CHANGING LIVES: LAWYERS FIGHTING FOR CHILDREN
Teaching & Discussion Guide
Each year, millions of children in the United States are caught up in the juvenile justice or foster care systems, where they face enormous challenges and are often destined for failure. Attorneys can play a critical role in protecting the rights of these at-risk children and ensuring their access to opportunities so they have a greater chance to succeed. A group of dedicated advocates has produced a new book to raise awareness about the need for legal representation for vulnerable children.

CHANGING LIVES: LAWYERS FIGHTING FOR CHILDREN, a new book from the Children's Rights Litigation Committee of the American Bar Association Section of Litigation, illustrates the difference a highly trained and skilled attorney can make in the life of a child in need. It is a must-read for any professional working with at-risk youth. Each chapter profiles a child who has been removed from her home and separated from her parents and siblings; locked up in a poorly run residential or psychiatric facility; kicked out of school; forced to live on the streets; or subjected to horrendous physical, sexual and emotional abuse. The chapters describe the skilled advocacy of attorneys who helped to change the life courses of vulnerable children who became involved in various systems including:

- Child welfare (abuse and neglect)
- Juvenile delinquency
- Adult criminal court
- Immigration
- School discipline
- Special education
- Mental health
- Runaway and homeless system

CHANGING LIVES: LAWYERS FIGHTING FOR CHILDREN is also a resource to encourage and support attorneys who advocate for children, both those who do this as a full-time vocation and members of the private bar who undertake pro bono representation. The chapters include practice tips and checklists, as well as resources for developing the expertise needed to zealously represent children in crisis to achieve the best outcome and ultimately help them grow into happy and successful adults.

On the front cover of the book, Marian Wright Edelman, president of the Children's Defense Fund, praised the publication, which "puts children first and actively describes the valuable role highly trained and skilled lawyers can play in changing the odds for our most vulnerable children."

This accompanying teaching and discussion guide is designed for use with graduate students, particularly in the areas of law and social work.
CLASSROOM DISCUSSION:

General

1. Define the term “best interest representation” of a child or youth. Define the term “client directed representation” of a child or youth.

2. How does the role of an attorney who represents the “best interests” of a child or youth differ from that of an attorney acting in the traditional “client directed” capacity on behalf of a child or youth? Does it make a difference if the child is two years-old or 15 years-old?

3. What are the arguments offered as to why children and youth do not need legal representation but instead need only people who will pursue their best interests? On what assumptions are these arguments based? Which assumptions are valid and which are invalid and why?

4. Are children competent to direct lawyers in their representation? Does your answer change if the child is, for example, seven years-old? 14-years-old? 16-years-old? Is there a certain age at which children become competent to direct their legal representation? What are the indicators of such competence?

5. What does the term “holistic representation” mean in the context of representing children and youth and what is the rationale underlying it? Find examples of holistic representation in the book and discuss. What are the barriers to holistic representation?

Chapter One

Fighting the Odds: Speaking for Infants and Toddlers in the Child Welfare System

6. What factors lead children and families to become involved in the child welfare system?

7. What are the major federal laws that govern the operation of state child welfare systems? What provisions of those laws did Grace’s attorney use to advocate on her behalf?

8. What do the following terms mean in the context of child welfare law:
   a. Permanency?
   b. Permanency goal?
   c. Concurrent planning?
   d. Goal change?
9. Grace had an elderly foster mother (she was 76 years-old). Should child welfare agencies have a maximum age cut off for foster parents? Why or why not?

10. At a certain point in Grace’s case, Grace’s attorney advocated for her mother’s parental rights to be terminated and for Grace to be adopted. If you were Grace’s attorney would you have pursued this course earlier in your representation of Grace? Later? How, if at all, would the mother’s mental illness factored into your decision?

11. **Activity for law students:** Applying relevant law and court rules in your jurisdiction, draft a motion for a goal change from reunification to adoption on behalf of Grace.

Chapter Two
Letting Children Be Children: Advocating for Youth in the Juvenile Justice System

12. Much has been written about the increased number of youth who are being arrested and adjudicated delinquent for alleged activities in school. This phenomenon is often referred to as the School-to-Prison Pipeline. What factors are fueling this trend? What are some examples of strategies that advocates are currently utilizing to stem the flow of cases from schools to the juvenile justice system?

13. Youth of certain racial and ethnic minorities are disproportionately represented in the juvenile justice system. This phenomenon is known as Racial and Ethnic Disparities (RED). What factors contribute to RED? What are some examples of strategies that advocates are currently utilizing to combat RED?

14. What is a “manifestation determination” under federal special education law? What criteria must schools apply to determine whether a student’s conduct was a manifestation of his or her disability?

15. **Activity:** Imagine that you were adjudicated delinquent as a juvenile in the state where you grew up. Go to the American Bar Association website “Think Before You Plea” at [http://beforeyouplea.com/](http://beforeyouplea.com/) and research the consequences of being adjudicated delinquent in your home state. Draft a 1-2 page memo summarizing the results of your research.
16. **Activity for law students:** Applying relevant law and court rules in your jurisdiction, draft a motion to dismiss the petition for failure to preserve evidence (i.e., the liquids that Marcus brought to school) on behalf of Marcus.

Chapter Three
**Finding a New Home: Representing Children in Immigration Actions**

17. How was Eniye’s attorney able to use her knowledge of immigration law and the conditions in Eniye’s native country in the context of Eniye’s child welfare case?

18. Eniye’s attorney had a choice as to whether to pursue her case in juvenile court or seek removal of the case to federal court. What are the advantages/disadvantages of proceeding in each of these courts?

19. Should unaccompanied children who do not have legal status in the United States be entitled to free legal representation in removal proceedings? Why or why not?

20. **Activity for law students:** review the various legal statuses described in the chapter. Pick one for which you think Eniye would be qualified given her situation. Prepare an application and/or petition on behalf of Eniye.

Chapter Four
**Staying on Track: Protecting Youth in School Discipline Actions**

21. What rights does a special education student have under federal law when the student’s school seeks to take disciplinary action (e.g., suspension, expulsion, etc.) against him or her? How did John’s attorney use these provisions on his behalf?

22. Data collected by the federal government confirms that schools are disproportionately disciplining youth of some racial and ethnic minorities as well as referring these youth to law enforcement. This phenomenon is known as Racial and Ethnic Disparities (RED). **Activity:** Identify a city in the United States that has a majority non-Caucasian population. Then go to the website for the Office of Civil Rights within the Department of Education ocrdata.ed.gov and look up three (3) high schools in that city. Compare the discipline rates of youth of different racial and ethnic groups (e.g., African American, Asian, Latino, etc.) between the three schools. What, if any, conclusions can you draw from the data as to whether there is RED in how the schools discipline students? Draft a 1-2 page memo summarizing the results of your research.
23. **Activity for law students:** draft a legal memorandum as to why the rules of evidence regarding the admission of hearsay should apply in school disciplinary proceedings.

Chapter Five

**Setting the Record Straight: Child Advocacy and School Responses to Mental Health**

24. What is a “manifestation determination” under federal special education law? What criteria must schools apply to determine whether a student’s conduct was a manifestation of his or her disability?

25. When is a child entitled to an evaluation under federal special education law?

26. In Jesse’s delinquency case, Jesse and his mother had different goals: Jesse wanted to stay at home with his mother but his mother ultimately decided to send him to a residential treatment facility. What is the role of an attorney representing a youth in a delinquency matter?

27. **Activity:** Research the current literature regarding the prescription of psychotropic medications for children in the child welfare and/or juvenile justice systems. Draft a 1–2 page memo summarizing the results of your research.

28. **Activity for law students:** Review the following records provided by your instructor (Instructor to obtain redacted records from a legal services firm or law office): Probation report, court ordered psychological report, school district psycho-educational assessment, and current IEP. Spot issues that you would raise at an IEP meeting to advocate for appropriate services for your client. What other documents would you like to review in advance of the IEP meeting that were not provided to you?

Chapter Six

**A Matter of Survival: Representing Runaway and Homeless Youth**

29. What are the systemic causes of youth homelessness in the United States?

30. What rights and entitlement do runaway and homeless youth have under federal law?
31. In what areas should youth have the same rights as adults? Consent to medical care? Signing contracts? Employment? Relationships?

32. Why do you think that youth who are abused or neglected might not go into foster care?

33. **Activity:** research the shelters in your area that house children and youth under 18 years of age. Contact the director of one of these shelters and interview him or her about the needs of the youth the shelter serves and any policies that help or hurt these youth. Draft a 1–2 page memo summarizing your findings.

34. **Activity for law students:** Determine the list of “status offenses” for minors in your state. In what court—delinquency, juvenile, child welfare, family court or other—are these cases processed? Are minors entitled to legal representation in these proceedings? Can minors be detained for a status offense? If yes, for how long and in what type of facility? Draft a 1–2 page memo summarizing your findings.

**Chapter Seven**

*Getting Another Chance: Lawyering to Prevent Youth from Being Tried as Adults*

35. Should youth under the age of 18 ever be tried in adult court? Why or why not?

36. Should the decision as to whether a youth under the age of 18 should be tried in adult court be solely dependent on the crime with which the youth is charged? Why or why not? Do you think other factors should be considered? If yes, what factors should be considered?

37. Who should make the decision as to whether and when a youth under 18 should be tried as an adult—the legislature, a judge, a prosecutor or someone else?

38. **Activity for law students:** Read the cases cited in footnote 21 of the chapter. What findings did the U.S. Supreme Court make with regard to adolescents in these decisions?
Chapter Eight

Keeping the Door Open: Representing Older Youth Transitioning Out of Foster Care

39. Caleb was 16 years-old when his attorney was appointed to represent him in a Child in Need of Care case. Should an attorney appointed to a 16 year-old client represent the client’s “best interest” or be “client directed” in her representation? Would your answer change if the client was 14 years-old? Five years-old? Why or why not?

40. If Caleb’s attorney had applied a “best interest” standard in her representation of Caleb, would that have yielded a different outcome for Caleb? If yes, how? If not, why? How did the attorney’s “client directed representation” shape the outcome in Caleb’s case?

41. What rights and services are older youth entitled to under federal law when they are in the child welfare system? After they have exited the child welfare system? What rights should they have?

42. What rights, if any, do children and youth in the child welfare system have under federal law to visit and/or be placed with siblings? What rights should they have?

43. Research federal and your state statutes on “reasonable efforts” in Child in Need of Care (child welfare) cases. If “reasonable efforts” were asserted in Caleb’s case, could it have made a difference?

44. Activity: Research the current literature as to outcomes (i.e., with respect to education, employment, adoption of older youth, etc.) for youth who “age out” of the child welfare system in the United States. Draft a 1–2 page memo summarizing the results of your research.

45. Activity for law students: Research the criteria to be adjudicated a Child in Need of Care (CINC), i.e., a dependent child, in your state. Applying this criteria, draft a CINC petition on behalf of Caleb.

46. Activity for law students: Draft a motion for change of placement for each of the placements that Caleb encountered applying a best interest standard. Compare and contrast with the application of Caleb’s express wishes.
Chapter Nine

47. Discuss the advantages and disadvantages of impact litigation as a strategy for reform of the child welfare system in the United States.

48. **Activity:** Both Maya and Gina were placed in multiple, different types of facilities—including shelters, group homes, boot camps, treatment centers—during their time in the child welfare system. Research the current literature as to what types of placements are and are not conducive to youth achieving permanency.

49. **Activity for law students:** Page 138 lists possible causes of action that can be raised in lawsuits against child welfare agencies on behalf of youth in their care. Review this list and Maya’s and Gina’s stories. Draft one legal claim (e.g., the agency violated Maya’s right to substantive due process or the agency violated Gina’s right to liberty) for inclusion in a complaint against the child welfare agency on behalf of one of the young women.