

JUVENILE JUSTICE UPDATE

The Impact of National Standards on Juvenile Defense Practice

by Sarah Bergen with David A. Shapiro

The United States Supreme Court's 1967 opinion in *In re Gault*¹ established a child's constitutional right to counsel in delinquency proceedings. Since then, the juvenile justice community has disagreed about the nature and breadth of that right.

Some argue the adversarial intentions juvenile defenders bring to delinquency proceedings impedes the rehabilitative focus of the juvenile court. Others diminish the importance of appointing lawyers for youth compared to the seemingly more urgent stakes of the adult indigent defense system.

However, the *Gault* opinion and the U.S. Constitution clearly demand high-level representation for children to preserve fairness and protect their rights in juvenile court.² Given the unique status of childhood, and the impact that immaturity, disabilities, or trauma can have on a child's life, children, most of all, need access to competent counsel when they come before the state.

The *National Juvenile Defense Standards (Standards)*, released by the National Juvenile Defender Center (NJDC) in February 2013, underscore the critical role of high-quality counsel for youth in delinquency proceedings. By demonstrating what is required for juvenile defenders to provide competent, diligent, and zealous representation to young clients throughout a delinquency case, the *Standards* aim

to guide the juvenile defense bar and provide a national framework through which juvenile defenders can elevate and enhance their practice.

In part, the *Standards* grew from other professional standards that preceded it, including the Institute of Judicial Administration-American Bar Association's (IJA-ABA) *Juvenile Justice Standards*.³ Addressing the juvenile justice system as a whole, the IJA-ABA *Juvenile Justice Standards* provide helpful and relevant policy guidance to the field. The *National Juvenile Defense Standards* expanded upon this foundation to establish the first set of practice-based national standards to focus through the lens of a juvenile defender and exclusively target the provision of juvenile defense.

To create these *Standards*, NJDC engaged in a deliberative and robust five-year process, guided by a multidisciplinary group of juvenile justice professionals from across the country, and rooted in a set of guiding principles that embrace law and developmental science. The *Standards* address the requirements of zealous advocacy and acknowledge the systemic barriers

juvenile defenders must overcome to meet such requirements.

By incorporating significant scientific research on adolescent behavior and development, the *Standards* break new ground, articulating a defender's duty to protect their child clients' constitutional rights in a developmentally appropriate manner at every stage of delinquency proceedings. Uniquely, the *Standards* also address a defender's vital role in addressing systemic barriers and achieving policy reform.

This article examines how defenders can use the comprehensive framework for juvenile defense provided in the *Standards* to elevate their practice and derive detailed guidance on the delivery of high quality juvenile defense services.

(Cont'd on p. 86)

What's Inside:

- 82 CASE LAW UPDATE
- 90 IN PRACTICE
10 Questions Asked by Children Whose Parents are in Prison
- 92 REUNIFICATION HEROES
Hawaiian Father and Case worker Team Up to Achieve Reunification
- 94 VIEWPOINT
Mother Seeks Courtroom Reform
- 96 RESEARCH IN BRIEF

Follow CLP:



twitter.com/ABACLP



facebook.com/abaclp

ABA Child Law PRACTICE

<http://www.childlawpractice.org>

ABA Child Law Practice (CLP)

provides lawyers, judges and other professionals current information to enhance their knowledge and skills, and improve the decisions they make on behalf of children and families. Topics include: abuse and neglect, adoption, foster care, termination of parental rights, juvenile justice, and tort actions involving children and families.

CLP is published monthly by the **ABA Center on Children and the Law**, a program of the ABA's Young Lawyers Division, 1050 Connecticut Ave., Suite 400, Washington, DC 20036.

Director: Howard Davidson

CLP Staff:

Editor & Designer:

Claire Chiamulera, 202/662-1724

Claire.Chiamulera@americanbar.org

Publications/Marketing Director:

Sally Small Inada, 202/662-1739

Sally.Inada@americanbar.org

Case Law Summaries:

Scott Trowbridge

Subscriptions:

- \$109 individual rate (**payable by personal check only**)
- \$185 institutional, agency, library, and law firm subscribers

Subscribe online: www.childlawpractice.org

Send check or money order, made payable to the: **American Bar Association**, 1050 Connecticut Ave, NW, Suite 400, Washington, DC 20036

Subscription Inquiries & Address Changes:

Call: Alanna Pawlowski, 202/662-1513

E-mail: alanna.pawlowski@americanbar.org

Copyright © 2013 American Bar Association, ISSN 2161-0649

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and accordingly, should not be construed as representing the policy of the American Bar Association.

CASE LAW UPDATE

Prostitution in Home Put Children at Risk Even if They Were Not Witnesses

In re N.K., 2013 WL 1197803 (Tex. App.).

Where mother, husband, and roommate were using their home for prostitution, trial court could conclude that environment was unsafe for children even if they did not observe the behavior. Finding could form basis of termination where mother did not gain significant insight or skills to ensure their safety or well-being by the time of termination.

The family originally came to the attention of the child welfare agency

ization, prostitution, and he had been incarcerated approximately 50 times.

Also during the proceedings, the father admitted to having touched the older child sexually on one occasion. He attempted suicide shortly after the confession. He later recanted, contending he made that statement only because he thought the mother could get her children back easier if someone other than her had abused them. The mother testified that she had never seen inappropriate contact between the father and the children.

... letting strangers into the home to exchange sex for money put the children at risk even if they had not witnessed the encounters.

due to reports of unsanitary living conditions and physical abuse. While investigating, the caseworker also received allegations that the father had sexually abused the toddler. However, medical examinations and questioning did not reveal sufficient evidence and the case was closed.

The agency again became involved six months later after the mother, father, and a roommate were arrested for prostitution, allegedly conducted in the home. Officers had been conducting surveillance of the home after seeing Craigslist postings offering sex for money and had observed several men coming to the home for 10 or 15 minutes. Sometimes, he reported, one of the three housemates would take the children from the home before the men arrived, but he could not confirm whether the children had ever been present.

During the trial it was revealed the mother had a long history of substance abuse. The father reported a history of drug abuse, sexual victim-

The older child, even at three, was very aggressive. She would bite, hit, scratch, kick, and growl at counselors, teachers, and other children. She displayed sexualized behaviors and was diagnosed with Post-Traumatic Stress Disorder. A few foster home placements had disrupted due to these behaviors.

After nine months, the agency filed for termination of parental rights. The trial court found clear and convincing evidence that the parents had failed to correct the conditions that led to care and that termination was in the children's best interests. The mother appealed.

The Texas Court of Appeals affirmed. The court noted first that termination is a two-step process; a statutory ground must be proven by clear and convincing evidence, then termination must be in the child's best interests.

On appeal the mother challenged the underlying reason for removal, which formed the basis for several

grounds. She contended the children were not exposed to prostitution and that they were taken from the home before the clients would arrive.

The Texas Court of Appeals did not find this persuasive, noting that letting strangers into the home to exchange sex for money put the children at risk even if they had not witnessed the encounters. These individuals, knowing where the family lived, might come to the home at other times. Second, that parents were engaged in a regular criminal activity put the children at risk of being without caregivers in the event of their being incarcerated. Notably, the mother engaged in these activities despite already being

on probation for a prior drug charge and having been recently investigated by protective services.

The Court also noted that mother had not fully separated from the father despite his possible sexual abuse and testimony that he is unsafe to be around children for the many reasons that had resulted in his numerous incarcerations. The record also showed that her therapist could not recommend a return to mother's care given her own recovery and other needs.

The Texas Court of Appeals held the trial court properly found there were grounds to terminate.

Regarding best interests, the court reviewed how the evidence for

the grounds applied to best interests. The court emphasized how the home environment had led to a very young child needing an intensive therapeutic environment and that though the mother had participated in treatment, she had not gained skills or insight to improve her parenting ability. While most of the record dealt with the older child, the court noted there was no reason to think the problems in the home environment would not be similarly harmful to the younger child if she had remained or was returned to the home. The court found that the court properly concluded termination was in the children's best interests.

Criminal Competency Standard Applied to Youth in Delinquency Proceeding

SWM v. State, 2013 WL 1775733 (Wyo.).

Trial court erred in disregarding criminal standard for competency determinations when youth's attorney contended he was incompetent to stand trial on delinquency petitions. Because juvenile statute was silent on matter, like criminal statute, and was intended to protect youth's due process rights, criminal standards governed.

A youth was aged 12 at the time of an initial hearing on two delinquency petitions, where the court informed him of his rights under the Constitution and Wyoming law. The court discussed potential sanctions if found delinquent and the differences being juvenile and criminal court. Despite the court's best efforts at explanation, the youth had difficulty understanding the information. Accordingly, the court appointed counsel for the child and entered a denial of the allegations on the record.

The youth's newly appointed counsel promptly filed a motion for an evaluation, indicating he had concerns about whether the youth understood the allegations and proceedings based on his age and maturity. The court ordered an evaluation to assess whether

the youth had a mental illness or deficiency, lacked capacity to comprehend the proceedings and participate in his defense, and whether he should be held in a treatment facility.

The evaluator noted the youth had borderline intellectual functioning at an intelligence quotient of 71, Attention Deficit Hyperactivity Disorder (ADHD), and receptive and expressive language deficiencies.

Regarding competency, she noted that although he could not be expected to perform academically at average 12-year-old standards, he was aware he was in serious trouble and could be taken from his home, and would not meet requirements to be involuntarily committed. Further, she noted, his limited maturity combined with his developmental delay and ADHD would likely prevent him from adequately understanding the allegations and participating in his defense. She believed it was possible he would be able to comprehend such things in his late teens or early twenties.

After a hearing, the juvenile court found the criminal standard relied on by the evaluator did not apply in juvenile court given the different, rehabilitative, nature of juvenile proceedings.

The court found the youth was competent to proceed because he did not have a mental illness so severe as to require involuntary commitment. The youth appealed.

The Wyoming Supreme Court outlined the parties' positions. Both the youth and the state agreed that a youth alleged to be delinquent is entitled under constitutional due process to an evaluation and determination of whether he or she is competent. The parties differed on what the correct standard was for the determination. The youth argued that, since the Wyoming Juvenile Justice Act was silent on competency standards, the Criminal Code applied.

The Wyoming Supreme Court noted that it is well established that in criminal trials, a person who cannot understand the proceedings, consult with his counsel, and participate in his defense cannot stand trial. The court cited *In re Gault*, and later cases where the U.S. Supreme Court found Fourteenth Amendment due process rights applied to juveniles. The U.S. Supreme Court had not, however, specifically addressed competency. The Wyoming Supreme Court examined

(Continued on p. 89)

STATE CASES**Alabama**

K.E. v. Dep't of Human Res., 2013 WL 1858787 (Ala. Civ. App.). DEPENDENCY, VISITATION

In case involving domestic violence and alcohol abuse by the parents, trial court abused discretion in not awarding father visitation. There was nothing unusual or extreme about the facts to warrant leaving visitation solely up to 13-year-old daughter, especially considering father had visited her without incident during the case and she testified she had a good relationship with him.

California

In re K.R., 2013 WL 1768693 (Cal. Ct. App.). DEPENDENCY, SEXUAL ABUSE
Trial court erred in dismissing petition regarding younger child after finding father had sexually abused older daughter. His aberrant behavior showed that younger child, who was now reaching the age that abuse of the older child occurred, was at risk. Fact that abuse of older child had not happened for several years did not rebut this as this was apparently due to the mother's actions in restricting his access to her, rather than any successful rehabilitation.

Florida

A.J. v. Dep't of Children & Families, 2013 WL 1844221 (Fla. Dist. Ct. App.). DEPENDENCY, ADJUDICATION
Trial court properly adjudicated child dependent where she had severe medical needs beginning at birth that led to father depleting his savings and losing his job. Though father was not at fault, dependency jurisdiction was not meant to punish the parents but to provide them assistance caring for this child.

C.L. v. Dep't of Children & Families., 2013 WL 1844258 (Fla. Dist. Ct. App.). DEPENDENCY, GUARDIANSHIP
Order placing child with aunt was reversed in part since it did not comply with statute requiring orders awarding guardianship to have written findings stating why the goal was chosen over adoption, a proposed visitation schedule with the parents, and a provision requiring the aunt not to return the child to the parents without further court order.

In re E.G.-S., 2013 WL 1776697 (Fla. Dist. Ct. App.). DEPENDENCY, REUNIFICATION

Though placement with father was appropriate given the lack of any allegations against him, procedural due process required the court keep case open where mother was in substantial compliance with her case plan and no evidence was presented at disposition that keeping the case open was harmful to the child's best interests.

Indiana

In re R.S., 2013 WL 1809875 (Ind. Ct. App.). DEPENDENCY, PRIOR TERMINATION
Prior termination of parental rights was insufficient to adjudicate child dependent. Prior cases involved children with substantial special needs compounded by parents' housing and financial issues and new child was not medically needy and parents had made progress resolving the other issues.

Kentucky

N.C. v. Commonwealth, 2013 WL 1776928 (Ky.). DELINQUENCY, CONFESSIONS
District court erred in denying juvenile's motion to suppress statements in delinquency case because Miranda warnings were not given in violation of the Fifth Amendment. Juvenile was in custody for Miranda purposes, where he was escorted from class by the vice principal and school resource officer, an armed uniformed sheriff's deputy questioned him in a closed room without a parent, and he was not told he was free to leave.

Massachusetts

Commonwealth v. Suero, 2013 WL 2097368 (Mass.). CHILD ABUSE, DUE PROCESS
Defendant's conviction for rape of a child and indecent assault on a child were not separate and distinct acts allowing convictions for both in violation of double jeopardy clause. Defendant's action in removing the child's clothing was incidental to the inappropriate sexual contact which occurred immediately thereafter, justifying the rape charge.

In re Norbert, 2013 WL 1749478 (Mass. App. Ct.). TERMINATION OF PARENTAL RIGHTS, WITNESSES
While trial judge went beyond the permitted questioning the witnesses to clarify testimony, asking around 1000 questions to the three attorneys combined 700, the error was harmless. The overwhelming

evidence of mother's failure to complete services, visit, and repeatedly subjecting the children to unsafe or unhealthy situations would have had the same result.

Missouri

In re I.R.C., 2013 WL 1701607 (Mo. Ct. App.). ADOPTION, RELATIVE PLACEMENT
In contested adoption proceeding between foster parents and great aunt and uncle, both of whom were found by the court to provide appropriate homes, court acted within its discretion in denying the petition of the relatives. The children had been with the foster parents over a year, the relatives had little contact with the children, and the relatives waited eight months after learning the children were in care to seek visitation or other involvement.

Montana

In re D.S.B., 2013 WL 1804289 (Mont.). TERMINATION OF PARENTAL RIGHTS, ICWA
Trial court properly found active efforts were made to reunify in case where the Indian Child Welfare Act applied. The agency was ordered and attempted to assist father with visitation, drug testing, substance abuse treatment, counseling, and parenting coaching, but he did not comply with the plan even before his incarcerations made some of the tasks difficult.

In re E.Z.C., 2013 WL 1896275 (Mont.). TERMINATION OF PARENTAL RIGHTS, AGGRAVATED CIRCUMSTANCES
District court properly terminated mother's parental rights without ordering reunification services after finding aggravated circumstances existed given evidence that children were found to have been exposed to methamphetamines, their beds had rat feces on them, they lacked winter clothing, the seven year old was left alone to watch the three year old and these types of risks had persisted for a long period as shown by records involving an older sibling.

In re K.B., 2013 WL 2070209 (Mont.). TERMINATION OF PARENTAL RIGHTS, ICWA
Enrolled Chippewa Creek mother's rights were improperly terminated where notice and qualified expert witness testimony failed to comply with the law. No documentation showed that the tribe, which had earlier participated in the case, was noti-

fied of termination proceedings, and expert witness testified to incorrect standard of the child's best interests, not whether termination was necessary to prevent serious emotional or physical damage to the child.

Nebraska

In re Rylee S., 2013 WL 1776724 (Neb.). TRUANCY, DISPOSITIONS

In truancy case, where child had violently refused to go to school, behavior related to his autism condition, order for mother to disclose mental health records and undergo an assessment was improper because order was not reasonably related to correcting the dependency. Though mother reported having anxiety and receiving treatment, there was no allegation this contributed to the truancy as mother had been diligent in attempts to get child to school, even if they were unsuccessful.

New York

In re Anthony FF., 2013 WL 1760214 (N.Y. App. Div.). DEPENDENCY, DOMESTIC VIOLENCE

Family court properly found child dependent despite mother's claim she was merely a victim of domestic violence where the record reflected mother allowed the perpetrator into her home despite having a protection order, partially blamed her children for the incident, and told her children to lie about it.

In re Dashawn W., 2013 WL 1759867 (N.Y.). TERMINATION OF PARENTAL RIGHTS, AGGRAVATED CIRCUMSTANCES

Family court erred in finding aggravated circumstances did not exist where father beat child at least two times resulting in a broken clavicle and several broken ribs. Language in social services statute regarding 'depraved indifference' did not have same meaning as in penal code and conduct may be intentional or reckless.

In re Immanuel C.-S., 2013 WL 1235417 (N.Y. App. Div.). DEPENDENCY, MENTAL ILLNESS

Family court properly found child dependent where mother had a mental illness that put her children at risk as shown by the facts that she had not taken her child to a doctor or dentist for several years and the deplorable condition of the home. State was not required to show past or present harm, merely an imminent risk of harm.

In re Jayden Q.Q., 2013 WL 1760210 (N.Y. App. Div.). TERMINATION OF PARENTAL RIGHTS, AGGRAVATED CIRCUMSTANCES

Family court was not prohibited from making aggravated circumstances finding against father despite fact that dependency petition solely alleged maltreatment by mother. Nothing in the statute required a related petition against the individual. Further, father was notified of mother's dependency petition and while being assisted with potential reunification, he was advised that a termination petition could be filed against him without a dependency petition.

Rhode Island

In re Rita F., 2013 WL 2109936 (R.I.). TERMINATION OF PARENTAL RIGHTS, HEARSAY

Court erred in admitting hearsay statements of children about sexual abuse through their therapists since the statements were not spontaneous and were made months after the incidents occurred. Error was harmless because ample evidence existed to terminate mother's rights because she continued to cohabit with sexual perpetrator despite repeated warnings by the agency and court.

Texas

Sennett v. State, 2013 WL 1786025 (Tex. App.). CHILD ABUSE, EVIDENCE

Trial court properly admitted emails between defendant and youth in sexual assault case where the victim's mother and youth testified they knew his email address and the emails contained discussions of things only the victim and defendant would have known. An email may be authenticated when its contents, distinctive characteristics, or the circumstances show that the document is what the proponent claims it is.

Utah

In re K.K., 2013 WL 2106014 (Utah Ct. App.). TERMINATION OF PARENTAL RIGHTS, FAILURE TO IMPROVE

Trial court properly found father had failed to remedy the reasons that led to foster care in termination case. Although he had recently progressed in his efforts to stop abusing alcohol and other substances, his long history of substance abuse showed he would have periods of relapse under stress and the trial court could conclude he would not be able to safely parent in the

reasonable future.

In re R.D., 2013 WL 2106086 (Utah Ct. App.). TERMINATION OF PARENTAL RIGHTS, SUBSTANCE ABUSE

Trial court properly terminated mother's parental rights due to her history of methamphetamine abuse which led her to neglect her child. Also, finding that mother's sobriety during seven-month incarceration showed she had not achieved sufficient rehabilitation.

In re R.T., 2013 WL 1771348 (Utah Ct. App.). TERMINATION OF PARENTAL RIGHTS, BEST INTERESTS

Trial court properly found termination was in children's best interests where father had a long history of issues related to his poor anger management. While father did comply with some services as required, the evidence supported the court's finding that he had resisted change and had not benefitted from services.

Wisconsin

In re Isaiah H., 2013 WL 1276026 (Wis.). TERMINATION OF PARENTAL RIGHTS, DEFAULT

Circuit court erred in entering default judgment terminating mother's parental rights when she arrived late for court but where her attorney was present and claimed to have evidence to counter the abandonment allegation but the court prevented her calling witnesses. Court must hold a fact finding hearing and determine the allegation is supported by clear and convincing evidence before entering a default judgment.

FEDERAL CASES

Seventh Circuit

United States v. Roux, 2013 WL 1920926 (7th Cir.). CHILD ABUSE, WITNESS TESTIMONY

District court properly admitted testimony of younger siblings about their own abuse in trial where defendant was alleged to have induced older sister into making child pornography. Though Rule 404 normally prohibits introducing evidence of uncharged offenses to show a propensity to commit the charged offense, the testimony was relevant to rebut defendant's claim that he was not a sexual perpetrator and to show the identity of the man in the photographs.

(Cont'd from front page)

Juvenile Defense as a Specialization

Just as recent U.S. Supreme Court decisions have relied on the claim that “kids are different,”⁴ the Standards detail how juvenile defense differs from adult criminal defense, and is a specialty requiring unique preparation and intensive training. The Standards’ emphasis on specialization implies that a system with defenders who recognize the legitimacy and complexity of juvenile delinquency representation will lead to better outcomes and protections for court-involved youth.

Specialized knowledge and skill.

Juvenile defenders owe child clients the same ethical and professional duties owed to adult clients, such as the duties of loyalty and confidentiality. However, children bring along some unique issues, such as school, parents, and ongoing cognitive development, which impact the nature of representation. Accordingly, the Standards delve into the additional, specialized knowledge and skills needed to competently practice juvenile defense throughout the trajectory of a delinquency case.

Extensive and specialized training is critical for juvenile defenders to provide high-quality representation. Lawyers need to firmly grasp the skills to competently practice adult criminal defense, in addition to understanding issues that arise at the specialized hearings in delinquency court. These include juvenile corrections, alternatives to detention, juvenile competence, disposition planning, adolescent decision making, and the role of the parents.

At the outset, the Standards stress the need for specialization in juvenile defense in Standard 1.3. This standard provides that in addition to being familiar with juvenile delinquency statutes and rules of procedure, juvenile defenders, at a minimum, must receive training on: key aspects of developmental science, such as capaci-

ties in legal proceedings, amenability to treatment, and culpability; effective adolescent interviewing techniques; the specialized skill of communicating with clients in a developmentally appropriate and effective manner; consequences of juvenile adjudications; and the operations of child-serving institutions.⁵

Lawyer and counselor roles. Another key component of the specialization of juvenile defense in the Standards is the need for juvenile defenders to act as equal parts defense lawyer and counselor. While adolescent decision making may be limited by developmental immaturity, “when given the opportunity to consult with counsel and engage in deliberative thinking, these limitations are likely to dissipate significantly.”⁶ Experts have found that youth can make better decisions when informed and unhurried than when under stress and peer or authority influences.⁷ This means that juveniles are less likely to waive their rights or further incriminate themselves if they consult with counsel first and counsel properly advises them of their rights.

Legal guide. Legal processes and court procedures can be too complex for some adults to comprehend.⁸ Thus the Standards assert that juvenile defenders must be conscious of how adolescent developmental stages and other attributes of immaturity may impact a young client’s understanding, reasoning and decision making as applied to his or her ongoing case.⁹ Juvenile defenders must know how to guide and advise a young client through the difficult legal and extralegal concepts that arise during representation so the client can meaningfully participate in his or her own defense.

Eliciting and Representing Client’s Stated Interests

The Standards reify a defender’s duty to pursue the stated interests of child clients, pointing out that the most effective juvenile defenders understand that their “primary and fundamental

responsibility is to advocate for the client’s expressed interests.”¹⁰ The lawyer is not to represent the so-called “best interests” of the client, but rather ensure that clients be meaningful participants in their own defense. As the Standards make clear, “[c]ounsel may not substitute his or her own view of the client’s best interests for those expressed by the client,” and “[c]ounsel may not substitute a parent’s interests or view of the client’s best interests for those expressed by the client.”¹¹

Too often, stakeholders conflate the roles of the juvenile defender with that of probation officers or guardians ad litem, or assume the “best interest” approach of the abuse and neglect system applies within the delinquency realm as well. The Standards make clear, however, that juvenile defenders owe their child clients the same ethical duties owed to adult clients. Defense attorneys who think their job is to advocate for the so-called “best interests” of the client convert the juvenile court into what the U.S. Supreme Court has called a “kangaroo court.”¹² That is, they leap over the due process protections guaranteed to all parties in court proceedings.

“Expressed interest” representation requires juvenile defense attorneys to counsel their clients through the legal and extralegal processes of a delinquency case. Young clients often lack knowledge and understanding about their rights and the procedures of the delinquency system. The Standards make clear that teaching youth about each of these is a critical component of representation that will help younger clients make informed decisions that the lawyer should then honor and advocate for accordingly.¹³

Competent, high-quality juvenile defenders explain laws and consequences to their young clients, helping to inform their representation and clients’ decisions, and maximize the potential for best outcomes. The Standards state that, “[h]aving a client-directed approach does not mean that counsel sets aside his or her legal training and experience at the whim of

a client; rather, counsel, drawing upon that training and experience, must keep the client fully informed and provide the client with information and advice, in developmentally appropriate language, on a particular matter and possible outcomes. This will help the client make informed decisions that the lawyer should then honor.”¹⁴

A lawyer properly trained in juvenile defense will know how to effectively communicate with his or her client and elicit how the client would like to proceed. Lawyers who do not specialize in juvenile defense will come to rely on the other players in the juvenile court: parents, who may have interests adverse to those of the client;¹⁵ probation officers, who represent the state; and judges.

Explaining Client Confidences and Confidential Information

An attorney practicing high-quality juvenile defense understands the need to maintain a confidential relationship with the client. Standard 2.3 mandates that a juvenile defender explain to the client the nature of confidential communications and how confidentiality might be waived.¹⁶ Specifically, “[c]ounsel must clarify that the client’s private conversations with counsel are protected from disclosure to anyone, including the client’s parent, the prosecutor, and the court.”¹⁷

Juvenile defenders, “. . . must also explain that the attorney-client privilege is deemed waived if anyone else, including a parent, is present during a conversation between the client and counsel.”¹⁸ As the Standards assert, a trained juvenile defender knows that his or her role is not to become a conduit of information between client and parent, but to build a relationship of trust that will foster zealous advocacy on the client’s behalf.¹⁹

Competent juvenile defenders should also grasp the importance of protecting confidential client information. As the Standards instruct, “[c]ounsel must exercise discretion in revealing the contents of psychiatric, psychological, medical, social, and

educational reports that bear on the client’s history or condition. In general, counsel should not disclose data or conclusions contained in such reports unless the client provides informed consent, and even then, only if doing so will advance the client’s stated objectives. Before requesting reports from outside institutions (e.g., educational reports), counsel must obtain informed consent from the client.”²⁰

Counsel should also be able to negotiate problems that may arise with parents and other third parties about nondisclosure of information.²¹ Furthermore, competent counsel should limit the stigma created when information about a client is leaked to parties outside the proceedings. Counsel’s advanced knowledge of the local juvenile courthouse and calendar can help when protecting client confidences. The Standards explains how: “If proceedings are scheduled to be public, to protect the confidential information involved, counsel, in consultation with the client, should move to close the proceedings or request the case to be called last on the docket, when the courtroom is empty.”²² Overall, the confidential relationship between a juvenile client and the attorney is parallel to that between an adult client and counsel.²³

Involving the Client and Preparing for Disposition

Disposition is often referred to as the most important phase of delinquency court proceedings, as it is the point at which youth confront the consequences of their adjudication and are subject to the court’s discretion.²⁴ Accordingly, the *Standards* carefully delineate the myriad responsibilities and obligations a juvenile defender owes the young client at this critical stage. To start, standards 6.1 and 6.2 explain that juvenile defenders must be well-informed about the disposition alternatives available in their jurisdiction, explain those options to the client, and work with the client to develop a theory of disposition consistent with the client’s desired outcome.²⁵

The *Standards* make clear that competent juvenile representation also requires counsel to present and zealously advocate for a written, individualized disposition plan for the client. Disposition planning is particularly complex because of the conflicting interests of various parties involved, and the high level of deference typically given by the court to stakeholders or juvenile justice professionals other than the defender. A juvenile defender must be able to successfully navigate these varied interests while focusing on the client’s stated interests and practicing client-directed advocacy.

Disposition planning. The attorney must involve the client in developing an individualized and tailored disposition plan and also prepare him or her for the disposition hearing.²⁶ Specifically, “[c]ounsel must explore disposition options with the client, explaining the processes and the possible range of dispositions the court will consider. Counsel must advise the client about the obligations, duration, and consequences of failure to comply with a disposition order.”²⁷ Juvenile defense attorneys must be properly trained on available disposition alternatives in order to meaningfully involve clients in discussing the positives and negatives of each disposition option. Throughout, “[c]ounsel must actively engage the client in discussions of available dispositions and should not recommend a disposition to the court without the client’s consent.”²⁸

Social/Psychological Background. The Standards mandate that juvenile defenders be familiar with a client’s social history reports and psychological and other evaluative testing that often plays a key role in dispositional outcomes.²⁹ A lawyer must be able to both understand and explain these tests to the client, and must engage with the client about their potential uses.³⁰

Parental involvement. Parents can play a crucial role at the disposition stage.

The *Standards* address how parental involvement can often lead to strengthened client advocacy, but reinforce the idea that parental involvement must be handled delicately. A trained juvenile defender is best able to balance the importance of obtaining parental buy-in while maintaining a relationship of trust and comfort with the client.³¹ “Counsel should consult with the client’s parent because: (1) he or she can help assess the relative strengths and weaknesses of a proposed disposition plan; (2) he or she often plays a significant role in the success of a disposition plan; and (3) the position a parent takes with respect to a disposition can have a significant effect on the court’s decision-making.”³²

Although the juvenile justice system has become increasingly punitive, juvenile courts across America still cling to their rehabilitative mission. When the client participates in the disposition planning, the client helps shape his or her own rehabilitation.³³ “Procedural justice research suggests that youth are more likely to comply with a disposition plan if they have been heard and have been given a meaningful opportunity to participate in the development of [the disposition] plan.”³⁴ It takes a conscientious, competent, zealous, trained advocate to make the court’s rehabilitative vision a reality, by making sure the client is the central, active participant at the disposition planning stage.

Undertaking Systemic Reform

The *Standards* recognize that no juvenile defender practices in a vacuum, and the reality of systemic barriers outside of counsel’s control may impact a case, the attorney-client relationship, or the course of representation. In section dedicated to a “Juvenile Defender’s Role in Addressing Systemic Deficiencies,” the *Standards* make clear that defenders may not stand idly by as gross injustices occur in their jurisdictions and impact their client’s cases. Rather, the *Standards* assert that frontline defenders are best positioned to identify and chal-

lenge system deficiencies such as late appointment, limitation on the right to counsel, over-bearing caseloads, and/or bias.³⁵ Even if defenders are overburdened by duties owed their clients, they should use the foundational ideals featured in the *Standards* to “strive to ensure that the system in which [they] represent young clients provides a fair and formal tribunal that abides by constitutional, statutory, and ethical mandates.”³⁶

In short, the *Standards* promote the idea that even if an individual defender is too busy or unsure how to break down systemic barriers, at the very least, counsel has a duty to say something if he or she witnesses injustices. While it is neither practical nor possible for each individual defender to also become a policy advocate, every defender has a responsibility to act in some way when larger systemic problems affect how they represent clients.

Whether defenders address these issues themselves or work with advocacy groups or defender leadership to push for reform, every defender is well-positioned to provide statistical data and qualitative examples of how the current system may prevent zealous, constitutional advocacy. Part X of the *Standards* aims to provide bases on which juvenile defenders can advocate for the systemic reform needed to provide the competent, diligent, and zealous representation their clients require and deserve.³⁷

Conclusion

The *National Juvenile Defense Standards* meet a tremendous need in the indigent defense community and provide comprehensive guidance for attorneys on the many components that comprise high quality, effective representation of youth in delinquency proceedings. Carefully deliberated and constructed, they are not aspirational; rather, the performance-based *Standards* demonstrate what is required for juvenile defenders to provide competent, diligent, and zealous representation to their clients.

As this article discussed, the

Standards offer a national framework for providing juvenile defense—one that, among many other things, emphasizes juvenile defense as a specialization, sees the juvenile client as the primary decision maker, envisions a relationship of trust and confidence between client and attorney, and encourages juvenile defenders to assume a role in addressing systemic reform. For years to come, the *National Juvenile Defense Standards* will continue to serve as a guide for elevating the quality of representation of young people in conflict with the law.

Sarah Bergen, is a staff attorney and *David A. Shapiro*, Esq. is a Gault Fellow at the National Juvenile Defender Center, Washington, DC.

Endnotes

1. *In re Gault*, 387 U.S. 1 (1967).
2. “The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it.” *In re Gault*, 387 U.S. 1, 36 (1967).
3. Institute for Judicial Admin. & American Bar Ass’n. “Standards Relating to Counsel for Private Parties.” In *Juvenile Justice Standards: A Balanced Approach*. Cambridge, Massachusetts: Ballinger Publishing, 1980.
4. “To start with the first set of cases: Roper and Graham establish that children are constitutionally different from adults.” *Miller v. Alabama*, 132 S.Ct. 2455 (2012).
5. National Juvenile Defender Center. “§ 1.3: Specialized Training Requirements for Juvenile Defense.” *National Juvenile Defense Standards*, 2012, 21-22.
6. “§ 1.2 cmt.: Elicit and Represent Client’s Stated Interests.” *National Juvenile Defense Standards*, 2012, 21 cmt. (citing Steinberg, Laurence et al., “Are Adolescents Less Mature than Adults: Minors Access to Abortion, the Juvenile Death Penalty, and the Alleged APA ‘Flip-Flop.’” *American Psychologist* 64, October 2009, 583.)
7. *See, e.g.*, Steinberg, Laurence et al., “Are Adolescents Less Mature than Adults: Minors Access to Abortion, the Juvenile Death Penalty, and the Alleged APA ‘Flip-Flop.’” *American Psychologist* 64, October 2009, 583.
8. “Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable,

generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he had a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him.” *Powell v. Alabama*, 287 U.S. 45, 69 (1932).

9. “§ 2.6: Overcoming Barriers to Effective Communication with the Client.” *National Juvenile Defense Standards*, 2012, 44 cmt. (citing Kamban, Praveen & Christopher Thompson. “The Development of Decision-Making Capacities in Children and Adolescents: Psychological and Neurological Perspectives and Their Implications for Juvenile Defendants.” *Behavioral Science and Law* 27, 2009, 173.

10. “§ 1.2: Elicit and Represent Client’s Stated Interests.” *National Juvenile Defense Standards*, 2012, 19.

11. “§ 1.2(a): Elicit and Represent Client’s Stated Interests” and “§ 1.2(b): Elicit and Represent Client’s Stated Interests.” *National Juvenile Defense Standards*, 2012, 19.

12. *In re Gault*, 387 U.S. 1, 28 (1967).

13. “§ 1.2 cmt.: Elicit and Represent Client’s Stated Interests.” *National Juvenile Defense Standards*, 2012, 20.

14. *Ibid.*

15. *See* Kristin Henning. “It Takes a Lawyer to Raise a Child?: Allocating Responsibilities Among Parents, Children, and Lawyers in Delinquency Cases.” *Nevada Law Journal* 6, 2006, 836.

16. “§ 2.3: Explain Client Confidences and Confidential Information.” *National Juvenile Defense Standards*, 2012, 38.

17. *Ibid.*

18. *Ibid.*

19. “§ 2.5(b): Parents and Other Interested Third Parties.” *National Juvenile Defense Standards*, 2012, 42-43.

20. “§ 2.3(d): Explain Client Confidences and Confidential Information.” *National Juvenile Defense Standards*, 2012, 39.

21. “§ 2.5: Parents and Other Interested Third Parties.” *National Juvenile Defense Standards*, 2012, 42-43 cmt.

22. “§ 2.3(e): Explain Client Confidences and Confidential Information.” *National Juvenile Defense Standards*, 2012, 39.

23. “§ 2.3: Explain Client Confidences and Confidential Information.” *National Juvenile Defense Standards*, 2012, 39 cmt. (citing Model Rules of Prof’l Conduct R. 1.6(a)).

24. “§ 6.1: Role of Counsel Regarding Disposition Advocacy.” *National Juvenile Defense Standards*, 2012, 106 cmt. (citing Institute for Judicial Admin. & American Bar Assn. “Standards Relating to Counsel for Private Parties, § 9.1 cmt.” In *Juvenile Justice Standards: A Balanced Approach*. Cambridge, Massachusetts: Ballinger Publishing, 1980.)

25. “§ 6.1: Role of Counsel Regarding Disposition Advocacy.” *National Juvenile Defense Standards*, 2012, 106.

26. “§ 6.3: Involve Client in Development of Disposition Plan and Prepare Client for the Hearing.” *National Juvenile Defense Standards*, 2012, 108.

27. *Ibid.*

28. “§ 6.3(a): Involve Client in Development of Disposition Plan and Prepare Client for the Hearing.” *National Juvenile Defense Standards*, 2012, 108.

29. “§ 6.3(b): Involve Client in Development of Disposition Plan and Prepare Client for the Hearing.” *National Juvenile Defense Standards*, 2012, 108.

30. “6.3(c): Involve Client in Development of Disposition Plan and Prepare Client for the Hearing.” *National Juvenile Defense Standards*, 2012, 108.

31. “§ 6.3: Involve Client in Development of Disposition Plan and Prepare Client for the Hearing.” *National Juvenile Defense Standards*, 2012, 108 cmt.

32. *Ibid.*

33. *Ibid.*

34. *Ibid.* at 108-09 (citing Tyler, Tom R. “What Is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures.” *Law & Society Review* 22, 2005, 103-35.) *See generally*, Tyler, Tom R. *Why People Obey the Law*. Princeton: Princeton University Press, 1990; Tyler, Tom R. & Yuen Huo. *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*. New York: Russell Sage Foundation Publications, 2002; *cf.* Fagan, Jeffery & Tom R. Tyler. “Legal Socialization of Children and Adolescents.” *Social Justice Research* 18, 2005, 217-42; Fondacaro, Mark, et al. “Procedural Justice in Resolving Family Disputes: A Psychosocial Analysis of Individual and Family Functioning in Late Adolescence.” *Journal of Youth & Adolescence* 27, 1998, 101-19; Fondacaro, Mark, et al. “Identity Orientation, Voice, and Judgments of Procedural Justice during Late Adolescence.” *Journal Youth & Adolescence* 35, 2006, 987.

35. “Part X – Juvenile Defender’s Role in Addressing System Deficiencies: Introduction.” *National Juvenile Defense Standards*, 2012, 152; *Ibid.*, “§ 10.1 cmt.: Participate in Policy Development and Review,” 152-53.

36. “Part X – Juvenile Defender’s Role in Addressing System Deficiencies: Introduction.” *National Juvenile Defense Standards*, 2012, 152.

37. *Ibid.*, 151-62.

(*SWM v. State*, continued from p. 83)

decisions from other states that held that due process required a youth be competent to proceed.

Although the juvenile statute did not state what standard the juvenile court should use to judge competency, it did give specific authority for courts to order evaluations and examinations of youth. The court concluded that a rational inference from that section was that one purpose of evaluations would be to determine competency.

Given this gap, the court noted the criminal standards were consistent with the Juvenile Act, which strives to protect party’s constitutional rights. The court also held the right to counsel has little meaning for some children if there is no requirement to be competent.

However, even juveniles without developmental delays will not have the same rational understanding of proceedings that an adult would. Thus, the court held the proper approach to assessing a juvenile’s competency is to apply age-appropriate norms, not to hold them to an adult standard of understanding and participation.

Because the court applied the incorrect standard, the case was remanded.

10 Questions Asked by Children Whose Parents are in Prison

by Howard Zehr and Lorraine Stutzman Amstutz

Children need time to adjust to the separation caused by having a parent in prison. But it takes more than time. As we have heard in their voices, children also need to make sense of what has happened to them and to their parent or parents. Because of this, they have many questions.

Some of the questions they ask are straightforward. But sometimes their questions come out indirectly or in their challenging behavior. Incarcerated parents, as well as caregivers of children or other adults in their lives, often have to answer their uncomfortable questions.

Children who are present when a parent is arrested, especially young children, are usually not told where their parents are being taken, when they will be coming home, or why they have to go away. As time goes on, the children have even more questions.

Our childhood experiences shape much of our adult lives. Children who live with these kinds of questions, many of which are not answered to their satisfaction, experience trauma as a result. Frequently that leads to their general mistrust of authority, especially the legal system. Not having their questions answered can also lead children to blame themselves for their parents' absence or to believe that they are destined to follow in their parents' footsteps.

Here are questions that children whose parents are incarcerated often ask, along with suggestions about how to answer them.

1. Where is my Mom or Dad?

Parents and caregivers often believe it is best to protect children by not telling them where their mothers or fathers really are. Children may be told that their parents are working in another state, going to school, or serving in the military. Sometimes children are told that their parents are ill and had to

go away for special treatment.

Sooner or later children will realize the truth and know they have been lied to. This tends to hurt their relationship with the persons who have told them the untrue stories and can lead to feelings of distrust that affect their other relationships as well.

While the adult who hides

Children who live with these kinds of questions, many of which are not answered to their satisfaction, experience trauma as a result.

painful reality does so believing it is in the best interest of the child, such an action (or inaction) creates a family secret that results in children feeling ashamed. Most childhood experts advise that children be told the truth.

2. When is he or she coming home?

The outcome and schedule of a parent's arrest and/or imprisonment is often uncertain. However, it is important to keep children up-to-date about what parents or caregivers do know. Children need to have concrete information they can deal with, even if it is, "We don't know what will happen yet."

3. Why is she or he in jail or prison?

Sometimes an innocent person is arrested. But when a parent has done wrong, it is important that this wrongdoing is acknowledged. Children need to know that there are consequences when people do things that are against

the law or harmful to others.

At the same time, they also need to be reassured that even if someone sometimes does something wrong, it doesn't mean that s/he is necessarily a bad person. While a child's parent may be serving the consequences for something wrong s/he did, the parent is still worthy of love and capable of loving.

A child can learn to trust a caregiver who is honest about what a parent has done wrong. This practice of honesty allows the child to believe other things that the caregiver tells her or him as they progress together on this journey.

4. Can I talk to my mom or dad?

Jails and prisons have specific and often constraining rules about prisoners talking on the phone to their loved ones. Phone calls from prison are often quite expensive and restricted in length. Many times a parent does not have enough money to call home because it is so expensive.

When phone calls are difficult, letters can be especially important. Although young children may find it hard to express themselves through words, they may find it more meaningful to make drawings. As Stacy Bouchet, now an adult, suggests in her reflections, children often treasure the notes and letters they receive from their parents, as she did from her father.

5. When can I see my mom or dad?

It is helpful to explain to children that prisons have specific times for visiting, and their caretakers will get that information so that they can see their loved

ones. If a parent is incarcerated at a distance, the child should be prepared for seeing his or her mother or father infrequently.

Some children are angry and do not want to see their parents, or at least they're ambivalent about the possibility. In general, though, it seems important for children to visit their parents as regularly as possible.

Before the first visit, they should be prepared for the circumstances of the visit. The caregiver should explain the security around the prison. The children should also know that there will be limits upon where they can visit and what they can do with their parents.

Most children want to know what their parent's life is like in prison. They may imagine frightening scenarios. Giving them a sense of mundane details of everyday life in prison can be helpful. If the child is interested, a caregiver can encourage the parent to describe his or her cell or room and tell what a normal day is like.

6. Who is going to take care of me?

Children in this situation often feel insecure. It is important to let children know who will be caring for them. If there is uncertainty about their living arrangements, children may need to be told that, but they also need to be reassured that plans for their care are being made and that they will not be abandoned. As much as possible, they need stability in their living situations and their relationships.

7. Do my parents still love me?

When children are separated from their parents, they often worry about whether their parents love and care for them. Most children need reassurance that they are loved by their parents no matter where the children happen to be living and with whom. They also value other loving relationships in their lives, but they still want to know about their parents' interest and love.

8. Is this my fault?

Children often blame themselves for being separated from their parents or even for their parents' misbehavior. They may imagine that if they had behaved better their parents would still be with them. They need reassurance on three fronts: that what happened to their loved one is not their fault, that it happened because that person did something wrong or harmful, and that this does not mean that their parent is a bad person.

9. Why do I feel so sad and angry?

Sadness and anger are children's common responses to a parent's incarceration. But most children do not understand their feelings or the origins of them. It is helpful for them to be reassured that their feelings are normal. Ideally, they can be encouraged to talk about their feelings of sadness or anger. If they cannot talk to their immediate caregivers such as their grandparents, they can be invited to talk to school counselors or social workers or even friends. Children often find it helpful to know other

children in similar situations because they can understand each other's feelings. Children who find it hard to articulate their feelings can be encouraged to express them through their drawings or other art work.

10. Can I do something to help?

Children typically feel helpless and responsible. They need to know that their loved ones usually appreciate letters and pictures. They can be encouraged to send them as often as they want to.

Howard Zehr is Professor of Restorative Justice at the Center of Justice & Peacebuilding at Eastern Mennonite University, Harrisonburg, VA and *Lorraine Stutzman Amstutz* is Co-Director of Mennonite Central Committee's Office on Justice and Peacebuilding. They are the authors of *What Will Happen to Me?*

Reprinted from *What Will Happen to Me?* by Howard Zehr and Lorraine Stutzman Amstutz. © by Good Books (www.GoodBooks.com). All rights reserved. Used by permission.

Register Today for Two Great ABA 2013 Conferences

July 10-11, 2013

3rd National Parent Attorneys Conference

A conference dedicated to raising the level and quality of parent attorney representation.

- Expert presenters
- Practice-based sessions
- Networking/small group learning opportunities
- CLE credits

July 12-13, 2013

15th National Conference on Children and the Law

Raising the Bar: Lawyers as Partners for Family Well-being

- Top-notch speakers
- Exciting plenaries on timely topics
- Practice-based workshops and sessions
- CLE credits

Attend a preconference (July 11, 2013):

- **Trial Skills for Child Welfare Attorneys:** Targeted training that sharpens courtroom skills by working through practical case scenarios.
- **Polyvictimization and Trauma-Informed Legal Advocacy:** Learn to identify clients' trauma histories and how they can impact the behavior and experience of children and youth both in and out of court.

For details and registration, visit: www.americanbar.org/groups/child_law/conference2013.html

Hawaiian Father and Caseworker Team Up to Achieve Reunification

by Rexanah Wyse and Scott Trowbridge

June is National Reunification Month, a time to celebrate those who work to reunify families involved with the child welfare system. Many individuals are “reunification heroes.” Highlighted here are a father and his caseworker from Hawaii. Together they pursued the father’s permanency goal of reunification.

The journey of Mr. U’U and his caseworker, Christina Satyo Dosland shows how positive change can happen when people focus on a goal and don’t give up. After two years in prison, Mr. U’U achieved his goal and obtained custody of his six children.

Mr. U’U’s turning point occurred in prison when he learned the court would terminate his parental rights if he spent more than two years incarcerated. Despite the looming deadline he never lost faith. He continued to meet the requirements of his rehabilitation programs and to support his children the best he could.

Ms. Dosland and a team of supporters helped Mr. U’U achieve success. Together they worked to reunite the U’U family. Ms. Dosland is widely recognized as a passionate advocate for birth families.

Mr. U’U

Q&A What activities do you enjoy with your children?

Going to the beach and the pool, and playing ball in the park. Whatever activities the children enjoy doing also are my favorites. Each child is unique in their own way. Although they can be a “handful,” they are handfuls I am happy to have.

Q&A What is one memorable moment related to getting custody of your children?

During incarceration I could not visit with them. I will never forget how their faces lit up when they saw me outside the prison walls. *(Following his release, Mr. U’U was granted ‘Ohana/Family Time every Wednesday for three hours.)*

Q&A What did you struggle with most in getting your children back?

Initially I could not acknowledge that I had problems. I could not accept what I needed to do to reunify with my children. *(Mr. U’U came to understand that Child Welfare Services was there to help him and his family.)*

Q&A What was the worst part about being separated from your kids?

Not knowing if I would succeed in getting them back.

Q&A What good came from the experience?

I might not have overcome my addictions if I had not gone through the sobering experiences of incarceration and losing my kids to foster care. Those events put my life into perspective and woke me to what I needed to do to curtail future negative events.

Q&A Who else was important in helping you get your children back?

Apart from caseworker Satyo Dosland and her team, my children motivated me. They wrote me to ask when I was getting out of prison.

Q&A Were there services you did not have that you would have found helpful?

All the services I received in prison were helpful. They offered many programs including Alcoholics Anonymous and tutoring programs. I had the opportunity to tutor other inmates

through the prison education department. This helped my motivation.

Q&A What would you want others to know about your experience?

The pressure was all on me. I couldn’t fail. I want other single parents to know that we can make positive changes. Take time to think before making bad choices. I let the kids help me decide what to do. If we make a bad decision, we make it together. Whatever services are offered to you, take advantage of them. Agencies, Goodwill, foundations, and churches are also available to help. Keep the faith and stay strong for yourself. Always believe you can get your kids back.

Q&A What advice do you have for other fathers like you?

More single fathers should speak publicly about trying to get custody of their children. It is not shameful to discuss your experience. It is a learning process for everyone.

Ms. Christina Satyo Dosland, Case Manager

Christina Satyo Dosland has been working as a Department of Human Services Child Welfare Service (CWS) case manager for 16 years. She arrived at DHS with a bachelor’s degree in human development and adjustment and experience in special education. Ms. Dosland was not looking for a career in child welfare, but she discovered a love for the work.

Q&A What are some strengths of the child welfare system in your area?

Strengths include working as a community, and supporting and teaching each other. The island of Maui is small enough that CWS staff knows the judges, lawyers, and police. We have good working relationships with them.

Q&A What are some weaknesses of Hawaii's child welfare system?

Weaknesses in Hawaii reflect national concerns. Child welfare systems across the country are underfunded and case managers work long hours under stressful conditions. It is rewarding work, but it's not easy.

Q&A You're known as "very passionate and an advocate of supporting birth families." True?

I am passionate and love the families I work with. Children generally prefer to stay with and remain connected with their birth families. I trusted my intuition on the first phone call with Mr. U'U when he was in prison. At that point he was four months away from permanently losing his kids to foster care. Mr. U'U was ready to take over and become a parent.

Q&A How can incarcerated parents increase the likelihood of reunification?

Working with the prison social worker to access services often proves successful. Maui has some challenges providing services. In Mr. U'U's case, I was pleasantly surprised that he had already completed an anger management program. The Oahu prison social worker also provided critical services that supported Mr. U'U.

Q&A What programs/practices helped Mr. U'U reunify with his children?

There were several, but the most notable was providing a parenting

coach. Mr. U'U was never the primary caretaker for his six children so he needed guidance. The Oahu prison social worker also helped Mr. U'U meet his goals. With the coaching and other services, he was on track with his service plan upon release from prison. I supported Mr. U'U's regular communication with DHS because it built my confidence in the family and helped defend Mr. U'U's position in court. He was becoming a better parent.

Q&A What advice would you give someone considering a career in child welfare?

When working with parents, look for the 'hook' in a parent that you can grab on to and align with them. If you are on the opposite side of the fence, the parents never trust you, you don't help them, and they don't progress. In the best situations, parents go through a stage of disliking the case manager before they start working their programs. Learn to not take their behavior personally.

Case managers should take care of themselves, eat and sleep well, take vitamins and exercise to stay on top of the daily stresses that are part of this job. It takes a special person to successfully work in the child welfare system. If you really like working with people, this job is fascinating, enriching, and rewarding. Child welfare is never boring. Even if you only stay for a few years, you will learn a tremendous amount about family dynamics, community resources and community problems. You will be well prepared for any other job working with people.

Q&A What advice would you give judges, agency directors, and elected leaders on improving the system?

The child welfare system would benefit from increased funding and reduced caseloads. Early and deeper intervention would promote more meaningful change. I also suggest that mandating the drug court system for all first time child welfare clients with drug prob-

lems could improve future outcomes. The Drug Court program is excellent, but it's not large enough to service the number of clients assigned to the child welfare system.

Q&A Do you think there are public misconceptions about the child welfare system?

Our intent is to support families in trouble. For families not ready to change, one misconception is that when CWS opens a suspected abuse or neglect case, the state removes the child from the home. This is not always the result. In fact, it's my job to do everything possible to keep the children safely in their birth family's home. Before the intervention or casework ends, most parents begin to appreciate the programs offered to support their families.

Q&A How do you define successful permanency?

I don't feel like I have "won" a case unless the family reunifies. I try to make reunification possible by thinking of creative ideas that inspire parents to take an active interest in their children's lives, and ultimately reunify with them. When reunification is not possible, the second best "win" is to find a permanent placement with relatives/Ohana, or with someone that the child will enjoy and maintain 'Ohana connections. The child should be nurtured and loved as part of the family, not just housed until they are 18.

Rexanah Wyse, JD Candidate 2013, and *Scott Trowbridge*, JD, ABA Center on Children and the Law, Washington, DC, conducted this interview.

For more on how states are celebrating National Reunification Month and reunification success stories, visit: www.americanbar.org/groups/child_law/projects_initiatives/nrd.html

Mother Seeks Courtroom Reform for Sexually Abused Children and Protective Parents

In *Prosecuted but Not Silenced: Courtroom Reform for Sexually Abused Children*, Maralee McLean shares her legal journey to protect her daughter from her ex-husband's alleged sexual abuse. She faced barriers at every turn and her ex-husband ultimately won custody. Her efforts to seek justice produced outcomes that would make many protective mothers question whether to travel her path. Changing the legal landscape motivated her to write her book. *CLP* caught up with Ms. McLean in the following interview.

Why did you decide to write your book?

I wanted to make a difference for those working in the fields of domestic violence, child abuse, or child trauma so that such maltreatment would not continue. I wanted to open the eyes of the legal system to mothers “trapped” in similar situations. I also wanted to make the public aware of the tragedy taking place in our courts and to make a difference in saving other children and protective mothers.

After experiencing the system fail time and time again despite evidence of abuse; hearing my daughter's cries for help hearing after hearing; enduring year after year of the abuse not being heard; and finally becoming financially depleted, I began to realize a main problem was lack of education and training among professionals handling these cases.

You faced challenges while seeking justice for your daughter. What did you learn?

I learned that my case is not an isolated one. There are thousands of cases in our courts in every state with the same outcome as mine and my daugh-



ter's. When I testified before Congress with 10 other mothers from different states, it was heart wrenching to hear each mother's experience; they all could have been my case.

The failure of various systems when child sexual abuse is reported and how these cases are turned against the protective parent in family court illustrates a Catch-22 situation. Mothers who report sexual abuse nearly always lose custody. Research shows children are placed in full or partial custody of their identified sexual abuser 90% of the time.¹ Unfortunately many judges, attorneys, and mental health professionals do not understand the overlap of domestic violence and child abuse.

When the child resists going with the abuser and the mother asks for protection from family (divorce) court, the mother is labeled dangerous and considered to be alienating the child from the father. The “Parental Alienation Syndrome” is relied on heavily although it isn't approved by the American Medical Association or the

American Psychological Association, and is considered “junk science” that should not be allowed in courts. In my experience, judges ignore or minimize evidence of sexual abuse and do not allow abuse findings in court.

Research shows that in family courts, false allegations of child sexual abuse remain rare. The allegations occur in approximately two percent of custody and visitation disputes, and most are substantiated.² Family court judges may not understand evidence that is essential to correct decision making. Incorrect family court decisions will have damaging effects, either by subjecting the child to continued abuse and/or by depriving the child of a relationship with the non-abusive parent.

According to another important study³ on child custody and domestic violence by Dr. Daniel G. Saunders, “the attitudes and knowledge of evaluators are critical to making decisions in child custody cases involving domestic abuse.”

In my view, cases alleging criminal acts do not belong in family court. They should be investigated by law enforcement and adjudicated in specialized family violence criminal courts using the preponderance of the evidence standard of proof, with evidence brought before highly trained and qualified judges.

Most of these cases involve domestic violence. No child should be placed in unsupervised contact with a domestic violence abuser against the child's will. Children need safe homes and need to have their constitutional rights protected. Giving an abuser control over the mother and the child is the ultimate act of revictimization. The mother is treated as a criminal with the loss of the children she tried to protect. She is often ordered to

receive minimal, supervised visits, sometimes lasting for years (even though she is not the abusive parent), jailed, given gag orders, depleted financially, and ordered to pay child support. Finally she may experience a de facto termination of her parental rights when the court disallows visits.

What can the legal community learn from your story?

My book is a case study. It includes legal documents to educate professionals, along with information on research studies, and my documentation of proof: police reports, doctor reports, hospital reports, judge's orders, etc. My hope is that professionals will seek training and not turn away. Attorney Richard Ducote said it well, "We need to disinfect these trusted institutions." When the system ignores strong proof that the children under its watch are being abused, it punishes those who act responsibly on behalf of child victims.

Many family courts accept and embrace as "infallible" flawed "evidence" and "experts" who would be rejected outright in other courtrooms based on constitutional law, rules of evidence, and judicial procedure. My story tells the breakdown in the judicial system. New measures must be taken. Most important are to: (1) not be so quick to ignore abuse allegations and assume it is a vindictive ex-wife; (2) listen to the children; and (3) educate and understand these cases as domestic violence and child abuse cases, not "high conflict" cases.

Professionals who lack this understanding must remove themselves.

Your book offers advice to mothers trying to protect their children in the court system.

What is the most important advice?

Never ever give up. It is crucial to stay in your child's life no matter how you may be prevented from seeing your child. Your child needs to know you are fighting for him or her. If you can't

see your child because of court orders, speak out and seek changes in practice, policies, and legislation. Get help finding a pro bono attorney or educating yourself so you can advocate for yourself in court. It is sad that most mothers are destitute after a few years paying for attorneys, evaluators, litigation, and therapy for themselves and their children.

How can the judicial system better handle these cases?

Many mothers lose custody in ex parte hearings when they are not notified of the court hearing; this practice should be banned. Judges must be trained by child sexual abuse and domestic violence experts, not by other judges. Judges must be trained how to interview the child. There must be effective oversight and accountability for all professionals involved. Court appointees should have no place in these criminal matters; if on the rare occasion they are appointed, there must be a cap placed on the fees charged and paid by the court making the appointment.

What policy and legislative changes are needed to better protect child sexual abuse victims?

- Ensure "safety first" for children who report sexual or physical abuse, or who witness domestic violence.
- Use multidisciplinary teams and a forensic interviewer to interview on videotape all children who report physical or sexual abuse, or witness domestic violence.
- Have the court make specific findings on domestic violence and child abuse or neglect allegations before making further determinations.
- Recognize parents who are acting in good faith to protect their children and do not punish them.
- Discontinue use of alienation theories. Parental Alienation

Syndrome is discredited by the scientific and legal communities.

- Require the court to consider past or present domestic violence and to protect the child from the primary aggressor.
- Reduce unnecessary litigation by implementing custody jury trials in family violence courts
- Build effective oversight, accountability, and transparency for all professionals in these cases, including judges. Consider developing a federal oversight committee.
- Require continuing education for court professionals and judicial officers using a standard online curriculum taught by experts in child sexual abuse and domestic violence. Include an exam.
- Require disclosure of conflicts of interest by statute.
- Develop a system to more easily remove incompetent, poorly trained professionals.

— Interview conducted by Claire Chiamulera, CLP's editor.

For more information and to order the book (\$27.99), visit <http://mmclemm.tateauthor.com/>

Endnotes

1. Neustein, A., and Goetting, A. Judicial Responses to the Protective Parent's Complaint of Child Sexual Abuse. *Journal of Child Sexual Abuse* 8(4), 1999, 103-122; Steubner, Nancy Marie. "Custody Outcomes for Protective Parents in Cases with Child Sexual Abuse," (Master's Thesis), September 2011.
2. Thoennes, N. and Pearson, J. "Summary of Findings from the Sexual Abuse Allegations Project." In E. B. Nicholson (Ed.), *Sexual Abuse Allegations in Custody and Visitation Cases*, 1988, 1-36. Washington, DC: American Bar Association.
3. Daniel G. Saunders, Ph.D. *Child Custody Evaluators' Beliefs about Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations. Final Technical Report* Submitted to the National Institute of Justice, U.S. Department of Justice, October 31, 2011.

Youth with Autism Face Barriers to Employment and Education after High School

Compared with youth with other disabilities, young adults with autism spectrum disorders (ASD) face a disproportionately difficult time navigating work and educational opportunities after high school, finds a new study by Paul Shattuck, PhD, assistant professor at the Brown School at Washington University in St. Louis.

“Thirty-five percent of the youth with ASDs had no engagement with employment or education in the first six years after high school,” Shattuck says.

“Rates of involvement in all employment and education were lower for those with lower income.”

The study, published in the journal *Pediatrics*, examined data from the National Longitudinal Transition Study 2 (NLTS2), a nine-year study of adolescents who were enrolled in special education at the outset. The NLTS2 included groups of adolescents with ASDs, learning disabilities, intel-

lectual disabilities and speech and language impairments.

“Compared with youth in the three other disability categories, those with an ASD had significantly lower rates of employment and the highest overall

Many families with children with autism describe turning 18 as falling off a cliff because of the lack of services for adults with ASDs

rates of no participation in any work or education whatsoever,” Shattuck says.

“Those with an ASD had a greater than 50 percent chance of being unemployed and disengaged from higher education for the first two years after high school.”

Shattuck notes that approximately 50,000 youth with ASDs will turn 18

this year in the United States.

“Many families with children with autism describe turning 18 as falling off a cliff because of the lack of services for adults with ASDs,” he says.

“The years immediately after high school are key. They are the time when people create an important foundation for the rest of their lives.

“There needs to be further research into services for young adults with ASDs to help them make the transition into adulthood and employment or further education.”

Shattuck says that particular attention should be paid to interventions that will help poorer youth overcome barriers to accessing services and achieving fuller participation in society.

This study was funded by the Organization for Autism Research, Autism Speaks, and the National Institute of Mental Health.

© Newswise



**American Bar Association
Center on Children and the Law
1050 Connecticut Ave., NW, Suite 400
Washington, DC 20036**

Presorted
First Class
U.S. Postage
PAID
Permit #163
Annapolis, MD