligated to notify the defense in advance of trial of the evidence it seeks to admit under this section. The Court must then determine whether the probative value of the evidence outweighs any undue prejudice to the defendant.³

Earlier this year, the Illinois Supreme Court considered whether it was error for the trial judge in a Will County murder case to allow in evidence of a defendant's prior conviction for domestic battery against the same victim.⁴ In *Chapman*, the evidence showed that the defendant killed Cassandra Frazier by stabbing her repeatedly, following an argument between them in the couple's shared apartment. Prior to trial, the State had moved successfully to admit evidence of the prior conviction as propensity evidence under Section 115-20 of the Code.⁵

On appeal, the defense argued that the judge's ruling was erroneous, because the statute did not mention first degree murder.⁶ The Court rejected this argument and concluded that the trial court did not err in admitting the conviction, because first degree murder of a household or family member of the accused was one of the "types of offenses" to which the statute applies.⁷ The Court stated that: "Both the trial and appellate courts correctly recognized that the murder of a family or household member, which involves an incident of domestic violence, is the functional equivalent of a domestic battery or an aggravated battery committed against that family or household member, albeit with a more tragic result."⁸

The Court held that, under Section 115-20, a prior conviction for domestic battery is properly admitted as propensity evidence in prosecutions for first degree murder, when the trial court "determines that the alleged murder victim was a household or family member of the accused and that the incident charged was the result of domestic violence."⁹

In creating this exception to the common law prohibition on propensity evidence, the legislature has given prosecutors a valuable evidentiary mechanism by which to demonstrate that a defendant is guilty beyond a reasonable doubt in domestic violence cases. *Chapman* makes clear that the domestic-violence related cases in which this evidence is admissible are not limited to the enumerated offenses.

¹*People v. McSwain*, 2012 IL App. (4th) 100619, ¶36 (2012)

²725 ILCS 5/115-20 (West 2012).

³725 ILCS 5/115-20(c).

⁴*People v. Chapman*, 2012 IL 111896 (2012)

⁵*Chapman*, ¶ 11

⁶*Chapman*, ¶ 21

⁷*Chapman*, ¶ 28

⁸*Chapman*, ¶ 29

⁹*Chapman*, ¶ 37

Introducing Araceli Alvarez...



Araceli (Celi) Alvarez joined the State's Attorney's Office as a Victim Services Representative in April 2012. She spent the last ten years as a legal assistant in private practice where she was responsible for client relations, client and witness interviews, testimony coordination, and court scheduling. She created and was responsible for the Spanish-Speaking Community Outreach Program. Courtroom interpreting on civil matters and inmate interviews as they primarily pertained to violent crimes has rounded out Araceli's experience as a legal assistant.

On a personal note, Araceli has devoted her "spare" time to serving as a volunteer mentor and youth group coordinator for over 20 years for the Catholic Hispanic Ministry in McHenry County. Araceli was born in Mexico City, but was raised in the United States; having been brought up with what she believes to be the best of both worlds has put her in a position to understand the less fortunate. Her energy and charisma has definitely attributed to enjoying her own three children and more than 500 Hispanic youth she's had the fortune to mentor, inspire and motivate.

Speaking to victims of violence is not new to Araceli. She was a speaker for over five years through church adult groups and most recently with the Latino women support group at Turning Point. Empowering others to speak up leaves her with a sense of purpose. Recently, Araceli attended the Illinois prosecutor-based Victim Assistant's Association annual conference and training.

Araceli says that she walked out of the event an even more passionate advocate than before. Being proud to be part of the Justice system is more than obvious when talking to her about her job at the State's Attorney's Office. She firmly believes that her tenacity and compassionate heart is being put to good use as it pertains to the victims she represents. Having worked within the community for a long period of time she is keen to recognize the importance of her involvement with the same as she continues to explore her professional capacity. Meeting school officials, counselors, police officers, crisis center advocates and church officials is her continued goal in an effort to be an asset not just in terms of her position as a Victim Witness Representative but in an effort to be a better servant to the community she lives in.

ASA Robert Zalud Honored by AAIM



Bobby Zalud accepted the Outstanding Assistant Attorney's Award for his commitment to seeking justice for victims of impaired driving crashes and their families.

Alliance Against Intoxicated Motorists (AAIM) was founded as a grassroots organization by victims of drunk driving in 1982 in order to save lives on Illinois roadways. An innocent driver can become a victim of a drunken driving crash in a matter of seconds. Last year, nearly 400 people were killed in Illinois, thousands profoundly injured and many left financially devastated due to drunk driving.

Introducing Susan VanDiggelen...



Susan VanDiggelen is a Victim Services Representative for the McHenry County State's Attorney's Office. Susan received her Associates Degree of Business Administration in August 2010. Susan began working in the State's Attorney's Office in October 2006 and has held many positions throughout the office. Positions Susan has held include: misdemeanor administrative assistant, administrative assistant in the felony Grand Jury Division, Mental Health Court Program liaison and Drug Unit Administrative Assistant. Additionally when the State's Attorney's Office launched the First Offender Program in September 2010, Susan served as the First Offender Program Coordinator for just over a year.

Susan has served as a Victim Service Representative since December of 2011; she received her Victim Advocate Certification in May 2012 through the Illinois Victim Assistance Academy. Her main focus is on working with victims, witnesses, and family members of victims of violent crimes. She is a member of the Family Violence Council, Education Committee and the Court and Law Enforcement Committee; she is also a member of the ARREST Grant 22nd Judicial Team and SART (Sexual Assault Response Team).

As a member of The Family Violence Council, Education Committee and the Court and Law Enforcement Committee, Susan participates as a member of this multi-disciplinary team covering many different agencies including Turning Point, Voice, Specialty Court Program, the Child Advocacy Court, police departments, and many other advocates in the community. Susan works on many projects and helps with getting the message out on upcoming events in the community.

As a member of the ARREST Grant Team, Susan is part of the training for prosecuting attorneys, victim advocates and local law enforcement agencies to enhance the coordinated community response to domestic violence to ensure that similar protocols are followed throughout area responders. Susan and other members of this team will receive additional training as the State of Illinois implements the Domestic Violence Protocol for agencies to follow. Members of this team include police officers, Turning Point Advocates, assistant state's attorneys, victim advocates, and VOICE advocates. The second part of this implementation is slated for April 2013 and will entail working on the updating, development and implementation for law enforcement, prosecutors and advocates regarding elder abuse and abuse against people with disabilities.

As noted above, Susan is also a member of the Sexual Assault Response Team headed up by Joan Rembacz, Centegra Health Systems. This team includes police officers, Turning Point Advocates, assistant state's attorneys, victim advocates, VOICE advocates, Child Advocacy Center representatives, and, health care agency employees. This team has come together to develop and coordinate a Multi-Disciplinary Community Approach. They have been able to lay out what the different paths for survivors look like, depending on their background. Additionally, they have also been working on flow charting the different agencies and their specific involvement. This team put together the Family Violence Symposium, presented on October 19, 2012, entitled "Not in My Backyard Sexual Assault."

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