CHILDREN'S RIGHTS

Children's Rights Litigation Committee
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Healing Trauma and Building Resiliency: Ramsey County's Runaway Intervention Project

By Kathryn Santelmann Richtman

As I sat at counsel table waiting for the hearing to begin, I glanced over at Jessie (not her real name) sitting just a few feet away, next to her lawyer. She was tugging at the sleeves of her sweatshirt, pulling them down so that they covered not just her arms but most of her hands. She looked so small sitting there, as though she wanted to shrink into herself and disappear. This last time, Jessie had been on the run for over two months. Even though she was barely 14, Jessie had quite a history, and she was a "cutter"—inflicting superficial cuts on her arms and legs just like so many of our runaways. My heart sank as I thought about what that sweatshirt was probably covering up—scars both visible and invisible.

This wasn't the first time we'd tried to intervene. Jessie had been on the run before, and we had tried to connect her with the Intensive Services component of Ramsey County, Minnesota's Runaway Intervention Project (RIP). She'd met Judy Rogni, the advanced practice nurse (APN) assigned as her case manager, a few times. But Jessie ran again before much of a connection could be made. This time, as I told the judge that my biggest fear was that Jessie didn't know how special she was and that I was afraid

Continued on page 12

Give Peace a Chance: A Guide to Mediating Child Welfare Cases

By Jennifer Baum

Would you like to speed up your cases, achieve more satisfying results for your clients, and cut back on needlessly polarizing motion practice? Since its introduction in the 1980s, child welfare mediation has helped attorneys do just that by facilitating resolutions in child protective disputes more quickly, less contentiously, and with more acceptance from stakeholders than its courtroom alternative, adversarial litigation.

If you've handled dependency cases for any length of time, you are already familiar with the crushing caseloads, emotional volatility, and high-stakes decision-making that are the hallmarks of child welfare litigation. In a growing number of jurisdictions, attorneys are increasingly turning to mediation to help move these difficult cases forward.

Mediation Success Story from Queens, New York

In his article, "Child Protection Mediation: A 25-Year Perspective," 47 *Fam. Ct. Rev.* 609 (2009), Judge Leonard Edwards from California describes "the angriest woman I had ever seen in my courtroom": "She walked into the court aggressively, looking around at everyone angrily with disgust. She refused to talk with the attorney who had been appointed to represent her and ignored the court assistant who tried to explain what the court proceedings were all about." However, a few days later, the judge observed a complete reversal of the hostility. After

Continued on page 16

IN THIS ISSUE

2 Message from the Chairs
3 Counting All Children: ABA Conference Focuses on Truancy
8 Secretary of Education Addresses Section of Litigation at Fall Leadership Meeting
10 Stories from Juvenile Court: Improving the Justice System for Children

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ABA AMERICAN BAR ASSOCIATION Section of Litigation

MESSAGE FROM THE CHAIRS

We have been very busy planning the goals for the Children's Rights Litigation Committee for this year. A special thank-you goes out to all members who have devoted their energy and time to assist in this planning process and who will help to ensure the successful outcome of the Committee's activities. We encourage the participation of all Committee members—there is much work to be done to protect the rights of the most vulnerable.

One of the many important goals of the Children's Rights Litigation Committee is to continue to strive for diversity in every aspect of the Committee's operations. Because membership is one of the most important elements of a functioning body, we encourage the participation of diverse members on the Committee. Other efforts by the Committee include cosponsoring programs with other Committees such as the Minority Trial Lawyer and the LGBT Litigator Committees, identifying diverse topics for programming, as well as submitting articles for publications that target minority lawyers in hopes of engaging their interest in children's law and our Committee.

Other moves toward achieving our ambitious diversity goals consist of compiling a list of all minority bar association publications. Speakers on our panels will be diverse, and we will ensure that the minority bar associations are invited to the Committee's programming. The Committee's newsletter articles will include issues that are sensitive to diversity such as disproportionate minority confinement. These articles will be made available to minority bar publications.

These efforts are the starting point of the Committee's commitment to ensuring diversity in every aspect of the Committee's operation. We are interested in hearing your thoughts regarding our approach to this very important matter. Specifically, ideas about diverse programs, articles, and relevant resources would be greatly appreciated.

While diversity is a very important goal of the Committee, we must also ensure that the relationship between our working group and our members is a seamless integration of activities, policy advocacy, and services. Therefore, all of your ideas and suggestions are welcome regarding how the Children's Rights Litigation Committee can support you and, in turn, serve as an invaluable resource for the goal that we all share: to improve and have a positive impact on the lives of children in our legal system.

Starting in spring 2011, *Children's Rights Litigation* will be available solely as a digital publication. It is extremely important that you send us your email address if you want to continue to receive the newsletter. If you are a member, please log on to MyABA at www.abanet.org/esubscription to make sure your email address is current, or contact our Committee director at krebsc@staff.abanet.org and give her your email address. If you are a representative of a children's law center that receives this newsletter, it is essential that we have an email address for your organization so that you can continue to receive it. ■

Counting All Children: ABA Conference Focuses on Truancy

By Laura Faer and Catherine Krebs

In the United States, it costs three times more to imprison a person than to educate a person, proving Frederick Douglass was right when he said, "It is easier to build strong children than to repair broken men." Still, a child drops out of school every 26 seconds. In New York City, only 28 percent of black males will graduate from high school; in Chicago, the statistics are only slightly better with 48 percent graduating. From 1995 to 2007, the number of petitioned truancy cases processed by juvenile courts went up by 67 percent (from 34,100 cases in 1995 to 57,000 cases in 2007). Benjamin Adams, Charles Puzzanchera & Melissa Sickmund, *Juvenile Court Statistics 2006–2007*, (National Center for Juvenile Justice, Mar. 2010), *available at* www.ncjjservehttp.org/ncjjwebsite/pdf/jcsreports/jcs2007.pdf. Likewise, every year from 2000 to 2007, truancy cases accounted for the largest number of adjudicated status offense cases that resulted in an out-of-home placement—more than ungovernability or runaway cases. *Id.* at 86.

On September 20, 2010, in Washington, D.C., judges, lawyers, policymakers, advocates, and education scholars from across the nation gathered at the ABA-sponsored Legal and Educational System Solutions for Youth: A Leadership & Policy Forum on Truancy & Drop Out Prevention. As Judge Judith Kaye, one of the panelists for the opening plenary, stated, "We have a problem, but we also have an opportunity."

Conference conveners wanted to put a spotlight on truancy and responses to truancy because research has shown that student absences are an early warning sign of academic failure and an accurate predictor of school drop-out or push-out. Research from a nine-city study of excessive absence in early elementary school has shown a strong correlation to later poor achievement and dropping out. Hedy Chang & Mariajosé Romero, *Present, Engaged, and Accounted For: The Critical Importance of Addressing Chronic Absence in Early Grades*, (National Center of Children in Poverty, N.Y., Sept. 2008), *available at* http://nccp.org/publications/pdf/text_837.pdf. In fact, by the sixth grade, chronic absence is a clear predictor of drop-out; educators can predict who will drop out 80 percent of the time just by reviewing attendance and course credit data. In Baltimore, nearly half of all chronically absent sixth graders during the 2002–2003 school year dropped out of school prior to graduation. By the ninth grade, attendance more accurately predicts whether a student will drop out than eighth grade test scores.

The principal question for conference attendees was: If we can predict who will drop out at such an early stage, what can we do to stop the epidemic?

Providing a framework for a solution-oriented discussion, plenary panelist Sue Fothergill, director of Baltimore City School's Attendance Counts Initiative, presented some innovative ideas being piloted in Baltimore for district-wide solutions. Setting out a theme that was reinforced throughout the day, Fothergill explained that the school system is now focused on recovery, intervention, and prevention, instead of punishment and legal intervention, which have not worked. When they realized that attendance could accurately predict drop-out, education leaders in Baltimore partnered with researchers at Harvard Law School, among others, to study and understand the extent of the problem. They then identified 100 public and private partners to serve on an attendance task force. Task force members quickly focused on prevention and intervention. With such a range of partners at the table, resources could be targeted to address barriers facing families, such as instability and mobility, homelessness, lack of transportation, and healthcare.

Fothergill also explained that the school district knew that it needed to educate its key stakeholders and create a marketing campaign to engage parents and students on the importance of attending school. Finally, the district committed to end its practice of using punitive out-of-school suspensions to punish lack of attendance and, instead, is focusing on a problem-solving, data-centered approach.

"Since chronic absence is often a signal of family or community distress, schools should use data on absences to allocate preschool and early resources, and provide free tax preparation and tax credit outreach, and target health, housing, and other resources," said Fothergill. By way of example, she noted that educators often forget that asthma is the number one medical reason that children do not go to school. However, once the problem is identified, schools can reduce truancy by training staff and obtaining services to address the core medical concerns.

Fothergill also shared several of Baltimore's universal strategies, based on proven practices, which include the following:

- Provide effective and engaging instruction.
- Invite family participation from the outset.
- Build an early warning system that uses multiple measures of attendance, including suspension.
- Establish a school-going culture, but recognize that the basis of good attendance is having a good school to attend.
- Follow up with parents the same day

on every absence and make person-to-person contact.
- Where absenteeism is high in a particular school, listen to students, parents, and teachers to learn what would help.
- Offer attendance incentives.
- Individually assess and provide community supports. Create a service-rich plan for students who have been chronically absent in prior years that includes special activities to increase a feeling of belonging, wrap-around services, and case management.
- For students who are missing a lot of school, increase interventions. Conduct a home visit, assign a mentor for daily check-in, invite the family to the school attendance hearing, and as a last resort, conduct a court-based student attendance hearing, preferably through family court.

As a result of this coordinated and focused campaign, Baltimore City's chronic absence and habitual truancy rates are declining, particularly in elementary and middle school.

Fothergill said that Baltimore's effort to target absences has also extended to suspensions, which are really forced absences of a school-created nature. Baltimore targeted its high suspension rate, recognizing that sending children home just puts them further behind and makes them far more likely to drop out. Fothergill explained that the district sat down with advocates from the American Civil Liberties Union of Maryland and others and took a hard look at the discipline code. Removing absences and truancy from the code as suspendable offenses and asking tough questions about the number of young people removed from school for defiance behaviors like acting out or talking back have reduced Baltimore's aggregate suspensions from 23,000 to 9,000 in a two-year period. Fothergill emphasized that the transformation requires ongoing, persistent monitoring and analysis; a team in Baltimore's headquarters consistently reviews suspension data school by school and provides additional support and training to schools with disproportionately high numbers of suspensions.

Fothergill shared Baltimore's policy that, in all instances, schools should "offer positive supports to promote school attendance before resorting to punitive responses or legal action." The theme of punitive discipline or legal remedies as a last resort was echoed by other panelists, who concurred, in spite of the recent trend toward zero-tolerance policies, that withholding learning as a punishment is wrong and ineffective. Plenary panelist and moderator Dr. Ken Seeley also brought attention to the "three As": Attendance, Attachment, and Achievement. He emphasized that truants and dropouts are the same people and that punishment with failing grades or removal from school for failure to attend is ineffective at changing behavior and

BREAKOUT SESSIONS

The Youth and Caregiver Intervention Program breakout session laid out some fundamentals for a truancy and drop-out intervention program. These included (1) parent education and engagement, including a challenge to states to implement the parent involvement compacts in No Child Left Behind and make schools more welcoming to parents; (2) community acceptance campaigns, aimed at educating parents on the importance of school and attendance; (3) consistently monitoring and analyzing attendance trends and changing policies to respond to the need; (4) using restorative justice and positive behavior intervention practices to keep struggling students in the classroom; and (5) rethinking court involvement as a voluntary participation program and using best practices to help connect families with resources. The court system should be a last resort, and judges should deny petitions where it is clear that the school system has not made sufficient efforts to resolve the problem before engaging the justice system.

The second breakout session focused on the role of schools, courts, and the community in intervention and prevention of chronic absenteeism among our nation's youth. The breakout group had a lively and productive seminar, which led to the group's finding of a three-pronged approach to solving the truancy epidemic. This approach could be called the three Rs: Report, Response, and Redirect. First, there needs to be periodic auditing of attendance and exclusion practices. Second, there needs to be a service-based approach to chronic absenteeism and individualized case management for children and their families. The backdrop behind this prong involves the need for an "early-warning system" for children in kindergarten through the 5th grade and a "retrieval process" to assist 6th through 12th graders, which would identify the factors contributing to chronic absenteeism. This prong necessitates an intrasystem program, which would help to identify at-risk and truant youth, and provide a multitude of services through one linking and functional agency. These services would include legal assistance by attorneys, guidance from the courts, and community programs that will diminish the risk of truancy among youth. Last, the youth should be provided the skills necessary for implementing schools' and students' best practices through peer mentorship programs, civic

addressing the root causes of truancy.

In addition to Baltimore's approach to reducing removals from school, conference attendees highlighted effective alternatives to suspension that do not force children out of school, including restorative justice and school-wide support for positive behavior. These positive approaches provide mechanisms for teaching good behavior and pro-social attitudes, and they involve parents and students as part of the solution. In Los Angeles, for example, the school district has put in place a school-wide positive behavior support (SWPBS) policy, which requires alternatives to suspension to be implemented and focuses on positive and pro-social teaching of behavior strategies instead of knee-jerk removals. *See, e.g.*, *Redefining Dignity in Our Schools: A Shadow Report on School-Wide Positive Behavior Support Implementation in South Los Angeles, 2007–2010*, *available at* www.publiccounsel.org/publications?id=0134. *See also* Dignity in Schools Campaign, *Model School Code* (a framework based on four fundamental human rights: the right to education, the right to participation, the right to dignity, and freedom from discrimination), *available at* http://dignityinschools.org.

Another plenary panelist, Dr. John Jackson from the Schott Foundation for Education, discussed the significant disparities in the provision of educational resources for students of color, and reminded participants that when we create schools with sufficient resources and high-quality instruction, students will attend. He emphasized that the first priority should be to realign resources and funding to target students in schools that lack sufficient, high-quality resources and teachers. He focused on what many researchers have called the "push-out" factors—structural and procedural policies and practices in schools that force high-risk youth out—including zero tolerance discipline policies, poor-quality schools and instruction, and the lack of resources to address health and mental health issues. Russell Rumberger & Sun Ah Lim, *Why Students Drop Out of School: A Review of 25 Years of Research*, California Dropout Research Project, Policy Brief 15 (Oct. 2008), *available at* www.slocounty.ca.gov/AssetFactory.aspx?did=18524.

Building on this critical piece, a number of attendees talked about the need to create an "Opportunity to Learn" funding system, which provides extra funding per pupil to schools that serve children with greater needs. Jackson also highlighted New Jersey, where the long-standing Abbott Consent Decree, which requires high levels of funding for schools and funding on an equitable basis, has resulted in a 65 percent African-American graduation rate—the highest in the nation. Reinforcing Baltimore's model, which includes an individual planning and team approach for chronically truant students, Jackson proposed that children who are disengaging from school need a student recovery plan that includes engagement, negotiated rule making, and positive sanctions, all as modeled in the nation's youth courts. The overall concern is that the system is "punishing youth that have already had punishing lives." We want to encourage children to stay in school and succeed, and our policies need not prevent them from accomplishing this.

The Laws, Policy and Practice Strategies Section breakout session looked at key statutory changes necessary to promote best practice intervention and prevention programs, and recommended that statutory requirements should include compulsory attendance age requirements for students from 5 to 18 years old; better definitions and accounting measures; identification of new metrics for assessing success (not just looking at math and science scores, but suspension, truancy, and drop-out rates as well); and incentives for schools to continue to educate and engage at-risk populations. The group looked at core elements for a successful intervention program and recommended that core elements should include evaluation (data must be collected and analyzed to understand program efficacy); communication and education; intervention and prevention recovery; and individualized assessments. To encourage prevention practices in schools, principals need to be supportive of prevention to create a culture or climate from the top down. In addition, schools should be connected to law firms, corporations, and other private community partners to motivate kids for future careers. Last, a collateral consequences paper needs to be drafted on truancy.

The Data Evaluation, Program Funding and Sustainability Strategies breakout session focused on the collection and use of data on these issues. The group recommended uniform definitions of terms like "truancy" and "suspension." In addition, the group concluded that funding needs to be tied to attendance data so that schools value attendance. Having money follow the student and creating incentive programs tied to attendance place more accountability on the schools and may help them focus on attendance. Also, more flexibility in funding is required to maximize limited resources effectively. Truancy data need to be publicized to engage teachers and the public on this issue. More research needs to be done on what works in truancy intervention and prevention and on what is currently being done in schools. In an important note, the group emphasized that evidence-based research needs to be done correctly.

academic support and mentoring, as well as nonacademic supports such as health interventions for identified barriers to attending school.

Recent participants in the City Year program, which recruits young people to provide a year of paid service, is deploying more than 350 corps members to District of Columbia public schools in the next five years to help schools focus on children who are at risk of dropping out. Two corps members shared their strategies for reengaging students who are not attending regularly, including developing personal relationships with the students, listening to them, calling home when students are absent, and working one-on-one with a family to address barriers to attendance, like a sick parent, lack of transportation, or unemployment.

One of the most marginalized populations, students returning from the juvenile delinquency system, requires a targeted approach, particularly because many schools unlawfully refuse to enroll them immediately. Participants discussed best practices, including funding transition centers that have resources and an advocate or attorney to ensure that young people are immediately reenrolled and in a placement where they will succeed. They also highlighted the Maya Angelou School in the District of Columbia as a school that is effectively serving children who have not received necessary help in traditional school settings. "Youth with learning disabilities or an emotional disturbance are arrested at higher rates than their non-disabled peers and studies of incarcerated youth reveal that as many as 70 percent suffer from disabling conditions." Sue Burrell & Loren Warboys, U.S. Dep't of Justice, Office of Juvenile Justice and Delinquency Prevention, "Special Education and the Juvenile Justice System," *Juv. Just. Bull.* (July 2000), *available at* www.ncjrs.gov/pdffiles1/ojjdp/179359.pdf.

A theme echoed throughout the day was that we need a drastically different and innovative approach to solve this problem. Among other things, participants acknowledged that the incentive system for schools is flawed. Schools win the most points under No Child Left Behind and other state accountability programs for high test scores and receive little to no credit or incentives for helping struggling or truant students.

Ryan Reyna from the National Governors Association highlighted Oregon as an alternative model. The state pays school districts to reengage truant youth. Similarly, Colorado has created a "reengagement rate," giving funding-related points to schools that effectively bring students back to school. Another solution is to stop funding schools based on a one-day count of attendance, which gives no incentive to keep kids in school after "norm day." Participants and panelists agreed that a daily attendance and funding model would encourage schools to focus efforts on keeping students in the classroom.

One of the most marginalized populations, students returning from the juvenile delinquency system require a targeted approach.

Although attendance troubles do not generally become pronounced until later grades, panelists also emphasized that early education is proven to help ensure that students enter school prepared to learn and is one of the biggest indicators of school success.

Noting that we spend three times more on prisons than on education, Judge Kaye called upon researchers in the audience to develop a method to quantify the cost of truancy to the nation. She and others noted that in Missouri, judges are now provided with the actual cost of a particular sentence to the state prior to imposing it. The cost analysis highlights the great imbalance—too much of a focus on punishment and not enough on prevention. To push our legislatures to target resources at the problem, Judge Kaye noted that an economic study of this type can be persuasive, even in a society that does not appropriately value prevention. "Government, by design, responds to immediate problems rather than preventing them. Illustrating the cost of ignoring prevention might be helpful in changing perspectives," Judge Kaye noted.

Overall, panelists and participants agreed that we cannot silo the many issues that keep our children from attending schools, and that a network of coordinated systems is needed to keep children engaged and attending.

Where Do We Go Now?

In the afternoon, conference attendees broke into planning groups to share ideas on legal, policy, funding, and court-related solutions (see sidebar). The ABA Commission on Youth at Risk will be putting together a report from the forum and, once that is published, may draft a new policy resolution for the 2011 ABA Annual Meeting in Toronto.

More information will be available once the ABA Commission on Youth at Risk completes its report from the forum. The Children's Rights Litigation Committee will post a link to that report from its website once the report is complete.

To get involved in drop-out and push-out issues, please contact the Children's Rights Litigation Committee at krebsc@staff.abanet.org to join our Education Subcommittee. ■

Laura Faer is the directing attorney of the Children's Rights Project with the Public Counsel Law Center. Catherine Krebs is the committee director of the Children's Rights Litigation Committee.

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Secretary of Education Addresses Section of Litigation at Fall Leadership Meeting

By Jason Hicks

U.S. Secretary of Education Arne Duncan gave a speech entitled "Attorneys and the Higher Calling" to approximately 300 leaders of the ABA Section of Litigation at the Section's Fall Leadership Meeting October 2, 2010, in Chicago, Illinois. Duncan, who was accompanied on stage by students and teachers from Chicago Public Schools, including charter schools such as Urban Prep Academy, the Young Women's Leadership Charter School, and the Legacy Charter School, explained how the Department of Education is trying to emulate leading litigators who not only defend the rights of clients, but also have a higher calling and "strive for a more just society." In addition to ensuring that grants meet statutory and regulatory requirements and making effective use of taxpayer money, the department also has a higher calling—helping fulfill "the American promise of education as the great equalizer."

The Department of Education is working toward equity and equal opportunity by ensuring that low-income minority students aren't stuck in underperforming schools and working with school districts to get them the resources they need most, Duncan says.

Office for Civil Rights

One instrument that the Department of Education uses toward its goal of equal opportunity in education is the Office for Civil Rights (OCR).

"OCR enforces laws that protect students from discrimination on the basis of sex, race, national origin, and disability status," Duncan said. "It oversees Title VI of the 1964 Civil Rights Act, which prohibits discrimination by race, color, or national origin in public schools and in institutions of higher education that receive federal funds.

"Yet at the same time that OCR scrupulously enforces the law, it is the office in the department that has the capacity to challenge the status quo in the courts and in public schools when children of color, students with disabilities, and English-language learners are cheated of a fair chance at a good future.

"OCR issues policy guidance. It launches compliance reviews. It provides technical assistance. And it is the only office in the department empowered to withhold federal funds to schools and districts that persistently refuse to remedy discrimination."

Duncan outlined the OCR's plans for the future as well. "OCR will be issuing a series of guidance letters to school districts and postsecondary institutions throughout the year to address issues of fairness and equity.

"By the end of the year, we anticipate that OCR will have opened 50 compliance reviews in 50 districts to ensure all students have equal access to high-quality educational opportunities, including a college-prep curriculum, advanced courses, and STEM classes.

"OCR is also reviewing whether districts and schools are disciplining students without regard to skin color. To date, it has opened four investigations to examine if district discipline policies are being disproportionately applied to African-American boys.

"OCR will also look at the tough, stubborn challenges that continue to limit equal educational opportunity. They will be examining how schools, with a careful adherence to statutory and case law, can promote healthy diversity and reduce racial isolation. And they are looking at how to enhance educational equity, both in terms of the distribution of resources and the distribution of high-quality teachers. In education, as in law, talent matters tremendously. If we are serious about closing the achievement gap, we must first close the opportunity gap."

Innovation in Education

Duncan also stressed the importance of innovation in the realm of education, stating that the Department of Education should concern itself more with encouraging the replication of methods that work rather than simply monitoring for compliance.

"To seed innovation and replicate success, we must challenge the status quo whenever it fails to serves children," he said. "That is why, with a relatively small fraction of our total funding, we decided to create new, competitive programs to support state and local reform efforts.

"The $4 billion Race to the Top program challenged states to craft concrete, comprehensive plans for reforming their education system. The preparation of state plans required extensive consultation between governors, state education chiefs, state and local lawmakers, unions, and other stakeholders.

"Race to the Top represents less than one percent of the $650 billion we spend annually on K-12 education, but the response to Race to the Top was absolutely extraordinary, belying the skepticism about the potential for real change."

Duncan also mentioned the success of other prgrams, such as the Investing in Innovaction Fund (i3). "The $650 million i3 fund offered support to districts, nonprofits, and institutions of higher education to scale up promising practices," he said. "The Department awarded 49 grants in the competition, but nearly 1,700 applicants applied—by far the largest number of applicants in a single competition in the Department's history. Our aim is not just to fund grantees each year but to build a new culture of evidence-based decision-making for expanding successful reforms."

While the federal government can help incentivize and support innovation, the Department of Education is working with state and local leaders, as those sources are vital for any change in the status quo in public education, Duncan added.

"The great ideas for improving education are always home-grown," he said. "They come from and are applied by educators, principals, and district leaders, not from Washington. They come from those closest to where the real action is—in the classroom."

In particular, Duncan praised the states that took it upon themselves to design higher standards and assessments for career and college readiness. In the past year, 35 states and the District of Columbia adopted the Common Core standards in math and English, with additional states signing on over the next several months, he said.

In addition to the new standards, states also developed new assessments aligned with the Common Core standards as part of the Department of Education's $330 million Race to the Top assessment competition. "When these new assessments are in place for the 2014–15 school year, millions of schoolchildren, parents, and teachers will know, for the first time, if students truly are on track for college and careers—and if they are ready to enter college without the need for remedial instruction," he said.

Civic Knowledge

Another important aspect of education that needs immediate attention is the passing on of civic knowledge, Duncan explained. "Civic participation entails so much more than voting, although that is a vital first step," he said. "To succeed in the 21st century, students will need to know how to communicate with public officials, participate in their local communities, ask well-informed questions, and have a multicultural awareness grounded in the history of our nation. These skills are required to participate in a democracy, but they are also sought after by employers in today's global economy."

The Department of Education has made steps toward that goal, including proposing reauthorization of the Elementary and Secondary Education Act, in addition to a proposal to replace funds that go to directed or earmarked grants with a bigger pool of $265 million that will go toward strengthening the teaching of the arts, foreign languages, civics, and government, he said.

Achievements of the Law Community

Duncan applauded the law community's efforts to improve civic education in public schools, starting with the Mikva Challenge. "The Mikva Challenge seeks to move beyond your grandmothers' civics to what it calls 'action civics' by placing high school students in Chicago polling places, having them volunteer in political campaigns, letting them host candidate forums, and advocating on student issues with local politicians," he said.

Duncan also called out individual litigators for their efforts to help create a more equal educational system. "Jeanne Nowaczewski was a critical part of our management team at [Chicago Public Schools]—a champion for creating new schools for children and communities that had been underserved for far too long," he said. "I was so lucky to have Lisa Scruggs on executive loan to the school district, where she helped with our Renaissance Schools initiative. She is now the lead counsel in a constitutional challenge to Illinois's school-funding system. Shortly before her non-retirement retirement, Joan Hall helped establish the Young Women's Leadership School of Chicago. It has a special focus on teaching math, science, technology, and leadership development in secondary school to minority girls—and it is narrowing achievement gaps in math and science.

"At its 100th anniversary, the Sonnenschein firm could have thrown a fancy party to celebrate or taken its partners on a trip to Europe. Instead, with Don Luben's moral leadership, the firm donated a million dollars to start the Legacy Charter School. Five years after the elementary school opened, a small army of lawyers from the firm continues to help out at the school—tutoring, mentoring, serving on the board, and donating generously. The firm has strengthened the school, and the school has strengthened the firm."

Duncan encouraged litigators to think ambitiously about their role in public education.

"And I could not be prouder of what Tim King's students have accomplished," he added. "One hundred percent of the young black men who graduated from the school Tim founded, Urban Prep, were accepted to college. He took over a failing school. And working with the same students, the same families, the same neighborhood, the same socioeconomic challenges, the Urban Prep team reminded us all of the power of a great school."

Challenge for the Future

Duncan ended his speech by encouraging litigators to think ambitiously about their role in public education, and to not only serve their clients, but also "respond to the higher calling of the law" and address the injustice and inequality in America's educational system. ■

Jason Hicks is an associate editor for the Section of Litigation in Chicago, Illinois. To watch a video of Duncan's speech, visit www.abanet.org/litigation/media/duncan-video-1010.html.

Stories from Juvenile Court: Improving the Justice System for Children

By Catherine Krebs

Seventeen-year-old Aaron is standing in the corridor behind Courtroom No. 5 in Lake County, Indiana. He is normally an affable, thoughtful young man with a disarmingly charming smile that flashes readily. But today, Aaron's charisma has dissolved into paralyzing confusion.

The bailiff pops his head into the corridor and announces, "Two minutes." Aaron leans into the wall and gently taps the soft cushion of his hair against it. He's thinking. He's trying to unravel the threads of advice he's heard from his mother, the detention center's residential supervisor, his peers, and his attorney. Should he take the plea deal or go for the waiver to adult court? The question has been looming for weeks, and what he decides in the next few moments could affect his life for months and years to come.

His uncertainty is palpable. Jamie B, the residential supervisor for the Lake County Juvenile Complex (LCJC) offers calm words of support that he can do it—that he knows in his heart what to do.

This is a scene filmed by Calamari Productions, the only production company in the country with an ongoing State Supreme Court-granted right to film documentary case studies inside the closed confines of juvenile systems at large. Calamari Productions films not just the courtroom scenes, but also the scenes outside of the courtroom. This allows the viewer to follow Aaron through his detention and see him in discussions with the various people in his life. We have a unique window into Aaron's experience in the juvenile justice system.

Calamari Productions is currently working in Indiana, Florida, and California, with open invitations to film in several other states. The company films both juvenile justice and child welfare cases. When it comes to real-world documentation of how systems of juvenile jurisprudence and corrections function, the challenges that practitioners and administrators handle on a day-to-day basis, and the struggles that define the lives of at-risk kids and families, nothing compares to the video library Calamari Productions has amassed since beginning its work in this arena in the late 1990s.

Making Sense out of the Cacophony

Back in the corridor, it's clear that Aaron has many people urging him to take a specific path. Adults urge Aaron to take the plea deal and settle the issue in the juvenile system, where the focus is primarily on administering remedial services. They tell him, "Don't take the risk of going across the street." However, during Aaron's three months in detention, viewers also see his mother tell him repeatedly not to admit to anything he didn't do. It's clear to anyone watching that Aaron is unsure of what to do.

Outside of the courtroom we see Aaron face his attorney, but his eyes are fixed in some abstract distance, and his head is rocking gently back and forth. He seems to be weighing the only short-term benefit to crossing the street to the adult system, one not available to him at LCJC: While his charges are pending in the adult system, he could post a bond and go home while he awaited trail. At least temporarily, he would be free. But across the street, he would face two felonies that could be with him forever if things don't go his way.

In the more than 100 juvenile and family court hearings that have been filmed by Calamari Productions, one of the most ubiquitous reactions among the people going into court—kids and parents alike—is confusion about their rights, the possible outcomes of the hearing, and the variables that affect the decision they are about to make.

Anyone who has spent time observing the courts in action knows that the juvenile system can be a befuddling arena, even for those of us who grew up with the privilege of a solid education and socioeconomic stability that affords us a certain objectivity when taking it in.

Throughout Aaron's case, we see his attorney attempt to unravel the complicated turns the case is taking, the ramifications of Aaron's choices, and the possible outcomes of those choices. But we also see the influence of Aaron's well-meaning mother, the advice of his peers during many games of Spades, and the counsel of LCJC staff, who encourage Aaron to take responsibility for his actions and decide for himself what's in his best interest.

Aaron's case elucidates the opportunity we have to better introduce kids and families to the judicial process. Aaron's lawyer does his best to explain the process to him, but his counsel takes the form of brief meetings with a rapid-fire recounting of the latest details. His mother is not included in any of these discussions. In the end, Aaron's experience is one of many voices coming at him from all directions, each with its own message about what is in his best interest.

Extraordinary Access and Great Responsibility

When the Indiana Supreme Court granted Calamari Productions access to the juvenile courts throughout Indiana in 1998, the privilege came with a mandate that the content filmed be used not only for documentaries, but also for educational and training purposes. For

years, that meant distributing programs to anyone who requested them.

Currently, countless teachers and professors use DVDs of Calamari Productions' films, and the DVDs are stocked in several university and law libraries. State agencies, such as the Indiana Department of Child Services, use the material to teach on-the-job safety to their caseworkers.

Students will one day be lawyers, corrections officers, counselors, and judges, but most will start their jobs with very little, if any, real exposure to their new work environment. Juvenile court judges have been very frank about how terrifying that first day on the bench can be, to say nothing of the folks stepping foot for the first time in a facility aiming to detain or rehabilitate wayward youth. If students have the opportunity to study the actual work environment and performance of their soon-to-be colleagues, their career preparedness can be improved.

Forging Partnerships, Expanding Opportunities

In 2006, Calamari Productions began a partnership with Pearson Education that led to its material being incorporated in college textbooks, both as supplemental video and as written case studies that were incorporated into textbooks. That partnership continues to flourish, and earlier this year, Calamari released a 31-DVD catalog that covers a wide variety of court hearings, case studies, interviews, and correctional environments. This is a wonderful way to reach students, and it can also be used to train professionals already in the field.

Calarmari Productions has created Calamari Educational Media, an entity designed to better disseminate the content and make the video library available to a broader educational audience. While undertaking the monumental task of transferring the more than 2,000-volume library of physical tapes into a deployable digital archive, Calamari Productions began talking to a broader range of organizations, institutions, and individuals involved with education and the betterment of at-risk kids and families.

To serve a broad range of outlets—schools from K–12 to the graduate and law level; local, state, and federal institutions; educational media developers and publishers; community organizations and the nonprofit world; research institutions; and so on—the only solution that seemed to make sense was to create a central digital resource that could be accessed through different platforms suitable to the individual audiences.

In November 2010, through a partnership with Indiana University's Research and Technology Corporation (IURTC), Calamari Productions launched the Institute for Juvenile Court and Corrections Research. This entity couples the great potential of the fully digital video library with IURTC's acumen for technology-based development. With the institute as the clearinghouse for Calamari Educational Media, a network of innovators will work to apply this media to the endless endeavors that can benefit at-risk kids and families, as well as the professionals who work with them.

Far from Over

The bailiff comes from the courtroom. "It's time," he says. Aaron follows his attorney inside. He nods at his mother, seated in the gallery behind the defense attorney's desk, and she undoubtedly notices the anguish on her son's face. Like her son, Aaron's mother does not fully understand what's at stake given the options before him. Therefore, she maintains the principle that her son should not admit to something he did not do.

The judge reads the terms of the plea agreement and asks Aaron, for the record, if he understands them. Aaron says that he does.

As soon as Aaron's mother hears an affirmative come from her son, she stands, incensed, and walks out of the courtroom. She believed her son had accepted the plea deal, and, furious that he would defy her advice, she left. Aaron sees this and is clearly devastated as the judge states, "The record will note that his mother has left the room."

The judge then asks Aaron if he is reluctant to enter into the agreement. Aaron says nothing. The judge repeats his question, and again Aaron says nothing.

"Is there a reason you're refusing to respond?" the judge asks.

In a thin and cracking voice, Aaron earns the judge's exasperation when he responds with the question, "How would you feel if your mom walked out on you?"

With that, the judge takes the plea deal off the table and sets another date for a waiver hearing, thus barring any chance that Aaron could do what many felt was in his best interest, to see the case through in the juvenile system.

The producers at Calamari Productions wondered if Aaron and his mother would have had a greater understanding of the legal system to which they were subject and would they have entered the courtroom that day with greater clarity if better resources had been utilized while Aaron was in detention awaiting his final disposition. These are the questions that spur the production company into finding opportunities to share its unique footage.

It would be idealistic to say that Calamari Productions' video library is a panacea for this or any aspect of juvenile jurisprudence that stands to be improved, but the company's educational media initiatives seem to have the potential to make a real difference.

If you are interested in learning more about Calamari's work and educational media initiatives, visit www.calamariproductions.com, or contact Chip Warren at chip@calamariproductions.com. ■

Catherine Krebs is the committee director of the Children's Rights Litigation Committee.

Runaway Intervention Project

(Continued from page 1)

for her, I glanced over and saw the tears flow from Jessie's eyes. When I asked the judge to give Jessie one more chance with our Runaway Intervention Project, Jessie nodded and smiled a little. When the judge asked her what she thought, Jessie said that she wanted to work with "Nurse Judy" again. As I walked out of the courtroom with "Nurse Judy," one of three APNs assigned to the project, I asked her why Jessie was willing to cooperate. Smiling, Judy said:

> Well, when she went on the run, I sent her a few little cards trying to keep in touch. For Valentine's Day, I sent her one of those cheesy little Valentines you get in grade school with a little note telling her that I missed her in group and that I hoped she was ok. When I talked with Jessie right before court, she told me that when she came back home, she read my notes—and that I was the only one who wasn't mad at her.

This anecdote demonstrates what is so different about the RIP and why it works. Sexual abuse, sexual exploitation, cutting, burning, self-harm, binge drinking, drug use, mental illness, sexually transmitted infections, and pregnancy—these are the typical experiences of the girls enrolled in the RIP's intensive services component. How should systems respond to this level of trauma and self-injurious behavior? Ramsey County has chosen a unique approach—a public health model of intervention that includes individualized care for some of the most highly traumatized girls in our community.

After many years of witnessing the connection between truants and runaways, I was part of a team of professionals who came together in 2005 to create an intervention for young runaway girls that was long overdue in our jurisdiction. One of the strengths of this team has been the leadership of two experts, Laurel Edinburgh and Emily Huemann. Ms. Edinburgh is an APN from our local child advocacy center, Midwest Children's Resource Center. She has a strong background in both research and in providing health services to abused or neglected youth. Ms. Huemann is the director of our sexual offense services advocacy center and is experienced in designing and providing direct services to young victims of sexual assault.

The RIP's goal is to reduce the traumatic response to sexual victimization, increase family and school connectedness, improve young victims' health and protective factors, and build resiliency.

From her research, Ms. Edinburgh knew that the youngest runaways lack the cognitive developmental resources to avoid being victimized and that teens who are younger when they first run away are more likely to become involved in high-risk and health-compromising behavior, such as sexual exploitation, drug use, criminal activities, and violence. With this knowledge in hand, Ms. Edinburgh, assisted by Dr. Elizabeth Saewyc from the University of British Columbia in Vancouver, Ms. Huemann, and the other members of our team designed the RIP as a public health intervention. With grant funding, the RIP officially began in 2006 as a joint effort of the Ramsey County Attorney's Office, Sexual Offense Services (SOS), Midwest Children's Resource Center (MCRC), Hmong American Partnership (a community-based service agency), St. Paul Public Schools, and the St. Paul Police Department.

From the beginning, the specific goals of the RIP have been to reduce the traumatic response to sexual victimization, increase family and school connectedness, improve young victims' health and protective factors, and build resiliency. The overarching goals have been to reduce future risk and improve outcomes for runaway girls who have been or are at great risk for being sexually abused and exploited and, for those not identified as having been sexually abused, reduce the likelihood that they will be victimized. The approach has also included collaboration, early identification of risky behavior, and building on existing resources to provide services. From the beginning, we have also had a strong commitment to evaluate our results rigorously. Dr. Elizabeth Saewyc not only helped design this intervention but also has conducted quarterly and annual evaluations since the project began.

Runaways in Ramsey County, Minnesota

St. Paul, Minnesota, is the state's capital city and the largest city in Ramsey County. It has one of the highest concentrations of economically disadvantaged youth in the state. Every year in St. Paul, more than 1,700 youth are reported as missing or runaway, and about a thousand of these runaways are age 15 or younger. These numbers do not include the "throw-away children"—children not reported as missing by their parents or caretakers. These numbers also do not quantify the victimization and trauma experienced by these street-involved

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youth. According to Wilder Research (*Overview of Homelessness in Minnesota*, 2006), roughly one-third of homeless young people have been sexually abused. Moreover, most youth under 16 never receive money for sexual favors, but they admit to trading sex for transportation, food, shelter, and drugs. The RIP was designed to provide services to these highly traumatized runaway girls, but it also includes a component for those girls who are starting to disengage from school and show other risk factors for running away.

The RIP's Design

At-risk runaway girls are identified through information from a number of sources, including the child's school, the child's family, police runaway reports, and child welfare reports. Girls are screened for risk level by the project coordinator, who works in the Ramsey County Attorney's Office. Because the position is housed in the County Attorney's Office, the project coordinator is able to gather information from a number of sources, including police, school staff, and parents.

Girls who have some risk factors (e.g., truancy, running away to known friends or family, chemical use) may be referred to community-based services through the County Attorney's Office's established truancy program. These "moderate risk" girls may also be referred to an Empowerment Group conducted by a youth counselor from Sexual Offense Services. The Empowerment Groups are 10-week sessions held at the girls' school that focus on safe choices, healthy relationships, family issues, the risks associated with running away, and sexual abuse. A second 10-week session is offered to those girls who want to continue in the groups. These sessions focus on some of the same issues but also concentrate on developing leadership skills.

The most intensive services of the RIP are reserved for the runaway girls who have been sexually abused or exploited. These girls have many other issues as well: Chemical abuse, mental health issues, and physical health issues are only part of what these girls face. Girls enrolled in the intensive services track receive an in-depth medical assessment at MCRC and are then assigned to work with "Nurse Judy" or one of the other two APNs assigned to the project. The APNs work with each girl and her family for one year. The girls are enrolled in a weekly girls' group facilitated by a therapist experienced in working with runaway and homeless youth. Other services provided by the APNs are regular in-home visits, regular contact at school, assistance with school and family issues, connection to positive youth experiences—especially fun events—and mentoring. The APNs act as advocates, educators, and role models for these girls.

From 2006 through June of 2010, more than 1,300 girls were referred to some aspect of the program, and more than 250 girls received services from one of the MCRC APNs assigned to the project.

From 2006 through the end of June of 2010, more than 1,300 girls were referred to some aspect of the program, and more than 250 girls received intensive services from one of the MCRC APNs assigned to the project. A snapshot of the girls seen by these nurses underscores the importance of this work. From January through June of 2010, MCRC received 92 referrals. In looking at these 92 girls, we found:

- 61 percent reported cutting or burning themselves on purpose in the last year;
- another 13 percent reported cutting or harming themselves more than a year ago;
- 21 percent reported a suicide attempt in the past two years with 17 percent being in the last year;
- 48 percent reported smoking tobacco regularly;
- 70 percent reported marijuana use in the last year;
- 30 percent report binge drinking in the previous two weeks (this is one of most important predictors for teens going on to have long-term substance abuse problems);
- four girls had a positive pregnancy test—two of them did not know they were pregnant;
- about 20 percent of the girls had a sexually transmitted infection; and
- 34 percent of the girls reported symptoms that meet DSM IV criteria for substance abuse.

When I see these numbers, I know they tell only part of the story. The numbers can't possibly describe the potential of these young, vulnerable girls whom we have come to know through the RIP. But the statistics underscore the need for a public health approach. These young people can't recover if their medical, emotional, and psychological needs aren't being met. The community- and school-based services provided to the moderate-risk girls and the intensive services provided to the high-risk girls through the RIP all focus on reducing trauma and increasing resiliency.

Outcomes

Elizabeth Saewyc and Laurel Edinburgh conducted an analysis of the results from the first two years of the Intensive Services component of the RIP. This analysis was published in a peer-reviewed article early in 2010. E. Saewyc & L.

Edinburgh, "Restoring Healthy Developmental Trajectories for Sexually Exploited Young Runaway Girls: Fostering Protective Factors and Reducing Risk Behaviors," 46 *J. Adolescent Health* 180–88 (Feb. 2010).

The 68 girls enrolled in the RIP's Intensive Services component, the most severely traumatized runaway girls, were evaluated at 3, 6, and 12 months after enrollment. The results are extraordinarily promising. At the time of enrollment, these girls reported severe levels of sexual exploitation and assault, some reporting multiple types of experiences. For example, over one-third reported sexual abuse by multiple perpetrators at different times; over a quarter reported repeated abuse by the same person; and 10 of the girls had been prostituted. These girls also reported evidence of significant trauma. Nearly two-thirds were cutting themselves, over half reported suicidal ideation, 13 reported attempting suicide within the past year, most were not in school, and most felt disconnected from their families or any positive role model.

After six months to a year of working with an APN, the girls felt significantly more connected to school and to their families. All of them were enrolled and attending school, and most had higher educational goals. All reported significantly increased self-esteem, an improved ability to talk to their mothers about their problems, an increased connectedness to family, and lower emotional distress. They also reported improvements in risk behaviors: reduced suicidal ideation, attempts, or both; reduced use of drugs, including use of crystal methamphetamine, ecstasy, and cocaine; improved use of contraception; and a pregnancy rate of 6.1 percent—significantly lower than among sexually abused ninth grade girls in the statewide Minnesota Student Survey.

Incredibly, at 12 months, these RIP girls looked more like the non-abused group in the Minnesota Student Survey than their sexually abused counterparts. They were no longer different from nonabused girls in alcohol or drug use or condom use at last intercourse, and had significantly lower rates of suicidal ideation and attempts and better school connectedness than even nonabused girls. Moreover, those who had the lowest baseline of connectedness to school, family, or other adults; lowest self-esteem; and highest emotional distress actually improved the most.

But these numbers don't tell some of the best success stories. This past spring, we met with supervisors from the city and county Parks and Recreation Departments. Our goal was to get as many girls hired into their summer jobs program as possible. We were only able to get four girls hired this year, but the connections we made have resulted in commitments for additional spots for next summer. The reason more girls will be hired next year is the success of the four girls this year and the work they did to prove themselves. One of my favorite stories is of one young girl who worked as a lifeguard all summer. When "Nurse Judy" talked with her near the end of the summer, this young woman told Judy about the other lifeguards she'd been working with—all were attending college. She then asked Judy about college, where she could go, how to apply, and how she might pay for it. Up until that time, she had never thought about going to college and had very few plans for her future. Now she is not only interested in going to college in two years, but she has someone to help her figure out how to get there. She is not alone: This fall, five former RIP girls started at Century College in St. Paul. All of them had been runaways and truant; without the RIP, it is highly unlikely they would have finished high school, much less gone on for further education.

Conclusion

The RIP has provided help to hundreds of girls, including intensive services to over 300 teens. The bottom line is that by connecting these vulnerable and traumatized girls to services, reconnecting them to school, helping families provide better support, and providing positive opportunities for them to succeed, the professionals working with these girls help them to heal. That is why the RIP exists and why I, and so many others in Ramsey County, are committed to its continued success. ■

Kathryn Santelmann Richtman is cochair of the Juvenile Justice Committee of the ABA Criminal Justice Section and section chief of the Juvenile Prosecution Unit of the Ramsey County Attorney's Office. She also serves on Minnesota's Human Trafficking Taskforce.

If you are interested in creating a similar program, you should begin by consulting with nurses or other staff in your local child abuse or advocacy center, if one exists. The RIP was created organically through ongoing discussions among the professionals dealing with runaways. The RIP team included an advanced nurse practitioner, prosecutor, sexual offense program director, law enforcement officers, and social workers. Changes have been made along the way based on the needs of the girls and the capacity of partners to address the challenges within their organizations.

For more information, feel free to reach out to me, Kathryn Richtman, at Kathryn.Richtman@co.ramsey.mn.us or Laurel Edinburgh at the Midwest Children's Resource Center in St. Paul at Laurel.Edinburgh@childrensmn.org.

Mediating Child Welfare Cases

(Continued from page 1)

returning to the courtroom following a single mediation session, the woman was "a different person." She declared that the mediation "was a positive experience—the only one I have had in this entire process." *Id.* at 69.

My own office's recent experience with mediation, though less dramatic than Judge Edwards's, nonetheless bears witness to the same phenomenon: Litigants need to be heard. Litigants need to be understood. Litigants need to be respected. When they feel powerless and unheard, litigants become angry and withdrawn. When they feel that they are not invisible or completely powerless, progress can be made.

My law clinic, which represents children, requested a mediation to resolve several thorny permanency issues in a four-year-old case. The case involved four children under five years old who were in two separate non-kinship homes and who had experienced repeated removals and re-removals. There were no fewer than a dozen maternal and paternal relatives and contract foster parents in various stages of competition with one another for the kids; the parents were in and out of compliance with services; and there were a half dozen caseworkers in two states, two Queens County judges and a Queens County referee, three (or more) city attorneys simultaneously, two Interstate Compacts, and a hair ball of court dates, conferences, and agency deadlines.

As you might imagine, the communication failures among the (too) many professionals in this case were not just unfortunate; they were debilitating. Investigating caseworkers failed to communicate with family services caseworkers. Court clerks failed to identify critical information about the family, resulting in the case being erroneously split into two. Once the case was carved up, multiple decision-makers (two judges and a referee) independently created plans for the family's services, goals, and court dates. Caseworkers repeatedly failed to communicate with relatives, phone numbers went in and out of service, resources appeared and disappeared, siblings were separated. Long-term planning for the children seemed unimaginable because even short-term stability seemed completely out of reach.

By the spring of 2010, emotions in the case(s) were running high. We would eventually learn just how high around a big oak table in an overcrowded conference room tucked away in a corner of the Queens Family Courthouse. This was the mediation my office had requested.

When they feel powerless and unheard, litigants become angry and withdrawn. When they feel that they are not invisible or completely powerless, progress can be made.

To begin, the mediator noted that we were the largest mediation group he had ever hosted. There were caseworkers, relatives, parties, lawyers, law students, and two mediators. Methodically, however, our mediator made sure that every person was introduced and had an opportunity to say what he or she hoped to gain from the mediation. The introductions alone consumed a significant chunk of our reserved time, but our mediator quickly assisted those assembled in identifying common goals and individual needs. After a short while more, a turning point came when one of the relatives was able to voice her outrage at recent actions by one of the caseworkers. The caseworker in question had testified at an earlier court date that the "the paternal relatives were suddenly coming out of the woodwork." When this particular paternal relative repeated those words at the mediation table, she spat them out with disgust, adding "we're not cockroaches," wiggling her arched fingers across the table to mimic an insect. For this relative, all of the powerlessness and frustration she had experienced in this case over the course of several years was represented by the caseworker calling her a cockroach in open court.

For her part, the caseworker seemed genuinely surprised by this response. Stepping up, she indicated she hadn't intended to insult, only to defend herself. The most recent emergency removal of the children (from a paternal relative) had resulted in an overwhelming number of additional paternal relatives coming forward to request the children. She had not had time to investigate each of the relatives, she explained, and had felt attacked in court. But, perhaps most significantly, this caseworker would soon be seen holding back tears when describing the conditions under which she found the children living with their last kinship placement. She conceded that she felt partially responsible for their most recent maltreatment because she had cleared that home just a few months earlier. As for paternal relatives, it was just as obvious that this caseworker was now operating under the principle of "once bitten, twice shy." It was equally clear that she was doing so not out of some misguided sense of agency policy, but because she personally felt partly responsible for the latest neglect. Her voice cracked as she described removing the children, again,

from their family. It was humbling—the caseworker was not evil; she was human, and she cared about these children, too.

In this manner, the "cockroach incident" became the vehicle by which both sides were able to express their years of frustration, anxiety, and fear. The mediator allowed both sides to air their grievances fully. Follow-up questions were asked. Interruptions were turned away. And in the end, each side had a far more humanized view of the other: Having received the caseworker's apology and feeling heard at last, the paternal relative was now willing to work cooperatively with the caseworker; having aired her fears about child safety and her feelings of betrayal, this caseworker was now able to proactively explore a new paternal placement for the children. (Also, the agency attorneys agreed to reduce their numbers from three to two, and the split cases were eventually reunited before one judge who would hear the cases together.)

Total cost: three hours in a crowded room with water, cookies, and a skilled pair of mediators. Total savings: countless hours of drafting, filing, and appearing on emergency applications; untold numbers of court-ordered reports and investigations; and perhaps weeks or, more likely, months of litigation delay.

And there was another thoroughly surprising benefit from the mediation. Immediately following the mediation, the mother reenrolled in services for the first time in years and is now following through on all referrals and services; unsupervised visits are about to begin. The mother seemed to have no trouble reading the writing on the wall of the mediation room, even though she had not seen what was written on the courtroom wall for several years. I have since learned that increased parental compliance with services and participation in the litigation is not uncommon following mediation. It seems the mother, who said little but listened closely, found what she needed to hear in mediation as well. While this case is not yet completed, the mother has been granted a suspended judgment in the termination of parental rights case filed over the summer, and she is very close to getting her children back at last.

Why Mediate?

Child welfare mediation is a powerful tool. It can amplify the most underrepresented voice, efficiently slice away bureaucratic red tape, advance distant litigation goals, and unearth previously hidden options, all while circumnavigating the time trap of adversarial litigation. As an added bonus, mediation can also de-escalate simmering tensions by providing a safety valve for volatility (on all sides), empower marginalized players by "bringing them back to the table," and—without a doubt—alter the course of a family's history.

Child welfare mediation is growing in popularity but, unfortunately, not as quickly as mediation in other fields is growing. Child welfare lawyers who favor alternative dispute resolution (ADR) still face considerable institutional resistance to nonadversarial decision making. Many lawyers, it seems, are scared away from attempting to mediate all or part of a child protective case, believing that it is simply unsafe to negotiate child welfare issues outside the courtroom even though nearly three decades of experience has shown that children's safety is not compromised by mediation. *See* "Child Protection Mediation: A 25-Year Perspective," *supra*, at 75. The mere mention of mediation sends many child welfare professionals running in the opposite direction.

Historically, there has been strong resistance to the idea of mediation among lawyers. General opposition to consensus-based conflict resolution can be traced back to law school, where the focus has traditionally been placed on tools of the adversary system. Law school curricula are rich in litigation-related course offerings but have only recently begun expanding beyond negotiation basics. As demand for ADR increases in the lawyering marketplace, however, so too does employer demand for graduates trained in mediation and other consensus-based conflict resolution. As one commentator has observed, "effective negotiation and settlement skills are becoming increasingly central to the practice of law and occupy more of lawyers' real time and attention than adversarial trial lawyering." J. Macfarlane, "The Evolution of the New Lawyer: How Lawyers Are Reshaping the Practice of Law," 2008 *J. Disp. Resol.* 61. Remember that, in reality, only a small fraction of cases—civil or criminal—are ever resolved through trial; the rest settle with an agreement of one kind or another, some agreements brought about more skillfully than others. To meet the demands of a practice that is increasingly reliant on negotiation and settlement skills, law schools are offering more ADR courses, and more students are seeking them out. Today's law graduates are better trained in dispute resolution than ever before.

This is welcome news because mediation can accomplish much in the child welfare context. The National Council of Juvenile and Family Court Judges notes that mediation can remedy the "partial and incomplete exchanges of information" that take place in hallway conferences, by providing "all relevant parties . . . a full exchange of information." National Council of Juvenile and Family Court Judges, *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases* 133 (1995).

Mediation can also demystify the court process, which in turn promotes a better understanding of the benefits to be gained from more fully participating in the underlying litigation. Mediation is also felt by participants to be more friendly and less adversarial, with the mediator correcting for power imbalances, explaining acronyms and terminology, ensuring turn-taking, and so forth. "The active involvement of mediators can protect against imbalances of power between participants resulting from various levels

of skill, experience, professional status or cultural differences." *Id.*, app. B, at 134.

But are mediations "successful?" A 2009 survey reported that in the vast majority of cases, a full or partial agreement was reached. J. Kathol, "Trends in Child Protective Ends in Child Protection Mediation: Results of the Think Tank Survey and Interviews," 47 *Fam. Ct. Rev.* 116 (2009). Reaching no agreement on anything, according to the survey, happened only rarely. While mediation may never render litigation completely obsolete, it can and does eliminate the need for motion practice over many issues, even if the ultimate issue on the case is not resolved. *Id.* at 122–23.

Mediation may or may not be available in your jurisdiction. Mediation is not limited to model courts, but it is encouraged in them. There are currently 32 model courts nationwide. (The full list is available at www.ncjfcj.org/content/blogcategory/112/151.)

Why Does Mediation Work?

The literature of negotiation theory is rich, and a full treatment is beyond the scope of this article, but the essential difference between litigation and negotiation, say negotiation theorists, is that in litigation, the parties are placed into direct conflict with each other, generating polarization and negative emotions. These negative emotions distract the parties from their goals and interfere with consensus building. A negotiation, on the other hand, provides a "vent" for strong emotions, which, once aired, can be cleared to make room for more positive emotions. This allows the parties to work together with a third person to advance everyone's interests, which can lead to agreements. Your mileage may vary, but there is no doubt that negotiation does work in the child welfare context. The National Council of Juvenile and Family Court Judges put it this way:

> Mediation provides an avenue for revisiting past conflicts and issues which have created roadblocks to constructive communication and problem-solving. When such impasses are addressed and resolved, or even when they are merely validated, resistance and defensiveness are often reduced to a degree which permits settlement of some or all issues. Participants also find that negative preconceptions are sometimes significantly reduced during mediation discussions, thereby permitting consideration of options formerly ruled out or never considered. As another benefit of mediation, less resistance may ultimately be encountered in holding family members accountable for commitments they have made in a mediation process in which they have been active participants. *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, *supra*, at 134–35.

How Does Child Welfare Mediation Work?

Child welfare mediation is a facilitated, confidential process in which persons with an interest in the welfare of a family can exchange information and ideas with other persons about issues central to a court case. The purpose of mediation is to reach a voluntary agreement about some or all of the subject of the litigation. Judge Edwards, a retired family court judge from Santa Clara County, California, and a child welfare mediation champion since the 1980s, notes that "[m]ediation is not an exotic, complicated process. Mediation is about talking and exchanging ideas in an environment where the discussion is guided by a facilitator." "Child Protection Mediation: A 25-Year Perspective," *supra*, at 609. A mediation dialogue can involve the parties (parents, caseworkers, subject children), family members and family friends, kin and non-kin foster parents, guardians ad litem, advocates and attorneys, agency and service provider personnel, and community members, all coming together to propose and discuss ideas or tease out thorny issues, legal or practical.

Mediation is a voluntary process, though in some jurisdictions a court-ordered referral might jumpstart the process by requiring litigants to attend a mediation information session. Because participants self-select, they are generally more motivated to participate in the process. Mediation can seem time-consuming in its early stages, but in the end it can pay you back double. Two thirds of child welfare mediations last just one session, and four out of five sessions last between two and three hours. A quarter of all child protective mediations require two sessions. "Think Tank Survey," *supra*, at 119.

While rules governing courtroom access in dependency cases can vary from state to state, in mediation, the participants themselves decide who sits at the table. Age-appropriate children might be present. Just as in litigation, participation in decision-making through mediation can have a powerful impact on children's understanding of, and ability to contribute meaningfully to, the course of a case that is about them. Through mediation, subject children are heard, educated, and empowered to contribute to the decision-making process. Participating in mediation can also address children's feelings of powerlessness, anger, and despair over events over which they often have no control. As one author put it, "Denying the child a voice . . . reinforces . . . the lessons learned most thoroughly by abused and neglected children, that [they] should not expect to have any control over [their] fate." L. Taylor, "A Lawyer for Every Child: Client-Directed Representation in Dependency Cases," 47 *Fam. Ct. Rev.* 605 (2009) (citing Emily Buss, "Confronting Developmental Barriers to the Empowerment of Child Clients," 84 *Cornell L. Rev.* (1999)).

Mediation can tackle any number of subjects, from legal issues on the underlying case to the details of a visitation plan. The Think Tank Survey notes that "topics that were always on the table for discussion at mediations were living

arrangements, parental visitation, and permanency planning. Other topics covered in mediation were treatment plans, relinquishment, kinship care arrangements, adoption, and many other unspecified issues." "Think Tank Survey," *supra*, at 120.

A 2007 report by the New York State Office of Children and Family Services observed that child welfare permanency mediation benefits not just families but also the systems that serve them in the form of "heightened family engagement and empowerment; increased information gathering and sharing; joint decision-making; creation of comprehensive and creative agreements/service plans; increased family and service provider compliance; time and monetary savings for court and social services staff; and decreased time to permanency." *Child Permanency Mediation Pilot Project: Multi-Site Process and Outcome Evaluation Study* 3 (Mar. 2007).

Who Are the Mediators?

A child welfare mediator is a neutral third party with substantive knowledge of the local child protective system. The mediator wields no independent decision-making power but "facilitates the [mediation] process and provides the structure the group needs […], sets a tone of cooperation, demonstrates good communication and dispute resolution skills, raises unrepresented interests, and assists in reality testing possible agreements." *See* M. Giovannucci, & K. Largent, "A Guide to Effective Child Protection Mediation: Lessons from 25 Years of Practice," 47 *Fam. Ct. Rev.* 38, 43 (2009).

One New York State report noted that most mediators are employees of court-based mediation programs, though many mediators also hail from child welfare agencies or professional mediation organizations, or are trained community volunteers. New York State, for example, employs a combination of court-based staff, child welfare agencies, and professional mediators, depending on the county. (New York City uses the Family Court and the Society for the Prevention of Cruelty to Children; Albany uses Mediation Matters; Oneida County uses the Peacemaker Program; and Niagara uses Catholic Charities of Western New York, to name just a few.) *Child Permanency Mediation Pilot Project: Multi-Site Process and Outcome Evaluation Study*, *supra*.

Conclusion

Mediation skills among litigators are in demand and can be used to negotiate successfully in the mediation room, in the hallway, and in any other venue. Mediation can move child protective cases forward in ways that litigation often cannot, and much more quickly than motion practice. While no license or special training is needed to take part in a successful mediation (indeed, that is what the trained mediator is for), understanding basic negotiation principles can assist the dependency lawyer in overcoming institutional resistance to mediation and also in understanding the nonadversarial role of the mediation participant.

Perhaps the most important tip would be to seek opportunities to mediate the issues in your cases. Challenge your own preconceived notions about mediation and consider anew how best to develop strategies for court-involved families. Peace begins with dialogue, and mediators ensure that this dialogue is conducted safely and productively. Give peace a chance, and see what it can do for you. ■

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MEDIATION TIPS

Before heading into a mediation, consider submitting to the mediator (and circulating among counsel, the parties, or both) a mediation background memo. Such a document could be used as a road map to the mediation issues; at the very least, it informs the mediator and other parties of your client's views and needs.

Consider also meeting with the mediator privately and in advance of the mediation to share your objectives and your understanding of the roadblocks to achieving those objectives. (In New York City, mediators reach out to the parties and their counsel individually before bringing everyone together in the same room, so that they have an understanding of the interests important to each of the participants.)

In gaining the acceptance of reluctant participants, consider reminding them that mediation is a way to avoid ancillary litigation and speed up outcomes, not replace the underlying litigation (though the parties are certainly free to reach an agreement on the underlying litigation as well, if that seems possible).

Try to avoid using legalese and courthouse jargon in the mediation room. It exacerbates the power imbalance by functionally excluding persons unfamiliar with that terminology.

Try to be as inclusive as possible when drawing up a proposed participant list.

Make a genuine effort to use good listening skills in the mediation room. The more you listen, the more the other side feels (and is) heard, creating conditions conducive to consensus building.

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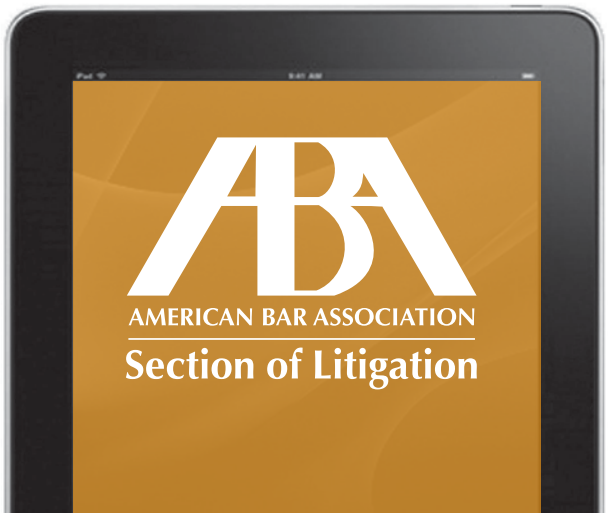

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