Last December, the Washington State Supreme Court issued a landmark ruling in the case of *Braam v. Washington*, 81 P.3d 851 (Wash. 2003), recognizing that foster children have rights protected by the United States Constitution.

The case, brought on behalf of more than three thousand foster children who had experienced three or more placements while in foster care, was litigated for several years prior to the State Supreme Court ruling. The tort claims of the named plaintiffs were settled and, at trial, only injunctive relief was sought.

The plaintiffs argued that the state had engaged in a number of practices that were unnecessarily harming children who were already victims themselves. These practices included:

1. **Unnecessary multiple placements**;
2. **Inadequate training and support of foster parents to be able to provide proper care for children in the plaintiff class**;
3. **Denial of necessary mental health care (assessments and treatment)**;
4. **Placement in unsafe settings (state offices, detention, homes of sex offenders and violent offenders)**; and
5. **Unnecessary separation of siblings**.

The State argued that children in foster care do not have rights under the Federal Constitution. Moreover, the State continued, if the Court granted the children constitutional rights, those rights were no greater than that of an incarcerated adult. The State Supreme Court rejected these arguments entirely providing a seminal case for child advocates.

“[A]t its core, foster children have a substantive due process right to be free from unreasonable risk of harm, including a risk flowing from a lack of basic services, and a right to reasonable safety.” *Id.* At 857

The case is not over, having been set for retrial in September because of errors in the jury instructions, but the effect of the case and the lessons learned by both sides are already becoming clear.

**What’s the harm?**

Multiple foster care placements are universally condemned as harmful to the emotional, mental, and (continued on page 3)
It is a pleasure to write a column about a law firm’s success in representing children who have been detained by the INS. Before getting to the law firm’s work, a little background is needed.

Every year, approximately 5,000 unaccompanied minors come to this country and end up in the custody of the INS. Most of these children are put in detention centers or what you and I would call jails. These children are fleeing virtually every type of human misery that is found in the world – slavery, prostitution, forced service in the armed forces, genital mutilation, etc.

After the children are detained, they must appear in an immigration removal proceeding at which the INS is represented by counsel. The children have no appointed counsel which means that their chance of success is close to zero. The stakes for the children could not be higher. If they receive asylum, they can stay in the United States; if they do not, they are returned to their native country.

In 2002, this Committee asked law firms who are active in the Section of Litigation to volunteer to handle these cases. Shook, Hardy & Bacon responded, and since then lawyers at that firm in eight cities have devoted over 2,000 hours representing children. Earlier this year, the Florida Immigrant Advocacy Center presented its annual law firm award to Shook, Hardy & Bacon for work representing immigrant children. It is an honor that was well deserved.

If you or your firm want to get involved in this important work, please contact the committee or Christopher Campbell, chair of the subcommittee that deals with immigration work. He may be reached at Christopher.Campbell@LW.com.

Geoffrey Vitt is a partner at Vitt & Rattigan, PLC, in Norwich, VT.

Marguerite Gualtieri is a staff attorney at the Support Center for Child Advocates in Philadelphia, PA.
The Constitutional Rights of Foster Children (continued from page 1)

psychological development of foster children. At the trial, a state regional administrator admitted that multiple placements can be “emotionally devastating.” Furthermore, a state study found that the “cycle” of multiple placements fundamentally undermined attempts to provide a consistent environment wherein attachment to caregivers could be nurtured.

One of the plaintiffs described how, due to the 34 different homes she was in between the ages of three and 17, she developed serious mental health problems. She called every one her foster parents “Mom and Dad,” despite knowing that the homes were temporary. She saw the numerous social workers assigned to her approximately every nine months, or when she was about to be moved, despite a then-existing requirement that social workers see children under their care every month (since then, it has been lengthened to every 90 days). She never joined school activities because she was never in one school long enough. She only went on one family vacation. Due to her changes in placement, this special education student was frequently pulled out of her classes and placed in new schools and new classes (often in the middle of a course). After fifteen years in foster care, she turned 18 and “aged out” of the system, an independent adult with no family whatsoever.

The precursors to multiple placements are equally as damaging. The failure to assess and address mental health needs appropriately can be catastrophic. There is a very high prevalence of serious emotional disorders among abused and neglected children. An expert in Braam testified that more than 50 percent of Washington’s foster children have demonstrated such a high level of emotional disturbance that they were indistinguishable from the children confined at the state hospital.

While state law (and professional child welfare standards) mandate assessments within thirty days of entry into foster care, the State consistently fails to carry out these assessments in a timely and appropriate manner. Treatment is often worse. Numerous studies throughout the years have documented how mental health services have been delayed, denied and designed without any thought towards outcomes.

The State’s case relied heavily on the lack of foster homes. A state administrator admitted that “a lot of placements” are chosen simply because they are the only beds available. Each year, the State loses 2,000 of 6,000 foster parents, causing it to place children in “[in] appropriately matched” homes. The State failed to address that many of its own practices such as its failure to prepare and support foster parents to care for their foster children - led to a dearth of available foster homes.

It is a vicious cycle. The State engages in desperate measures to place children, and puts them with foster parents who are extremely unprepared and under-informed. These improper placements, together with inadequate foster parent support and a lack of services for foster children, lead, in turn, to more unnecessary placement changes.

This practice of placing foster children wherever there is a bed available led to placements in the state’s own offices, jail cells, the homes of sexual predators, adult mental hospitals and detoxification facilities, and homes with licensing or other safety issues. In what the State described as an act of “desperation” to find any bed for a child, siblings are often split up from each other and placed in separate homes, sometimes a few miles away, sometimes on opposite ends of the state. While sometimes a good reason exists for this, often the only reason is that not enough homes exist.

The results of those placements on the children were horrifying, whether manifesting themselves in short-term physical harm or lasting emotional damage. After trial, the court enjoined those practices, and the State appears to have ended some of them even though the injunction was vacated.

These conditions, presented at trial, resulted in a jury deliberating for only five hours before it came back with a verdict that found that the State was violating the Constitutional rights of foster children in the class. The trial court entered an injunction, which has now been vacated pending a second trial, mandating the state to remedy the conditions.

**Cause of action**

By the time the case went to the jury in the late Fall of 2001, the judge had dismissed all of the plaintiffs’ causes of action except one. The plaintiffs had sought to show that the State had abdicated its responsibilities under federal law, state law, and constitutional procedural due process.

Revised Code of Washington (RCW) 74.14A.050 required the assessment of foster children and the development of effective programs to meet their needs. RCW 74.13.250 and .280 required the training of and provision of information to foster parents. The federal statute, 42 U.S.C. §675, a section of the Adoption Assistance and

(continued on page 4)
The Washington Supreme Court should apply to foster children (from professionally accepted standards) that the state substantially departed from adults, and that the lower standard required more protection than incarceration with the plaintiff's that foster children

However, the Supreme Court agreed with the plaintiff's that foster children required more protection than incarcerated adults, and that the lower standard (that the state substantially departed from professionally accepted standards) should apply to foster children.

From where will the money come?

The plaintiffs are going after the wrong people, the defendant Department of Social and Health Services has declined on numerous occasions. The elected citizen legislature is to blame for any harm to the children, the argument goes, for it is that body which decides how to fund the foster care system. Therefore, according to the defendant, the legislature's failure to fund the child welfare system allows the State to escape liability and allows it to violate the rights of children for whom it is caring. The Supreme Court disposed of this argument, explaining that a "Lack of funds does not excuse a violation of the constitution and this court can order expenditures, if necessary, to enforce constitutional mandates." Id. at 862-63. The Supreme Court unanimously held that the trial court can order the State to expend the funds necessary to protect the rights of foster children.

Can this litigation be brought elsewhere?

The establishment of rights for children under the substantive due process clause is not new, but it is far more common to see substantive due process used to protect the rights of parents whose children end up in out of home care. While this is also an important focus of litigation, it is becoming increasingly clear that many state foster care systems continue to be in crisis despite broad acknowledgement of the underlying issues. The recent federal audit of state foster care systems has revealed that most, if not all states, are falling short of meeting the needs of kids in their care. Where states are unwilling to make needed changes to protect foster children, litigation under substantive due process protections is clearly available as a tool, whether to address a number of systemic issues or specific institutional failures. For example, a guardian ad litem sued the state of Arizona on behalf of a child who was sexually assaulted at a foster care facility. Weatherford v. State, 81 P.3d 320 (Ariz. 2003). The Arizona Supreme Court, although applying a "deliberate indifference" standard of liability, clarified that the State need not have actual information that a placement is dangerous to invoke Constitutional liability. The Court held that Constitutional liability can be established when a state worker "ignore[s] information indicating that the placement will result in danger to the child or refuses to obtain information that, if considered, would reveal a danger to the child." Id. at 328-29.

Undoubtedly, litigation over foster children's rights is a blunt tool, and may take decades to show results. But in states whose systems have, for decades, harmed children who were already victims, such an approach is not only critical, it is perhaps warranted by lawyers' duty to zealously represent their clients.

As the head of the Washington state foster care system ironically noted after the federal reviews were completed, "This is a moment in time to really push the reform agenda." (Johnathan Martin, DSHS gets failing grades in U.S. review of child safety, Seattle Times, Feb. 19, 2004, at www.seattletimes.com). Child advocates in all states should heed her wisdom.

Casey Trupin is a staff attorney with Columbia Legal Services in Seattle. Washington, Trupin also directs a clinic for at-risk adolescents and homeless young adults directed at increasing safety and stability through civil legal services.
by providing ongoing education to
the State’s children’s lawyers. Sec-
ondly, we are interested in replicat-
ing the Resource Center concept in
other jurisdictions.

The Resource Center operates
with a small staff. We currently
have one full-time Program Man-
ger, an experienced child welfare
lawyer who is responsible for the
substantive work of the Resource
Center as well as general program
oversight. A part-time Administra-
tive Assistant is responsible for the
operations of the office including
coordinating the production of pub-
lications, coordinating trainings,
bookkeeping and related adminis-
trative tasks. We utilize law stu-
dents as research assistants and to
assist in the production of publica-
tions and training materials.

Continuing Education

The Resource Center seeks to
accomplish its first objective of
providing continuing education in
several ways. We are active in pub-
lishing practice-oriented materials
for attorneys, judges and social
workers involved in child protec-
tion and related cases. We provide
technical assistance of various
types to individuals and policy
making bodies, and we provide
training curricula and training
seminars for various professional
groups.

Publications

The Resource Center publishes
various materials helpful to the
child advocates. Several years ago
we compiled the Child Welfare
Law Source Book (Source Book)
specific to Michigan law. The
Source Book is intended to be port-
able so that lawyers can carry it
with them as they go about their
work in children’s homes, in
agency offices, and in the court-
room. The book contains the Child
Protection Law, the Juvenile Code,
the court rules relating to juvenile
cases, the Indian Child Welfare
Act, the Michigan Rules of Evi-
dence and child protection specific
jury instructions. We update the
Source Book as the law changes.

In conjunction with the State
Bar of Michigan’s Children’s Law
Section, the Resource Center pub-
lishes the Michigan Child Welfare
Law Journal (the Journal). The
Journal is intended to be a quar-
terly publication, with each issue
focused on a particular topic such
as child development or the Indian
Child Welfare Act. We recently
obtained a stream of funding from
the Governor’s Task Force on
Children’s Justice, which adminis-
ters Michigan’s Children’s Justice
Act funds, to support this publi-
cation for the next two years. We
publish fairly short articles (10-20
pages) that primarily address prac-
tice issues which we believe will
help lawyers to improve their rep-
resentation of children.

The Resource Center also pub-
lishes a monthly newsletter, the
Michigan Children’s Law Update
(Update), that summarizes any
new appellate cases, changes in
legislation and any new court
rules. We also bring to practitio-
ners’ attention research from pro-
fessions including medicine and
social work that we believe will
helpful in the day-to-day handling
of child related cases. The
“Question of the Month” is a regu-
lar feature in the Update that re-
ponds to questions that the Re-
source Center’s staff receives from
attorneys, judges, and social work-
ners in the field. The Update also
provides a convenient means of
publicizing upcoming trainings as
well as relevant publications to
members of the Bar.

The Resource Center’s staff also
participates in the production of spe-
cial publications. For instance,
Michigan’s five law schools have
established a consortium for profes-
sional development called the Insti-
tute for Continuing Legal Education
(ICLE). The ICLE publishes a two-
volume treatise entitled Michigan
Family Law, the Sixth Edition of
which is currently nearing publica-
tion. The Resource Center’s staff
has for each of the last two volumes
written the chapter of the treatise
addressing child protection cases as
well as the annual chapter updates.
In 2003, our staff authored the an-
nual delinquency chapter update as
well.

Other special publications in-
clude co-authoring Guidelines For
Achieving Permanency In Child Pro-
tection Proceedings, a step-by-step
guide to Michigan Child Protection
Proceedings for lawyers, judges and
social workers, and the Child Protec-
tive Proceeding, Juvenile Justice, and
Adoption Proceedings Benchbooks.

The purpose of these various
publications is to provide a range of
products of various levels of detail
that provide a steady flow of infor-
mation to lawyers handling child
related cases in Michigan.

Technical Assistance

The Resource Center maintains
an active technical assistance pro-
gram for practitioners from law and
the allied professions. Technical as-
sistance may be provided to individ-
ual practitioners, agencies, or policy-
making bodies.

Attorneys, judges, and casework-
ers regularly contact the Resource
Center with questions regarding
cases that they are handling. We
assist these individuals by discussing

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trial or pre-trial preparation strategies, offering relevant case citations, or researching and drafting memoranda regarding the issues that are confounding the practitioner. When we encounter interesting or unique questions, we publish the answer in the "Question of the Month" of the monthly newsletter described above in order to make it available to a wider audience.

We provide individual agencies with data compilation, assessment and policy recommendations. For example, we recently wrote a 38-page analysis for the state’s public child welfare agency which was accompanied by perhaps 200 pages of supplemental materials which included several recommendations regarding the handling of child welfare cases. Our staff also provides technical assistance to policymakers and policymaking bodies such as legislative committees, the State Child Death Review Advisory Committee and the federally mandated Citizen Review Panel. This form of technical assistance may include written analyses of bills, testimony or compilations of the law regarding various issues impacting children’s welfare.

**Training**

The Resource Center maintains an active program for providing training to child welfare professionals. We do this in a number of ways. We sometimes approach training as an entrepreneurial enterprise, sponsoring training conferences entirely on our own. When doing so, we rent space, produce materials, advertise and conduct the training seminar entirely on our own as a means of raising funds to support the Resource Center. More frequently, we work with one or more partners—such as the State Bar of Michigan’s Children’s Law Section or county bar associations—to produce training conferences. When approaching training in this way, we may provide all of the training or we may provide a portion of a broader training program. Our staff has developed a series of day-long case hypotheticals in which we walk through a factual scenario from the time the case is referred to children’s protective services, to court involvement at preliminary hearing, and to supplemental petitions to terminate parental rights. We have found that practitioners are particularly interested in frequent updates regarding the ever-evolving law as it relates to children, case law development, changes in legislation and newly adopted court rules.

Over the past eight months we have written a new curriculum for the Michigan Family Independence Agency’s use in training new child welfare workers through its Child Welfare Institute. We have also worked with Professors in the School of Social Work providing the legal component of interdisciplinary training programs funded by Title IV-E training grants. We are currently working on our third grant. Our first federal training grant involved interdisciplinary training for handling complex child welfare cases involving comorbidity—that is, child protection cases with mental health, substance abuse and domestic violence issues—within the context of the Adoption and Safe Families Act as it has been implemented by individual states. (The materials we developed for this training are available on the University of Michigan School of Social Work’s website: www.ssw.umich.edu/icwfp.)

For the second training grant, we provided instruction regarding substantive federal and state child welfare law as part of a wider training in supervisory skills for public child welfare supervisors. Our thinking in doing so is that it is essential for such supervisors to understand the requirements of the law if they are to supervise front line workers regarding their compliance with those laws.

We are currently in the first year of a five-year federal training grant regarding recruitment and retention of public child welfare agency staff. As with the supervisors, our belief is that increasing workers’ substantive knowledge of the legal system that is such an integral part of their day-to-day work will improve competency and, in turn, job satisfaction and help to reduce turnover.

**Starting a Resource Center**

For the reader interested in starting a Resource Center, here are some things to think about. Our Resource Center was established as part of a large public university’s law school. This is by no means the only possible organizational framework for a resource center. Other models that may work equally well could include a free standing non-profit organization, an office within a legal services program or connected to the administrative arm of your state’s court system, or within a *pro bono* attorney recruitment program. How other resource centers are established, structured and funded, will depend upon the particular circumstances of that community, organization and the persons involved.

**Funding**

Funding is a constant concern, and one that must be addressed from the earliest stages of planning.

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Knowledge of foundations with and interest in funding children’s programs—national, regional, and local, will be most helpful. Our single largest source of funding has been private philanthropic foundations, first the Kellogg Foundation and, more recently, the James and Lynelle Holden Fund, a Detroit area foundation that has provided both general operating funds and funding for discrete projects.

Having leaders from state and local bar associations, judges’ associations and the business community actively involved will also be important. In the early years of the Resource Center we maintained an advisory board that consisted of representatives of each of these constituency groups, in part to work as liaisons to these different groups.

Currently the Resource Center is funded by a combination foundation grants, university support, fee for service (charging for training programs, charging for more complicated and time consuming technical assistance), selling the products we produce (we make a modest profit from selling the Source Book and subscriptions to the Michigan Children’s Law Update), and federal and state grants (because we are a university based center, these grants pay a percentage of staff salaries).

Depending upon the structure of your resource center, you may negotiate with landlords for reduced rents as well as other service providers for various discounts. Developing relationships with law firms may also be an important source of both funding and concrete forms of assistance (e.g., access to computer based legal research). We have found that developing relationships with judges is also important because they sometimes have the ability to sponsor training. A couple years ago, Michigan’s State Court Administrative Office provided local courts mini-grants to use as the local judiciary thought best to improve their handling of child protection cases. Some courts invested in computer equipment, other hired additional staff. A number of judges choose to provide training to their child welfare lawyers, and the Resource Center provided much of that training.

While the Michigan Child Welfare Law Resource Center provides no direct services to child clients, it aids Michigan’s children by helping their lawyers to be more well-informed and better advocates. To learn more about the Resource Center, visit our website: www.law.umich/childlaw or contact us at (734) 998-9191.

Frank E. Vandervort is the Program Manager of the Michigan Child Welfare Law Resource Center and a Visiting Clinical Assistant Professor of Law at the University of Michigan Law School, where he teaches in the Child Advocacy Law Clinic.

**Tips on Preparing Caseworkers to Testify** by Frank Vandervort

Testifying can be a difficult and intimidating experience for caseworkers who are unfamiliar with the adversarial environment of the courtroom. They often experience the courthouse as a hostile environment where every effort undertaken to assist a client may be critically analyzed in the most confrontational manner. This type of discipline is at odds with most caseworkers’ training in cooperative working environments, collaborative problem solving, and strength based professional practice. Putting in the time to become acquainted with the caseworker-witness to understand her or his anxieties and to prepare the witness typically pays off when the witness performs in a way that helps to prove a case on behalf of the child client.

**The First Rule**

When providing testimony in the courtroom, it is critically important that caseworkers understand that the most important rule is to be prepared. There is no substitute for doing the exacting and sometimes tedious work of preparing a case for the courtroom.

**Understanding the Legal Process**

A caseworker’s effectiveness as a witness will improve if they understand the legal process generally as well as the specific issues the court is addressing in a particular hearing. Usually child protection cases move through the legal system in a predictable fashion, from preliminary (shelter care, emergency removal) hearings, to pretrial conferences, to trial, to periodic reviews, to permanency planning, to reunification or termination of parental rights hearings. At each stage of this process, the court must answer one or two specific questions. For example, at a preliminary hearing the court typically has to answer two questions, whether to permit the child protection petition to proceed toward

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Tips on Preparing Caseworkers to Testify (continued from page 7)

trial and whether to remove the children from the parental home.

Many caseworkers, especially those with less experience, may not have an in-depth understanding of this process, the point in the process at which they are asked to testify, or the impact their testimony may have on the court’s decision-making at a specific hearing. Helping caseworkers better understand the legal process and how their testimony fits into the overall process of the case can help them organize their testimony to focus on what is important at that particular stage in the proceeding, thus maximizing their impact upon the court. When possible, children’s attorneys should, if local law and ethical practice permit, meet with the caseworker before a hearing to prepare the worker’s testimony and to outline the nature of the hearing and the decisions the court must make at the conclusion of the hearing. The attorney will want to suggest topics for testifying, which may include things such as what services were offered, how the parent and child responded to those services, the nature and extent of parent-child contact, and specific recommendations for the hearing if recommendations are appropriate.

The Facts

The child’s attorney should clearly communicate to the witness how critical good, fundamental, factual preparation can be to the outcome of the hearing. The attorney will want to convey to the caseworker the importance of knowing facts such as the date on which the agency became involved in the family, the services that were provided to preserve the family, or, if no such services were provide, why, the date the children entered foster care—and should consider reviewing them with the caseworker before the hearing.

The worker should be advised to review the agency file and have a general sense of specific case details, be able to locate them in the file, or have a sheet of notes to which she or he can refer. For example, if a parent’s failure to provide drug screens upon the worker’s request will be an issue at the hearing, the worker will need to be able to testify to the specific dates on which screens should have been provided, whether the screen was provided on each of those dates, and, if not, the parent’s explanation for the failure as well as the worker’s response to the parent’s rationale.

Know the Agency’s Policies and Their Impact on the Hearing

Sometimes agencies have internal policies that will impact how the caseworker presents testimony. For example, some agencies do not permit their caseworkers to bring the case file to court. If this is the situation, it will be important that the child’s attorney know this and prepare the caseworker to testify with this in mind. It may be helpful in such a case for the caseworker to make notes to be referred to during testimony.

The Rules of Evidence

In many jurisdictions the rules of evidence applicable to child protection proceedings vary depending upon the stage in the proceeding. As part of preparing the witness, the attorney should discuss with the caseworker the relevant rules of evidence. The attorney may need to discuss difficult evidentiary issues, such as the use of tender years hearsay exceptions. Doing so will help the advocate and the caseworker to have a mutual understanding of what evidence can be offered for the court’s consideration. It will also allow the attorney to develop plans for how important information will be put before the court. Do the applicable rules permit the caseworker to testify directly regarding a particular piece of evidence? Will the caseworker need to provide documentary evidence of one or more pieces of information? Will another witness need to be called to present the evidence? Caseworkers, who often have only a working knowledge of the rules of evidence, may have misconceptions about what they may say during a particular hearing. The child’s lawyer should guide the worker to a more complete understanding of the evidentiary issues at the particular hearing.

Helpful Tools for Testifying

Lawyers can often improve the testimony of their witness by becoming familiar with the person’s background, expertise, experience, or lack thereof. For instance, in some jurisdictions a caseworker can be deemed an expert at some or all stages of a child protection proceeding. Reviewing local rules and practices with the caseworker will help the worker prepare for this possibility. It may be helpful for a worker to prepare a resume outlining education (including continuing education), work experience and related matters for presentation to the court in an effort to convince the court that it should accept the worker as

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Announcements

♦ Children in Florida are one step closer to gaining greater access to legal services after the state’s House Subcommittee on Highway Safety and House Transportation Committee each unanimously approved a plan to sell specialty license plates entitled “Kids Deserve Justice.” Administered by the Florida Bar Foundation, the license plate revenues are expected to produce between $1.5 and 2 million per year for organizations that provide legal assistance to children who are disabled, abused, or neglected. Brennan Center E-lert 4/30/04

♦ The Houston Bar Association has a new section on its Web site that provides information and resources on law-related topics for children, teens, parents and educators. Called "KidZone," the pages may be accessed at www.hba.org by clicking on the KidZone icon. The section includes information on law and legal education, safety and links to helpful resources.

♦ The ABA Annual Meeting will be held August 5—10, 2004 in Atlanta, GA. The Children’s Rights Litigation Committee will be co-sponsoring a program at the Meeting entitled "Justice Over the Rainbow: State v. Dorothy Gale, et al., The Art and Importance of Storytelling in the Courtroom," to be presented on Friday, August 6, 2004. For anyone who goes to trial, the program is not to be missed.

WANTED:

Content for the Children’s Rights Litigation Committee Newsletter

Topics for articles can include:

- Unique or innovative children’s law projects or clinics
- The experience of children’s pro bono attorneys
- Information of interest to children’s lawyers or pro bono attorneys

Please contact our editor, Catherine Krebs at 202-547-3060 or catherinekrebz@prodigy.net if you have an idea for an article, or if you would like to write an article, but do not have a topic in mind.
Tips on Preparing Caseworkers to Testify (continued from page 8)

an expert in some aspect of the case.

Visual aids can assist the trier of fact in understanding the facts of a case. Testimonial aids and demonstrative evidence can be excellent tools to show what services were offered to family members, when they were offered, how they were responded to, and what effect they had.

Connecting Up Facts and Recommendations

Caseworkers at times make recommendations that seem disconnected from any facts in the case. For example, while testifying regarding the facts of a case, the worker may make the statement that there is a lack of adequate bonding between parent and child and that the parent is developmentally delayed. Later in the testimony, the worker may recommend an intensive, long-term, hands-on parenting skills class. If the facts—parental developmental delay and an assessed lack of bonding—are disconnected from the recommendation, it may not be understood why this particular service is being suggested: “Because the mother is mildly developmentally delayed and has not adequately bonded with the child, I am recommending that she attend a long-term, hands-on parenting skills class.”

Caseworkers fulfill an educational role for the trial court, but workers and children’s lawyers should not assume that because the judicial officer hears and understands the facts as presented, that the same conclusions or recommendations will directly follow. Also remember that an appellate court may need to review the record of the trial. Caseworkers often do not understand the need to make the record explicitly clear as to each point in every case, and that, therefore, nothing should be assumed.

Final Words of Wisdom

It is always helpful to remind caseworkers of basic rules regarding testifying:

• Dress and act professionally at all times.
• Be scrupulously honest, do not shade the truth to help your client or your case, doing so will only destroy your credibility.
• Avoid jargon. If you use it, explain it.
• Listen carefully to each question. If you do not understand a question (or are at all unsure) say so.
• If you don’t know the answer, say so.
• If the question asks for an opinion outside your ability to answer, say that you are not qualified to answer it.
• Strive to appear rational, thoughtful, and objective. It may be helpful to take a moment to think about each question before answering it, doing so will enhance your credibility.

If it would be helpful to expand upon an answer, do so. On the other hand, do not provide a long answer when a short answer will suffice.

Conclusion

Very often, children’s lawyers and caseworkers have common goals in a case. The practical realities of child welfare legal practice may require the child’s lawyer to fulfill the role of preparing the caseworker to testify. In accepting this responsibility and making a conscious effort to prepare the caseworker, children’s attorneys can better serve their clients.

Frank E. Vandervort is the Program Manager of the Michigan Child Welfare Law Resource Center and a Visiting Clinical Assistant Professor of Law at the University of Michigan Law School, where he teaches in the Child Advocacy Law Clinic.

Learn about children’s law programs around the country and find opportunities to volunteer to represent a child by visiting The Directory of Pro Bono Children’s Law Programs at www.abanet.org/litigation/committee/childrens_l/publications.html
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