Introduction

The Purpose of This Book

Rebecca and Phil began conceptualizing this book when Rebecca first became a lawyer, when she recognized all the issues she never learned in law school that were important in a dependency court or family court practice. Phil is a psychologist who has worked with children in the courts since the mid-1980s. Phil is a life member of the Association of Family and Conciliation Courts, an interdisciplinary association focused on the well-being of children, and Rebecca joined AFCC while in law school. At AFCC and other meetings, Rebecca started to learn about family issues and their impact on children whose cases are in the court system. We kept talking about what children’s representatives needed to know and how to expose them to these issues.

While in New Zealand studying for her LLM, Rebecca researched various ways the New Zealand court system guided children’s representatives in their practice. She developed a model, which we identify in this book as the child’s representative being equivalent to the child’s imaginary friend. This is discussed more fully in Chapter 3.

Since the end of 2011, Rebecca has worked almost exclusively as a children’s lawyer in dependency court matters—first in Tucson, Arizona, and now in Los Angeles, California. Through her work and her attendance at conferences, she has learned a great deal about child development and attachment, about domestic violence, and, most importantly, about trauma. Her work in understanding the impact of trauma on children in the court system has been a central component in her understanding of the children she represents in dependency court. As a trained yoga instructor and a somatic experiencing student, Rebecca has also become highly sensitized to the somatic experience of those who are traumatized and how trauma stays within the body and nervous system long after the initial events. As her skills developed, we returned to the idea of our book so that we could share what we both have learned about children, trauma, and various considerations about how to represent children in the court system.
This is not a book about the law. You learned the law while attending your law school classes and while studying for the Bar in your jurisdiction. The American Bar Association Family Law Section is also publishing a companion book on the law in representing children in dependency court, written by our colleague and friend Melissa Kucinski, titled *A Practical Handbook for the Child’s Attorney: Effectively Representing Children in Custody Cases*. We urge you to read that book as well.

Rather, this book is unique. The title, *Representing Children in Dependency and Family Court: Beyond the Law*, reflects the various issues that Rebecca has learned are critical for working with child clients in dependency and family court settings. Some children’s representatives work exclusively in this area and may already be aware of some of the family dynamics we discuss but want to delve deeper into. Some children’s representatives occasionally work with children’s cases and have had limited or no exposure to these issues. And some lawyers may be considering working with children and need to know where to start. *Representing Children in Dependency and Family Court* is the place to start.

**“I’m a Lawyer, Not a Social Worker”**

A comment that both Rebecca and Phil hear from children’s representatives is that they are lawyers, not social workers or psychologists. They do not understand why the dynamics discussed in this book are so critical. Many lawyers who practice in family and juvenile court state that their job is to practice law and not to practice social work. This refrain from lawyers is heard across the family-juvenile law divide. It is true that lawyers should not practice social work. Lawyers, however, are more than the law they practice; that is the very essence of being a good lawyer. The best advice Rebecca ever received as a young lawyer came from a retired securities lawyer who said, in paraphrase, “I had to understand my clients’ businesses better than they did, or I would not be able to advise them and represent them.” In other words, the lawyer must understand the client on all levels that affect the legal representation. In family and dependency law, that means issues that society more traditionally believes to be social work or psychology.¹

1. We are not advocating you become the social worker on a case and enroll children in services, find therapists for them, or drive them to their appointments. We understand there is a difference between understanding the psychological issues your client faces outside the legal realm and practicing social work. You are still a lawyer and not an actual
We believe the need to fully understand the client increases with respect to children who are less legally sophisticated and psychologically aware clients. The lawyers who represent children must understand them, the system in which they are engaged, the services available to them, the schools they attend, their ethnic and cultural issues, any special needs they have, the legal issues they face outside of family and juvenile courts, etc. In addition, lawyers for children, even if their only clients are children, need to understand the issues their parents face, whether that be the emotional strain a separation poses on parents or the issues parents need to address (e.g., complying with court-ordered therapy and parent education) to reunify with their children. Children in family and dependency law cases do not exist in a vacuum; thus, it is necessary to understand the adults with whom they live. For this reason, the imaginary friend concept described later views each child from his perspective.

Law school does not train lawyers how to engage with children. Instead, lawyers learn to ask about objective facts and to keep emotions out of the conversation. Knowing that, we ask lawyers reading this book to step out of law school training for a moment and refocus on how to interact with your child clients. We will circle back to how to bring this work into a legal practice, but for now, we ask you to turn off the focus on objective facts and admissible evidence in order to see children and your role from a different perspective.

We believe the most important question a lawyer for children can ask is “Why?” Curiosity is your most important attribute as a children’s lawyer; someone may have given you information, but that does not mean there is not always more to learn and understand about your clients’ lives. And patience may be the second most important attribute; it takes time to have a safe and strong relationship with child clients. We often hear about children’s behaviors, whether they excel in school despite egregious circumstances at home or they have been kicked out of five different preschools. All children respond in different ways to their life circumstances, and we know “hurt people hurt people.” A person who feels hurt can, in turn, hurt others. Children, even more than adults, respond to life from an emotional place. They feel and act on impulse before they stop and think about their responses. And when they have experienced trauma, they feel and act

social worker, but sometimes the line can feel blurry, and one of the goals of this book is to help you understand your client from a psychological or social work perspective.

2. We will discuss trauma and its effect on behavior in Chapter 4. Here, we are discussing how to begin to see past the legal training to another way of seeing children and their actions.
from that place, which can result in circumventing their ability to control their actions. Understanding the “why” is vital to understanding the “what”—the behaviors children use to express themselves.

Despite the importance of knowing why and asking why, depending on the child can be counterproductive. Too often, when we ask why, children respond with “I don’t know.” There are other ways of exploring the why without asking that specific question. Instead, ask other questions to understand as much as you can about your client’s life, her history, the source(s) of her troubles, and the nature of her feelings. Being curious and asking relevant questions about her life enables you to learn as much as you can about your client, even if you can’t ask her “why” she feels or acts in certain ways.

Another reason to be able to understand the why is to be able to speak to our individual clients differently based on their experiences. Just as we learn to do our job differently with different judges, we learn to speak to child clients differently based on their life experiences and why they act in certain ways. Life experiences may be case related, and they may be external to the case. For example, in what culture was your client raised? Is the child being bullied in school because of her sexual orientation? Was the child in a car accident that caused trauma that is now affecting everything else, including his issues in the case?

Rebecca had a child client while in law school who she went four years without seeing after her graduation from law school. But when his case reactivated for the third time in juvenile court, his case was randomly assigned to her again. Although to others he was an angry, obstinate, gang-related teenager who would blow up at the smallest issue, Rebecca knew him well enough that she could often calm him down. She usually could get him to come back from those outbursts by mentioning his siblings. Rebecca knew the “why” because she had known him for so long, so his behaviors became an expression from the “why,” not from the place of an out-of-control teenager. From that place, they were better able to discuss his legal options.

The ability to create this level of understanding in a relationship is limited in legal representation. Although it happens, it is rare, and unfortunate, when we know our clients for long periods of time. But this relationship with one client has always guided Rebecca’s interaction with every other client. By asking different questions and being the person in their lives not asking about the behaviors, but instead asking about the underlying issues, we can begin to shift the

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3. In addition, children who were exposed to drugs may be more hindered in their ability to respond because their brain development can be affected by in utero drug exposure.
conversation, often back to what we needed to discuss initially to do the legal work. This simple question and deeper awareness, with the interest it conveys to your client, also helps create a feeling of safety, a topic we will discuss in depth in Chapter 4. This curiosity also helps convey to your clients that you are not going to make assumptions about them. We have both seen lawyers assume they know the why when they have never asked. We will discuss bias in Chapter 11, but one of the most important ways to control for bias is to be curious without judgment. Thus, taking a more holistic approach, and understanding all the issues that affect our clients, does not make one a social worker; it makes one a good lawyer.

Understanding your clients on a deeper level includes recognizing that the children will likely change throughout the proceedings. One of the many arguments over the years as to why children should have less say in their lives involves the fact they are children and will change their mind anyway. Some see this as a negative aspect of childhood, but in truth, it is how humans are. We change. We grow. As lawyers for children, we must be ready and open to all possibilities children’s lives present. If our clients’ views change, that is to be expected, and understanding why they change is as important as understanding that they change. It may be that a child has been manipulated or wants to manipulate a situation. It also may be that the child has grown and changed and sees things in a different light and from broader perspectives. Sometimes we never know exactly what is happening, but the curiosity to ask the “why” question helps guide our next moves as their legal representatives.

Understanding the “why” for children’s actions helps lawyers advise child clients to ask for what they need in a particular situation. Understanding these issues is vital for two reasons: first, it is important to advise our clients directly. As the securities lawyer instructed, only by understanding our clients can we offer them solutions. Second, the interventions may be required legally. In situations where children refuse to see a parent, for example, it may be necessary to understand the why in order to determine what interventions are necessary to attempt to resolve the problem. As we will discuss later, these are complex issues, but looking at the broader perspective is vital to advising clients and helping them get the services they need in order to meet the legal and moral obligations these cases entail.

Services available to clients is one area where juvenile and family law differ dramatically. When there is child welfare intervention, federal law requires child

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4. Suggestibility and the variables that contribute to internal or external influence of what children say will be examined more fully in Chapter 5.
welfare agencies to provide the family with reasonable services aimed at reunification of the family. Those services often include providing therapeutic intervention for the children as well as ensuring children live as normal a life as possible. Family law, by contrast, has no automatic state intervention, so there is no one to provide the services except the parents who are often so embroiled in their own emotional turmoil they are not as present as they should be to provide appropriate services to their children. Thus, it is vital that lawyers who represent children in family law cases understand how to help children so they may ask for orders appropriate for the children’s mental health. In an era of increasingly diminishing resources, the job of the lawyer to solve problems is that much greater.

While it is true that lawyers cannot be responsible for arranging the services, they must understand the services available, and the issues children face, in order to advocate strongly for those services that best benefit the children. (For a more detailed look at the variety of therapeutic interventions, see the website associated with the book.) Judges who rotate between benches and parents who are experiencing their own turmoil may not have the necessary resources to know what the children need. It is vital that lawyers for children understand what may help children in order to ask for appropriate orders for services for their child clients.

**Cultural Issues to Consider**

Finally, perhaps the most important aspect of the recognition of your role as more than just a legal lawyer is understanding that your clients and you are likely from different cultures. Culture can be defined broadly, and here we define it to include race, ethnicity, religion, socioeconomic level, language, country of origin, and sexual orientation. It likely includes many other aspects as well, and we hope you will consider all of them in your representation. While this book was being written and these issues of culture were being discussed, Canada announced millions of dollars in reparations to native cultures for taking children from native homes to be adopted by white Canadians. In other words, even from a legal perspective, these issues are still front and center in the work you do with children. Also, during the writing of this book, a major New Zealand newspaper posted

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an article about how recognizing culture, and using culture, can help heal trauma differently, and maybe better, than other techniques.6

From a personal and relationship standpoint with your child clients, however, it is important to recognize and honor the differences we all share. How your clients view you and your willingness to work with their unique culture can affect whether they feel comfortable enough with you to have the necessary professional relationship required for you to adequately represent them. For example, the day after the 2016 presidential election, Rebecca was speaking to a 16-year-old client who asked Rebecca who she had voted for the day before. Hoping to instill a little civic education into the conversation and not realizing why the child had asked, Rebecca responded, “That’s a private matter.” The child replied, “If you voted for Trump, I’m walking out of the room.” In that moment, that child would not have been comfortable having a lawyer who had voted for Donald Trump.

These cultural issues can also show up in other areas. For example, should Jewish foster children be forced to go to church with their foster parents? Obviously, a First Amendment argument is that the answer is no, but what about something more difficult for you to accept personally? But what if a child does not want to be around a different race? Is that a sufficient reason to ask for a child to be removed from a home? Is putting a cultural belief about acceptance on a foster child acceptable just because that is what you believe is right?

We believe it is important to learn as much as you can about other cultures, but you cannot learn everything. We will discuss bias more in Chapter 11, but here it is important to discuss how bias affects what you see in front of you. Rebecca once had a situation where she was asking for her 17-year-old female client to be removed from her mother’s custody as the client wanted. The judge made it very clear she was not going to order the removal that day. Rebecca’s client dressed like society’s view of a boy and, upon superficial glance, could have looked like a boy to other people. When she entered the courtroom, the judge changed her mind and ordered the removal of the child without any explanation as to why. The only difference is the judge may have thought the child was being treated poorly by her mother not because she was an out-of-control teenager, but because she was not expressing herself and her sexuality the way her mother believed was appropriate. To the judge, the mother’s conduct was inexcusable.

Neither Rebecca nor the child welfare agency had mentioned these issues to the court because they are rarely legally relevant, but they were culturally relevant to the court that day. And ultimately, they became legally relevant because the judge took the necessary protective measures for the child.

The issue of children’s emerging sexual orientation and sexuality in general can be difficult for you, as their lawyer, to address. Culturally, LGBTQ issues sometimes seem to change daily, and it can be difficult for cisgender,\textsuperscript{7} heterosexual individuals to know the right way to talk about these issues. And even over the past five to ten years, children express themselves differently and more fluidly than ever before, particularly on either coast within the United States. It can be difficult to keep up. Being curious, being open to anything, and asking questions can be very helpful. Be polite. Neither of us has ever had a child become upset when we asked a question incorrectly or used the wrong term because we were polite. And if you do not know what terms to use for your clients, just ask. Ask about pronouns. Ask about names. In other words, ask about everything about which you are not certain. Phil suggests saying something like, “You are talking about something that often has different meanings for different people. Please help me understand what you mean.”

Another way cultural issues can emerge that affect legal representation immediately is how different cultures respond to government officials. If you grew up with no reason to fear the police or child welfare agencies, you will likely respond to them differently than someone who has never felt safe trusting these officials. People from many cultures, however, fear government officials, so they withhold information. One of Rebecca’s biases is honesty. If people are honest about making mistakes, Rebecca believes the problem can be addressed, but when people lie and cover up, she believes it is far more difficult for the situation to be resolved. But what happens when a parent is from a culture that is leery of government officials and hides the truth as a form of protection? How does that bias interact with a cultural norm Rebecca does not share? It requires asking questions.

And while you know you are a safe person for your clients, they often do not know that. They often see you as different than they are, and therefore, they believe you are unable to understand them and their circumstances. Rebecca once had a case where she really liked the mom, but the mom could not stop using drugs. In court, Rebecca stated, “I understand why.” After court, the mother’s lawyer said

\textsuperscript{7} Merriam Webster defines \textit{cisgender} as “of, relating to, or being a person whose gender identity corresponds with the sex the person had or was identified as having at birth,” https://www.merriam-webster.com/dictionary/cisgender.
to Rebecca, “Of all the things you said, that upset her the most. She asked how you could understand if you had never been an addict.” Many people believe if you have not experienced something, you cannot understand it. This book is not a place to debate that, but what is important is your clients may believe that and therefore might not trust you as much as you would like them to trust you.

There are likely hundreds, if not thousands, of stories of how culture, broadly defined, impacts your relationship with your child clients and your legal arguments. What is important to remember is you do not know how your culture, or how children’s views of your culture, affect them and their willingness to trust you. The more you ask about these issues and get to know what matters to your clients, the better. Sometimes they will tell you; other times they will not. And if you are not sure whether your own misunderstanding of a culture is interfering with your ability to read a case correctly, ask questions. Ask people who are culturally different from you. Ask people with whom you generally disagree.

The takeaway here is to stay curious and ask questions. Never stop asking questions. Even when you think you understand, ask more questions. No matter what your cultural background, it will likely be different from that of your client. The only way to begin to understand is to ask. Learn about cultures different from your own. But also learn what it is like for the child sitting in front of you. This is the takeaway of this entire book, but it begins with trust—and that trust begins by asking questions.

**Language Used in This Book**

We have attempted to avoid two main problems with writing texts such as this. First, we do not want to presume a particular gender for attorneys or children. We also do not like to use *s/he* or *he/she* or *they* for grammatical reasons. Instead, periodically we alternated between the use of *he* and *she* in the book. We recognize there are more than two genders, but for clarity of writing, we have chosen to limit ourselves to these two. We thank you, the reader, for indulging us in this choice.

Further, we often use the word *data* when discussing both research and the information you obtain in your cases. It is a plural word, and we use it as such. We also alternate between *lawyer* and *representative*. We recognize that not all people who represent children are legally trained, and we hope this book can be beneficial to them as well. For those trained in the legal profession, there are issues specific to you, and we will address them as such.

Throughout this book, we refer to all children as children, from birth until 18 years of age. We recognize that older teenagers, in particular, are very different
from other children, but we believe it is important to remember no matter the age of child clients, they remain children in the court system. They do not have the same rights as parents, and their development is not complete. We do not use the word as a form of disrespect, but instead as a form of the highest respect for these people in our lives.

Also note that we often refer to ourselves in the first person. Phil is a psychologist whose significant work experience is in Family Court, and Rebecca is an attorney whose significant work experience is in Dependency Court. We have both experienced working in both types of courts. We regularly provide examples from our work and our lives to help in sharing our information, and most of them come from these experiences. We use our first names to differentiate whose experiences we are citing so you, the reader, can better understand this. Sometimes these examples have been altered slightly to protect confidentiality.

Citations in This Book

We want this book to lead you to accessible information. Although we cite many research articles and books, and the online resources section is full of them, we also recognize it is the twenty-first century and information is readily available that can help you in your practice. Therefore, when we believe the information is beneficial in a more accessible source, we have linked to that. This includes online resources provided by research agencies, professors, and even mainstream articles when the topic we are discussing involves mainstream topics. Some of the articles we reference will also be available in the online materials if they are readily available online without being behind a pay wall.

A Final Note

We urge you, the reader, to consider things you wish we had discussed, problems you encounter, and suggestions you have for our next edition of this book. We know this book is unique, and if you have ideas of topics we need to include or different ways of interacting with child clients, please let us know. We are encouraged by the goal we all share, i.e., improving the representation of children and improving the lives of children in the court system. Feel free to contact either of us if you have ideas, dilemmas, suggestions, or problems you have encountered so we can continue to help those in the field grow and learn from our early writing, as well as practical experiences along the way. Thank you, in advance, for your contributions to our next project.