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From the Chairs

The 2000-2001 year promises to be an exciting one and we hope you will all plan to get involved. The Committee now has 94 members and continues to grow at a consistent rate. The following subcommittees are now up and running: Immigration, Access to Health Care, Education, Juvenile Justice, Child Welfare, Law Day 2001 and Starting Children’s Law Projects. Already more than half of our members are signed up for a subcommittee. If you are a member and have not signed up yet, please fill out the form in the back of the newsletter or contact our committee director, Catherine Krebs, to let us know which subcommittee you are interested in joining. Our modest goal is to have each subcommittee work

(continued on page 5)
Law Day 2001: Protecting The Best Interests of Our Children by Shari Shink

Law Day is a national event observed each year on May 1st by members of the legal profession and the judiciary. Its purpose is to increase awareness of the Justice System and to strengthen the heritage of liberty, justice, and equality under the law.

The concept of Law Day was first suggested in 1957 by the president of the American Bar Association, Charles S. Rhyne, was proclaimed such by President Dwight D. Eisenhower in 1958 and later established by Congress in 1961. Since then, Law Day has become a celebration of freedoms through educational programs, law related activities, legal advice clinics, student debates, charity races and varied efforts to bring attention to our great system of laws.

This year’s Law Day theme is “Protecting the Best Interests of Our Children.” “Best Interest” is a legal term of art used by courts and legislatures to help make legal actions more child-centered. Law Day 2001 will focus on the development of laws related to children and how they can better protect the interest of children. As we mark the 100th year anniversary of the first Juvenile Court in the nation, it is fitting for the bar and the judiciary to examine the current system of justice for children.

Time For New Activism

What better day than May 1st to call attention to the plight of children in this nation? May 1, 1866 was a critical date in the labor movement. All of the privileges workers enjoy today such as a minimum wage, safety laws and an eight-hour workday came about only with the very real and personal sacrifices of a quarter million workers who went on strike as part of the May Day movement. May Day is a time for working class people around the world to reflect on the struggles and accomplishments of workers and to remember the endeavors of the martyrs who built the society we currently enjoy. May Day often conjures visions of flow- ers and maypoles, however, this fascinating history inspires one, instead, to strive for justice.

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surely children are no less deserving.

2. To join the ABA Children’s Law Committee May Day 2001 subcommittee, fill out the form on page 7 or call the Children’s Law Committee at (202) 547-3060.
3. To volunteer for Law Day 2001 activities in your community as part of an overall national celebration, contact Shari F. Shink at (303) 87 1-64 10 or e-mail her at sshink@mail.law.du.edu.

Shari Shink is the Executive Director of the Rocky Mountain Children’s Law Center in Denver, Colorado. Attorney Shink is also a member of the Children’s Law Committee “Working Group” and the subcommittee chair of Law Day 2001.

Children’s Attorneys Project Begins in Las Vegas

A new project has begun for children in Las Vegas, Nevada. The Children’s Attorneys Project has been established under the umbrella of Clark County Legal Services.

In 1999 members of the Las Vegas community, including a judge, court administrators, a University of Nevada (Las Vegas) professor, a state senator, two state assemblywomen, the director of legal services and the director of CASA (Court Appointed Special Advocates) joined together to form a collaborative to address the issue of the system’s neglect of foster children. In Clark County the average length of stay in foster care is more than three years per child. Nevada has a mandate that each abused and neglected child have a guardian ad litem (GAL) to represent the best interests of the child from the moment they enter the system. Yet Nevada was not providing its children with GALS. The only representation provided to children was through the CASA program, a volunteer program in which lay people advocate for a child’s best interest. Yet CASA volunteers were still only appointed to 10% of children entering the system and 37% of all children in foster care.

The collaboration set a goal that every child would either have a CASA or an attorney to represent their best interest in court. It was concluded that an advocate would help to shorten children’s stays in the foster care system. To achieve its goal, the collaboration successfully sought to have funding for the CASA program increased and established the Children’s Attorneys Project.

The mission of the Project is to provide independent legal representation to children in abuse and neglect cases in order to expedite their cases to a permanent plan. The project now has two attorneys, Steve Hiltz and Liliana Loftman, who already have full case loads.

The Children’s Attorneys Project is also beginning a pro bono program in which private attorneys can represent abused and neglected children. The first CLE training for volunteers was held in September 2000.

The Children’s Law Committee was pleased to be able to provide some information to the Collaboration as they identified their goals and has committed to assist the new Project with their pro bono trainings.

The Committee wishes to congratulate the Collaboration on its success in establishing the Children’s Attorneys Project. The children of Las Vegas will certainly benefit from this important program.

Programs at the ABA Annual Meeting

The Children’s Law Committee co-sponsored two programs at the ABA Annual Meeting in New York this past July. Elian Gonzalez and the Forgotten Children in Immigration Proceedings was co-sponsored with the ABA Coordinating Committee on Immigration Law, the Young Lawyers Division, Sections of Administrative Law and Regulatory Practice, and the Steering Committee on the Unmet Legal Needs of Children. The program consisted of a panel focused on Elian’s case along with the thousands of unaccompanied children who are fighting deportation and languishing in INS detention centers across the country. Approximately 45 people attended this program. The speakers included experts from a variety of disciplines, including Committee member, Bernardine Dohrn, and lawyers directly involved in the Gonzalez matter.

The Committee’s second program was co-sponsored with the Section of Litigation’s Pre-Trial Practice Committee and was entitled In re: Hansel and Gretel. This program consisted of mock oral arguments in three cases arising out of the facts of the fairy tale. In the first case the state of Fairlyland successfully argued that custody of Hansel and Gretel should be removed from their father. Committee members, Amy Vasquez, Judith Wheat and Susan Hoffman, argued the merits of this case in front of Committee member, Judge Patricia Macias, a juvenile court judge from El Paso, Texas.

Koji Fukumura represented the step-mother’s estate in a wrongful death suit against the father, and Steven Richman represented the witch’s estate in a tort action to replevy the jewels stolen by Hansel and Gretel and to receive damages for trespass to her house. Dan Kornstein defended the father against these two summary judgment motions.

The program attracted roughly 50 attendees and received very positive feedback, particularly for the humor used by the participants in their oral arguments.

After this program, attendees were encouraged to consider volunteering to represent a child.
Zero Tolerance (con’t from page 1)

Two 14-year-old boys were scheduled for expulsion hearings for being in a group of boys who shot a bb gun at a school bus. Both hearings were scheduled on the same day one hour apart since the witnesses and all other evidence were exactly the same for both boys. When counsel for the first boy contacted the school board to explain that she would be appearing on his behalf, the school board sought a continuance, explaining that the school’s witnesses would not be available to testify the day the hearing was scheduled. The school board has yet to reschedule this hearing. The second boy appeared at his hearing without counsel, that same day those witnesses were not available, and was expelled for one year.

(The above true stories are from the Children’s Law Pro Bono Program of Northwestern University Legal Clinic).

Each day across the United States, hundreds of children are facing expulsion and suspension from our public schools. Under the excusing rationale of “zero tolerance,” instead of addressing the actions of students who violate or are accused of violating school rules by correcting their behavior and teaching them to change it, the most severe sanctions are imposed. Many children are temporarily suspended, some are removed from their classroom to alternative educational settings which are criticized for prioritizing behavior modification over education, and still others are denied access to education of any kind. The length of expulsions can vary by state, for example in some states expulsions are limited to one year, but in other states expulsions can be permanent exclusions from public school. When a child violates the code of conduct they are not mentored, advised, educated, and guided as to how to act better. They are removed and they are labeled. If a student chooses, she may challenge an expulsion decided by a principal through a hearing conducted by her school board. Legal representation is rarely available at either a principal or a school board hearing, and students are forced to face the elimination of their right to a public school education unprotected and unrepresented. Additionally, parents often do not know their rights and are too intimidated by a school procedure in which their children could lose their education to advocate effectively for them. The legal profession must get involved to ensure justice for children at risk of losing their public education.

As an advocate for children in the Juvenile Court of Chicago in school-based arrests, and in expulsion proceedings on behalf of students in the Chicago Public Schools, I have seen that the above examples of zero tolerance conflicting with notions of fundamental fairness, due process, and the best interests of many children are all too common. Zero tolerance has transformed Chicago schools by changing school officials from educators and appropriate disciplinarians into sentencing judges who are not allowed to use mitigating facts, academic or disciplinary history or any discretion as they make decisions which change the entire course of young lives. This new role is bewildering to the students and families affected by zero tolerance.

Legal representation can make a dramatic difference in the outcome of a hearing. Often when legal counsel becomes involved in these proceedings, children are afforded an opportunity to explore all defenses, mitigation and other forms of rehabilitating the child’s behavior.

The Effects of the Elimination of Tolerance

“Zero tolerance” is a concept formally born in the Federal Gun Free School Zones Act of 1994. Its initial goal was to remove students found with firearms on school grounds and to thereby enhance school safety. However, zero tolerance has been expanded to become the rationale for the referral of a student for suspension or expulsion for even the slightest infraction of a school’s discipline code. Where a teacher or school disciplinarian might have had the luxury of individualized decision-making and restorative sanctions for less significant infractions in the past, the zero tolerance model does not allow such consideration. School officials, the former decision-makers in these settings, are now relieved of all responsibility and all blame because strict and meticulous discipline codes leave no room for interpretation or judgment of special exceptions.

As a result of the zero tolerance policy which mandates away discretion, the numbers of children subject to school discipline sanctions has skyrocketed. In 1998, 3.1 million children were suspended from America’s public schools and 87,000 were expelled. (Statistics provided by “Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline,” a report (continued on page 6)
From the Chairs (con't from page 1)

on at least one project during the upcoming year.

Aside from forming subcommittees, we hope to present many programs in the upcoming year. Last year the Committee sponsored programs at both the Section of Litigation and ABA Annual Meetings. This year we have again presented proposals for both the ABA Annual Meeting next August in Chicago and the Section of Litigation Annual Meeting in Phoenix next May. The proposals focus on the juvenile death penalty and the ongoing problem of no legal representation for undocumented children who enter the country with no guardian. We also plan to submit a proposal to present a program at the 2001 ABA/NLADA (National Legal Aid Defender Association) Pro Bono Conference.

The Committee has a wonderful opportunity to participate in Law Day 2001 which will focus on “Protecting the Best Interest of our Children.” Law Day is described more fully on page 2.

As we begin new projects we will continue to focus on our original mission: assisting with the start-up of children’s law projects throughout the country and encouraging lawyers to undertake the direct pro bono representation of children. Along these lines co-chair Tony DeMarco participated in a program entitled “Fundraising and Development of Projects for Children,” August 5, 2000 at the 2000 National Fundraising Conference, “Creating New Community Partnerships for Justice.” The audience consisted of legal service Development Directors, Managing Attorneys and Executive Directors from 11 states. Additionally, we have continued to provide a broad range of support and technical assistance to individual programs and law firms.

We clearly have a lot of work to do in the upcoming year. If you are not yet a member, we would welcome you to join us. You can either fill out the membership form on page 7 or contact our committee director at (202) 547-3060. We look forward to working with you and thank you for your participation.

Meghan Magruder is a partner at the law firm of Hale & Dorr LLP, in Washington, D.C. Meghan specializes in environmental law.

Tony DeMarco is the Director of the Juvenile Justice Center at Suffolk University Law School in Boston, MA. He is also the founder and former director of the Children’s Law Center of Massachusetts

Committee News

◆ Congratulations to Committee Member, Molly Langer of the Guardian ad Litem Program in Tampa, Florida, who was selected as the “Young” Lawyer Recipient of the 2000 Child Advocacy Award. This award is given by the American Bar Association Young Lawyers Division Children and the Law Committee.

◆ Na Keiki Law Center in Hawaii celebrated its first birthday on July 7, 2000 with a birthday lu’au. The Committee was able to assist with the start-up of this program and wishes to congratulate it on completing its first year.

◆ Committee Director, Catherine Krebs, has moved from Massachusetts to Washington, D.C. Her new information is:

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Washington, D.C. 20003
(p)(202) 547-3060
(f)(202) 547-3064
Her e-mail is the same:
catherinekrebs@prodigy.net
Please make a note of this new information.
Zero Tolerance (con't from page 4)

by the Advancement Project, and the Civil Rights Project of Harvard University, June 2000) More devastating than the large numbers is the great number of effects on the individual children who are the victims of this intolerance. Students have their course of study interrupted even by just a short suspension—a disruption which is even more damaging to a child who feels he has done nothing to deserve the punishment. Many school codes require referral to law enforcement for certain infractions which, regardless of whether they are formally prosecuted in court, cause arrest records to follow these children through adolescence. Finally, racial disparities are becoming clear with black students making up 17% of the student population, but 3 1% of all expulsions for the 1997-1998 school year. (Table 2, 1998 Elementary and Secondary School Civil Rights Compliance Reports, Office for Civil Rights, U.S. Department of Education) This disproportionate application of zero tolerance to children of color illustrates the failures of the system which is neither as blindly intolerant as it claims, nor as encouraging of education as it promises.

Students and parents unprepared for hearings

In the lead case of Goss v. Lopez, the United States Supreme Court secured the right of students to at least “minimal due process” in suspension hearings, and a higher standard of protection in expulsion proceedings. (In Goss v. Lopez, 419 U.S. 565 (1995), the court distinguished between a suspension which is removal from school for no more than 10 days, and an expulsion which authorizes the removal from a regular program for up to 2 years). Yet these protections are unknown to most students and parents. Most students and parents do not know what their rights are regarding the receipt of adequate notice, the right to counsel, and the opportunity to question witnesses. Few parents or students know that they can bring a lawyer and witnesses in support of the student’s account of what happened. Fewer still know that the Federal Rules of Evidence may be enforced to keep irrelevant and improper information from the decision-maker.

Even families who know that they can bring advocacy assistance to these hearings have little access to legal representation. In many of the largest metropolitan cities, few clinics and legal service organizations are available to represent children in these types of proceedings. In Chicago, for example, the public schools have claimed to have conducted over 2200 hearings in the 1999-2000 school year. (The Chicago Public Schools provided this expulsion data to the Northwestern University Legal Clinic in answer to a request under the Freedom of Information Act, July 2000. This data represents a 200% increase over the previous academic year.) Only two free clinics were available to provide representation for less than 75 of those 2200 children. In smaller cities and towns, only the hiring of private counsel will allow a family access to legal representation. In light of the growing number of expulsions nationwide and the public fear of school violence, the need for representation in these areas is at crisis level.

Fortunately, the attention brought to these issues has encouraged professionals from many fields to examine the effects of zero tolerance and other school discipline policies. Children’s organizations, legal clinics, community organizations, political groups, school boards, local school councils, community leaders and families are becoming interested and active around the effects of zero tolerance in our schools. In Chicago, for example, children’s advocates have partnered with the private bar to work on behalf of children who would otherwise have no access to legal representation in their expulsion hearing. Volunteer attorneys from such prestigious law firms as Baker & McKenzie and Latham & Watkins have worked with the Northwestern University Legal Clinic to represent children in expulsion hearings, guide families through school discipline problems and negotiations, and examine the expulsion system with an eye toward reform. In other parts of the country, the barriers to justice for youth facing expulsion, including the lack of case law or regulations, are ripe for challenge by the private bar. Interested attorneys can become involved in this work by volunteering for children’s advocacy agencies listed in the ABA’s Directory of Children’s Law Pro Bono Programs online at www.abanet.org/litigation/committee/childrens_l/publications.html or by contacting the Children’s Law Committee by phone at (202) 547-3060.

The work done by children’s legal advocates in this area has proven that fairness for students and safe schools are not necessarily competing concerns. They must both be components of any system of school discipline. Achieving both requires able advocates, considered opinions and measured tolerance.

Angela Coin, Director of the Children’s Law Pro Bono Program at the Children and Family Justice Center of Northwestern University Legal Clinic, represents children in the juvenile justice division of the Cook County Juvenile Court and in expulsion hearings against the Chicago Public Schools. She can be reached directly at a-coin@nwu.edu