

Clifford's Notes



Clifford's Corner

Robert Clifford was selected as "one of the five most feared and respected plaintiffs' lawyers in corporate America" by Corporate Legal Times.

The National Law Journal selected Clifford Law Offices as one of the Top 25 Firms in the Country in its July 26, 2004 issue, an honor

achieved for the second year in a row for the firm.

Martindale-Hubbell, one of the nation's premier law firm directories, has listed Clifford Law Offices as one of the top 10 firms in Chicago.

Clifford Law Offices is listed as one of the best law firms in the city in a special section of the August "best" issue of Chicago Magazine.

Bob Clifford also was noted in the Daily Southtown newspaper on

June 14, 2004, as one of the three most notable graduates of his alma mater, Marist High School in Chicago.

Bob was named Co-Chair of the American Bar Association 2005 Annual Meeting Advisory Committee. He heads the group consisting of many of Chicago's leading attorneys in organizing the ABA August meeting for the 400,000-member organization.

CHICAGO TRIBUNE OCTOBER 25, 2004

County fire tragedy could have been avoided

With all due respect to John Stroger, president of the Cook County Board of Commissioners ("Editorial about fire unfair to Cook County," Voice of the People, October 18), I must agree with the Tribune's Oct. 6 editorial "Chicago's next high-rise tragedy."

It was a sad day after reading the Mikva and Witt reports on the fire that killed six people a year ago at the Cook County Administration Building, but one must agree with the newspaper when it says, "The most troubling conclusion to be drawn from those reports is that not enough has been done to prevent something similar from happening again today."

Hundreds of hours examining the scene and listening to testimony of those who were there led to one lesson by these independent experts, as the paper pointed out, "... these six deaths didn't have to happen."

It is clear that many mistakes were made and much could have been done to have avoided the Oct. 17, 2003 tragedy. Certainly the fact that the county and the Chicago Fire Department have instituted some of the changes bespeaks to their courage to recognize just how wrong things were.

But too many relied upon an apparently inadequate fire code, a mangled communication system and inept building management and security companies.

Dozens of people barely escaped with their lives because they took their own initiatives to get out of the building, ignoring the very orders that were repeated over and over on the public address system throughout the evening to use the deadly stairwell. Those who had followed orders and collapsed in the smoky stairwell were not found for almost an hour and a half, and for many of them that was where they were found - slumped on the stairs, covered in soot, clutching cell phones or bags or their hands clasped in prayer. Some would not be revived.

Although that building has been retrofitted with sprinklers—a device that both investigatory commissions are convinced would have prevented the spread of this fire—many high-rises in Chicago do not have such protective measures. An ordinance that could correct this is stalled somewhere in City Council.

Some of the victims and their families are looking for justice. Certainly no one can bring back their loved ones or put them back to the places they were before the fire. But these families are also bonded together in a unique sense of commitment to assure that such a tragedy does not befall another person who lives or works in the City of Chicago. They want to see change, a sensible fire safety ordinance—including sprinklers in high-rises—that will make Chicago a model for other major cities across the country to emulate.

Certainly it would cost money, but what price does one put on the lives of those who thought they were safe, who thought they would be safely evacuated or who would be accounted for by rescuers in a timely manner?

Toward that end, when we filed lawsuits against the city and county in early October on behalf of a dozen victims, we suggested the appointment of a mediator so that a multifaceted solution could be designed so that all parties can come away with a sense of accomplishment, with a greater assurance of safety. The Tribune's brave stance in its Oct. 6 editorial should be applauded; instead, Stroger says that the paper took the meticulous findings of the investigatory commissions and "manipulate[d] them to meet its political agenda."

The fact is that until the time of the release of the Mikva and Witt reports, the county, through its officials' remarks, was, and apparently continues to be, in a state of denial regarding responsibility.

Ultimately it will take a jury's determination to demonstrate the impossibility of defending the actions and lack of pre-fire preparation by the city, the county and its politicized independent contractors.

Robert A. Clifford, Clifford Law Offices, Loop

Bob Clifford praises the Chicago Fire Department for its firefighting efforts in second Loop blaze. He faces questions from the press on the 2003 tragedy. See back page.

Press Room



Michael Krazk

Michael Krazk and Timothy Tomasik were promoted to partners at Clifford Law Offices. Mike joined the firm as an associate in 1997.

Tim came to the firm in 1998 after serving as an Assistant Cook County State's Attorney for eight years.

Shannon McNulty and Matthew Willens were hired as associates at Clifford Law Offices. Matt was selected as one of the 2004 Illinois' Top 40 Attorneys Under 40 Years Old by the Chicago Law Bulletin Publishing Company from among a pool of 1,100 nominees. He also recently authored an article in the Illinois Trial Lawyers Journal entitled, "Traumatic Brain Injuries."

Keith Hebeisen was elected President Elect of the Illinois Trial Lawyers Association. He will become President of the statewide organization next year.



Keith Hebeisen



Timothy Tomasik

Tim Tomasik spoke to the staff and residents at Michael Reese Hospital on the plaintiffs' perspective of medical malpractice lawsuits. Once again,

he will be part of the faculty of the University of Virginia Law School's Trial Advocacy Institute in January.

Kevin Durkin was sworn in as Second Vice President of the Chicago Bar Association. He is expected to ascend to the presidency of the 22,000-member organization in 2006. Kevin also has been appointed Co-Chair of the American Bar Association (ABA) Section of Litigation Mass Tort Litigation Committee.

Jeff Kroll teaches Trial Advocacy at Northwestern University School of Law. He also was appointed Co-Chair of the ABA Annual Meeting in Chicago for the Section of Litigation, planning a series of legal education programs to be held in Chicago in August, 2005. Pamela Sakowicz Menaker, Communications Partner, serves as the Written Materials Co-Chair for the event, reviewing the program materials for the four-day conference.

FINAL JUDGEMENT

Kevin Durkin and John Karnezis obtained a \$38.3 million verdict on behalf of a west suburban family who was tragically devastated by a multiple truck-car crash on Interstate 90 near Rockford in 1999.

Four-year-old Teagan Yoder was killed when the car in which she and her family were traveling was crushed. Her two-year-old brother, Zachary, suffered permanent brain damage requiring round-the-clock care. Their mother, Jerelyn, sustained severe injuries to her skull and face requiring 31 surgeries.

"So many lives were dramatically changed because of what happened on that tragic day," said Mr. Durkin. "We are thankful that the jury provided sufficient damages to take care of little Zachary for the rest of his life."

The three-man-nine-woman jury deliberated five days before rendering the verdict against three trucking firms that caused the pile-up. The \$38.3 million dollar verdict is believed to be the largest in Cook County this year.



Jerelyn Yoder and son, Zachary

Bill of Particulars

Tort Reform Alert



Supreme Court of the United States Deals a Blow to Patients Nationwide

The Supreme Court of the United States ruled that an HMO-covered patient cannot seek damages in state court when its insurer refuses to pay for doctor-recommended medical care. In a case that reversed previous state case law in Illinois, *Petrovich v. Share Health Plan of Illinois*, 188 Ill.2d 17, 719 N.E. 2d 756 (1999), the country's highest court invalidated vital parts of patient rights laws in several states across the nation. *Aetna Health, Inc. v. Davila*, No. 02-1485, and *Cigna Healthcare of Texas Inc. v. Calad*, No. 03- 83 (decided, June 21, 2004).

The Supreme Court relied upon a 30-year-old federal pension benefit law that predated the rise of managed care. According to the court's opinion, the remedy for these patients is limited to the cost of the medical services the HMO would not cover.

The American Medical Association calls the Supreme Court's ruling "a sad day for America's patients and the physicians who care for them." Its statement goes on to say that, "By reserving the right to decide what is – and what is not – medically necessary, managed care plans can now practice medicine without a license, and without the same accountability that physicians face every day." Patients' rights advocates also criticized the decision, stating that HMO bureaucrats now control patients' lives without recourse.

The case before the Supreme Court stemmed from two Texas lawsuits that were consolidated: one where an insurer's refusal to pay for a certain arthritis drug and the approval of a cheaper alternative caused a bleeding ulcer and put him in critical care; he no longer can ingest medicine through the stomach. The other case dealt with a woman who was denied a one-day extension in the hospital following a hysterectomy, causing severe injury to her that put her in the emergency room.

The court's decision is estimated to impact roughly 72 million people covered by HMOs and is expected to spur Congress to action on a national patients' bill of rights. President Bush opposed a patients' rights bill in 2001.

Report of Medication Errors on the Rise

A recent independently conducted study found that nearly 200,000 medication errors in 482 hospitals in the United States resulted in more than 3,000 harmful incidents including death. The U.S. Pharmacopeia (USP) issued a report of its findings based on 2002 data.

The report also found that senior citizens were twice as likely to be harmed by medication errors. The USP is an independent non-profit organization that sets standards for medicines and runs an anonymous, voluntary hospital-medication-error reporting system representing less than 10 percent of U.S. hospitals.



Hospitals Get Creative in Fighting Nursing Shortage

Hospitals around the country are using various strategies to battle the six-year nursing shortage. Some have even begun to utilize robotic nurses to ferry medications and supplies around hospitals.

With mechanical help, flexible shifts and online auction of shifts, hospitals are bracing for what some experts predict may only become worse in the next decade or two.

Illinois became the first state this year to require hospitals to reveal to consumers how well staffed it is on any given shift.

The goal is to lead to lower vacancy rates, lower turnover and lower mortality rates for patients as well as higher ratings of satisfaction among nurses as well as patients.



New Hospital Law in Illinois to Benefit Patients

The Illinois Hospital Report Card Act requires that hospitals submit quarterly reports of information that previously were unavailable to the public including nurse-to-patient ratios, the number of hours nurses work per day, hospital-acquired infection rates and hospital mortality rates. The purpose of the law is to allow a more-informed consumer to make more knowledgeable health care decisions.

The law went into effect this year and requires hospitals to report these statistics to the Illinois Department of Public Health. They are available on IDPH's web site at www.idph.state.il.us.

Less Damages in Fewer Civil Cases Tried

Despite tort reform advocates' unsubstantiated statements to the contrary, far fewer civil cases are going to trial and jurors are awarding significantly less in damages compared to a decade ago. The Justice Department's Bureau of Justice Statistics released that information in a report that was the result of a comprehensive study of civil trials.

The study looked at the 75 largest metropolitan areas in the United States based on 2001 data. According to the report, the number of cases tried in court dropped nearly in half in the ten-year period. The overall median jury award also decreased by more than 40 percent over that same time frame.

Overall, plaintiffs won 55 percent of civil trials, but won less than one-third of medical malpractice cases in 2001, according to the survey. See accompanying chart below.

Department of Justice study*

Number of cases tried in court

1992 22,451

2001 11,908

Overall median jury award

1992 \$65,000

2001 \$37,000

* "Civil Trial Cases and Verdicts in Large Counties, 2001." Bureau of Justice Statistics.

Approach the Bench

Brian Nash

Brian Nash is one of the quiet forces at Clifford Law Offices. A shy guy, he goes about his work in a serious manner, accomplishing a great deal without a lot of fanfare.

At the office long before courts open, Brian works on his cases with a steady eye to detail in the facts and the law. He feels it is a privilege to work for his clients, helping them in what is often their darkest hour.

"My first day of clerking at Clifford Law Offices was my first day of law school, and I knew immediately that this was the area of law in which I wanted to work," Brian said. "Not only did it fascinate me, but I found a great deal of satisfaction when you can help someone when they don't know where to turn."

Brian attended night law school at DePaul University College of Law and worked during the day at Clifford Law Offices, finishing in a shorter time because he doubled up classes and attended summers. He stood out in his class, not only for his academic accomplishments but also because he graduated with another Nash — his mother.

She started the year after he did but attended full time during the day. She now has her own firm in the northwest suburbs, her practice devoted primarily to family law.

Brian attended the University of Illinois in Champaign-Urbana, starting as an accounting major. He then switched to finance and even worked for a short time as a financial analyst at a large bank, but he knew that his head and his heart were headed in a different direction. He needed a profession that was more people-oriented, more of a service to people in need.

After meeting Bob Clifford on the golf course while caddying for him in high school, he was exposed to the law on the links. Mr. Clifford encouraged him to apply to law school, seeing that spark of sincerity, a work ethic and professionalism in him even then.

While at law school, he took classes in sales and commercial paper, but ultimately it was torts and trial advocacy that became his favorite classes. "I wanted to help people. That's the best part of the job," Brian said.

When Brian's not at work, you can find him usually at some sporting field. Whether it be golfing, horse racing or one of the local hockey rinks, Brian is a sports enthusiast. But his real love is the Cubs.

He fondly recalls visiting his grandparents nearly every weekend in far northwest suburban Cary, Illinois. The winters were spent tobogganing. Summers would mean watching the Cubs, after the large lawn was mowed.

"The games were always on the television in the living room, and I grew up loving the Cubs. My grandpa knew a lot about baseball." His



grandma passed away in the early 1980s, but his grandpa lived another 15 years and everyone still went over to be with the retired doctor, listening to his stories of being a soldier during World War II, helping mow his lawn and trim the bushes. His grandfather was a surgeon in the Army who found himself in the first wave of the D-Day Invasion on Omaha Beach. He would set up temporary hospitals, operating on the wounded right in the sand.

"He told me about the rough seas on the English Channel. It got to where the men were so seasick that they just wanted to get off the boats, even knowing that the Germans would be firing on them," Brian recalled.

Playing catch in the yard turned into playing second base in grammar school and junior high. Brian recalls his dad coaching many of his teams along with several other dad volunteers.

Brian also played football for awhile, but ice hockey took over his recreational life until a serious injury stopped his playing. "I hit a rut in the ice and my leg got caught under me. I dislocated my knee and wound up in a leg cast for weeks. It was right before my brother's wedding, and I was best man," Brian says with a regretful smile. "It was a nightmare. I got to the point where I realized I just was too old to play in the adult league." Now it's just a spectator sport for him at the United Center when the Black Hawks are in town.

In his professional life, Brian remains active with his alma mater, DePaul University College of Law, having received the Young Alumni Distinguished Service Award. He oftentimes judges moot court competitions, client counseling competitions and career counseling. His successful work at Clifford Law Offices on many significant cases resulted in his being named one of Illinois 40 Top Attorneys Under 40 Years Old last year by the Chicago Law Bulletin Publishing Company from among a pool of more than 800 nominees.

"Brian is a hard worker and a very intelligent young man," said Robert Clifford. "We are very proud of him. He sets a fine example in the profession."

Brian is one to quickly blush at a compliment, but he readily admits that, "The best part of the job is helping people who need help. We have the responsibility of problem solving. People rely on us for counsel and advice. That is an awesome responsibility, but you can't be afraid to tackle it. If you do your homework, do the trial preparation, do the one-on-one talking to your clients, it can be accomplished successfully," Brian says with authority.

As to where he sees himself 10 years from now, he looks at you like it's a thought that's never crossed his mind. "I take each day as it comes."

That's Brian Nash. Quiet. Hard working. Good-natured. Professional. And how about them Cubs?



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Holiday Greetings from the Clifford Law Offices' Family



Jaci Keith Michael Karen
 Amy Mc. Susi Katrina Heather
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 SEAN Kevin Sarah Chato
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Wishing You Holiday Greetings

Bob Clifford

Women in the Profession Reach for the Stars



Photographer: Paul McGrath



Sally Ride and Bob Clifford

Sally K. Ride, the first American woman in space, addressed the Women's Bar Foundation Annual Scholarship Award luncheon hosted by Robert A. Clifford and Clifford Law Offices. Dr. Ride, a former NASA astronaut serving on the crew of the Space Shuttle Challenger flights in 1983 and 1984, currently is on the faculty of the University of California at San Diego and is the co-founder and CEO of Imaginary Lines, a company dedicated to encouraging young girls to study math and science. Clifford Law Offices also co-sponsored the foundation's lunch with Pulitzer Prize winning columnist and New York Times best-selling author Ellen Goodman. She spoke on Women and Social Change. The Women's Bar Foundation is a state-wide organization dedicated to furthering the interests and education of women in the legal profession.

A scholarship was funded in the name of the first woman justice of the Illinois Supreme Court, Mary Ann McMorrow.



Photographer: Bill Richert

Ellen Goodman, Bob Clifford and Illinois Supreme Court Chief Justice Mary Ann McMorrow

Trial Notebook

New Cases at Clifford Law Offices

- grandfather taking a walk killed by Blue Island police officers
- 14-year-old girl struck and killed by Metra train on Chicago's south side while walking to school
- 10-year-old on his bike suffers severe leg injuries when he is struck by car at intersection
- limo driver loses control of vehicle and crashes, killing one passenger and severely injuring another
- woman is struck by CTA bus and is rendered unconscious in a coma for three days, suffering permanent injuries
- mother killed by truck driver in head-on crash when he drives into her lane of traffic
- four people injured in car/truck crash on Interstate 40 near Nashville, Tennessee
- paraplegic nearly bleeds to death in bathroom at highway oasis when toilet in handicapped facility comes off the wall and shatters, impaling him
- 22-year-old woman killed when grocery truck slams into a car stopped behind a school bus unloading children, crushing her car between its cab and a concrete truck
- man exiting his car heading to a coffee shop is killed by drunk driver
- 26-year-old Illinois Tollway worker killed in a highway repair zone when a tractor-trailer rig hits him on I-294 near the Cermak Road Plaza
- 38-year-old mother of two riding in charity triathlon suffers severe head injuries when bike collapses and helmet fails to protect her
- elderly driver crashes through window, killing teenage patron in fast-food restaurant
- several Vioxx prescription users who suffered heart attacks and strokes

Bob Clifford meets the press about the tragic fire at the Cook County Building.



Bob Clifford and Clifford Law Offices filed lawsuits against the City of Chicago and Cook County in the deaths and injuries of people who were trapped in a stairwell of the Cook County Administration Building last year. Representing a majority of the victims who were hurt or killed in the fire, Clifford Law Offices has taken the lead in filing against a number of defendants including the management company and security company for the building at 69 W. Washington in Chicago's Loop. The allegations filed in September against the county are as owner of the building which had responsibility for the management and security of the building as well. The allegations against the city include a failure to follow its own procedures and orders required to fight a high rise blaze. The case has drawn a great deal of media attention, and Bob Clifford has faced the press in attempting to get answers for his clients as well as for the people who live and work in high rises throughout the city. He also was quick to praise the Chicago Fire Department for its response to a second high rise blaze in December on LaSalle Street. No lives were lost in that fire.

Advertising Material Only

Clifford Law Offices has prepared this newsletter for its many friends, clients and colleagues world-wide. It is purely a public resource of general information. Although it is not intended to be a source of either solicitation or legal advice, it must be regarded as an advertising or promotional communication in the terms of the lawyers' professional responsibility law. Accordingly, it is necessary that certain information be supplied to and noted by the reader.

This newsletter should not be considered as an offer to represent in any legal matter, nor should it be the basis of legal hiring decisions. Thus, the reader should not consider this information to be an invitation for an attorney-client relationship, should not rely on information provided herein, and should always seek advice of competent counsel.

All lawsuits are different, and Clifford Law Offices makes no representation or promises that it can obtain the same results as reported in this newsletter in other legal matters. Nothing in this newsletter constitutes a guarantee, warranty or prediction regarding the outcome of any future legal matter. Further, it should be noted that even where the fee arrangements are on a contingency basis, clients will still be responsible for payment or reimbursement of the costs and expenses of litigation.

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Finally, this newsletter is disseminated to our many friends around the world. We hope you find the information here useful and informative. Anyone, however, who does not wish to receive future newsletters can contact us at the numbers or locations listed here, and the matter will be promptly attended to.

Very Sincerely Yours,

Thomas K. Prindable, Managing Partner, Clifford Law Offices, P.C.