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ARTICLES

Combating Rise of Heroin Abuse in Child-Welfare System
By Debra Rothstein, Sarah A. Smith, and Adolfo Olivas

Heroin addiction is a grim reality in Ohio, as in other states. It is an especially addictive drug. Recovery is particularly difficult, if not impossible, without adequate resources and supports in place that are readily accessible. In Butler County, Ohio, attorneys/guardians ad litem appointed in a dual capacity to represent children in juvenile court in abuse, neglect, and dependency cases have seen an alarming increase in the number of child clients born addicted and in the number of parents succumbing to the drug’s pull.

The statistics:

- The National Center on Addiction and Substance Abuse at Columbia University states that children whose parents abuse alcohol and other drugs are four times more likely to be neglected and three times likelier to be sexually or physically assaulted.

- The number of children who are removed from their homes in Butler County because of heroin abuse has doubled since 2010. In 2010, 25 percent of the children removed from their home were removed because of parental substance abuse, specifically involved heroin. In 2012 that figure jumped to 52 percent. Overall, since 2010, Butler County Children Services has experienced a 30 percent increase in the number of families receiving services due to any kind of substance abuse.

The director who oversees Butler County Children Services said the threat to children due to heroin abuse is significant. By law, children’s services agencies have two years to reunite children with their families or place them for adoption—drug treatment is part of the process for reunification. Parents are subject to random screenings to make sure they are staying clean.

“Their parents just can’t get clean in the time frame that’s required, and there’s nobody able to care for them,” said Hamilton County’s Job and Family Services director. More children are being permanently committed to the child-welfare system because the drug is so addictive. Sheila McLaughlin, “Special Report: Children of the Heroin Curse,” Cincinnati.com, Mar. 25, 2013.

Heroin overdoses are also on the rise in Hamilton (Ohio, Butler County). In one two-week period, emergency crews responded to 18 drug overdoses, including five in one day. The percentage of overdose runs for the department has more than tripled since last June, according to the emergency medical services coordinator. More than 90 percent of the runs involve heroin. It’s a problem of epidemic proportions. Heroin has made a comeback as the drug of choice for addicts after federal and state authorities cracked down on the prevalence of prescription

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Case Example
A 12-year-old boy, Jon, calls Children Services to report that the electricity is off in his home. When the social workers respond, they are shown a water disconnect notice. The home was in the process of being condemned by the health department for several years of violations. During the visit, Jon and his siblings, ages five and six, tell the workers about the drugs the parents take in front of them. One of the siblings takes the worker to the room where the parents keep the syringes and heroin in plain sight and in easy reach of the children. The mother says she stopped taking heroin two weeks ago.

An abuse, neglect, and dependency complaint is filed by the state in juvenile court. The children are placed in a foster-to-adopt home, crying for their parents. Jon tells his attorney/guardian ad litem that he only wants help for his parents. He does not want to lose them.

It is now two years since the case was filed. A motion for permanent custody (termination of parental rights) is filed and the trial scheduled. The children have been in the same foster care home since their placement two years ago.

Three weeks before the permanent custody hearing, the parents finally complete an outpatient drug rehabilitation program. Prior to that, while waiting for the inpatient treatment program that the case plan calls for, they had some setbacks. They shoplifted items from a store to pawn and buy drugs, and spent some days in jail. The parents were in jail when the promised residential programs were ready for them. The position of Children Services is that the parents’ efforts to meet the case plan mandates are too little and much too late. The parents’ attorneys question the effectiveness of the services offered because the case plan called for drug assessments and treatment, but it took Children Services two months to provide assessments, and then four additional months to provide available treatment beds. Children Services claims budgetary constraints limit its ability to contract with more assessment and treatment agencies in order to provide more timely services. Children Services faults the parents for being in jail when the beds were ready.

During the course of the case, the children’s original attorney/guardian ad litem acknowledges a conflict between the children’s positions. Jon, now 14, remembering his life with his parents before their addiction, wants his real family fixed and to return home. The younger siblings, now 6 and 7, do not have the same attachment to their family and want to be adopted by their foster parents who want to adopt all three children. This conflict requires the separation of the attorney and guardian ad litem roles.

Jon’s attorney will argue to dismiss the permanent custody case as to his client and, based on the extreme time required for the parents’ assessment and treatment, will urge giving the parents more time to continue their rehabilitation. The younger children are very happy with the
nurturing the foster parents have provided every day since their placement. The foster family is willing to adopt. The attorney/guardian ad litem for these two children will recommend permanent custody and freeing the children for adoption. The likelihood is that the court will decide to terminate parental rights to all three children. An appeal will likely be filed, and the children will continue in foster care for another year without a final answer to the then-12-year-old Jon’s original question: Can you help my family?

Attorneys/Guardian Ad Litems Respond
Recommending termination of parental rights is a serious and profound responsibility for an attorney/guardian ad litem. Practitioners hope for, and work toward, reconciliation as the outcome if at all possible, if that is what the client wants, if that is what is in the child’s best interests. However, as a consequence of heroin addiction in parents who are involved with Children Services and juvenile court, and due to the lack of assessment and treatment programs to address addiction, attorneys/guardians ad litem for children in this community are frequently recommending permanent custody (termination of parental rights) and adoption.

One practitioner recently reported filing three reports and recommendations in favor of terminating parental rights in a period of three consecutive months. The practice of writing reports and recommendations in such numbers in a single county is disturbing, not because the arguments for permanent custody when heroin use is prevalent are legally difficult, but because they are too easy. Practitioners recognize the financial expense associated with providing drug recovery and prevention services for addicts who are likely to need such services more than once to become clean. At the same time, the community cannot keep losing families to this epidemic. The recommendations for permanent custody now seem inevitable, despite case planning for other outcomes.

The Family Drug Court
There have been helpful resources in the recent past that, even though they are no longer funded, might be able to provide insight into working with addicted parents that can be incorporated into new ways of approaching cases. One such resource, the Family Drug Court, was built on the premise of holding parents immediately accountable for drug abuse and providing them access to a consistent and readily available support system to promote staying clean.

In 2006, Butler County Children Services was awarded a multiyear grant to establish a specialized court docket. This docket was designed to address the needs of families whose ability to care for their children was impaired by substance abuse. The sheer number of parents abusing drugs depleted available resources to assist these families with timely and successful reunifications. The court wanted to see families reunited, not torn apart.

The Family Drug Court was created as a specialized, multidisciplinary court docket to address these concerns. The approach was to provide heightened support and accountability to parents combating addiction while increasing responsible parenting and ultimately protecting children from maltreatment.
A dedicated magistrate was appointed to oversee the judicial aspect of cases and to provide immediate intervention for support or redirection when needed. Children Services initially provided one dedicated and specially trained social worker to handle the case plan services, coordinate referrals, and monitor progress. A second worker was added later to accommodate the docket to two half days. An assistant prosecutor was present to represent Children Services, and a private attorney was present to represent the parent/drug court participant. An attorney/guardian ad litem was assigned to protect and advocate for the children’s best interests. In addition, designated substance abuse treatment providers, psychologists, and case managers attended and provided services to participating parents.

The specialized court was designated to provide accelerated support and services not available in the traditional court forum. Assessments for potential Family Drug Court clients were conducted within a few days to a week of the referral. The assessment was done wherever and whenever it needed to be conducted, which included jail, the offices of Children Services, and participants’ homes.

There were a specific number of treatment beds contracted by Children Services as part of the grant. For example, a residential facility may have contracted to provide one bed for a man and three beds for women. Those beds could be used only for Family Drug Court participants. There were specific numbers contracted in multiple treatment facilities and for different levels of care. There was no wait for intensive outpatient spots, and participants never had to wait very long for a residential treatment spot. If a delay did occur, arrangements were made for clinicians to provide individual sessions, even going to the jail to provide treatment, until the residential program was available. Most often, beds were available to a participant the same day the participant entered the Family Drug Court program.

Family Drug Court participants experienced more frequent and random drug screens than those involved in juvenile court. Screenings were also ordered to include more substances than standard tests. Family Drug Court team members met weekly and were able to share information across programs, allowing for a quick response regarding each case. Participants’ weekly meetings with the Family Drug Court team allowed for accountability as to the services delivered and accepted and as to individual treatment plans completed.

To be eligible for the Family Drug Court, the applicants had to be

1. an adult resident of Butler County
2. nonviolent
3. identified as being drug or alcohol dependent and, because of this dependency, unable to parent a child effectively or adequately
4. a parent or guardian of a child or children for whom Children Services has filed a complaint of dependency, neglect, or abuse, and the parties agreed to stipulate at least to dependency

5. a parent or guardian of a child or children determined to be at risk of placement outside the home or placed outside the home due to alcohol or drug issues

6. a parent who has given birth to a baby who has tested positive for drugs or a parent who, herself, has tested positive for drugs when the child was born

7. a parent who is not in compliance with his or her case plan when alcohol and/or drug treatment is part of the case plan

8. able to fully participate in weekly court hearings and recommended treatment sessions

9. not currently taking prescribed prohibited drugs or medications (Note: Some treatment programs do not permit clients to be in residential treatment if they are prescribed benzodiazepines.)

Participants worked through a series of phases as they transitioned or progressed through the program. These phases allowed the parents to process and understand addiction and the impact on themselves and their children, and to learn prevention skills. As the parents progressed, less accountability and monitoring were necessary. The three possible outcomes were as follows:

1. Parents who completed the entire program were successfully transitioned out of the program and reunited with their children.

2. Parents who did not complete the program for reasons outside their control were given a neutral discharge. In these cases, the Family Drug Court did not make a recommendation in the abuse, neglect, or dependency case as to whether reunification should or should not occur. The case proceeded.

3. Those who failed to complete the program, either because of repeated relapses or failure to abide by court orders, were discharged from the program. Their unsuccessful completion was noted in the abuse, neglect, or dependency case.

One example of a parent’s success, Mary’s story, is indicative of the Family Drug Court’s effectiveness in keeping families together. Mary entered the abuse, neglect, and dependency court system after the birth of her second child. She used a variety of illegal substances throughout her pregnancy, and as a result, her baby was born positive for drugs and suffered withdrawal symptoms. Both this baby and Mary’s oldest child were removed from her care and placed in foster care. Eventually, appropriate relatives were located to care for the children, but they were unable to remain in the same home. Mary was provided the traditional case plan.
services in abuse, neglect, and dependency cases. She was required to complete substance abuse treatment and counseling services. Her case was monitored in court about every three months. Mary struggled with completing these services, and ultimately her two children were placed in the legal custody of relatives.

However, around the same time that her case was winding down for her older two children, Mary became pregnant with a third child. Because Children Services was still involved with her case, they made a referral for Mary to participate in the Family Drug Court. Mary was suddenly subject to an entirely new approach to her case. She was required to come to court weekly, she had immediate access to residential treatment, and she had an entire team of people who held her accountable for her actions and provided support in her efforts to achieve and maintain sobriety. As a result of Mary’s participation in the program, her third child was born drug free. Moreover, this child was never removed from Mary’s care, which allowed for appropriate and necessary bonding and attachment to form between Mary and the child. And even more important, Mary was finally able to be successful in treatment and maintain her sobriety. Mary’s case for her third child was closed with her child in her care and custody. Mary is a perfect example of how the traditional abuse, neglect, and dependency court approach to the family crisis involving the first two children failed to address and treat the substance abuse problem adequately. The Family Drug Court provided Mary a real opportunity for family reunification.

During the years the Family Drug Court operated, budget cuts negatively affected operations. Notably, funding for court-appointed parents’ attorneys to attend the docket ended. In May 2009, the availability and frequency of screening was severely curtailed. Funding for the Family Drug Court ended January 2013, and court activities ceased.

The parents who successfully completed the Family Drug Court program were reunited with their children. These successful reunifications will be remembered, as will the collaboration among attorneys, service providers, and families that led to this success.

Jon’s parents in the above case example would also have been eligible for the Family Drug Court, if the court had existed when their children were taken into care. With assessment and treatment available in a timely manner and with weekly court hearings to monitor, support, and hold the parents accountable for their progress, they would have had a chance to complete the case plan successfully, and the children would have had their family restored. The family would have had a chance to succeed. Mary’s story is an example of how a specialized approach to these cases is paramount for family preservation.

**Practitioners Collaborate for Family Preservation**

As difficult as it is to accept the end of a valuable resource, such as the Family Drug Court, especially during a time of increasing heroin dependence affecting families, current economic realities call for rallying practitioners around other solutions.
To that end, a number of Butler County attorneys/guardians ad litem, parents’ attorneys, and court-appointed special advocates have met to explore the development of a collaborative effort in juvenile court abuse, neglect and dependency cases to preserve families separated by parental addiction. The premise is that if we can work together on behalf of our clients’ mutual goals for reunification at the beginning of cases, maybe we can improve the outcome. Of course, there must be mutual goals and, of course, clients must agree to this approach.

Preliminary conversations have included the following considerations:

1. This should start as a pilot project. The collaborative practice model used in domestic relations cases should be reviewed for foundation protocols.

2. Choosing cases for a collaborative approach should be based on criteria perhaps similar to those established and successfully used by the Family Drug Court. There should also be discussion as to whether to include other criteria such as the child’s age and placement.

3. Practitioners should be more extensively trained about heroin and other drugs, and about screening protocols and the types and meanings of test reports. The existence and location of drug-specific assessment and treatment resources should be researched.

4. Parents’ attorneys and attorneys/guardians ad litem should meet with parents weekly, to review, explain, and prioritize case plan requirements, to monitor their progress, and to hold them accountable. When necessary, case plans should be amended, for example, to include more appropriate or timely services. Parents’ attorneys and attorneys/guardians ad litem will proceed together in these efforts.

5. On behalf of children’s interests in reunification, attorneys/guardians ad litem will support parents’ requests for quality and timely services related to overcoming their addiction.

Practitioners for parents and children have to learn how to better handle cases that involve heroin. It is natural to form a responsive collaborative effort. We have to work together unless and until our interests diverge. We want to prevent heroin from claiming any more of our families. We have to learn what treatment will work for heroin addiction and how to predict the likelihood that the addicted parents will stay clean. We have to learn from others’ success in working with similar high-risk populations.

Learning from Success

In 2010, Ohio spent more annually to incarcerate an inmate than an average family spent to send a child to college: a total of more than $1.32 billion. In the past, most of that spending simply did not work, and the majority of offenders came out of prison only to commit more crimes.
In 2005 the state commissioned the Criminal Justice Research Center to create a system that applied science and evidence to criminal-justice decisions. With that single step, Ohio got smarter on crime.

In studying recidivism, the University of Cincinnati’s Center for Criminal Justice Research developed the Ohio Risk Assessment System, a tool that helps determine which offenders are likely to commit more crimes and which are not, and helps determine which programs and services are the most effective at deterring future crime. Judges now have a more reliable way to decide who can safely be released on bail, prison officials have a way to decide who needs the highest security, and halfway houses and other agencies have a way to know who will do best and who will not do well in their own communities.

The research involved information on 2000 offenders. Numbers were crunched and patterns analyzed to see what factors made some people stay law-abiding and others return to jail. The conditions that predicted non-reoffending behavior included whether low-level offenders were engaged with their families and whether they had stable jobs. Providing a saturation of treatment to some high-risk offenders could set them straight. This treatment was paid in part by money saved from incarcerating fewer low-risk offenders.

Today Ohio’s recidivism rate is at 29 percent—an all-time low—and incarceration numbers are decreasing. [Krista Ramsey, “UC Center Helps Ohio Get Smarter on Crime,” Cincinnati.com, July 26, 2013.

Such research and risk-assessment tools would be as much of a milestone in improving the child-welfare approach to parent addicts as it is in the criminal-justice approach to offenders. It is clear that foster care for children is far more expensive in financial, psychological, and social costs than developing appropriate assessment and treatment access for parent addicts.

The Path Ahead
The constitutional right to family integrity cannot be thwarted by budget constraints. Tolerating delayed assessments and treatment for heroin-addicted parents when children are in foster care is tantamount to assisting in case planning for terminating parental rights. The establishment of a collaborative effort among legal advocates for children and parents is a different, more constructive approach to cases. We are all accountable. And we will keep you posted.

Keywords: litigation, children’s rights, abuse, neglect, dependency, drug treatment, addiction, foster care, family reunification, adoption, Drug Family Court

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The Rights of Children of Same-Sex Couples: In Their Own Words
By Monique R. Sherman

[T]here is an immediate legal injury or—what could be a legal injury, and that’s the voice of these children. There are some 40,000 children in California . . . that live with same-sex parents, and they want their parents to have full recognition and full status. The voice of those children is important in this case, don’t you think?

—Justice Anthony Kennedy

We see the argument made that there is no problem with extending marriage to same-sex couples because children raised by same-sex couples are doing just fine and there is no evidence that they are being harmed. And the other argument is Proposition 8 harms children by not allowing same-sex couples to marriage[sic]. Which is it?

—Chief Justice John Roberts
Id. at 61.

Although the questions raised during oral arguments in United States v. Windsor and Hollingsworth v. Perry were wide-ranging, one of the most discussed was how to consider the effects of laws that outlaw or prohibit recognition of same-sex marriages on children of same-sex couples. An amicus curiae brief submitted in both cases by the Family Equality Council answered the question simply: by looking to the words of children of same-sex couples and lesbian, gay, bisexual, and transgender (LGBT) youth. By giving the children, whose well-being was otherwise described only by adults, a voice in the Supreme Court, the amici tapped into an argument that proved to be persuasive.

The Family Equality Council’s Amicus Brief
The brief—submitted on behalf of amici Family Equality Council, other nonprofit organizations that support families headed by same-sex couples, and Sarah Gogin, a young woman raised by two dads—was written by pro bono attorneys at Bryan Cave LLP’s San Francisco office. Bryan Cave Counsel Katherine Keating, whose practice generally focuses on trademark, copyright, and intellectual property litigation, took the lead in writing the brief.

The amici did not cite any law. Instead, they focused on a perhaps more effective means of persuasion: the words of children of same-sex couples themselves. Some of them are youth still; others, like Sarah Gogin, are successful adults who were raised by same-sex parents.
Some people I thought, you know, they’re cool with my family. But then when it comes to same-sex marriage, they have a different opinion. They’re like, “I don’t think they should get married. I think things are fine the way they are now.” But they don’t realize that they’re talking about my family, too.


So often in cases that deal with children—child welfare, juvenile justice, education, and family law—we hear about the effects on children and youth of our decisions from other adults: expert witnesses, social workers, teachers, and parents. Keating says that while similar briefs filed over the years similarly focused on social science research, the goal here was to give the court the information straight from the youth themselves. “Although those who oppose marriage for same-sex couples frequently make assumptions about the quality of the children’s family lives, the children themselves are rarely asked to explain what they actually experience.” Brief for Family Equality Council at 2. Samuel Putnam-Ripley, whose testimony before the Maine legislature when he was 14 years old was quoted in the amicus brief, pointed out the problem with ignoring the youth voice: “I want to talk today about how kids all over the state are affected by the current limitations on marriage. I want you to understand that denying gays and lesbians their right to marry doesn’t just affect adults.” *Id.* (quoting *An Act to End Discrimination in Civil Marriage and Affirm Religious Freedom: Hearing on LD 1020 Before Me. Joint Comm. on the Judiciary* (Apr. 22, 2009)).

Keating also intentionally focused on the children’s and youth’s positive statements, recognizing that the normalcy of the families the children described could be most convincing. Young people quoted in the brief described ordinary, everyday experiences they share with their families:

My parents—my two moms—go to work every day, like other parents. They cook dinner and mow the yard. They take care of the house. Volunteer in the community. Pay their bills. Do the thousands of little things that keep a household running. And they love me, unconditionally.


Marriage is about family and my dads take the best care of me and my brother. My family is no different than any other family. We go to the movies, they take me to my sports practice, play games, and make the holidays, especially Christmas, awesome.

Brief for Family Equality Council at 13 (quoting Austin Covey, nine years old).
Keating and others involved saw that the persuasive potential of these types of statements by the children was increased by the arguments of the proponents of the Defense of Marriage Act (DOMA) and Proposition 8, themselves. The amici were struck by the central argument of the laws’ proponents in the briefing: It was based on the importance of marriage for the protection of stable families and children. The dissonance, as Keating puts it, between the focus of those arguments against same-sex marriage and the children’s focus on their ordinary, unexceptional lives, which could be made more stable by marriage, was striking. Sarah Gogin, who signed on to the amicus brief herself, described the example set by the enduring relationship of her two dads:

Not only have my dads physically and financially supported me throughout my childhood, but they also have supported me emotionally, spiritually, and mentally as I have transitioned into adulthood. For over forty years, my dads have been living proof that true love does exist and that perseverance through adversity helps to define who we are. They have taught me to stay true to myself, to change for no one, and to be the best me that I can be.

Brief for Family Equality Council at 18 (quoting Sarah Gogin).

The young people also explained—at times with heartbreaking clarity—how the failure of the state or federal governments to recognize their parents’ unions stigmatized them and their families by making them feel less worthy and by forcing them to question the validity of their families:

It really hurts me that my family isn’t recognized by the government, it makes me feel like we aren’t seen as a family, which makes me feel insecure. It’s not fair to my parents, who love each other just as much as straight couples.

Brief for Family Equality Council at 27 (quoting Elizabeth Byrnes-Mandelbaum).

Both DOMA and Prop 8 essentially sentence my parents’ relationship to second class status, not only making our family feel less worthy than others, but denying us rights that are enjoyed by other families headed by straight parents.

_Id._ (quoting Maggie Franks, 18 years old).

How can they tell me that my family doesn’t count? That the relationship between my two dads that I have not only learned from and cherished, but also reaped the benefits of, isn’t acknowledged on the federal level? That the love they share isn’t deserving of the same protection and laws that a man and a woman receive?

_Id._ at 28 (quoting Ella Robinson).
Similarly, these descriptions struck at the heart of the justification for the laws, that DOMA and Proposition 8 were actually designed to protect the stability of the American family.

**The Windsor Decision**

The effects of the laws on children and youth, if not decisive, appeared to influence the majority in *Windsor*. Although the holding was based on equal protection jurisprudence, Justice Kennedy’s questioning during the oral argument on Proposition 8 and statements in the *Windsor* opinion attributed legal significance to the rights of these children. It is importantly that he did not mention exactly what rights of children of same-sex parents were violated when the federal government stigmatized children and their families by its refusal to recognize same-sex marriages. But he acknowledged, at least implicitly, a *legal injury*—caused by the government—that befalls a child whose parents are not allowed to be married or whose marriage is not recognized by the federal government. Justice Kennedy wrote, “DOMA instructs all federal officials, and indeed all persons with whom same-sex couples interact, including their own children, that their marriage is less worthy than the marriages of others.” *United States v. Windsor*, 133 S. Ct. 2675, 2696 (2013).

The differentiation demeans the couple, whose moral and sexual choices the Constitution protects, and whose relationship the State has sought to dignify. And it humiliates tens of thousands of children now being raised by same-sex couples. The law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their communities and in their daily lives.

*Id.* at 2694 (internal citations omitted).

The Court went on to describe other, more specific legal harm to children of same-sex couples whose marriages the federal government refused to recognize. Justice Kennedy explained some of the federal benefits available to heterosexual married couples that are not available to same-sex couples:

DOMA also brings financial harm to children of same-sex couples. It raises the cost of health care for families by taxing health benefits provided by employers to their workers’ same-sex spouses. And it denies or reduces benefits allowed to families upon the loss of a spouse and parent, benefits that are an integral part of family security (benefits available to a surviving spouse caring for the couple’s child).

*Id.* at 2695 (internal citations omitted).

Although the Court did not mention the amici’s arguments, the inclusion of these points makes clear that the voices of the children made an impact on the majority.
The Pro Bono Experience
The Family Equality Council was a long-standing pro bono client of Bryan Cave, so when the opportunity to submit an amicus brief came about, it was a natural choice to approach Keating. Although this work was significantly different from previous pro bono work the firm and Keating had performed for the organization, Keating was excited to take it on. And she says she was proud to work at the firm when support for the project came pouring in. The firm’s willingness for Keating to take on the work and support for it have positively influenced her ongoing commitment to the firm.

Keating is currently working on another amicus brief for the Family Equality Council in the Ninth Circuit, which soon will be hearing cases from Hawaii and Nevada challenging those states’ restrictions on same-sex marriage. The focus is the same: to make sure the voices of the children and youth are heard.

Keywords: litigation, children’s rights, amicus curiae, Defense of Marriage Act, United States v. Windsor, Hollingsworth v. Perry, same-sex marriage, Proposition 8, federal rights, Family Equality Council

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Improving Representation for Parents in the Child-Welfare System
By Mimi Laver

Providing attorneys who represent parents in the child-welfare system with practical tools, as well as a supportive, lively atmosphere, were some of the goals of the Third National Parent Attorneys Conference held on July 10–11, 2013, in Washington, D.C. By all accounts, the conference delivered on these and many other important themes. Two hundred and seventy parents’ attorneys from around the country gathered to learn together, share their challenges, and get reenergized to return home to provide high-quality representation to their clients.

Leading the Way to Quality Representation for Parents
Since 2007, there has been increasing focus on the connection between high-quality representation for parents and improved outcomes for children and families. These improved outcomes include children reuniting with their parents more quickly and safely, children reaching other permanency options sooner, children and families having more frequent and better family time/visitation while the children are in care, and an increase in the use of kin for placement and support for families. Research demonstrates that children have better long-term outcomes when they are raised within their families. More and more data are showing that when parents are represented by attorneys who have reasonable caseloads, are paid a reasonable amount of money for their services, and, most important, spend time with their clients in between court hearings, they have better experiences with the child-welfare system, and this means their children also do better. There is also a growing consensus that when parents are represented by a multidisciplinary legal team consisting of an attorney, social worker, and parent partner (a parent who successfully reunified with his or her child and has received training to be a professional in the system), the parent and family have the best results.

The ABA Center on Children and the Law’s National Project to Improve Representation for Parents Involved in the Child Welfare System, in partnership with Casey Family Programs and with the help of a national steering committee, is leading the movement to spread this improved model for representation across the country. The project is assisting states in drafting and implementing standards of practice for parents’ attorneys based on the ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, working with state-level child-welfare and court leaders to initiate representation for parents in states like Mississippi, where parents don’t have assigned attorneys, and working to improve representation in other states by providing local training programs to parent lawyers and connecting over 750 parents’ attorneys across the country through a moderated listserv. The three biannual conferences have been a central part of this movement.

A Packed Conference Agenda
The 2013 conference agenda was full with a combination of plenary talks, workshops, and small discussion groups during which participants had the opportunity to have conversations about substantive topics, including talking with clients about difficult issues, appellate issues,
legislation and systemic advocacy, working with parents with disabilities and substance abuse, attorney evaluations, and ethical obligations. The workshops were often skills based and provided participants with concrete tools about, for example, examining experts in court, identifying and presenting alternative non-abuse explanations for injuries, using clients’ stories to bolster a case, using constitutional arguments in child-welfare cases, understanding drug tests, and negotiating the housing system to find resources for clients. Workshops also focused on sharing information about model parent representation programs and how to replicate them in new jurisdictions.

The energy level and camaraderie throughout the conference were extremely high but were especially felt during the three plenary discussions. At the opening plenary, Professor Martin Guggenheim from New York University Law School spoke about how far the parent attorney movement has come since the first conference four years earlier. He shared a new film in which a number of parents spoke about their experiences with the child-welfare and court systems. It was very moving and set the tone for a conference in which practitioners were asked to think about ways they could go back to their homes and do their best for each and every client.

Following Professor Guggenheim, Dr. Carl Hart gave a talk entitled Myths About Drug Use that Every Parent’s Attorney Should Know. As a researcher who studies substance use and abuse, Dr. Hart urged those assembled to question allegations of substance abuse that their clients have. Hart spoke about the impact of race and poverty on the question of substance use and reminded participants that people always have used, and always will use, drugs, but that does not necessarily mean that these individuals are unable to parent their children safely. It is the parent attorney’s job to question and find out if the parent’s use of drugs is hindering his or her ability to parent.

**Empowering Lawyers to Make Positive Change for Parents**
Over lunch on the second day of the conference, Judge William A Thorne Jr., a Pomo/Coast Miwok Indian from northern California who is enrolled at the Confederated Tribes of the Graton Rancheria and a judge on the Utah Court of Appeals, spoke about best practices for representing Native families and all families. Judge Thorne told the audience that when he first became a judge nearly 34 years ago, he trusted the system. He signed termination of parental rights orders believing that the child-welfare agency did everything possible for the child and family and this decision would be best for the children. However, he shared that as he became a more experienced judge, he regretted those early orders. He learned that nearly every child develops best when he or she is raised by family. Judge Thorne put this philosophy into context for the audience by describing the long history of Indian children being separated from their parents, families, and communities, and the damage this did to those children. Judge Thorne called on attorneys representing parents in child-welfare cases to be a voice for keeping families, Indian and non-Indian, together:
All children deserve the chance to be home. That means you’re going to have to help educate people because the vast majority of state juvenile judges have no background in child development. They have the same prejudices, the same biases that people off the street do. . . . You’re going to have to take the role of educating the players, or reminding them if they’ve already been educated, about why these children need their families and why foster care is not a just-in-case option.

Judge Thorne urged looking for solutions before children are taken from their homes and efforts to help parents keep their kids. “Don’t be afraid to think outside of the box to find solutions for parents,” he said.

The conference ended on a high note with a plenary session entitled Transforming Injustice into Systemic Change. The panel consisted of Joanne Moore, the director of the Office of Parental Defense in Washington State; Rep. Roger Freeman, a Washington legislator and parent attorney; Professor Vivek Sankaran, the director of the Detroit Center for Family Advocacy; and Professor Claire Zimmerman, professor of architecture and art history at the University of Michigan and the mother of a child who was removed by the child-welfare system following an inadvertent act by his father (known as the Mike’s Hard Lemonade Case). Each of the speakers talked about actions they have taken in both their professional and personal lives to make important systemic change. For instance, Professor Zimmerman shared her story of losing her son after her husband gave him alcoholic lemonade at a baseball game, without realizing the drink contained alcohol. She told the story about how after her son was returned, she, her husband, and son worked with child-welfare professionals from the University of Michigan to change child-protection law. Following her testimony and that of her young son, the Michigan legislature passed a law requiring more stringent investigations before children are removed.

Representative Freeman told the audience about his journey from being a longtime parent attorney to sitting in the Washington legislature while battling cancer. He talked about how his illness changed his perspective about time. He now tries to make the most of every opportunity, including using his knowledge about his clients, to help make good and fair laws. Rep. Freeman also used a football analogy and asked each of the participants to be part of the NFC, to be Navigators for Change.

Following the panel, audience members were welcomed to the podium to share their stories about actions they have taken that led to systemic change in their communities. One attorney from Philadelphia talked about focusing her energy on working with the Department of Human Services to change policy, and eventually state law, affecting incarcerated parents. A young attorney from Tennessee shared her efforts to block state legislation that would be harmful to poor families—and she was successful. Another attorney from Chicago talked about building on the energy from the Second National Parent Attorneys Conference and forming an Illinois group of parents’ attorneys who have been working to support each other through communication and training. It was very exciting to leave the conference with everyone feeling that their efforts could truly make a difference for children and families.
Honoring an Inspirational Colleague
During the 2013 conference, the National Steering Committee started what it hopes will become a tradition at each conference, an award given as a “thank-you honor.” This year the Steering Committee presented Professor Guggenheim with the “thank-you honor” for his years of steadfast representation of families and for being the inspiration behind the Parent Attorney Project. The honor read:

Marty,
Thank you for being a champion of justice for those who need your voice, your vision, and your courage to stand up publicly for them. Thank you for being an inspiration for your peers in helping us reimagine what is possible and necessary to do on behalf of families across the country.

Research shows that children have the best outcomes when they are raised within their families and communities. The National Project to Improve Parent Representation is about “reimagining what is possible and necessary to do on behalf of families across the country,” and then taking action for those families.

To learn more about the National Project to Improve Representation for Parents Involved in the Child Welfare System, or to join the national listserv, visit the project’s webpage or email Mimi Laver.

Keywords: litigation, children’s rights, parent attorney, parent representation, National Project to Improve Representation for Parents Involved in the Child Welfare System

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The Plight of Unaccompanied Immigrant Children: An Australian Attorney's Perspective

By Jahan Navidi

For many people, moving to the United States of America represents a chance for a new beginning. The “American dream” presents seemingly boundless opportunities and the prospect for a life their home countries may not offer. This American dream is even more meaningful for the tens of thousands of immigrants that arrive in America from countries like Guatemala, El Salvador, and India every year. It is perhaps even more significant still for a particularly vulnerable group amongst these immigrants—unaccompanied minors. The opportunities that America presents to this group of individuals are, however, limited by their access to legal representation.

Pro Bono Week

Recently, I had the opportunity to visit a facility housing these children as part of Pro Bono Week at Baker & McKenzie. As an Australian, visiting from the Baker & McKenzie office in Sydney to complete an international clerkship at Baker & McKenzie in Chicago, this presented a unique opportunity to gain firsthand insight into the life of an immigrant child. This experience at the facility housing unaccompanied immigrant children was [jarring], and one that I suspect will have a profound impact on me long after I have returned to Australia. For me as a young lawyer at the start of my career in the corporate world, it was a timely reminder of our obligation as lawyers to assist those whose lives, quite literally, are dependent on our legal knowledge and advice.

Adjusting to a new city is challenging. Because I am from “Down Under,” my sense of culture shock was trivial. I found I had to adjust to such things as the different metric system, cars that drove on the other side of the road, and minor linguistic variances. But even as a 23-year-old, I found these slight differences between Australian and American somewhat daunting. In light of my experiences, I cannot fathom how difficult it would be to be in Chicago as an unaccompanied minor, with little knowledge of the culture, language, or way of life.

Orientation

From the outset, my experience at the immigration housing facility was jarring. Indeed, following the overview of the legal regimes governing asylum claims of unaccompanied minors in the United States, it was immediately apparent these children would require support and legal advice to articulate their asylum claims. Unaccompanied immigrant children do not have the right to appointed counsel within the United States, which makes it even more imperative that lawyers partake in pro bono initiatives to assist these children. In addition, to achieve Special Immigrant Juvenile (SIJ) status, and under the definition of a “refugee” under the Refugee Convention, narrow, circumscribed criteria must be fulfilled. Consequently, the prospects for successful immigration are dependent on the placement of children in a category, such as the category of persecution in their home countries on racial, religious, or political grounds. Of
course, the children may not fall into one of these categories, and they may be too young to understand, let alone explain, their plight, which makes it difficult to advance their claims.

Asylum seekers are generally required to disclose as much information about their reasons for asylum to progress their claims. Identification documents such as passports and birth certificates are also required. It is often the case, however, that having fled their countries, these children often speak no English, are not aware of the application requirements, and carry little or no identification.

Because of my Australian background, I found this session particularly insightful given some of the differences between United States and Australian law pertaining to unaccompanied immigrant children. During my final semester of law school at the University of Sydney, I worked at Australia’s largest refugee service, the Refugee Advice and Casework Service. I found it incredibly useful to learn about the American approach to unaccompanied children, which involves the immediate housing of children within centers. This presents a vast contrast to the Australian system, which involves the offshore processing of asylum seekers.

Tour of the Center
Equipped with some background into the intricacies of U.S. immigration law, we proceeded to partake in a guided tour of the unaccompanied minor facility, which included sharing lunch with some of the unaccompanied children. I found the children to be well behaved and polite individuals who offered their seats and expressed natural curiosity about our career in law. I was amazed at how easy it was to talk to the children despite our language barriers. The fact that I was from Australia was a source of great fascination for some of the Indian children, particularly given the historic rivalry between Australia and India in cricket. We also established bonds over topics such as the Blackhawks’ recent victory and even Chicago’s somewhat erratic summer weather. Indeed, we were both new to Chicago, pursuing new opportunities and experiences. Our similarities demonstrated that regardless of your country of origin, or the language you speak, there are commonalities which transcend physical borders.

An Interview with a Minor
The most [eye-opening] aspect of my experience at the facility was an interview I helped conduct with a particularly fragile and vulnerable unaccompanied minor. Whilst the intricacies and details of our interview remain highly confidential, it highlighted the vulnerabilities some of these children face as unaccompanied minors within the United States. The child’s visible exhaustion, helplessness, and simple lack of awareness of legal rights within the complex immigration system placed her at serious risk of being sent back to her home country where she may potentially face a life-threatening predicament. My assistance in providing a legal assessment of the child’s predicament and prospects of submitting a successful asylum claim alerted me to the vital role lawyers and child advocates can play in assisting unaccompanied children.
Given that minors may not be aware of their legal obligations and roles, it is necessary for lawyers to provide counsel and assist them with presenting the strongest possible case for asylum. In addition, given that they are children on their own, they will often need child advocates (best-interests guardians ad litem) to help put their cases in context. Without this assistance, it is difficult to imagine an unaccompanied child having reasonable prospects for success for immigration to the United States.

Through the interview process, I was enlightened by the intricacies and difficulties associated with working with children within the legal industry. There are challenges associated with obtaining instructions from clients who are minors, in addition to language and other barriers. Further, obtaining the facts from minors is complicated by the trauma associated with their journeys and the requirement to relive often painful experiences from their homeland. Such challenges present a vastly different working environment as compared with our interaction with corporate clients.

To assist in obtaining the relevant facts and instructions, there are multiple guidelines which exist specifically for the purpose of assisting individuals who work with children, given their particularly vulnerable status.

**Comparison with Australian Policy**
The trip to the facility is highly significant given the recent political debate surrounding asylum seekers in my home country, Australia. The arrival of so-called boat people is a vexed and divisive issue right across the spectrum within Australian politics.

Typically, a small number of asylum seekers seek refuge in Australia, traveling from countries such as Sri Lanka, Afghanistan, and Iran. These asylum seekers generally stop in Indonesia, but some risk their lives to travel to Australia by boat in perilous conditions. This is not dissimilar from many of the unaccompanied minors arriving in America, some of whom have traveled in extremely dangerous conditions.

In July 2013, the Australian Labor Party enacted a controversial and hard-line policy which has placed a blanket ban on any so-called boat people being settled in Australia. A new asylum seeker arrangement between Australia and Papua New Guinea (PNG) has been adopted, and it will mean that all asylum seekers arriving by boat, not by plane, will be transferred to PNG, where they will be mandatorily detained for an undefined period of time. Indeed, as a professor of international law at the University of Sydney, Ben Saul, has described, “many countries would find it laughable that an astonishingly rich and under populated country like Australia would seek to amend the [refugee] convention in response to an extremely modest refugee flow.” In 2012 alone, a total of 58,179 persons were admitted to the United States as refugees, and 29,484 were granted asylum. In comparison, in 2010–2011, Australia’s refugee intake was 13,799.

This latest policy of deterrence appears legally dubious and perhaps inconsistent with Australia’s obligations under the Refugee Convention. As stated under article 31 of the convention, an
asylum seeker may not be penalized on account of mode of entry to Australia—whether by boat or by plane. Perhaps the Australian Labor Party would benefit from a trip to a local unaccompanied minors facility similar to the one I visited during my time here in Chicago. The inhumane policy of rejecting all of these arrivals purely based on their method of arrival is, contrary to the requirements of the Refugee Convention, punitive. To suggest that unaccompanied children, such as those in Chicago, would “never be settled in Australia” purely due to the nature of their arrival appears logically and legally incongruous. It defeats the underlying purpose of the Refugee Convention and undermines the definition of an “asylum seeker.” My experiences at the facility in Chicago demonstrated that minors are vulnerable and at risk of getting lost in the legal system. For immigrants sent to PNG, accessibility to legal advice will decrease significantly, and they will be subjected to mandatory detention for extended periods of time.

Pro Bono Initiatives
There are multiple pro bono opportunities for lawyers to assist unaccompanied minors by providing free legal representation or serving as a child advocate. By working with unaccompanied immigrant children or representing an unaccompanied child seeking asylum to gain Special Immigrant Juvenile status, lawyers can be expected to partake in 80–100 hours of casework, which presents a substantive learning opportunity. The pro bono representation and child advocate projects serving immigration centers provide in-depth training, technical assistance, and case support, which presents an opportunity to harvest legal skills. Further, it is an opportunity to improve legal and communication skills by learning how to obtain instructions from a minor, which is vastly different to the usual corporate client.

Conclusion
My experience at the facility served as a pertinent reminder of our obligations as lawyers to help provide legal services to those who genuinely require our assistance. Whether it is through experiencing the harsh realities of an immigration facility housing unaccompanied minors on the other side of the world, or simply volunteering to provide assistance to your local community to those who desperately require legal aid, we, as lawyers, certainly have a role to play in increasing accessibility to the law. Having gained law degrees, we are in position to make a difference, and we should embrace this by assisting those who may not be as fortunate or privileged. My experience has certainly changed my outlook and desire to participate in pro bono initiatives. Perhaps it will change yours too.

Keywords: litigation, children’s rights, asylum, best interests, child advocate, deportation, immigrants, unaccompanied children, pro bono

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The Plight of Unaccompanied Immigrant Children: A Mexican Attorney's Perspective
By Maria del Pilar Orozco

Immigration presents a significant challenge for many countries, including the United States. Numbers have grown and will continue to grow exponentially because people are coming to the United States not only from Latin America but also from around the globe. They come by foot, train, or boat. They travel in the worst conditions for days, weeks, and even months to arrive at their final destination. What many people may not know is that a significant percentage of immigrants coming to the United States each year are unaccompanied minors.

While working during the summer as an international clerk for Baker & McKenzie in the Chicago office, a group of the firm’s summer interns and I were invited for a day of service at the International Children’s Reception Center of Heartland Alliance. The day was hosted by the center, the National Immigrant Justice Center (NIJC) of Heartland Alliance, and the Young Center for Immigrant Children’s Rights at the University of Chicago Law School. Each of these entities plays a different role with respect to unaccompanied immigrant children detained inside the United States. The International Children’s Reception Center provides care and custody until the children can be released to family or sponsors. NIJC provides “Know Your Rights” presentations and legal screenings and, in some cases, undertakes the representation of individual children. The Young Center for Immigrant Children’s Rights serves as child advocate—best-interests guardian ad litem—advocating for the best interests, safety, and well-being of individual children.

The International Children’s Reception Center houses children from all over the world who have been apprehended by immigration officials and then placed in facilities such as this one for a short or sometimes extended period of time while family or sponsors are located.

The Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, by the Office of the UN High Commissioner for Refugees (Geneva, Feb. 1997), define an unaccompanied child as a person who is under the age of 18, unless, under the law applicable to the child, majority is attained earlier, and who is “separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so.” These guidelines encompass the general measures to be taken by countries regarding protection for unaccompanied children to ensure that certain standards are met and their legal rights are respected throughout the process of either returning to their home country or as candidates for asylum in the receiving country. The guidelines state that as soon as an unaccompanied minor is identified and it has already been determined that the child is seeking asylum, “every effort should be made to process the examination of his/her claim as expeditiously and as child-appropriate as possible.”

The Visit
We spent a day at the International Children’s Reception Center of Heartland Alliance. The
Young Center and NIJC provided an abbreviated training on unaccompanied children, legal relief, and international protections. While they are at the detention facility, the children receive a “Know Your Rights” presentation and a legal screening by an attorney or paralegal with NIJC. NIJC provides free legal advice and representation to unaccompanied immigrant children, immigrant survivors of domestic violence and violent crimes, youth applying for deferred action, and asylum seekers.

When we arrived at the immigration detention center, I was amazed by several things. First, the people who care for these children do it with an absolute happiness and joy. They are there to give these children, who have just come from a horrible journey, a warm meal and a comfortable bed. The facility is in extremely good condition, something that may not seem so important, but it is important compared with these kinds of facilities in other countries. For example, kids have their immediate needs met, such as housing, food, and clean clothes. The children receive immediate medical and dental care. If they have family, they have a right to communicate with them once a week. They have physical and recreational activities, and they are able to enjoy some time outdoors too. The children who are detained at the border or who are detained after they are already inside the United States are able to spend some months with a good meal, a community of people who care for them, and a group of kids who are on the same quest as they are. Everyone in our group was surprised at and at times saddened by how well the kids behaved; their journey and experiences have made them become tougher and very mature for their age.

“Know Your Rights”
During the first weeks of their arrival at the detention facility, the children are informed of their rights as unaccompanied minors through “Know your Rights” presentations provided by NIJC. This lecture is intended to give them general information about why they are at the center, what their rights are at the center, when they will be released, what an attorney is and how an attorney is going to help them, how can they stay legally in the United States, and other important things to remember.

While on our visit, we were able to listen to one of the lectures given by a paralegal for NIJC. A group of about seven teenagers walked in the room and stared with big eyes at the four lawyers sitting next to them. I imagine they were wondering what this was all about, but they just looked at us and smiled.

The NIJC paralegal spoke in Spanish in order for the kids to understand. She started out by stating that they had been detained by border patrol and that they were here on a temporary basis to try to locate their families and wait for a court date for an immigration judge to decide their future. The boys just nodded, as if they already knew what the next step would be. The paralegal then made an interesting analogy likening the court hearing to a soccer game. She explained that, just as in a soccer match where you have a referee, here there will be a judge who verifies that the law is followed. She also mentioned how there are two teams that are playing—in this case, the child and the United States government. She explained how both teams have to show up to the match in order to win and not forfeit. She also let them know they want to help them. But, in
order for NIJC or the organization that will represent them to be successful, the kids have to go
to the game. They have to appear at all of the hearings, and they have to be on time or the judge
will order their deportation. They are also made aware of the fact that they are not allowed to
work, they have a right to attend school, and they should stay out of trouble.

She handed each of them a *Know Your Rights* handbook in Spanish that includes all the
information related to their status and explains the different types of protection they can get from
the government, such as asylum, Special Immigrant Juvenile status, a U visa, or a T visa, or
apply for voluntary departure. It explains what an attorney is and how an attorney will help them
during their case before the immigration court.

According to NIJC’s *Know Your Rights* handbook, unaccompanied minors may apply for asylum
if they are afraid to go home for any of the following reasons:

- fear of being harmed
- their family’s political activities, actions, or belief; religion; race or language
- belonging to a certain group in their community
- their sexual orientation or gender
- their refusal to be a soldier or join a gang

Organizations like NIJC fight for their rights and look for legal relief for these kids in order for
them to be able to stay safely in the United States.

**The Interview**

After the “Know Your Rights” lecture, we had lunch with some of the children. I sat with two
youths from India and two from Guatemala. One of them asked me if I was currently legally in
the country, because I was speaking Spanish with them. It hurt me to say it, but I answered yes. I
have a work visa. That really made me think, what do I have that they don’t? Why has it been so
hard for them? What can I do to help?

I’m a fluent Spanish and English speaker, so I assisted as a translator while two of my colleagues
interviewed one of the children to assess whether he qualified for any kind of relief. This way we
got to see what being an NIJC volunteer is all about and how you have to be sensitive and put
yourself in the children’s position to really be able to help them.

The interviews are not easy. Some of the questions are pretty general: How old are you? What is
your mother’s name? But some can be pretty tough and personal: Have you been persecuted
because of your sexual orientation? Has anyone ever forced you to do something you didn’t want
to do that made you feel uncomfortable? Usually, children are afraid or they are trained not to
tell the truth for the fear that they will be deported. What NIJC has to make sure of and be very
careful of is letting them know that NIJC is there to help. NIJC lets the children know that any
information they share is confidential and will not be disclosed to the government or other
parties and that their experiences back home may actually make them candidates for asylum.
**Best Interests of the Child**

Sometimes the children want to go back home or want to stay in the United States but have no family to take care of them, or if they go back home, they will return to a life where they are abused, mistreated, persecuted, or neglected. The child advocate’s role is to figure out what the child wants (not what the child’s sponsor wants) and to represent the child’s best interests. International human rights laws, such as the Declaration of the Rights of the Child, state that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.” The UN Convention on the Rights of the Child (1989) states, in article 3, that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

The Young Center for Immigrant Children’s Rights serves as child advocate pursuant to the Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA). The role of the child advocate is to identify and represent the best interests of the child. The TVPRA child advocates meet with the children, learn their stories, and advocate on behalf of individual children. The child advocates prepare detailed best-interests reports incorporating international law and the child-protection law of the state in which the child is detained. The best-interests reports are submitted to decision makers, including detention facilities, immigration authorities, asylum officers, and immigration judges. The attorney’s role is to represent the child’s stated interests, while the child advocate identifies and represents the child’s best interests. In most cases, the child’s best interests are identical to the child’s stated interests. There are cases, for example, in which the child wants to remain in the United States, and it is in his or her best interests to remain in the country, but the child’s case does not fall neatly within a category of relief. In such a case, the child advocate’s role is to gather factual information to establish why it is not in the child’s best interests to return to his or her country of origin and to present that information to the decision maker. In some cases, the decision maker—immigration official, immigration judge—may have the authority to exercise discretion and, at the very least, avoid the deportation of the child.

Being a corporate lawyer, you don’t usually get involved with these kinds of matters every day. By participating as a volunteer with organizations such as NIJC or as a child advocate with the Young Center for Immigrant Children’s Rights, you get a feel for what being a socially responsible lawyer is. We were prepared in law school to make sure the law is enforced; therefore, we have a duty and a moral obligation to apply such knowledge to help others as best as we can.

**Keywords:** litigation, children’s rights, asylum, best interests, child advocate, deportation

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Fostering Justice Conference Focuses on the Right to Counsel

By Monique R. Sherman

In June, over a hundred child-welfare attorneys, judges, legislators, and academics from across the country gathered in Seattle for the Third National Conference on the Right to Counsel for Abused and Neglected Children. A parallel symposium brought together current and former foster youth to address the same issues and report their findings and input back to the full group.

Fostering Justice was unique—while attendees learned from the programming, the focus was on participation and brainstorming. Initially, participants heard from Judge Marguerite D. Downing, of the Superior Court of California in Los Angeles, who explained from the judge’s point of view the importance of the participation of children and young people in court proceedings about themselves and the importance of having someone to explain the law and proceedings to them.

Next, Judge William D. Acey presented the points of view of a group of participants he had surveyed about whether his practice of appointing an attorney for every child in dependency proceedings made a difference. Not surprisingly, he reported that children’s attorneys answered a resounding “yes” and presented him with bullet points detailing the reasons. The state’s attorneys and social workers were not as convinced. Court-appointed special advocates appreciated the assistance because they are not attorneys and do not have the background to file legal motions.

The response of foster parents was less consistent. But one particular foster parent made clear to the judge that attorneys appointed to represent children need to be dedicated to the representation and need to take the time to do it right. Finally, Mikayla Milam, a seventh grader in foster care, described her experience with an attorney. Although the attorney’s efforts to help Mikayla remain in the same school were unsuccessful, Mikayla expressed her gratitude that she had an attorney who listened to what she wanted and gave her the chance to have her voice heard.

Throughout the day, the current and former foster youth expressed similar sentiments. Whether they were successful in obtaining the outcomes they wanted, having an attorney who ensured their voices were heard in the proceedings was of key significance to their conception of the legitimacy of the proceedings.

Before getting down to work, participants received an overview of the status of the right to counsel for children around the country. Funding cuts have impeded progress in some areas, but in other jurisdictions, such as Washington State, the courts have consistently held that there is no categorical right to counsel. Much of the remainder of the day was spent working on the messaging that is necessary to convince key decision makers that the right to counsel for children in dependency proceedings is worth the unavoidable expense.
Outcomes
First, participants focused on the outcomes that could be measured to show that children’s counsel are fundamentally useful and actually save money in the long run.

A threshold question had to be answered before the group started down this road: If we focus on outcomes as justification for the expense of children’s counsel, don’t we run the risk of losing the focus on representation for children in abuse and neglect proceedings as a due process right? The collective answer was that the two arguments are not incompatible and that because the due process argument simply will not hold sway in all corners, an argument based on outcomes needs to be constructed to build broad consensus among key decision makers.

The room full of child advocates generated at least as many potential outcomes to measure as there were participants. The following are among the outcomes that participants suggested could be measured and compared in relation to the presence or lack of child’s counsel:

- number of pre-permanency placements
- reunification rates
- length of time to permanency
- number of kids who age out of care
- educational stability
- educational attainment
- physical health
- mental health
- family visits
- contacts with juvenile delinquency and number of runaway incidents
- abuse in care
- repeat maltreatment

Participants then shared information about where and how data were already being collected on these and other measures, and brainstormed potential effective measurement ideas for the future. The Children’s Rights Litigation Committee has convened several conversations on outcomes and will continue to investigate what outcomes are already being gathered around the country and how this information might be put to use as we think about illustrating the importance of lawyers for children.

Litigation
Next, the group tackled the question of effective litigation strategies. In some states, such as Washington, the courts have been grappling with the question of whether (and when) children are entitled to an attorney in abuse and neglect proceedings. After a mock appellate argument conducted by Casey Trupin of Columbia Legal Services and Mike Dale of Nova Southeastern University’s Shepard Broad Law Center, participants discussed the most effective arguments in support of the child’s right to counsel, including due process. Of key concern was the manner of...
due process argument to be made: Because children are always in some type of custody, arguments in favor of the child’s right to counsel based on due process may be vulnerable to the argument that children’s due process rights cannot be the same as adults’. Some advocated a distinction between a child being in the custody of parents (a more typical type of custody that is more akin to liberty) and being in the custody of the state. State custody is a different type of custody that necessarily brings due process considerations into play.

While the approach certainly will vary from state to state and depend on individual circumstances, the discussion produced tangible ideas for practitioners around the country.

Legislative Strategies
Finally, the group discussed the legislative strategies that have been successful in various arenas and recent developments at the state and federal levels. Participants then broke out into discussion groups on federal policy advocacy, state and county legislation, and court and county rules.

Moving Messaging Ideas
The symposium ended with sessions on effective messaging. Participants in both conferences worked together to identify the most effective messaging for the various target audiences (judges, the media, members of the public) and discussed the best ways to get those messages out in the era of social media. Some of the most moving messaging ideas came from the current and former foster youth who attended the conference:

“Nothing about us without us.”

“It’s my life. I should have my own voice.”

Other messaging ideas tended more to the practical and humorous:

“It’s a freakin’ COURT. You need a freakin’ LAWYER.”

“You have a broken toilet? You need a PLUMBER.
You have a legal problem? You need a LAWYER.”

“You wouldn’t want kids to self-medicate—why would you want them to self-litigate?”

Many participants in the symposium left the day feeling invigorated, inspired, and energized. Indeed, one of the foster youth said that the day had been “life-changing.”

Information and tools generated during the day will be housed on the website ambar.org/FosteringJustice. To learn more or to get involved in efforts to secure a child’s right to a lawyer in abuse and neglect cases, contact Cathy Krebs, director of the Children’s Rights Litigation Committee.
Keywords: litigation, children’s rights, due process, foster youth, right to counsel, dependency proceedings, Fostering Justice, measurable outcomes, litigation, messaging

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NEWS & DEVELOPMENTS

Relatives Allowed to Intervene in Child-Welfare Cases in Colorado

In the Interest of O.C., 2013 CO 56, the Colorado Supreme Court held that "parents, grandparents, and relatives" may intervene as a matter of right in a child-welfare case. There had been a question of whether C.R.S. § 19-3-507(5)(a) mandated that a parent, grandparent or relative could not intervene in a case unless the child has previously been in their care for three months. The court held that the three-month custody requirement of section 507(5)(a) applies to foster parents only. In its decision, the court pointed to the Children's Code goal "[t]o preserve and strengthen family ties whenever possible." O.C., page 7 (citing §19-1-102(1)(b), C.R.S. (2013)). In addition, the court emphasized that the "issue of whether a relative may intervene as a matter of right in termination and placement hearings is a matter of great public importance" as it "impacts who may offer evidence at hearings and decisions regarding placement of children and parental rights." O.C., at page 5.

Keywords: litigation, children’s rights, child welfare, intervention, custody requirement, relatives, Children's Code

—Cathy Krebs, committee director, ABA Section of Litigation, Children's Rights Committee, Washington, D.C.

Decision Benefits Older Exceptional-Needs Children and Their Parents

In A.D. v. State of Hawaii Department of Education, the student plaintiff was age-eligible at the time he filed his due process complaint, but was 20 when he invoked stay put, thereby exceeding the state of Hawaii's maximum age for special-education eligibility set by Act 163.

The Hawaii Department of Education (DOE) argued that because the student plaintiff had aged out of public education thereby becoming ineligible for special education, he does not have any right to stay put to invoke.

The Ninth Circuit ruled that the student had a right to remain in his current educational placement pursuant to stay put until the appeal finally resolved.

That the maximum age of eligibility is different in California does not appear to impact this holding that results in better and potentially longer protections for our older students with exceptional needs.

The following is a summary of the important takeaways from this Ninth Circuit decision:
Your child has the right to remain in stay put after age 22. This decision interprets federal laws regarding stay put, so it doesn't change the outcome just because California ages children out on their 22nd birthday (actually the child can remain in school to the end of the school year in which he turns 22 in California).

So long as your child is still 21 on the date you file for due process, your child remains eligible and in stay put through all resulting hearings and court proceedings. In the unusual case, this could enable a child to remain in stay put until age 27 or 28 should the case be appealed to the Ninth Circuit or U.S. Supreme Court.

The date you move for stay put is not important. Parents need not worry about actually filing for stay put before the date the child age out. The right to stay put is automatic and a stay put placement is guaranteed upon filing a request for due process.

It is not relevant that A.D. challenged Hawaii DOE’s eligibility age. The A.D.’s complaint challenged the specific age eligibility criterion for the state of Hawaii. The court discusses this in its decision for the purpose of underscoring why stay put was especially important to the child that is challenging the very law that would otherwise operate to extinguish the child's eligibility and stay-put rights. This discussion does not limit the holding of this case to California kids challenging California's age-related eligibility criterion. Any due process hearing triggers the stay put right even if the child turns 22 thereafter.

Keywords: litigation, children’s rights, stay-put rights, age eligibility, special education, Hawaii, educational placement

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