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ARTICLES

An Introduction to Child Trafficking in the United States

By Katherine Kaufka Walts – January 9, 2012

Human trafficking is a modern-day form of slavery prevalent both domestically and abroad. The crime of child trafficking has recently gained more attention in our society via news reports, celebrity advocacy, and new outreach and advocacy campaigns designed to combat this heinous crime. The latest government estimates state that approximately 14,500–17,500 men, women, and children are trafficked into the United States each year to perform compelled labor or sexual services, with women and children representing the majority of victims. This figure does not include U.S. citizens, who may also be trafficked. Current estimates suggest up to 100,000 U.S. citizen children are trafficked in the United States each year. In 2000, the United States enacted the Trafficking Victims Protection Act (TVPA), which created new human trafficking crimes and provided protections, services, and benefits for human trafficking victims. While the terms “child trafficking” and “human trafficking” may be new legal terms, the phenomenon of children being commercially sexually exploited or compelled into performing labor or services is not new, even in the United States.

Child Trafficking—What Is It?

The term “human trafficking” is often misleading to those unfamiliar with the legal definition. “Trafficking” often elicits a mental picture of drugs, arms, and people being smuggled across international borders. While human trafficking may involve the movement of people across international borders, the legal definition does not limit cases to international movement, or even movement within national borders. Hence, anyone, including U.S. citizens, can be trafficked in the United States. The legal definition of human trafficking under the TVPA expanded on 13th Amendment involuntary servitude and related criminal statutes, and it includes a broader array of means that traffickers use to compel labor or services from victims. It also follows the general principals of international law, including the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (2000). The TVPA created new human trafficking crimes, including forced labor (18 U.S.C. 1589); Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor (18 U.S.C. 1590); and sex trafficking of children by force, fraud, or coercion (18 U.S.C. 1591). Responses to human trafficking are not limited to federal initiatives. Currently, there are 45 states with sex trafficking criminal offenses and 48 states with labor trafficking offenses.

Under federal law, child trafficking is defined as the recruitment, harboring, transportation, provision, or obtaining of a child for labor or services through the use of force, fraud, or coercion. It also includes recruiting, enticing, harboring, transporting, providing, or obtaining a child for or benefiting financially from the commercial sex act of a child. The “transporting, providing, or obtaining” can happen anywhere—within counties, within states, or across state or



international lines. Note that coercion can be psychological, physical, or financial. Child trafficking includes, but is not limited to, work in factories, restaurants, domestic service, agriculture, peddling, meat-packing plants, exotic dancing, and prostitution. In some cases, children can be trafficked for both labor and sexual services. The lines can often be blurred, as a trafficker may compel a child to perform a type of labor or service by exerting power and control via sexual abuse.

Child trafficking cases can occur in metropolitan areas, wealthy suburbs, and rural areas. Traffickers can be family members, acquaintances, intimate partners, or strangers. Child trafficking investigations have occurred in every state. Child trafficking cases may be single-victim cases, or they may involve multiple victims. Sometimes, multiple-victim cases involve groups of victims that include both minors and adults.

Here are a few case examples from the attorney general's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons FY 2009.

United States v. Vasquez-Valenzuela, et al. (California)

Maribel Rodriguez and Gabriel Mendez, members and associates of an extended family, received terms of imprisonment ranging from 30 to 40 years for crimes involving the sex trafficking of children by force and importation and harboring of illegal aliens for purposes of prostitution. The co-conspirators were responsible for luring young Guatemalan women and girls to the Los Angeles area, where they were forced to perform commercial sex acts. The defendants used physical violence, including rape, and threats of violence against the victims and their families to gain compliance. The victims were held in captivity by the defendants and received little, if any, of the money they earned.

United States v. Paris, et al. (Connecticut)

Defendent Dennis Paris organized and facilitated a sex trafficking ring that victimized U.S. citizen minors and coerced multiple young women to engage in commercial sex acts against their will. Paris, one of 10 defendants convicted in this case, was previously convicted after trial on two counts of sex trafficking of minors, including a 14-year-old child; two counts of sex trafficking of adult women through force, fraud, or coercion; 13 counts of using interstate facilities to promote and conduct a prostitution ring; and conspiracy to use an interstate facility to conduct unlawful activity.

United States v. Afolabi (New Jersey)

Four defendants were charged in a multi-count indictment for holding young West African victims, some as young as 10 years old, in forced labor in the defendants' hair-braiding salons. The defendants told the victims' families that, while in the United States, the victims would be able to learn English and make money to send home; however, some of the young women were forced to work in hair-braiding salons six to seven days a week for eight to twelve hours per day. The victims had their pay withheld and were subjected to physical and sexual abuse.



Child pornography and child sex abuse are not necessarily considered human trafficking, but they are considered forms of commercial sexual exploitation of children (CSEC), covered by other criminal statutes. In some cases, child trafficking cases involve components of CSEC.

Identifying Child Trafficking Cases

Identifying child trafficking victims remains a challenge. While the U.S. government estimates that women and children comprise the largest percentage of human trafficking victims, children and youth currently represent the smallest victim class of human trafficking victims identified. Minors, including American children, are among the most vulnerable populations. Few, however, gain access to the services and protections available to them under the TPVA and other laws related to children who are victims of crime generally. Several issues contribute to the lack of identification of child trafficking cases in the United States.

Paradigm Shift: Child as "Victim" Versus "Offender"

Unfortunately, many child trafficking victims continue to be viewed as offenders in various government systems, including juvenile justice and immigration systems, and subject to arrest, detention, and deportation. Police officers, ICE agents, and even child protection workers often view a child trafficking victim as a "juvenile prostitute" or an "illegal alien." There are still conflicts between federal and state law with respect to juvenile prostitution. While the TVPA defines any child under the age of 18 involved in a commercial sex act a victim of human trafficking, many states may charge a 16-year-old with juvenile prostitution. In fact, current research indicates that states are three times more likely to charge a juvenile with prostitution versus recognizing that child as a victim of a crime. Similarly, a non-U.S. citizen child engaged in prostitution may be perceived as violating both criminal and immigration laws, when in fact, the TVPA states that such a child should be treated as a victim of a serious crime and afforded protections and services as such. Only a few states, including New York, Illinois, Washington, and Connecticut, have passed "safe harbor" laws to address this issue and decriminalize juvenile prostitution.

Lack of Research

While the general public's knowledge of human trafficking has improved since the passage of the TVPA, the quality of data on the subject has not. The data and methodologies for estimating the prevalence of human trafficking, types of human trafficking, and specific patterns of how and why trafficking occurs is currently not well developed. While several statistics exist, many are only estimates based on varying forms of methodology, and they are often recycled by various organizations. Additionally, research on children is often subsumed under research analyzing "women and children" who are trafficked, without allowing for analysis of the unique situation and needs of children, including boys. Existing research focuses primarily on the sexual trafficking of children, with little to no research of labor trafficking. The lack of evidence-based data severely impacts how we can better identify and respond to child trafficking cases and inform better policies to address the issue.

Training and Protocols to Identify and Respond to Child Trafficking

While research is still limited, we do know that child trafficking victims often encounter at least one, if not several, systems that fail to identify them as victims of child trafficking. These systems include local, state, and federal law enforcement, child welfare and child protection, education, and social service providers. Not all of these systems have protocols in place to identify, track, and respond to child trafficking victims. While much more attention and training has been made available about the subject of child trafficking to various first responders, there has been little effort to assess the quality and effectiveness of these training programs. Similar to the current gaps in research, few training programs address the specific issues and needs of children. Additionally, because human trafficking is a complex issue and crime, or because of organizational missions and values, some training programs emphasize only one aspect of human trafficking or victim type—sex trafficking versus labor trafficking, women and girls versus boys, U.S. citizen or domestic trafficking versus trafficking of foreign national children, and so on. This is problematic, particularly for governmental agencies, as the U.S. criminal statutes do not make such distinctions and are often not reflective of the diversity and scope of human trafficking crimes and experiences of victims.

The Population Does Not Self-Identify

Child trafficking victims may be reticent to self-identify as a victim of a crime, and they might not even know what human trafficking is. Traffickers often threaten their victims with direct harm or harm to someone else, including family or friends, if they talk to anyone about their situation. Traffickers may tell victims that law enforcement and authority figures are not to be trusted, or children may have a previous experience with an adult figure (child protection, foster parent, law enforcement officer) that discourages them from trusting another adult figure. Some victims may exhibit symptoms of Stockholm Syndrome or “Trauma-Bonding” with their traffickers, and therefore may want to protect the trafficker. In many cases, children have been surviving trafficking situations, working, and living as adults. They may resent the term “victim” or “child” and object to a service provider or legal advocate trying to guide them toward child-appropriate services.

A review of successful child trafficking prosecutions over the last five years indicates that there is much diversity with respect to the type of victim, where the children come from, and types of labor or services children are trafficked for. Some cases are part of larger organized criminal networks; others are part of smaller family networks or individual cases. While there is no single victim profile in child trafficking cases, several risk factors that contribute to a child’s vulnerability for trafficking have been identified for all children, regardless of origin. These factors include being “system” involved (such as foster care or residential care), homelessness, drug addiction, engagement in some form of child labor or seeking employment in the United States (especially for foreign nationals), and a history of sexual abuse.

Myths about child trafficking include the following:



Victims never get paid. Traffickers are smart and understand that it is often easier to control someone who is receiving some sort of benefit, even if it doesn't meet legal standards. Sometimes, gifts are provided in lieu of compensation.

Victims are always locked up or not allowed to attend school. While this may be the reality for some children, there have been cases where traffickers allow children to go to school for brief or extended periods of time. In fact, some children have been recruited from schools by their peers or acquaintances.

Victims are always kidnapped by strangers. While these stories receive the most media attention, in most cases, the trafficker is someone that the victim knows.

Legal Advocacy and Protections for Survivors

Because human trafficking is complex, it often touches a variety of legal systems in both governmental and nongovernmental sectors at various points, from the initial identification of a case to legal advocacy on behalf of a child trafficking survivor. The legal actors involved may be prosecutors, public defenders, guardians ad litem, judges, and attorneys and service providers working various legal systems, including family law, child welfare and protection, labor/employment law, immigration, juvenile justice, criminal justice, and civil litigation. For any legal professional working with children who may come into contact with a child trafficking survivor, it is important to know what legal protections and services are available to child trafficking victims.

The TVPA states that anyone working with child trafficking victims must treat victims of human trafficking with a "victim-centered" approach. This includes a provision that "victims of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked." (TVPA 2008, Sec. 102(a)(19)). Under the TVPA and subsequent reauthorizations, children are entitled to protections under three legal systems: the criminal justice system (both U.S. citizen and foreign national), immigration (foreign national), and civil (both U.S. citizen and foreign national). Child trafficking victims are legally entitled to:

- Safety
- Privacy
- Information about their case
- Legal representation
- A chance to be heard in court
- Medical attention
- Access to appropriate services
- Compensation for damages (restitution)
- Repatriation (return home for foreign victims)
- A chance to seek residence (stay in the United States for foreign victims)



Children's Rights Litigation

FROM THE SECTION OF LITIGATION CHILDREN'S RIGHTS LITIGATION COMMITTEE

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- Short- and long-term relief are available under the TVPA to allow trafficked children to remain in the United States legally.
- Children may also petition for qualifying family members to join them in the United States.

Child trafficking victims are often the targets of other forms of maltreatment, such as child abuse, sexual assault, battery, and domestic violence, that are part of the trafficking scheme. Whether in conjunction with other crimes or as part of a human trafficking case, advocates should consult with state and federal guidelines and policies regarding the rights of victim-witnesses, including the Victims of Child Abuse Act (42 U.S.C. § 13001 et seq), the Attorney General Guidelines (18 U.S.C. § 2509), and [Crime Control Act of 1990, Child Victims' Rights \(18 U.S.C. 403 § 3509\)](#).

Survivors of human trafficking endure a multitude of abuses—physical, psychological, and financial—as a result of trafficking. Subsequent reauthorizations of the TVPA allow child trafficking victims to file civil suits to receive monetary damages for their injuries. A civil suit may be filed during an ongoing criminal investigation and prosecution. Prosecutors may intervene to stay the civil proceedings until the end of their investigation and prosecution.

Practice Pointers

Protection does not equal prosecution. Traffickers do not need to be charged or convicted of a human trafficking crime for a victim to receive appropriate protections or services.

Trafficked children, whether U.S. citizens or foreign nationals, should be informed of their rights, both under the TVPA and relevant state and federal child abuse and victim-witness statutes.

Trafficked children are eligible for certain public-assistance programs. Foreign national children must receive a letter from the Department of Human Services/Office of Refugee Resettlement to be eligible for certain federally funded benefits and services. Requests may be submitted via email to ChildTrafficking@acf.hhs.gov or by fax to 202-401-5487. An HHS/ORR Child Protection Specialist will respond to requests and may be reached by phone at 202-205-4582.

Foreign national victims should always be referred to competent immigration counsel as soon as possible.

Under the most recent reauthorization of the TVPA, federal, state, and local government officials are required to notify HHS within 24 hours of discovering a child who may be a foreign victim of trafficking to facilitate the provision of assistance. Note: a conclusive assessment about victim status is not required.

Ongoing Advocacy

While the TVPA provides enhanced protections for victims of child trafficking, several systemic gaps still remain to both prevent child trafficking and protect victims. As mentioned earlier,

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children are still falling through the cracks due to lack of training, lack of protocols, and inconsistent policies and laws between federal and state crimes, especially around the issue of juvenile prostitution. Incremental progress has been made in this area with some state laws, but much more needs to be done. While child welfare systems are tasked with responding to abused, neglected, and abandoned children, most states do not have formalized identification or response mechanisms to child trafficking cases for U.S. citizen and foreign national children, including the training of mandatory reporters.

Additionally, while the TVPA states that all human trafficking victims *should* have access to legal representation, it is not *required*. For foreign national children, programs to provide referrals to public interest and pro bono legal advocates exist; however, the U.S. government is not obligated to provide legal counsel to children. Thus, many children go through immigration proceedings without counsel and via the same procedures as adults. This severely compromises the ability to identify potential child trafficking cases.

In addition, there is a critical lack of specialized services available to child trafficking survivors, as well as to vulnerable children more generally in the United States. For example, one of the risk factors for children is homelessness. The lack of safe, long-term housing increases the likelihood of being re-trafficked, social isolation, substance abuse, and exploitation. Adolescents in particular have more limited access to various services, including educational and vocational services, both in and out of formal systems, creating additional vulnerabilities for this population. Sub-groups of child trafficking survivors are frequently underserved in both government systems and existing programs designed to assist human trafficking victims, including boys and lesbian, gay, bisexual, and transgender (LGBT) populations.

Addressing these challenges will require advocacy and expertise from a variety of disciplines and both governmental and nongovernment sectors. It should also include the input of child trafficking survivors, whose resilience and courage in the face of their trafficking experience should inform initiatives to prevent and protect children. While the task may seem daunting, it can also be exciting and incredibly rewarding.

Keywords: litigation, children's rights, child trafficking, human trafficking, forced labor, sex trafficking

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Special Education Advocacy at School Meetings: Part 2

By Erin Han, Janeen Schlotzer, and Richard Cozzola – January 9, 2012

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[Part one of this article](#) describes preparation for the various types of meetings that can occur in the special education process at schools.

Advocacy at a Special Education Meeting

Because special education meetings can easily involve eight to ten professionals, make notes of the names and specialties of each team member at the beginning of the meeting. Consider making a diagram of the room with people's names and positions on the chart as a quick reference. Once you know the players, you are ready to begin.

Tread Lightly at First

In general, it is wise to tread lightly at the beginning of an individual education program (IEP) meeting rather than arrive in an argumentative or accusatory posture. The more information you have before articulating your position, the stronger your opinions will be. Give the school a chance to present its position. Sometimes the position the school presents at a meeting may be less adversarial than originally assumed or feared. School personnel are also more likely to be open and candid about their opinions when they do not feel like they are "on trial." Listen and ask open-ended questions to gather information. You may even use some techniques that you learned in conducting expert-witness depositions—allowing the team as the expert to state its position, and then asking clarifying questions to learn additional facts that may be helpful to the position you are advocating. Then present your counter position, if you have one, using the information you have gathered from listening and questioning the school staff to support that position. If it becomes clear that the school is committed to a legal decision that is adverse to your client (such as denying eligibility or a needed related service), reaffirm your position and lodge a dissent if necessary.

Make All of Your Points

IEP meetings can quickly get derailed with many layers of issues. This is why it is important to have some sort of systematic way to make sure that all of your issues get addressed. Stay focused on all of the points that you came to the meeting hoping to make. One approach is to come to each IEP meeting with a three-column chart. In the far-left column, list in advance of the meeting all of the issues that you want addressed. Add more issues, if they emerge, as the meeting goes on. In the second column, note how the issues are addressed and resolved over the course of the meeting. In the final column, check off each resolved issue once you confirm that it is addressed in writing somewhere in the IEP. At the end of your chart, list the areas in which you or the parent needs to follow up after the conclusion of the meeting.

Be Strategic in the Information That You Release

The student may have outside diagnoses from a treating psychologist or psychiatrist that would aid the team in making an eligibility determination for that client. Get copies of outside reports in advance of the eligibility conference for the student. Talk to the parent and student about whether you think giving this information to the school will be helpful to their position. Then discuss whether they want the reports released and make sure you have appropriate consents for releasing the information to the school. Keep in mind that, once given to a school, an outside



evaluation becomes a permanent part of that student's record. If an outside report contains information that is simply too personal to include in the student's school file, consider seeking a more limited or redacted form from the treating professional. Some doctors will offer to write a letter summarizing just the information deemed relevant to the school setting. Another option is to have the psychologist attend the eligibility conference and share relevant information with the team without putting the full reports into the file.

Acting as a Translator for Your Clients

School meetings are full of lingo. As the attorney, it is critical that you act as translator so that the parent and those who are part of the student's advocacy team can fully participate in the meeting and understand the options being presented. Some of the language involves acronyms like IEP, BIP (behavior intervention plan), or shorthand names for tests. Others defy established rules of grammar. For example, schools may ask for "anecdotal," and a parent, even one who teaches English at a university, may not know what the school wants. If the issue is attention deficit, such a story might be a parent's explanation that his or her child has never been able to sit and work on homework for more than five minutes, even at home. This provides information about attention deficit in a concrete way.

When the attorney hears lingo, he or she should make sure that the client understands what is being said. This is usually fairly simple, but important. One approach is to speak directly to the client, saying, "When they say 'BIP,' they mean a plan to help Walter when he gets upset." Another is to join with the parent as someone who may not understand what is being asked. For example, when the school asks for anecdotal, remember that you are there to help involve your clients in the planning that occurs. Help them understand what is going on without making them feel like outsiders. Ask the school staff, "When you say 'anecdotal,' do you want examples of when Jenny has trouble getting her words out?" This approach can help the parent feel less isolated.

Using Client Stories to Make Points

Your interviews with parents and others before a meeting may give you examples of problems that are identified elsewhere in formal evaluations. For example, a report may say that a student is able to read words well but cannot understand what he or she has just read aloud. If your interview provides an example of this, consider bringing it up at the meeting when the team is examining the issue. Once again, do what you can to help parents understand that they have something important to bring to the meeting. "Ms. Henderson, the psychologist just talked about some of Jenny's reading problems. Could you talk about what happened when you were reading with her last week?" This provides corroboration for conclusions in evaluations and helps confirm the presence of issues that might otherwise be ignored. Historical information, such as medical problems or traumatic incidents that impacted a child, can also be helpful.

Use Breaks Well

Unlike trial, where an attorney cannot discuss testimony with a witness once that witness begins testifying, a school conference is more like a negotiation or mediation. The sides are free to take



a break and discuss issues among themselves. Tell your clients and their supporters before the meeting that if they get overwhelmed or surprised by anything that happens, you can stop the meeting and step outside at any time. Let them know that if you believe that you need to meet briefly with them, you will say so and that when you are making such a request, it is important for the client to take the cue and meet with you. Tell your client that you will also suggest a break if you reach a crucial point in the meeting where any offer is being made that the parent must consider. Sometimes these breaks are critical to developing a plan—a parent may change his or her mind about what the student needs based on information learned at the meeting. The break gives the parent a time to talk about these issues with you.

A second type of break can occur if you and the school staff decide the team needs more information, such as additional testing or the introduction of outside reports, before deciding a question such as eligibility. Suggest that the team take a week to consider this additional information and then come back to the table. Just keep in mind the impact that any delays will have on the student when deciding whether this strategy is worth the time it will take.

Recording Your Dissent

The conclusion of the meeting is another time for a break—this time to discuss what the school is proposing with the parent and to determine your next step. If the school is proposing something with which the parent disagrees, identify the issue with the parent. These disagreements can be on a wide variety of subjects depending on the meeting: a school decision at a domain meeting that it does not see a need for a speech assessment, a determination at an eligibility conference that a student is not disabled, or a disagreement with a placement decision or the amount of a specific service at an IEP meeting, and so on. Go over the documentation with the parent. Decide whether you are going to try one more time to persuade the school to change its position. Remember that it is the parent who knows the child. The parent may change his or her opinion about what is best for the child based on what occurs at the meeting. For example, a parent who had been hoping to maintain a child in a regular classroom may become persuaded by school staff that the student needs a higher level of care.

Also remember that if the school maintains a position contrary to your clients' goals, you must decide whether you will record your disagreement and how. Written dissents are not like evidentiary objections at trial; it is not necessary to record a written dissent to preserve your right to appeal on an issue. Nonetheless, as a practical matter, a dissent shows clearly that a parent disagrees with a school's decisions to not find a student eligible or to place a student in a particular setting. This can be helpful if a parent seeks a due-process hearing on one of these issues and in that process seeks compensatory services to make up for the school's failure to find a student eligible or to make a certain placement. In such a case, a dissent can rebut a school district claim that it should not be liable for compensatory services because everyone, including the parent, agreed at the time of the eligibility meeting that the student was not eligible for services. The primary purpose of the dissent is to identify the items of disagreement in writing. As such, it is the recording of the disagreement that is most important. You can do this in a



couple of sentences or paragraphs. It is not necessary to cite each document or comment that supports your position. You can provide the details after the meeting if you later draft a request for an administrative due-process hearing.

Get a Copy of the IEP

Leaving a special education meeting with the paper documenting the meeting can be as important as leaving a court hearing with a copy of the final order. Depending on the meeting, some kind of document should be generated: a listing of relevant “domains” for testing at an eligibility meeting, a decision about whether a behavior was a manifestation of a disability at a manifestation determination review (MDR), or the individualized educational plan at an IEP meeting. The meeting may have also led to the generation of a variety of evaluations or other documents. Often, some technical difficulty will intercede to create a barrier between your getting copies of these various documents—a copier or printer breakdown, a meeting that school personnel are attending too soon after yours, and so on. After an hours-long meeting, it is tempting to ask the case manager to simply fax you a copy of the final documents rather than wait. Avoid this if you can. If you wait and review the final document, you will often find some discrepancies between what it says and what the team decided at the meeting. It is much easier to insist on an immediate change when you are right there with the same team members with whom you discussed the issue in question, particularly when these team members are as tired and anxious to adjourn the meeting as you are. This is the time to go through your checklist to make sure that all of your issues were addressed in writing in the IEP.

Leave the Meeting in as Congenial a Mood as Possible

Even if you leave the meeting with a dissent and expressed an intention to file due process, you can do this in a professional manner and in a way that is respectful to the team. Keep in mind that you are a part of this team for a limited period of time. In all likelihood, the parent and student’s relationship with this school will continue long after your departure from the case. Therefore, you do your clients a disservice if you further alienate the school as a result of your demeanor or treatment of the team. Keeping your cool from the beginning to the end of the meeting is easier than it might appear if you remember that you can always go back to your office and file for due process.

Special Education Myths that Derail Meetings

There are a number of legal “myths” commonly perpetuated by school staff at special education meetings around the country. They can arise at almost any point in the process and can quickly derail a parent or an advocate. Be careful not to fall into any of these traps.

Eligibility

“We can’t test your child because we haven’t had a chance to do response to intervention (RTI).” Schools are required to monitor all children for progress and to provide scientifically approved interventions for children who are not making this progress. While it is true that schools should be doing these screenings, the fact that the school has not done so does not provide the school with an excuse to deny a parent’s request for special education testing. If you believe that your



child may have special education needs, your response should be firm: The school should begin an evaluation of the child, and it should set a meeting time within the Individuals with Disabilities Education Act's (IDEA) time limits to discuss the evaluation and make an eligibility determination. If the school also wants to use RTI to evaluate the possibility of learning disabilities, it can do so, but that process cannot stop the evaluations from going forward.

“We would like to give your child a 504 plan instead of an IEP.” A 504 plan is a plan for accommodations under the Americans with Disabilities Act (Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 394 (Sept. 26, 1973), codified at 29 U.S.C. § 701 et seq.). It is entirely appropriate for certain types of disabilities that do not impact the student's academic learning or emotional functioning in the classroom, such as food allergies or diabetes. However, it does not require the same disciplinary protections or goal monitoring as an IEP. Therefore, if you are offered a 504 plan when you believe the child meets the requirements for eligibility under the IDEA, including eligibility under the “other Health Impairment” category for ADHD, you should demand that the student receive the IEP to which he or she is entitled. Bottom line: Don't settle for the 504 plan when the student needs an IEP.

“Your child is earning good grades, so there is no impact on education and no need for an IEP.” This quote commonly precedes a school's denial of special education eligibility. Remember that the key question is whether a disability has an impact on education. This impact refers to more than just grades and standardized test scores ([Letter from Alexa Posny, Ph.D., Director, Office of Special Education Programs, to Catherine D. Clarke, Director, American Speech and Hearing Association](#) (Mar. 8, 2007)). The child's social, behavioral, and emotional functioning in the classroom are also relevant measures of impact on education. A first-grade student with documented emotional challenges may be both getting good academic grades and facing suspensions. Make sure the school knows that if a child's behavior results in missing many days of school, the disability is having a clear impact on his or her education, and he or she is eligible for an IEP to help with that impact.

MDRs

“The question we have to answer is whether your child knows right from wrong.” At some point in almost all MDRs, someone from the school will raise this question as the supposed crucial question to answer in determining whether a behavior is a manifestation of the child's disability. Of course, this language appears nowhere in IDEA. Moreover, in our experience, it usually comes up in cases of children with ADHD/OHI or ED where such an inquiry is actually the antithesis of an appropriate MDR discussion. Children with ADHD/OHI may certainly “know right from wrong.” However, their disabilities may prevent them from controlling certain reactions or behaviors due to impulsivity, post-traumatic stress disorder, or other issues in line with their disabilities. Redirect the MDR to the critical issue, which is the connection between the disability and the action at issue.

After the Meeting

The Parent Is Unhappy with the Outcome

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Discuss the parent's legal options. These options vary depending on the situation. If the school has denied eligibility or made another determination based on its assessments, the parent may request an Independent Educational Evaluation at the school's expense (34 CFR 300.501(b)) or file a request for a due-process hearing to challenge differences of opinion with the school district over the appropriate services or placement of the child. The parent can also file for a due-process hearing for other violations of the IDEA, such as the failure to complete an evaluation within the appropriate time periods. Beyond independent evaluations and due-process hearings, states have procedures for filing a compliance complaint with a state agency if there is a violation of a procedural mandate, such as failure to complete an evaluation in 60 days or a failure to conduct an MDR. Know how these options operate within your own state.

Make the Meeting Mean Something in the Life of the Student

A meeting that develops a good IEP is only one step in the process. It does little good to have a solid plan on paper with no follow-up. Parents should still confirm compliance. The services that you worked so hard to obtain in the IEP are only going to benefit the student if they are actually enforced. Sometimes a school's compliance is obvious, such as when a child is placed in a different setting, such as a therapeutic day school. Sometimes compliance is harder to verify, such as whether a school is providing the actual amount of minutes set forth in the IEP or whether the student is making progress on his or her goals.

Maintaining regular communication with the school is vital for the parent to ensure compliance. The parent should ask for updates from the service providers as well as written documentation of the student's progress toward each of the quarterly benchmarks. Impromptu visits to the child's classroom can help verify if a 1:1 aid promised in the IEP is actually working with the child. We strongly suggest that the parent keep a written log of problems noted at the school as well as calls received from the school about problems. This will give you a better sense of the scope of the problems the student is experiencing and will help guide whether it is worth the effort to ask for another IEP meeting or whether it would be more effective to simply file for due process. Sometimes we ask the team to set up a "check-in" IEP meeting on a fixed date to discuss the appropriateness of the IEP developed. This is a particularly good idea in the case of a brand new IEP, where the team may have some lingering questions about appropriate placement and services.

Compliance and Private Therapeutic Day School Placements

If the team agreed to refer the student for a private placement, don't close out the case until that placement has been approved. While the IDEA requires schools to place children in the placement defined by the IEP within 10 days of the date of the IEP, districts frequently exceed their 10 days to place the child. In such cases, you may have to consider a state compliance complaint or even a federal action if the child is missing school while awaiting placement.

Furthermore, your assistance will likely be needed to advocate for the right therapeutic day school. While some districts will send the student's packet out to several schools simultaneously and encourage your child to visit all that extend interviews, other districts will only send the



packet to one school and will then direct the parent to show up at that school to complete enrollment. When faced with this latter situation, we encourage the parent to agree to visit the school being offered, making it clear that he or she will not make a decision the day of the visit and will need to see another school if the offered school is inappropriate.

Talk to the Parent and the Student

Whether or not the child attends the IEP meeting, it is easy for him or her to get lost in the shuffle. Being qualified for special education services or being transferred to a therapeutic day school can be difficult for any student. Many students have a misperception of special education as only applicable for students with mental retardation. Unless you take the time to explain the specifics of the student's eligibility category in a way that is empowering, the new label that you fought so hard to obtain actually may have a negative emotional impact on the student you are trying to help. For example, explain to your clients with a learning disability that this is a very distinct category from cognitive impairment and one that they only qualified for because they had average or above average intelligence.

Conclusion

The school education meeting is a legal forum unlike any that most attorneys have ever encountered. Navigating it using the skills you have, as well as some new ones, can lead to better outcomes for the student not only in terms of services offered but also in terms of helping the student to maintain a positive relationship with the school.

Keywords: litigation, children's rights, special education, individual education program, manifestation determination review, behavior intervention plan

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Lessons Learned Through Child Welfare Litigation

By Alet A. Brown – January 9, 2012

We all have our idea of demons. If asked, we can visualize and describe them without hesitation. When I entered the field of child advocacy, I had one demon in mind—a demon I crafted after years of working with underprivileged youth and listening to their heartbreaking tales of trauma at home: the parent. It was my mission—no, my *destiny*—to protect innocent children from their abusive parents. I would be to child advocacy what Batman was to Gotham City, and there would never be a shortage of villains. Yet, when I finally experienced child advocacy, something unexpected happened. I found myself humanizing the people I was so certain were at the root of the problem. My perspective of the field was slowly shifting, and my outlook on the lives of these children and their families was changing along with it. I was transforming from an eager student attorney to a budding child advocate, and I was surprised that I could credit such growth to one of the villains in my own Gotham City.

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Children's Rights Litigation

FROM THE SECTION OF LITIGATION CHILDREN'S RIGHTS LITIGATION COMMITTEE

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Transitioning into the field of child advocacy is not child's play—no pun intended—especially for an inexperienced law student. It requires a completely new way of thinking and the realization that a child advocate's job is to be the voice of the child. In my jurisdiction, children in dependency cases are entitled to attorneys, not guardians ad litem. The clinic operates on the presumption that children age seven and over are entitled to expressed-wishes advocacy. I had no idea that existed or what it would entail. Naturally, as expected, the field involves advocacy on behalf of the child. Such advocacy, however, is not limited to the technical skills taught in law school. While there are an extensive discovery process, motion practice, interviews, oral advocacy, and other staples of litigation, the most critical component is that a child's attorney is able to use his or her technical skills to speak *on behalf of* the child, not *for* the child. As a student attorney preparing to work in a child advocacy clinic, I expected child welfare litigators to speak for the children. I thought that I would read a case file, meet a child, and then use the technical skills I have learned to convey to the court what I thought should happen to the child. I never anticipated that my legal work would be guided by the wishes of the child, nor did I anticipate that advocating on behalf of one child would lead to me meeting a parent that would have such a profound effect on me.

Guided by my well-intentioned naïveté, I eagerly started my work in the child advocacy clinic. I was shocked to discover that many of my expectations of child welfare litigation differed so much from the reality of the field. An expectation that did mirror reality, however, was that I would have no trouble growing close to the children. When I met my first clients, a three-year-old girl and a two-year-old boy, I fell in love. With big, bright eyes full of innocence, they stole my heart the minute I met them. It was the same with all the clients assigned to my three-student team during my time in the clinic, and with each new client, I promised myself I would do everything I could for them. I spent countless hours reading intake reports and discovery, learning about the children and the events that brought them into the system. I was wholly dedicated to doing everything I could for them, and with that dedication came the ease with which I could vilify my clients' parents.

The same passion that inspires a desire to protect children can also encourage an incredible amount of judgment of their parents. It certainly did not help that I was already convinced that their parents were monsters before my foot was even in the door. Going through case files and listening to the stories from other student attorneys, I found myself thinking the worst of the parents I read about. I felt no sympathy for them or what they might be going through. How could you neglect, abuse, or abandon an innocent child, a defenseless individual who wants nothing more than to be loved by the people who brought them into this world? And why would I advocate for the return of a child to such a home? I was consumed by my one-sided thought process and was even a little proud that I was vocalizing what I was certain so many people were thinking. It was an experience with one of my clients' parents, however, that opened my eyes to the true consequences of being so judgmental.

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I will call my client Loretta. Loretta was a precocious 14-year-old girl, full of energy and life. She had a smile that can light up a room and a knowing twinkle in her eye that made me want to work doubly hard for her. Every visit with her was entertaining, and my team and I usually left with tears in our eyes from our laughter. It is always amazing to see so much tenacity in a child with such a heartbreaking story. My team picked up Loretta's case mid-stream, as the case started during the previous semester. Loretta's mother, a chronic drug abuser whose rights to three of her five children had been terminated years earlier, had abandoned Loretta when she was a baby. Loretta was left in the care of an aunt who obtained custody of her and raised her as a single caretaker. Over the years, multiple reports from numerous sources were made to child welfare about potential neglect in the home. The report that finally brought the family to court was made by police officers who discovered Loretta covered with bruises on her face and body from her aunt's beatings. Both Loretta and her aunt said the bruises were the result of her aunt having disciplined her with a belt. Loretta was removed and placed into foster care. Curiously, the file also indicated that Loretta's mother then somehow reappeared, and, incredibly, Loretta had been placed with her. Even more curious was that last semester's students were the ones who advocated for Loretta to be released to her mother.

Reviewing the case file, I wondered what child welfare and the previous student team were thinking. Still not fully appreciating the advocacy model I was working under and not yet having interviewed our client, I was fixated on my own reactions. Loretta's mother had lost multiple children to the system, many of them through pure abandonment. I shook my head as I went through the case file, angry that such a person would continue to be blessed with children. My anger only increased after my first conversation with her. I called her to set up a time for the team to visit with Loretta and she was loud, abrasive, and very forward. It was a stark contrast to the submissive, cooperative parents I had come to know in my first case. During a supervision meeting with my professors, I told them exactly what I thought of her: She was aggressive and scary. "She yelled at me," I whined. One of my professors looked at me with a knowing eye and told me she was not aggressive or scary. In fact, she was a nice woman. I found it hard to believe. I even thought my professor was confused about which parent I was referring to. She could not possibly be talking about the same woman who practically climbed through the phone and down my throat just a few minutes earlier. "Get to know her," my professor said, her tone encouraging. I have never gotten better advice.

I went back to the case file. Based on the last student team's advocacy to return Loretta to her mother, the attorney for Loretta's mother had given us permission to meet with her. I took some time to prepare for the meeting by focusing on Loretta's mother's background. I read through all the information about her in the file, including the medical records the previous student team had received, and a picture started slowly to emerge. At first, I felt as if I was intruding on something sacred and private. Notes from her therapists, her medical information—it was all too much! But I kept reading until I came across some heartbreaking information. I finally understood how Loretta's mother came to lose her first child to the system. She had been sexually abused herself by a relative while she was still a young child, and was pregnant before seventh grade as a result.



A life of foster care turmoil followed, and she fell into the arms of a terrible drug habit. Through it all, she continued to give birth to children, but her own lack of self-worth and love left her incapable of loving anyone else. She continued to lose her children to the system until the day she somehow found the strength to decide to leave her destructive past behind. She accepted the help of numerous professionals who assisted her with sobriety, social skills, employment, housing, and other necessary aspects of independent living, and she eventually even managed to get two of her children back, including her youngest daughter, Loretta. She was insistent on making herself a better person so that she could be a good mother to her children.

I felt like the worst person in the world. I knew nothing about this woman, yet I felt entitled enough as her child's attorney to judge her and make predictions about what my client *should* want, not what she *did* want. I dismissed her before I even got the opportunity to know her. In many ways, I failed my client from the outset. I was so caught up in what I thought should happen to Loretta that I failed to consider the importance of what she wanted. Even worse, I made snap judgments without fully learning about the people who would be most directly affected by them: the child and her mother. This was the home that the child would come to love and in which she would thrive, and she was adamant about staying there. Rather than taking a moment to try to figure out why that was, I skipped that critical step and went straight to passing judgment and making unwarranted, unnecessary, and ultimately incorrect assumptions. When we finally scheduled time to meet the family, I immediately volunteered to interview Loretta's mother. Somewhere within me I felt like it would be a moment of redemption, an opportunity for me to start fresh and really get to understand her. That was three months ago, and no one else on my team had an opportunity to interview her after that.

Listening to this woman speak with such eloquence and share stories that resonated so much with me, I refused to turn down the opportunity to speak with her again. Every conversation was a learning experience, and I still marvel at the strength she found to move past a life of such hardship. We had many conversations, during which I sometimes found myself looking away from her as we sat outside on the steps of her modest home, hoping she could not see just how much her story affected me. She was completely open and may be the most straightforward person I have ever met. She was always willing to admit that while she was new to actually parenting, she desperately wanted to be a good mother. She was determined to make something of herself, not because it would make her happy, but because it would mean she could be part of her children's lives. I was moved.

After hearing her story and recognizing just how far she had come, I realized that I had been very wrong about her. She was not abrasive; she had been hurt and refused to be hurt again. She was not mean; she was protective of herself and her family. Like a lioness that has lost some of her cubs, she was fiercely protective of the children she does have with her. She taught me things about child welfare litigation that I never expected to learn, and, in the process, she taught me an incredible amount about myself. From this woman with this sad and dark past, I found a way to humanize the individuals I once vilified.



It is far too easy to immediately dismiss abusive or neglectful parents as inadequate. In the beginning of my time with the clinic, I spent a lot of time judging them instead of trying to understand why my clients loved and needed them. Every person has a story, and many times that story is the key to understanding exactly why a case is sitting in your lap. Even more important is that the whole purpose of child welfare litigators is to be certain that the child's position does not go unheard. This position is not dictated by the attorney's view of a child's mother, but by the child's perspective. My experience with Loretta's mother is a constant reminder of that. I now have a different eye when looking at all cases—especially child welfare cases—and I can thank Loretta's mother for making me a better child advocate in that respect.

My experience with the clinic has shown me that child welfare litigation is not easy, but the difficulty it presented for me was what makes it such a special subset of legal advocacy. With each new client, it is so easy to fall into the trap of judgment. You can never understand the true value of your work, however, until you set aside your judgments and work toward the best possible representation of the child's position. In the process, you will meet the "villains" who caused so much turmoil in the first place, and you may—though not always—discover there was no villainy, just life and its many twists and turns. It is in the midst of those twists and turns that unexpected moments of enlightenment present themselves. I managed to find my own moment of enlightenment, and it was one of the most valuable lessons I have learned in law school—a lesson taught not in a classroom with a casebook but by a disabled recovering drug addict who also happens to be quite an inspiration. I owe a great deal to Loretta's mom.

Keywords: litigation, children's rights, child advocacy, child welfare

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A Voice for the Young Child with an Incarcerated Parent

By Lynne Reckman and Debra Rothstein – January 9, 2012

"When a parent goes to prison, they never go alone . . . Their children go with them." This introduction to a [video produced by the Children's Justice Alliance](#) shines light on the often-ignored needs of children with incarcerated parents. It is well documented that adverse childhood experiences, including the incarceration of a household member, are linked to a host of health and social problems. Centers for Disease Control and Prevention, [Adverse Childhood Experiences Study](#). Brain research of the past three decades concludes that a child's brain is wired for relationship. All future child development cascades from the quality of the first and most important relationship between parent and child. That relationship exists for good or ill in the absence or the presence of the parent. When children are separated from their parent due to incarceration, their lives are greatly affected by the array of systems surrounding the family, including, at times, the child welfare system. It is important that the child not be overlooked and

that the systems surrounding the family recognize the significance of the child-parent relationship.

National statistics paint a broad and staggering picture of families disrupted by the trauma of incarceration:

- There are more than 1.7 million children in the United States with an incarcerated parent.
- One in 43 (2.3 percent) American children has a parent incarcerated in state or federal prison.
- Approximately 10 million—one in eight—of the nation's children have experienced parental incarceration at some point in their lives.
- Twenty-two percent of the children of state inmates and 16 percent of the children of federal inmates are under five years old. The Sentencing Project/Research and Advocacy for Reform, Feb. 2009.

Fifty percent of incarcerated parents expect to be parenting their children upon release. [Bureau of Justice Statistics 1997](#) (2000). As a result, half of the children experiencing the loss of a parent through incarceration will also eventually be faced with reunification issues on release. Further complicating the picture is the likelihood that parental incarceration is associated with other risk factors, such as poverty, drug and alcohol problems, and violence.

The mental-health practitioner is often the voice of children who are invisible in the systems that make critical life decisions for them. The infant-mental-health practitioner is specifically concerned with the needs of infants and toddlers. Ten years ago, the field of neuroscience in collaboration with early childhood development demonstrated strong evidence that early relationships and early experiences profoundly impact the rapidly developing brains of children between birth and three years of age. Jack Shonkoff and Deborah Phillips, National Research Institute Council of Medicine, *From Neurons to Neighborhoods: The Science of Early Childhood Development* (2000). Healthy brain development promotes strengths, such as the ability to take the initiative, to engage in a strong mutual-attachment relationship, and to achieve self-control. These strengths contribute to the child's further growth and learning and create protection that allows children to be more resilient in the face of life stressors.

This knowledge challenges the assumption that children are naturally resilient and instead suggests that resilience is earned over time under the right conditions. A strong early attachment relationship creates the fertile ground for healthy brain development and is identified as one protective factor. It stands to reason that an infant or a toddler's separation from a primary attachment figure constitutes a significant stressor, putting that young child at risk for a variety of health, social, and emotional problems. The vulnerability of the child depends on variables such as the quality of the attachment relationship prior to separation, the duration of separation, and the intensity of experiences surrounding the separation. The child's vulnerability is also impacted by the way in which his or her caretakers and other adult service providers respond to the crisis of separation.

Older children communicate their needs through language as well as behavior. The language of babies and toddlers is unique. An infant too young to speak still communicates in a variety of ways. His or her earliest tool for communicating needs is crying. Infant specialists have identified a variety of cries to which an attuned parent is able to understand and respond. The infant relies on the ability of a primary caregiver, presumably a parent, to understand his or her cry to meet basic needs such as eating, staying dry and warm, and needing a human's touch. An infant (0–12 months) is totally dependent on others for survival. The mutual dance in which the child cues the parent and the parent responds with appropriate nurture creates the basic trust that comes from being repeatedly understood. The toddler (1–3 years) has the same basic needs for food, shelter, warmth, and human connection. In addition, he or she is developing an autonomous sense of self and the beginnings of initiative. The child needs a parent to understand that testing limits is part of a naturally growing curiosity in the world outside of the primary attachment relationship. The child needs encouragement and support for the exploration of his or her environment. A consistent parent provides a secure base from which a child can safely pursue this natural curiosity and learn about the world.

When the dance of attachment is interrupted, in this case by separation from the parent, the child experiences trauma. An infant communicates this trauma through disrupted biological rhythms. The baby cues distress with inconsolable crying, eating or sleeping difficulties, withdrawal, irritability, and/or physical symptoms like vomiting with no apparent diagnosis. For example, a nine-month-old baby who sleeps an inordinate amount of time may have simply stopped wanting to engage and explore the world. A toddler who has lost his or her secure base may show some of the same signs of stress, with the addition of clingy or withdrawn behavior, aggressive behavior, and/or inconsolable, prolonged temper tantrums. These distress signals from our youngest children are usually seen in the privacy of the child's home or sometimes a new caregiver's home, away from the eyes of the larger community. With greater awareness, professionals involved in monitoring, advocating for, and making decisions about these children are better able to help them overcome traumatic early-life experiences.

A less tangible need of children of all ages is to have a simple and honest narrative of their life story. Unfortunately, mental-health practitioners often hear from the adult caregivers of children with an incarcerated parent that the caregiver has not told the child the truth about the parent's absence. The most often heard story is that the parent is "at school." The mental-health practitioner is confronted with two common beliefs: that children are better off not knowing that a parent is incarcerated and that children are better off not knowing this parent at all.

However, secrets and lack of information are damaging to children's emotional health. Harboring the secret information that a parent is in jail or prison does not afford the opportunity to explain to children that the separation is not their fault. It does not offer children the opportunity to explore their feelings of sadness, grief, and sometimes anger about the loss of their parent. It also robs children of the opportunity to share their story with others in similar circumstances so that they do not feel so alone. It contributes to confusion, fear, and shame. And



it certainly precludes facilitating direct contact with the absent parent. Even very young children can sense the tension in a caregiver who is less than honest about family circumstances and perhaps has not personally come to terms with the reasons for the incarceration or has judgments about the absent parent. Without simple, direct, and developmentally appropriate explanations, children are left to experience the confusion of the unspoken feelings of their caregivers as well as themselves. Sometimes, caregivers want to tell the child the real story of the parent's absence, but they don't know how.

Strategies for Change

There is evidence that preserving and strengthening the relationship between child and parent while a parent is incarcerated promotes permanency and reduces the potentially damaging effects of separation. *Healthy Beginnings, Healthy Futures: A Judge's Guide*, American Bar Association Center on Children and the Law (2009). The Second Chance Act, which President George W. Bush signed into law in 2008, includes a call to "develop best practices for communication and coordination between State criminal justice agencies and child welfare agencies to improve the safety and support of children of incarcerated parents, and to maintain the parent-child relationship when the parent is incarcerated as appropriate." The Second Chance Act of 2007, H.R. 1593, 110th Cong., § 243).

The best way to support the child-parent relationship after the parent has been incarcerated is to create opportunities for contact, except when the court determines that such contact places a child's life, health, or safety at risk. [Zero to Three](#), National Center for Infants, Toddlers, and Families. It is the responsibility of the child welfare agency to provide services to promote the reunification of families. Those services include parental visitation. However, even absent reunification goals or realities, it is important to acknowledge the existence of the child-parent relationship and recognize the positive impact that planned contact can have on the emotional well-being of the child.

The most effective type of visitation toward promoting the attachment relationship is one that recognizes the importance of direct physical contact between the child and parent. When visitation can occur, there is a need for a developmentally appropriate and child-friendly environment in which to visit. The importance of touch in building attachment is honored in visiting environments where children and parents are given a child-friendly place to play together. Visitations that include such contact should be planned and considered a therapeutic intervention in which the child's needs are continually monitored as well as the parent's ability to provide a positive experience for the child. The Children of Prisoners Library published a useful fact sheet called "[Visiting Mom or Dad: The Child's Perspective](#)." This tool for caregivers and child advocates offers practical tips on preparing children for prison visits with a developmental guide that outlines needs for different ages, starting with infants.

The most intense example of direct child-parent contact exists in prison nurseries, where the infant lives in the prison with the mother, who contributes to meeting her child's basic needs. The number of prison nurseries has grown over the past decade, and some include creative child-



visitation programs. However, there are still significant limitations in terms of availability and requirements in prison nurseries. Most mothers and all fathers do not have this option.

Children's visitation with parents in prisons and jails involves many complex considerations. There are external obstacles, such as the distance of most families from state and federal prisons. More than 60 percent of parents in state prisons are incarcerated more than 100 miles from their last place of residence. The cost and transportation issues required to bring children for visits are often prohibitive. One study reports that more than half of both mothers and fathers had never had an in-person visit with their child.

When in-person contact is not advisable or possible, there are other options for keeping a parent alive in a child's mind. A more recent offering is the use of a web cam. The policies for its use vary from state to state, but the web cam often involves the child and parent visiting remotely through a computer or TV screen. The advantage of this approach is that the visitation environment is more controlled for situations where there are concerns about the child's safety or the appropriateness of the visitation space provided by the prison. Other creative ways to involve absent parents in their children's lives include telephone contact and exchanging personal photographs, letters, and audiotapes of the parent reading the child a story. With the permission of the child's guardian, the mental-health practitioner who has access to these items can use them in the treatment of the child. A common practice in the treatment of young children is to create a life book with or for the very young child that can be utilized to complete the child's narrative of his or her life. This is one of the ways significant adults can communicate with the child the truth about the parent's absence, allowing an ongoing dialogue as the child becomes older.

All of these practices involve connecting children with their incarcerated parents. The [Child Protection Best Practices Bulletin](#) [PDF] identifies several advantages for promoting and maintaining these connections, such as the following:

- It allows children to express their emotional reactions to the separation from their parent.
- It helps children develop a more realistic understanding of their parents' circumstances and allows parents to model appropriate interaction.
- It allows children to maintain existing relationships with their parents, contributing to a successful family reunification.
- It improves recidivism rates. Parents who maintain contact with their children are shown to be less likely to recidivate, reducing additional child trauma.
- It helps children preserve important connections.
- It allows children to know that their parent is safe.

Children cannot be protected and supported if they remain invisible. There are concrete ways to increase their visibility. Jurisdictions across the country do not uniformly keep statistics regarding children of adults who come in contact with the criminal justice system. Both the criminal justice and child welfare systems can contribute to increasing the visibility of children when their parents enter the criminal justice system by routinely requesting and collecting family



information when an adult is arrested. In addition, child-sensitive arrest practices can ameliorate the trauma that occurs if the child is present to witness the arrest. Again, even babies and toddlers are aware of overwhelming life events and an adult's emotional reaction to them.

Representatives of the legal system who work with children whose parents are incarcerated can serve as important agents for change. The ABA purports that attorneys who represent infants, toddlers, and parents should make visitation that ensures that the child's safety and well-being is a focus of their advocacy. Judges can order child-parent visitation in the least restrictive environment possible, while maintaining the safety of the child. Children's court attorneys can present a plan to the court for child-parent visitation or parental contact. As a professional responsible for interviewing the child and caregiver as well as knowing about the child's circumstances and specific needs, the guardian ad litem is in a unique position to advocate for the child based on this highly individualized information. Parents' attorneys also have a role to play in advocating for child-parent contact by educating parents about their rights, responsibilities, and options for maintaining contact during incarceration.

A Common Barrier to Best Practice

One of the potential barriers to this creative approach to child advocacy lies in biases about prisoners and what is in the best interest of their children. A significant contribution that the infant-mental-health field offers to others is the foundational belief in reflective practice. "Effective leaders . . . create relationships characterized by trust, support and growth among professional colleagues, parents and children. These relationships profoundly affect the quality of services provided . . . Reflective leadership is characterized by self-awareness, careful and continuous observation and respectful, flexible responses that result in reflective and relationship-based programs." [Zero to Three](#).

As previously stated, there are common assumptions about children whose parents are incarcerated, including the idea that young children are better off not seeing a parent who is in jail or prison, that young children are better off not knowing the parent at all, and that young children are resilient in the face of the trauma of separation from the parent. Assumptions like these come from a lack of knowledge as well as a predisposition one develops from one's own life experiences. In court, the contest can become the parent's need to maintain the parent-child bond through ongoing contact versus the child's need to avoid exposure to the consequences of the parent's bad choices. Attorneys and guardians ad litem for the child should make sure that the advocacy focuses on what is in the child's best interest, rather than punishing the parent by withholding the child.

Infant-mental-health practitioners believe that self-reflection is essential to quality practice and to overcoming such barriers. Collaborative and reflective practice within and among the systems involved with children whose parents are incarcerated can contribute to creative problem-solving and fresh new solutions. The child's mental-health provider, when the child has one within his or her support circle, is the key to educating the child's attorney, guardian ad litem, and other



advocates about the emotional and psychological benefits of children visiting incarcerated parents.

Keywords: litigation, children's rights, incarcerated parents, mental-health providers

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Parent Representation Project Promotes Permanence

By Angelica Ramos – January 9, 2012

Prof. Mark Courtney is a professor of social service administration at the University of Chicago, he serves as an advisor to Partners for Our Children, and he is affiliated faculty at the University of Washington School of Social Work. He specializes in child welfare policy and services, welfare reform, and the professionalization of social work. In 2010, Partners for Our Children at the University of Washington conducted [a study on the impact of the Parent Representation Project \(PRP\)](#). The PRP was developed by the Washington State Office of Public Defense and the Washington State Legislature to enhance the quality of defense representation for parents in dependency and termination hearings. Courtney was one of the researchers and evaluators of this project, and he recently spoke to the Right to Counsel Strategy Group organized by the Children's Rights Litigation Committee. This article summarizes his conversation with the group.

The Parent Representation Project

The PRP was created in 2000 as a pilot program in the state of Washington with five goals established to enhance the quality of defense representation in dependency and termination hearings. These goals were intended to reduce the number of continuances requested by attorneys, even if those were continuances due to unavailability; set maximum caseload requirements per full-time attorney to no more than 80 cases; enhance defense attorneys' practice standards, including reasonable time for case preparation and the delivery of adequate client advice; support the use of investigative and expert services in dependency cases; and ensure implementation of indigency screenings of parents, guardians, and legal custodians.

The PRP developed five key components, including the selection criteria for attorneys, training requirements, oversight mechanisms such as client complaint procedures, the use of expert and social work resources, and the periodic evaluation of judicial officers. The PRP was implemented on a staggered basis. Courtney feels that this staggering helped Partners for Our Children researchers assess the PRP's implementation, because they could compare outcomes to counties that had yet to implement the PRP. The issue was whether the presence of the PRP was associated with a change in the timing of children's transitions to permanency through reunification with their family, adoption, or legal guardianship.

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The study followed 12,104 children who entered care for the first time in 2004 to 2008 to see whether the children were reunified, adopted, or put into a guardianship. To assess the impact of the PRP, the study compared counties with PRP to counties without PRP. The research accounted for variations of gender, age at entry, race, year of entry, reasons for removal, placement type, number of placements, and number of children entering foster care in each county every year. The research question was “Is the presence of the PRP associated with a change in the timing of children’s transitions to permanency through reunification with their family, adoption, or legal guardianship?”

Findings

According to Courtney, the PRP is helpful in moving children from the child welfare system to permanent homes. The program cuts the time it takes for children to reach permanency, so reunification occurs one month sooner and adoptions and guardianships occur one year sooner. The rate at which children are adopted is 83 percent higher, and the rate at which children enter guardianships is 102 percent higher. The study also found that there did not appear to be a cause for concern on the quality of parent representation. Courtney also mentioned that the study did not look at the rates of reentry for children back into the dependency system, but there does not seem to be a reason for this to be a problem.

Next Steps and Suggestions

So far, 35 out of 40 counties have implemented the PRP. Partners for Our Children does not lobby for the project, but it has made recommendations to implement the program in all states, because the research shows a favorable outcome for children, parents, and the state. It is important to note that there is no long-term data yet, but a cost-benefit analysis could show that the state can increase savings due to parental representation providing a more efficient reunification timeline and therefore less time in state custody.

Because of these findings, state legislatures should take a look at the PRP if they are interested in promoting family reunification in the juvenile courts. The program is readily available and can be easily replicated in other jurisdictions.

For those interested in initiating studies, Courtney suggests bringing the stakeholders to the table. There should be an open dialogue on how courts function and their impact. This should include judges, attorneys for all parties, and other members of the child welfare system. Once everyone has a stake in the potential of a program, engage researchers to frame the study’s question. The most important component at the planning stage is the commitment of the stakeholders, because it is more likely to reduce disagreements, promote collaboration, and produce accurate results that stakeholders will not dispute.

For more information about a potential study, please contact [Mark Courtney](#) or [Clark Peters](#).

Keywords: litigation, children’s rights, Parent Representation Project, parent-child reunification

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NEWS & DEVELOPMENTS

Brief Looks at Suicide and Bullying

The Suicide Prevention Resource Center has released [Suicide and Bullying: Issue Brief](#), a brief on the relationship between bullying and suicide, especially as it relates to lesbian, gay, bisexual, and transgendered youth. The brief describes the extent of the problem and identifies strategies for bullying and suicide prevention.

Keywords: litigation, children's rights, suicide, bullying, LGBT

—Cathy Krebs, committee director, ABA Section of Litigation, Children's Rights Committee, Washington, D.C.

ABA Supports Right to Counsel for Indigent Parents

Indigent parent-defendants in abuse or neglect proceedings in which the state is seeking custody of their minor children should have the right to state-provided counsel, according to an American Bar Association (ABA) [amicus brief](#) [PDF] filed late Monday with the New Hampshire Supreme Court in *In re Christian M. and Alexander M.*

Responding to the New Hampshire court's request for briefs on the ramifications of a decision in these cases, the ABA states that its long history of examining this issue has led it to conclude that the risk of error when indigent parent-defendants are not represented in such matters is so great that fair and equal access to justice requires the appointment of counsel.

A substantial majority of states, either by statute or based on their state constitutions, have recognized an unqualified right to counsel for indigent parent-defendants in child custody proceedings, the brief also notes.

The ABA supports, as a matter of right, the appointment of legal counsel at public expense for low-income persons in adversarial proceedings that involve basic human needs such as shelter, sustenance, safety, health, and child custody.

With nearly 400,000 members, the American Bar Association is the world's largest voluntary professional membership organization. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law.

Keywords: litigation, children's rights, indigent parents, abuse and neglect

—Ira Pilchen, American Bar Association Communications and Media Relations Division

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How Washington, D.C., Reformed Its Juvenile-Justice Agency

A new report released by the Moriah Fund, the Carter and Melissa Cafritz Charitable Trust, the Meyer Foundation, and the Public Welfare Foundation shows how a collaborative effort between Washington, D.C., foundations and national funders supported the transformation of the district's juvenile-justice agency.

The report, [*Notorious to Notable: The Crucial Role of the Philanthropic Community in Transforming the Juvenile Justice System in Washington, D.C.*](#) [PDF], details how, between 2000 and 2011, the district's juvenile-justice system went from one of the worst—with a notorious and inhumane juvenile prison, an over-reliance on incarceration, and a dearth of community programs—to one of the highest acclaimed, receiving recognition from Harvard University. The reforms ultimately reduced youth re-offending rates by decreasing the district's over-reliance on incarceration; closing and replacing Oak Hill with a smaller, homelike facility and an innovative and acclaimed school; and redirecting funding from incarceration to community-based alternatives.

Keywords: litigation; children's rights; Washington, D.C.; juvenile justice

—*Marlene Sallo, web editor, Children's Rights Litigation Committee*

ABA Section of Litigation Children's Rights Litigation

<http://apps.americanbar.org/litigation/committees/childrights/home.html>