TABLE OF CONTENTS

Articles »

Truancy Lawyering in Status Offense Cases: An Access to Justice Challenge
By Dean Hill Rivkin and Brenda McGee
Lawyering reforms may challenge juvenile courts to reexamine their historical role.

Federal Criminal Restitution for Child Pornography Victims
By James. R. Marsh
Congress responds to the Supreme Court’s decision in Paroline v. United States.

Book Review: Changing Lives: Lawyers Fighting for Children
By Monique R. Sherman
An excellent guide for attorneys and law students looking to use their legal training to fight on behalf of today’s youth.

The Hidden Benefits of Pro Bono
By Deb Mallgrave
Can you gain something from charging nothing?

News & Developments »

Keeping Kids Out of Foster Care
Examining the role that civil legal services programs can take to help families involved in the child protection system.

Breaking Down Barriers for African American Girls
A new report takes a comprehensive look at the education roadblocks faced by black girls.
Truancy Lawyering in Status Offense Cases: An Access to Justice Challenge
By Dean Hill Rivkin and Brenda McGee

Nationwide, status offense systems are rapidly unraveling. Despite the systemic reforms advocated by projects such as the Vera Institute for Justice’s Status Offense Reform Center, the Coalition for Juvenile Justice, the Texas Public Policy Foundation, the National Center for School Engagement, Dignity in Schools Campaign, and others, which are still in nascent stages, juvenile courts (and, in some states, lower adult criminal courts) will remain the vortex where aggressive lawyering can make a difference in speeding changes to these dysfunctional systems and ensuring justice for children and youth. Keeping Kids In School and Out of Court, the title of a May 2013 study by the New York City School-Justice Partnership Task Force, should be the byword that animates lawyers to appear in this neglected realm of juvenile justice.

The Bleak Landscape of Status Offense Cases
The latest available data demonstrate that, in 2010, 137,000 status offense petitions were filed nationally. Charles Puzzanchera & Sarah Hockenberry, National Center for Juvenile Justice, Juvenile Court Statistics 2010 (June 2013). Of this number, 49,300 (36 percent) were for truancy; 30,100 (22 percent) were for underage consumption of liquor; 16,100 (12 percent) were for “ungovernability”; 14,800 (11 percent) were for running away; 14,300 (10 percent) were for violating curfew; and 12,330 (9 percent) were listed as miscellaneous. It is important to note that 10,400 status offense cases involved secure detention, with 2,300 of those (just over 22 percent) listing truancy as the most serious charge.

As troubling as these figures are, there is good reason to believe that they do not fully represent the degree to which status offenders are “criminalized.” In 2010, in Tennessee alone, 8,327 juvenile court truancy petitions were filed. Tennessee Council of Juvenile & Family Court Judges, Annual Juvenile Court Statistical Report (Sept. 2011). When compared with the 2010 national data, Tennessee’s reported data would constitute a full 16 percent of the national total—reported as 52,000 truancy petitions. Given Tennessee’s relatively small population, that percentage is questionable. Equally dubious is that the State of Texas, just two years later, reported that 112,000 youths were summoned into adult courts on truancy charges (a low-level misdemeanor in that state)—more than twice the 2010 national total. Deborah Fowler, Texas Appleseed, Criminalization of Truancy in Texas: Prosecution of “Failure to Attend School” in Adult Criminal Courts. These two examples cast serious doubt on whether the existing data credibly portray the full picture of the number of court actions involving status offenses that enmesh children and youth in court systems that have little ability to serve their needs.

Although better data will lead to a better understanding of this historically neglected corner of juvenile justice, other considerations have impeded needed reform in this realm. One is the
profound lack of understanding about status offenses, the laws that govern them, and the potential remedies available to resolve these cases. These cases are often lost in the lacuna between the juvenile justice system and the child welfare regime in each state. Because relatively few lawyers regularly inhabit this terra incognita, few appeals make it to courts of record. This reality largely insulates juvenile courts from critical scrutiny and accountability. Even in those states where there is a right to counsel in status offense cases, children and youth routinely waive their right to counsel and systematically plead guilty to the charged offense. As with the ineffectiveness of appointed counsel systems for adults—part of the Gideon movement—status offense cases lie well under the radar for reform advocates. Because lawyers potentially can play a pivotal role in achieving effective outcomes for court-involved juveniles, why hasn’t the right-to-counsel movement gained more traction in status offense cases?

The obvious first reason is cost. In times of fiscal stringency, funding for the appointment of counsel in a new arena is unlikely to be a legislative priority, despite the argument that the appointment of counsel would be cost-effective. Weighing the quantifiable additional costs of providing appointed counsel against the difficult-to-quantify benefits that would flow from reducing juvenile court involvement and obtaining better educational and economic outcomes for youth accused of status offenses is a one-sided calculus: The costs of appointed counsel will invariably block reform. Matt Lakin, “End to Practice of Locking Up Truants Sought,” Knoxville News Sentinel, Oct. 7, 2012.

A second reason is the constitutional paradox that, because status offenses theoretically do not carry a sentence of confinement, no attorney is mandated. What makes this justification ring hollow is that status offenders are often saddled with intrusive sanctions and conditions that, for all practical purposes, are as severe as those faced by juveniles in delinquency cases, where there is a right to counsel. As described below, these conditions often tether a juvenile to the court system indefinitely, a harsh consequence for children who are not committing “crimes.”

Finally, in jurisdictions where there is a right to counsel, attorneys who vigorously defend their clients in status offense cases can be viewed as outliers in a system where conformity to the status quo is highly prized. Mainly viewed from the lens of child welfare litigation, status offense case representation often defaults to a model of “best interests” lawyering. This model yields results that are not in the best interests of the juvenile (e.g., recursive court involvement) and fails to generate any pressure toward changing a dysfunctional status quo.

A final factor that cannot be ignored in considering the case for legal representation in status offense cases is the legacy of In Re Gault, 387 U.S. 1 (1967). The luminous language in Gault about the paternalistic origins of the juvenile court, the constitutional importance of cabining the discretion exercised by juvenile courts, and the pivotal role that lawyers should play in juvenile court proceedings applies equally well in status offense cases. Yet, courts have been almost dismissive in rejecting the application of the framework in Gault to status offense cases. See, e.g., In the Interest of A.G.R., Juvenile Officer v. A.G.R., No. WD 73007 (Mo. Ct. App. 2011). The distinction cited by the few courts that have considered the issue is that, because
incarceration is theoretically not constitutionally legitimate in status offense cases, due process safeguards are not as important. As seen below, however, this distinction can be a cruel hoax. Other courts, recognizing the flawed justifications for punishing status offenders, have called for a heightened standard of due process. See, e.g., Doe v. Norris, 751 S.W.2d 834 (Tenn. 1988).

The Role of Lawyers in Truancy Representation

Despite the variation in the state-by-state handling of status offense cases—termed, in some jurisdictions, CHINS (Children in Need of Services) or PINS (Persons in Need of Supervision) cases—there are common elements that can be identified. This article focuses on representation in truancy cases, the largest category of status offense petitions filed. Because runaway cases compose a separate, specialized arena of practice, this article does not deal with the equally important role of lawyers in these cases. In runaway cases, lawyers can play a critical role in representing the disproportionate number of girls who become court-involved. Cynthia Godsoe, “Contempt, Status, and the Criminalization of Non-Conforming Girls,” 34 Cardozo L. Rev. 1091 (2014). Lawyers in these cases will confront such complex issues as trafficking, homelessness, and, as in truancy cases, educational neglect by school systems.

Truancy cases provide lawyers with rich opportunities to develop strategies that counter the received narrative that chronic absences are exclusively the product of intentional actions by the youth or the family. They allow the lawyer an opportunity to demonstrate that a juvenile should not be saddled with a truancy adjudication because of the provision of an inadequate education, whether through poor educational programming, a lack of social services, push-out through misguided school discipline, bullying, trauma, homelessness, poverty, or any other number of causes of absences. The goal of all representation in this arena is to keep and re-engage kids in meaningful educational programs.

On a broader plane, lawyers in truancy cases should be familiar with the “right to education” constitutional litigation that has occurred in many states. The right to an “adequate” education arguably should include an educational program tailored to the unique needs of students who are chronically absent. Dean Hill Rivkin, “Truancy Prosecutions of Students and the Right [to] Education,” 3 Duke Forum for L. & Soc. Change 139 (2011). Litigating this claim in case after case will elevate the argument that a court must first look to the school system for resolution of the underlying causes of absences.

At the outset, representation in status offense cases is not unplowed territory. In 2010, the American Bar Association published Representing Juvenile Status Offenders, an excellent introductory resource to the field. The same year, Team Child in the state of Washington published a detailed practitioner’s manual, Defending Youth in Truancy Proceedings, on representing children and youth in truancy cases. This manual can serve as a model for lawyers in other states, who will benefit from the practice and strategy protocols described in the book.

Building on these resources, this section catalogues a range of issues that frequently arise in truancy cases. Because many of these cases are adjudicated without counsel representing the
student, the issues are rarely raised. This section assumes the presence of counsel following the filing and service of a petition. The issues include:

**Notice of the charges.** The instruments used to invoke the jurisdiction of the court in status offense cases vary widely. Typically, a petition is filed that includes minimal information about the charged offense. In truancy cases, the number of days absent invariably is included in the petition. Beyond this number, petitions should include the elements of the offense as defined in the juvenile code of the state. For example, if the offense requires allegations of habitual absence without justification, the latter should be included in the petition. It is important for lawyers to explain to clients from the outset the nature of the status offense process. Rarely will children and youth on their own comprehend the exact charges leveled against them. If the petition is defective in material respects, a lawyer can and should file to dismiss the case.

**Exhaustion.** A growing number of states require school systems to exhaust a series of steps prior to referring the case for filing in juvenile court. See, e.g., S.C. Code Regs. R 443-274 (2014). These steps often include mandatory communications and meetings with students and parents and other vehicles—such as mediation or youth courts—to ensure that complete information about the reasons for a student’s absences are uncovered. Other practices require school social workers to document the steps that they have taken to communicate with the student and the family and to resolve the problem of absences. These steps might involve realistic “attendance contracts,” coordinated referrals to community health or mental health agencies, assistance with clothing or transportation, provision of homebound services, and, for students who have few earned credits for graduation, referral to a General Educational Development program. Following or contemporaneous with this information-gathering stage, a common intervention is a screening by a multidisciplinary team to determine whether the student may be suspected of having an educational disability under the Individuals with Disabilities Education Act (IDEA) or section 504 of the Rehabilitation Act of 1973. States and individual school districts vary on the depth of inquiry required to determine the underlying causes of the absences. If the actions taken by the school system do not comport with the exhaustion requirements, or the school system has failed to comply with its Child Find or Individual Education Program (IEP) obligations under IDEA or section 504, a motion to dismiss the case would be warranted.

**Discovery.** Discovery of the State’s documents and all school system files is an indispensable step in truancy cases. These documents should specify the lineage of the case prior to the filing of a petition, the interactions between the school system and the prosecuting authority, and the involvement of the juvenile court staff, if any, in seeking to divert the petition before it progresses to the courtroom for adjudication. The notes of the key players can reveal motivations for filing the petition. Often these motivations—for example, the parent(s) didn’t respond to communications—can readily be rebutted by showing that the school system was not using the family’s current address or telephone number.
number for communications, despite updated information being available in the school’s emergency files.

**Pre-Adjudication.** If the defense lawyer is diligent in pre-adjudication discovery, plea bargaining may resolve the matter before it comes to trial. Even hardened prosecutors or state officials will recognize that continuing the court case is not in the best interests of the child, the family, or any of the state players, including the court. The defense lawyer should be vigilant not to accept any disposition other than a complete dismissal without prejudice. *Nolle pros*, a conditional plea, or an agreement to participate in and pay for an unproven community program are dispositions that can entangle the student in further court involvement. As is discussed below in the section on conditions of probation, it is naïve to believe that a student with chronic absences will immediately attend school on a regular basis; re-engagement into a meaningful educational program is a painstaking process that can take time and patience.

**Adjudication.** If the case goes to trial, it is critical that counsel be prepared to put the State to its usually high burden of proof—either beyond a reasonable doubt or by clear and convincing evidence. Counsel should make clear from the outset that the State has the burden to prove each element of the offense. This burden is a difficult one for the State to shoulder. Although there is a dearth of reported cases, one of the few vividly illustrates that aggressive lawyers can successfully put the State to its burden of proof in truancy cases. *In re J.H.*, No. 2012-316 (Vt. 2013).

If the case involves health-related or mental health–related documents or testimony, counsel should request that, under the authority of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the courtroom be cleared of all individuals who are not part of the case. As in most cases, the rule on exclusion of witnesses should also be invoked to prevent the State’s witnesses from a last-ditch effort to coordinate their testimonies. It is beyond the scope of this article to deconstruct all the trial strategies and tactics available to lawyers in truancy defense. Beyond the competent defense of an individual student, the long-term deterrent effect of taking a case to trial cannot be understated. Making it hard on the State in truancy cases should prompt rational school system personnel and prosecutors to reconsider the value of invoking the court system in the first place. Disrupting the status quo by fulfilling the lawyer’s role as defense attorney in cases that so often are informally handled is one way to stimulate the “system” to rethink its time-worn practices.

**Post-Adjudication—appeal.** If the student is adjudicated guilty of the status offense, the first critical decision will be whether to appeal the adjudication. Appeal procedures vary widely. In considering an appeal, lawyers must be alert to truncated time periods specified for appeals, whether the standard of review on appeal is de novo or a standard that gives deference to the decision of the juvenile court, and the experience of the court designated for the appeal. In those jurisdictions where juvenile courts are not full courts
of record and where the rules of civil procedure or evidence do not apply to the adjudication in the juvenile court, the court hearing the “appeal” should be more likely to hold a plenary hearing in the case. Although there is very little data indicating the prevalence of appeals in status offense cases for truancy (or for other status offenses), the small number of reported decisions across the states suggests that appeals are not routine. Full-fledged appeals of status offense adjudications would serve the deterrent effect that full-blown representation at trial would have and would grow a body of case law that would frame and guide subsequent cases.

Post-Adjudication—disposition. Post-adjudication lawyering is crucial to positive outcomes for juveniles in status offense cases. The imposition of harsh and intrusive dispositional sanctions creates the self-fulfilling prophecy that status offense cases are the gateway to the school-to-prison-pipeline. Although state laws differ on the dispositional options available to courts, there are cross-cutting issues that must be confronted:

- **Incarceration in secure juvenile confinement.** The available data reflect the fact that 10,400 (of the 137,000) status offense cases petitioned to courts result in incarceration in a secure juvenile detention facility. This is a disposition that should be aggressively challenged, not only because of the emerging consensus that even short-term incarceration is harmful to children but also because of the questionable legal bases for such orders. Blueprint for Kentucky’s Children, *Ending the Use of Incarceration for Status Offenses* (updated May 2012). There is no valid penological justification for incarcerating children and youth who commit non-crime status offenses; the claim that incarceration is necessary in runaway cases to protect the juvenile is belied by the negative effects of incarceration, especially alongside serious delinquency offenders—including, in some jurisdictions, mandatory shackling—and the positive prospects of placing genuinely at-risk juveniles in facilities that stress full-scale services and supports and community integration.

Federal and state law on incarcerating status offenders, moreover, is exceptionally obscure. The federal Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA) prohibits the use of secure detention of status offenders for dispositional purposes in its “Deinstitutionalization of Status Offenders (DSO)” mandate. States that violate this mandate risk the loss of federal juvenile justice funds. The narrow pre-adjudication exception to the DSO mandate, 28 C.F.R. § 31.303(f)(2) (allowing 24-hour incarcerations; longer if a weekend is involved), is poorly understood. Under state laws, courts also base incarcerations of status offenders on a practice called “bootstrapping,” escalating the original adjudication into a “delinquency” or contempt of court for a violation of probation. *In re Shelby R.*, 2013 IL
114994 (Ill. 2013). These practices circumvent the sensible prohibition imposed in the JJDPA and should be roundly challenged.

- **Valid court orders.** The only permissible exception to the JJDPA DSO requirement is the imposition of a valid court order (VCO), a type of industrial-strength probation. 28 C.F.R. § 31.303(f)(3). Under governing federal regulations, the imposition of a VCO must come with “full due process,” as must any proceedings that allege a subsequent violation of a condition of a VCO. “Full due process” entails the appointment of counsel to those juveniles who are not already represented by counsel, though the data currently reported by the states to OJJDP do not indicate whether the appointment of counsel is actually taking place. Called by knowledgeable commentators “the exception that swallowed the rule,” VCOs are in disfavor on a national level; the U.S. Department of Justice and the National Council of Juvenile and Family Court Judges have urged Congress to abolish this loophole. Patricia J. Arthur & Regina Waugh, “Status Offenses and the Juvenile Justice and Delinquency Prevention Act: The Exception That Swallowed the Rule,” 7 Seattle J. for Soc. Just. 555 (Spring/Summer 2009).

- **Probation orders.** It is imperative that counsel ensure that the conditions of any probation order are reasonable and tailored to the offense. A common condition of probation in truancy cases is that the student not miss any more days of school or be “tardy.” In most cases, this condition is a guarantee from the outset that the student will be subject to a violation of probation hearing. A lawyer should advocate that this condition be removed and replaced by a realistic plan of re-engagement into an educational program. A particularly egregious, and constitutionally suspect, condition of probation that fails the reasonable nexus test is a requirement that the juvenile submit to random, suspicion-less drug testing. This condition can be driven by monetary incentives by firms that purvey the drug testing apparatus. Other onerous conditions of probation that should be challenged are the imposition of fines, drastic curfew restrictions, school disciplinary prohibitions, and enrollment in character-building programs, often at a fee, that have no evidence-based justification for status offenders.

**Expunction.** In those jurisdictions where expunction of juvenile records is not automatic, counsel should review the client’s record in a status offense case to determine whether the records contain detrimental material. The risk of disclosure in a data-driven world is real, and a student’s truancy record should not follow him or her. Also, counsel should advise the client about how to answer future inquiries from employers and others about the client’s juvenile court involvement.
Post-Conviction petitions. Because of the pervasive absence of counsel at the initial adjudication, lawyers in this field will meet clients who have passed the deadline for an appeal on the merits but who wish to have their adjudications vacated and dismissed. The opportunity to obtain this type of relief varies, but lawyers should mine their state’s juvenile rules and statutes to carve out relief, where warranted. In some states, a petition to vacate will resemble a Rule 60 motion under the applicable rules of civil procedure. This pinched avenue will often falter on concerns about the finality of the judgment, although the often abbreviated appeal period, combined with the absence of counsel, provide strong equitable grounds to reach the merits of the claims.

Access to Justice
There are two paths for providing heightened access to justice for children and youth with serious attendance problems. In keeping with the theme of this article, one path is to ensure that all children and youth who are petitioned to court for truancy (or any other status offense) have access to an independent, competent attorney. In those states where counsel is already appointed, more robust training in education advocacy can equip these lawyers with an array of arguments to remove truancy cases from the courts. These lawyers—whether juvenile public defenders or private appointed counsel—should be encouraged to collaborate with lawyers who possess expertise in special education law and poverty law and, in select cases, public interest lawyers who do civil rights and civil liberties cases. Representation in truancy cases is an ideal vehicle for pro bono work, especially in large firms where conflict issues often prevent the firms from taking consumer, housing, and similar cases. The Truancy Intervention Project in Atlanta is a proven model for pro bono representation in truancy cases.

The second path of reform lies in projects that seek to reduce the overall number of truancy petitions that are filed. Legal services programs, for example, can proactively screen their clients to ascertain whether attendance issues might be a concern for the family. Dean Hill Rivkin & Brenda McGee, “No Child Left Behind? Representing Youth and Families in Truancy Matters,” 47 Clearinghouse Review 276 (Nov.–Dec. 2013). If so, these programs can undertake the education advocacy necessary to resolve the problem or refer the clients to nonprofits, pro bono, or law school clinical programs that specialize in education issues. See, e.g., University of Baltimore School of Law Truancy Court Program.

Other prominent projects seek to provide decision makers and communities with solid evidence that court-based approaches are inefficient and expensive and to promote school-justice partnerships. The Vera Institute of Justice’s Status Offense Reform Center (SROC) provides a wealth of resources to policy makers and practitioners who are interested in creating effective alternatives to juvenile justice involvement for affected youth. SORC’s website contains comprehensive resources for lawyers and advocates interested in transforming status offense systems:
**Toolkit:** This step-by-step guide can help you bring stakeholders together to plan, implement, and monitor reforms that keep youth charged with status offenses in the community and out of court.

**Library:** This growing library includes resources on status offense behaviors, system responses, and reform efforts.

**Notes from the Field:** This collection of profiles provides an insider’s look at jurisdictions that have undertaken status offense system reform and serve youth in a variety of ways.

**Blog:** This space offers quick recaps about recent news stories, webinars, and events, as well as commentary from experts in the field regarding policy and practice developments related to status offenses.

The Coalition for Juvenile Justice (CJJ), through its Safety, Opportunity and Success Project, has also been a leader in status offense reform, developing the [National Standards for the Care of Youth Charged with Status Offenses](#), a set of concrete policy and practice recommendations for avoiding or limiting court involvement for youth charged with non-delinquent offenses. Other resources from the CJJ include publications by its [SOS Project](#), a model policy guide, a forthcoming 50-state survey on state status offense laws, webinars, and numerous other publications, including the following:

- Use of the Valid Court Order: State-by-State Comparisons
- Making the Case for Status Offense Systems Change: A Toolkit
- Exercising Judicial Leadership to Reform the Care of Non-Delinquent Youth: A Convenor’s Action Guide for Developing a Multi-Stakeholder Process
- Juvenile Defense in Status Offense Cases
- Addressing Truancy and Other Status Offenses
- Running Away: Finding Solutions that Work for Youth and Their Communities
- Disproportionate Minority Contact and Status Offenses
- LGBTQ Youth and Status Offenses

CJJ also works directly with states that are considering reforming their status offense law and policy, by providing advice, training, and technical assistance.

**Conclusion**
The lawyering reforms urged in this article, when coupled with the systemic reforms being adopted in smart jurisdictions, will challenge juvenile courts to reexamine their historical missions. No doubt, in some places, these reforms threaten the power of entrenched community institutions. In status offense cases involving truancy, school systems will be asked to diversify their programs profoundly to accommodate children and youth who regularly are unable to attend school for a host of reasons beyond their or their family’s control. District attorneys will...
be asked to screen petitions with rigor to ensure that the school system has exhausted all alternatives to juvenile court involvement. Most important, juvenile judges will be called on to abandon their role in adjudicating individual status offense cases and to assume leadership roles in building new systems for more efficiently and effectively serving children. The solid outcomes of these initiatives are becoming clearer by the day. In today’s climate, lawyers have a singular opportunity to make this change happen.

**Keywords:** litigation, children’s rights, truancy, status offense, access to justice, legal representation

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Federal Criminal Restitution for Child Pornography Victims
By James R. Marsh


Victims of child pornography are harmed twice: first, by the sex abuse and sexual assault committed against them and, second, by the subsequent distribution and collection of the images and videos depicting their sexual abuse. The worldwide, ubiquitous circulation of a victim’s child pornography is a never-ending invasion of privacy that is both psychologically traumatizing and emotionally unsettling.


As part of a remedial statutory scheme, 18 U.S.C. § 2259 requires federal courts to issue restitution orders to victims of child pornography crimes, which include the creation, distribution, trafficking, and possession of child sex abuse images and videos. Courts are required to hold individual defendants liable for the “full amount” of a victim’s out-of-pocket losses, including the cost of psychological treatment, lost income, and attorney fees.

The statute enumerates six categories of pecuniary losses:

1. medical services relating to physical, psychiatric, or psychological care;
2. physical and occupational therapy or rehabilitation;
3. necessary transportation, temporary housing, and child care expenses;
4. lost income;
5. attorney fees, as well as other costs incurred; and
6. any other losses suffered by the victim as a proximate result of the offense.

Restitution in the Federal Courts
Over the past five years, child pornography victims have increasingly turned to the federal courts to obtain restitution. Despite a congressional mandate requiring defendants to pay the “full
amount” of a victim’s losses, federal trial and appellate courts are deeply divided on what the restitution statute requires.

Some district courts have ruled that each individual defendant must pay the full amount of a victim’s losses, while others have decided that each defendant must pay just a tiny fractional share of the total losses suffered by a victim. A few courts awarded no restitution whatsoever. At the circuit court level, several circuits read a proximate cause requirement into section 2259. Only the Fifth Circuit rejected a proximate cause requirement, and only the Third Circuit did not directly consider this issue. Ten circuits held that a victim must show that all his or her losses were the proximate result of an individual defendant’s crime in order to obtain “full restitution.” The Fifth Circuit reviewed most of these decisions and—acting en banc—specifically rejected them, explaining that “[a]ny ‘seeming agreement on a standard [in the circuits] suggests more harmony than there is.’” In re Amy Unknown, 701 F.3d 749, 766 (5th Cir. 2012).


The Sixth Circuit noted these diverging principles but concluded “[w]e need not choose between the rationales.” United States v. Evers, 669 F.3d 645, 658–59 (6th Cir. 2012). The First Circuit acknowledged the disagreement but developed its own resolution by imposing a general proximate cause requirement, while concluding that the requirement could be shown in the “aggregate” rather than at the “individual” level. United States v. Kearney, 672 F.3d 81, 94–95 (1st Cir. 2012). The Eighth Circuit followed the First Circuit. United States v. Fast, 709 F.3d 712, 721–22 (8th Cir. 2013). Finally, the Seventh Circuit added yet another variation, holding that, while a proximate cause requirement exists, it results in full liability (i.e., joint and several liability) for any offender who distributes child pornography but not for an offender who possesses child pornography. United States v. Laraneta, 700 F.3d 983, 990–92 (7th Cir. 2012).

This circuit split resulted in the Supreme Court granting certiorari on the following question: What, if any, causal relationship or nexus between the defendant’s conduct and the victim’s harm or damages must the government or the victim establish in order to recover restitution under 18 U.S.C. § 2259? Paroline v. United States, 133 S. Ct. 2886, 186 L. Ed. 2d 932 (2013).
Amy’s Story
Amy was sexually abused as a young girl to produce child sex abuse images, which are legally known as child pornography. When she was 17, Amy discovered that these images were being trafficked on the Internet—in effect repeating her original abuse—and realized that her humiliation and pain will continue well into the future as thousands of additional wrongdoers witness those crimes.

The defendant in the case before the Supreme Court, Doyle Randall Paroline, pled guilty in federal court to possessing images of child pornography, which included Amy, in violation of federal child pornography laws. Amy sought restitution under 18 U.S.C. § 2259, the Mandatory Restitution for Sexual Exploitation of Children Act of 1994, for lost income and future treatment and counseling costs. The case eventually made it to the Fifth Circuit, which ruled en banc in Amy’s favor.

The case was accepted by the Supreme Court on June 27, 2013. Oral argument occurred on January 22, 2014 and the Court issued its decision on April 23, 2014.

Amy’s Legal Theory
Amy, whose story was powerfully told by noted journalist and author Emily Bazelon in the New York Times Magazine last year and popularized earlier this year on Law and Order: SVU in the episode Downloaded Child, argued that joint and several liability is the best mechanism to hold not just Paroline responsible but every other defendant who trades and collects her child sex abuse images.

In order to prevail under this theory, victims like Amy must first establish that they suffered “harm” from a defendant’s child pornography crime. See 18 U.S.C. § 2259(c). This cause-in-fact link or nexus between an individual’s harm and a defendant’s crime establishes a statutorily recognized “victim” entitled to restitution for the “full amount” of his or her losses. 18 U.S.C. § 2259(c) & (b)(1).

Next, the victim establishes the “full amount” of his or her losses from child pornography. In this case Amy provided detailed, expert evidence of, for example, the projected costs for psychological counseling she requires as a victim of child pornography. These costs are the losses Congress required to be awarded as restitution. Accordingly, as the Fifth Circuit held, the district court should have entered a restitution award in Amy’s favor for this amount, thereby making Paroline jointly and severally liable for her full losses along with other defendants convicted in other cases.

This legal theory makes every defendant responsible for the full amount of Amy’s losses and shifts the burden on collection from the innocent victim to guilty defendants who are, after all, benefiting and willingly participating online in Amy’s continued sexual abuse.
The Fifth Circuit’s practical interpretation of section 2259 also followed applicable tort law principles—i.e., the principles providing ample compensation to victims of intentional torts. Section 2259 applies to serious felonies with stringent mens rea requirements. For such intentional torts committed against vulnerable victims, the common law was never concerned about strict “proximate cause” limitations; instead, it imposed broad joint and several liability.

Once Amy collects the full amount of her losses, she cannot collect any more restitution. The law specifically provides that the court must set the amount any one defendant pays based on that individual defendant’s financial resources, thereby ensuring that no defendant bears a disproportionate burden. Under Amy’s theory, most defendants will pay the equivalent of child support every month until Amy is made whole. After that, restitution will end, and if any defendant felt their obligation was unfair, that defendant can seek contribution from other defendants—as Amy has been doing for six years now—to even things out.

The Supreme Court’s Majority Decision
In a split 5–3–1 decision, the Court rejected Amy’s legal theory with all three sides calling for congressional reform of the law. The majority decision, which was written by Justice Kennedy and joined by Justices Ginsburg, Breyer, Alito, and Kagan, recognized the terrible harm caused by child pornography but created a regime that will be hard to implement in the lower courts and will lead to years, if not decades, of additional litigation about the proper amount of restitution in any given case.

Critically for victims, the Court acknowledged, in the strongest possible terms, the devastating nature of this pernicious crime:

> The full extent of this victim’s suffering is hard to grasp. Her abuser took away her childhood, her self-conception of her innocence, and her freedom from the kind of nightmares and memories that most others will never know. These crimes were compounded by the distribution of images of her abuser’s horrific acts, which meant the wrongs inflicted upon her were in effect repeated; for she knew her humiliation and hurt were and would be renewed into the future as an ever-increasing number of wrongdoers witnessed the crimes committed against her.

The majority explained that

> there can be no question that it would produce anomalous results to say that no restitution is appropriate in these circumstances. It is common ground that the victim suffers continuing and grievous harm as a result of her knowledge that a large, indeterminate number of individuals have viewed and will in the future view images of the sexual abuse she endured . . . . Harms of this sort are a major reason why child pornography is outlawed . . . . In a sense, every viewing of child pornography is a repetition of the victim’s abuse.
Ultimately, however, the Court rejected Amy’s solution of joint and several liability with contribution and adopted an almost nonsensical standard for determining restitution:

- A court should order restitution in an amount that comports with the defendant’s relative role in the causal process that underlies the victim’s general losses.
- The amount should not be severe.
- The amount should not be token or nominal.
- The award should be reasonable and circumscribed.
- The award should recognize the indisputable role of the offender in the causal process underlying the victim’s losses and be suited to the relative size of that causal role.
- Trivial restitution orders are prohibited.
- The victim should someday collect restitution for all of his or her child pornography losses.
- Restitution orders should represent an application of law, not a decision maker’s caprice.

The majority urged the lower courts to “use discretion and sound judgment” without resorting to a “precise mathematical inquiry.”

In other words, the majority decision basically accepted the government’s rejoinder at oral argument that there should be a “fudge factor” when fixing compensation for victims of child pornography, while adopting “rough guideposts” for “determining an amount that fits the offense.”

**Chief Justice Roberts’s Dissent**

The dissent, which was written by Chief Justice Roberts and joined by Justices Scalia and Thomas, declared that, under the majority’s proposal, “Amy will be stuck litigating for years to come” and that the best she can hope to obtain is “piecemeal restitution” and “trivial restitution orders.”

“Congress set up a restitution system sure to fail in cases like this one.” That system “effectively precluded restitution in most cases involving possession or distribution of child pornography.” When it comes to Paroline’s crime—possession of two of Amy’s images—“it is not possible to do anything more than pick an arbitrary number for that amount.” The dissent concluded:

> The Court’s decision today means that Amy will not go home with nothing. But it would be a mistake for that salutary outcome to lead readers to conclude that Amy has prevailed or that Congress has done justice for victims of child pornography. The statute as written allows no recovery; we ought to say so, and give Congress a chance to fix it.
Justice Sotomayor’s Dissent

Justice Sotomayor, who was alone in her dissent, found that the majority’s approach cannot be reconciled with the restitution law that Congress enacted: Congress mandated restitution for the “full amount of a victim’s losses,” with defendants held “jointly and severally liable for the indivisible consequences of their intentional, concerted conduct.”

One key problem that Justice Sotomayor identified is the proper standard of causation and how that gets applied in a world where “child pornography victims suffer harm at the hands of numerous offenders who possess their images in common.”

Justice Sotomayor’s solution to this quandary is aggregate causation. Aggregate causation applies when “the concurrent or successive acts or omissions of two or more persons, although acting independently of each other, are in combination, the direct or proximate cause of a single injury.” In this case, any defendant may be held liable “even though his act alone might not have caused the entire injury, or the same damage might have resulted from the act of the other” defendants.

The policy issue is simple: The child pornography restitution statute offers no safety-in-numbers exception for defendants who possess images of a child’s sex abuse in common with other offenders. The aggregate causation standard exists to avoid exactly that kind of exception. Congress did not intend the law to create a safe harbor for those who inflict upon their victims the proverbial death by a thousand cuts.

After critiquing the majority’s decision as preventing restitution “in cases where the victim’s losses are caused by too many offenders” and the dissenters’ decision as foreclosing “entry of restitution in cases where a victim suffers indivisible losses as a result of the aggregate conduct of numerous offenders,” Justice Sotomayor proposed her own solution.

Joint and Several Liability with Contribution

Justice Sotomayor explains that “the nature of the child pornography industry and the indivisible quality of the injuries suffered by its victims make this a paradigmatic situation in which traditional tort law principles would require joint and several liability.”

This means that “individuals who act together, with the common end of trafficking in the market for images of child sexual abuse” cannot “hide behind the anonymity of a computer screen.” As joint actors, they are all individually liable for the full amount of the victim’s losses. This is especially important because “the injuries caused by child pornography possessors are impossible to apportion in any practical sense.”

Child pornography possessors are jointly liable under this standard, for they act in concert as part of a global network of possessors, distributors, and producers who pursue the common purpose of trafficking in images of child sexual abuse. As Congress itself recognized, “possessors of such material” are an integral part of the “market for the sexual exploitative use of children.”
communally browsing and downloading Internet child pornography, offenders like Paroline “fuel the process” that allows the industry to flourish. Indeed, one expert describes Internet child pornography networks as “an example of a complex criminal conspiracy,” the quintessential concerted action to which joint and several liability attaches.

To mitigate any unfairness in holding one or even several defendants responsible for the entire amount of a victim’s losses, defendants must be able to seek contribution from all similarly situated defendants. Adding joint and several liability with a right to contribution to the child pornography restitution law will solve two of the problems that vexed both the majority and the dissent.

**What Congress Must Do**

As Justice Sotomayor recognized, “in the end, of course, it is Congress that will have the final say.” If Congress wishes to re-codify its full restitution command, “it can do so in language perhaps even more clear than section 2259’s ‘mandatory’ directive to order restitution for the ‘full amount of the victim’s losses.’”

According to Justice Sotomayor, Congress might amend the statute, for example, to include the term “aggregate causation.” Alternatively, “to avoid the uncertainty in the Court’s apportionment approach, Congress might wish to enact fixed minimum restitution amounts.”

**The Ineffectiveness of the Current Law**

Recent facts present a dismal reality for victims of child rape and sexual assault that results in child pornography. The United States Sentencing Commission recently compiled the following statistics about child pornography offenders subject to fines and restitution under the statutory regime:

- Of 1,922 child pornography cases in the federal court system in 2013, no fine or restitution was ordered in 1,423 of those cases. That means that 74 percent of convicted criminals subject to Congress’s mandatory restitution requirement under current law were ordered to pay nothing.

- Just 286 offenders—or about 15 percent of convicted defendants—were ordered to pay any restitution.

- Shockingly, 190 defendants who were found financially capable of paying a fine (which means the probation officer determined that the defendant had demonstrated financial resources) were not ordered to pay restitution.

- Only 23 defendants were ordered to pay both a fine and restitution.

- For 437 child pornography defendants who were ordered to pay anything—either a fine or restitution or both—the median payment ordered was just $3,000.
Clearly, full mandatory restitution for child pornography crimes under the current law, from every defendant in every case for every victim, is an illusion.

**Congressional Action**

Faced with the United States Supreme Court’s draconian decision, U.S. Senators Orrin Hatch (R-Utah) and Chuck Schumer (D-N.Y.) spearheaded a comprehensive legislative fix, Senate Bill 2301, which addresses the concerns outlined by the Court in *Paroline v. United States*. The Amy and Vicky Child Pornography Victim Restitution Improvement Act of 2014 was introduced exactly two weeks after the Supreme Court’s decision.


National advocacy groups such as the National Center for Missing and Exploited Children, the National Crime Victim Law Institute, the National Center for Victims of Crime, and the National Task Force to End Sexual and Domestic Violence Against Women are also supporting this bill. How this novel new law will allow victims of child pornography to receive meaningful and timely compensation is discussed below.

**About the Act**

The act’s congressional findings reflect the long-held maxim that the demand for child pornography harms children because it drives production, which involves severe and often irreparable child sexual abuse and exploitation. The harms caused by child pornography are more extensive than the harms caused by child sex abuse alone because child pornography is a permanent record of the abuse of the depicted child, and the harm to the child is exacerbated by its circulation. Every viewing of child pornography is a repetition of the victim’s original childhood sexual abuse.

Congress recognizes that victims suffer continuing and grievous harm as a result of knowing that a large, indeterminate number of individuals have viewed and will in the future view images of their childhood sexual abuse. Harms of this sort are a major reason that child pornography is outlawed.

Most important, the unlawful collective conduct of every individual who reproduces, distributes, or possesses the images of a victim’s childhood sexual abuse plays a part in sustaining and aggravating the harms to that individual victim. Multiple actors independently commit intentional crimes that combine to produce an indivisible injury to a victim.

It is the intent of Congress that victims of child pornography be fully compensated for all the harms resulting from each and every perpetrator who contributes to their anguish. Through the
act, Congress adopts an aggregate causation standard to address the unique crime of child pornography and the unique harms caused by child pornography. Victims should not be limited to receiving restitution from defendants only for losses caused by each defendant’s own offense of conviction. Courts must apply a less restrictive aggregate causation standard in child pornography cases, while also recognizing appropriate constitutional limits and protections for defendants.

The Amy and Vicky Act responds to the Paroline decision and does three things that address the unique nature of these crimes. First, it considers the total lifetime harm to victims from the initial sexual abuse (grooming is in the congressional findings) to the last possessor. Second, it requires meaningful and timely restitution. Third, it allows defendants who have contributed to the same victim’s harm to spread the restitution cost among themselves.

**Highlights**

A victim’s losses include medical services, therapy, rehabilitation, transportation, child care, and lost income. Restitution does not include pain and suffering, emotional damages, or punitive damages. If a victim was harmed by a single defendant, that defendant must pay full restitution for the victim’s losses.

If a victim was harmed by multiple individuals, including those not yet identified, a judge can impose restitution on an individual defendant in two ways, depending on the circumstances of the case: The defendant must pay “the full amount of the victim’s losses” or at least $250,000 for production, $150,000 for distribution, or $25,000 for possession.

Federal law already provides a mechanism for creating a fair and balanced payment schedule according to each defendant’s ability to pay. Multiple defendants who have harmed the same victim and who are liable for the “full amount” are jointly and severally liable and may sue each other for contribution to equalize their restitution obligation.

Congress is expected to reintroduce this bill in the next session in early 2015.

**Keywords:** litigation, children’s rights, Paroline v. United States, child pornography, restitution, Amy and Vicky Child Pornography Victim Restitution Improvement Act of 2014

Book Review: *Changing Lives: Lawyers Fighting for Children*

By Monique R. Sherman

Lourdes M. Rosado  
*Changing Lives: Lawyers Fighting for Children*  
ABA Book Publishing

Written and edited by attorneys practicing on the ground in almost every area of legal child advocacy, *Changing Lives: Lawyers Fighting for Children* provides a valuable resource to several different audiences: law students who went to law school to “help the children” but are not sure what that means or how their particular skills and interests would best translate to helping children; attorneys in private practice who would like to focus their pro bono efforts on assisting children but are not sure where to start; and attorneys who are making a foray into the area of child advocacy and want a brief primer at a 30,000-foot level that will explain what issues may be involved and identify red flags. The book is also a terrific resource for children’s lawyers who have been practicing for years and who might use the book for inspiration or to educate others about why lawyers make a difference in the lives of children.

Each chapter focuses on a different area of practice. The book includes chapters on representing children in immigration, school discipline, and juvenile justice proceedings; advocating for children who are homeless or have mental health problems; and representing youth charged as adults. Other chapters focus on representation in child welfare cases—from very young children to youth transitioning out of foster care—and in impact litigation to change the system.

Each chapter begins with a vignette about a real client that will motivate readers to engage with similar clients. Notably, each of the vignettes incorporates elements of types of child advocacy addressed in other chapters. Readers who are experienced in almost any form of child advocacy will recognize the truth in each of the stories—they could easily be fabricated, like a law school fact pattern, to pull together the myriad of issues that may face a child client. But we child advocates know that they are not only real stories but typical ones, because the intertwining of social, economic, educational, mental health, child welfare, and juvenile justice issues is the hallmark of representing children.

Following the vignette in each chapter, the authors describe the trends in the area of practice, the pitfalls to watch out for, and useful practice tips—some general and some as specific as a list of potential motions to make in court.

Chapter 1 describes the classic job of the child advocate—representing infants and toddlers in child welfare proceedings. The authors point out the importance of having a separate advocate for these children who is not beholden to “the system” and whose focus is on the development of and permanency for the specific child. The authors point out at least two factors that are too often ignored for advocates to consider: (1) although it is the preferred outcome, reunification is not always in the child’s best interest; and (2) courts are not always bound by agency policies on
placement—often the court could order a placement or other disposition that the agency would not be able to support based on its own policy—but only if a dedicated child advocate has researched and investigated the possibilities and is present in the courtroom to make the request.

Next, the authors take on representation of youth in juvenile delinquency proceedings. The authors make an important point about the prevalence in the juvenile justice system of children with disabilities, minority children, and children in poverty. In addition, the authors point out the significant feeder effect of increasing zero-tolerance policies in schools, resulting in increased arrests due to school infractions. Finally, the authors discuss crossover youth—those involved in the child dependency system who become embroiled in delinquency proceedings.

Advocates for children and youth in immigration proceedings have received increased attention recently, and Chapter 3 provides a brief primer on the types of immigration relief potentially available to immigrant youth, including asylum, Special Immigrant Juvenile Status, T-visas, U-visas, and Violence Against Women Act petitions. The most interesting thing about this chapter, though, came through its beginning vignette—the story showed an attorney who questioned the assumptions that everyone else accepted, and the attorney discovered her client was actually an unaccompanied minor, protected by multiple immigration laws. This lesson carries through to most of the other forms of advocacy described in the book, as well: Most of the information we know about child clients, unlike adults, is going to come from other people, whether or not those people have access to full or accurate information. A skilled and dedicated advocate is often necessary to challenge the information received from those adult sources who may have their own interests at heart.

In Chapter 4, the authors describe a classic story for anyone who has represented a child with learning disabilities who is referred for expulsion: An argument develops in class for reasons related to the child’s disability (in this case, a request to read aloud, made to a young man whose disability makes that a herculean task); a frustrated young person acts out, comes into physical contact with a school staff member, and finds himself or herself in dual-track expulsion and delinquency proceedings. The chapter identifies trends that are at once commonly voiced but jarring: African American students are three and a half times as likely as white students to be suspended. Students with disabilities are suspended and expelled disproportionately compared with students in regular education. For those in law school or private practice looking for pro bono opportunities, the chapter offers some concrete information that might make this area of practice more appealing: Students are entitled to due process in school discipline proceedings and specifically (in many jurisdictions) to cross-examine witnesses against them. This can provide a great opportunity for attorneys to use their skills in ways they might not have recognized were possible.

Chapter 5 introduces one of the most difficult (and, for that reason, important) issues a child advocate can grapple with—school responses to mental health problems of students. The red flag that this chapter’s vignette illustrates so well is that the student had consistent behavioral problems and an Individualized Education Plan (IEP) but no mention of or attention to the

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behavioral problems in the IEP. The chapter also highlights the proliferation of psychotropic medication for children, often without proper medication management or even appropriate underlying evaluations. Most importantly, though, this chapter illustrates the profound effect that restrictive “treatment,” such as placement in residential treatment facilities, can have on a young person. The client described in this chapter viewed his placement in a residential treatment facility as incarceration—and why wouldn’t he? He was removed from his family, community, and school, and he knew that the treatment wasn’t helping him. For him, this was punishment. This is the one vignette in the book without a satisfying resolution. Indeed, it appears that this area is one of the most difficult for advocates to make real progress in, but in many ways, that is all the more reason that it is important for lawyers to be involved in representing children with mental health issues and to be well trained on how to effectively advocate for them.

Runaway and homeless youth are often depicted in the media with far less sympathy than the author of Chapter 6 engenders. Instead of painting homeless youth as mini-delinquents, the author aptly points out that they are often taking matters into their own hands to protect themselves when other systems, such as the child welfare system, will not protect them. This chapter describes the resources available to homeless youth in a very clear way, and it points the reader to several federal authorities related to those resources.

In Chapter 7, the authors describe the work advocates around the country are increasingly focused on doing to decertify children charged with crimes as adults so that they may be adjudicated in juvenile courts. The opening vignette describes an interdisciplinary team who went far beyond the courtroom to make sure that the juvenile court could order resources to support treatment and rehabilitation of the client, which makes it easier for a criminal judge to justify sending the youthful offender back to juvenile court. The chapter also includes a number of useful checklists and practical information for those interested in working in this area.

The last chapter of the book that focuses on direct representation is aptly named “Keeping the Door Open” and describes the advocacy attorneys do to keep older children who are approaching majority engaged and receiving services. The chapter explains the reason such advocacy is vital—poor outcomes for young people who age out of foster care are well documented, including failure to graduate high school or attain a General Educational Development certificate, lack of employment and underemployment, homelessness, early pregnancy, and incarceration. The authors describe transition plans that are required by federal law for youth in foster care over the age of 16 and the federal reimbursement that is available if state systems provide independent living and other services to youth between the ages of 18 and 21. Additional resources, such as scholarships, are also described. The checklists at the end of the chapter provide an excellent outline for advocates looking to create a transition plan for aging-out youth.

*Changing Lives* closes with a description of two pieces of impact litigation undertaken by legal services and pro bono attorneys that made drastic changes in the way state and local agencies approached the care of the children in their charge. As the authors point out, it is axiomatic that when a child must be removed from his or her parents, the state’s job is to care for that child.
Unfortunately, the authors contend, a number of factors in many states lead to re-traumatization and risk for children involved in the child welfare system after they have been removed from the families who are unable to care for them. The authors establish the importance of working on larger-scale litigation and policy changes alongside the everyday, individual advocacy described elsewhere in the book.

One of the most important characteristics of each of the first eight chapters of *Changing Lives* is the emphasis on the collateral consequences of each type of legal problem a child might face: If the child is adjudicated delinquent, what effect will that adjudication have on his or her immigration status? If the child testifies in his or her defense in expulsion proceedings, what effect will that have on the child’s related delinquency proceedings? How do a child’s special educational needs and the school’s failure to meet them affect his or her ability to stay in school even after what would otherwise be labeled a “zero tolerance” offense? These questions are the questions any child advocate ought to be asking throughout the representation of a child, no matter what the subject matter, because for almost every child who has a legal problem requiring representation, these separate realms of legal problems often interact significantly. As a result, this book will be a terrific tool for even the most experienced child advocate.

*Changing Lives* can be a good guide for attorneys or law students who have a heartfelt desire to use their legal training to help children but want to learn about the various avenues to do so. For attorneys just starting in one of these areas of the law, many of the chapters provide practical advice about the practice and resources. Read as a whole, the book is an excellent showcase of the myriad of legal problems that one action, or set of actions, can spur and why our most vulnerable children need well-trained, dedicated attorneys who specialize in each of the areas described.

To purchase *Changing Lives: Lawyers Fighting for Children*, please visit the [ABA store](#).

**Keywords:** litigation, children’s rights, legal representation, juvenile justice, child welfare

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The Hidden Benefits of Pro Bono
By Deb Mallgrave

Pro bono work provides lawyers with opportunities to give back to the community, but there are other, less recognized career benefits that stem from pro bono work. Newer lawyers can gain experience, confidence, connections, and visibility both inside and outside their firms. More senior attorneys, particularly when they lead a firm’s or office’s pro bono program or a larger team on a significant pro bono case, can gain even greater visibility as well as case management and law-firm leadership skills.

Junior Associates—Gain Experience and Confidence

Experience. Through pro bono cases, litigation associates can get their first depositions, hearings, or even their first trial. The experience of Kendra Beckwith, with Wheeler Trigg O’Donnel LLP, in Colorado, demonstrates the breadth of experience pro bono can provide. She took on her first pro bono matter as a third-year and soon found herself running a major case with several other associates. As a young associate, she learned to delegate and manage a team of associates (even giving one attorney his first deposition). Her pro bono experience allowed her to showcase her skills to senior partners without having to brag about them. She did not have to tell them what she could do or what experiences she was ready for; she could simply show them.

Another associate, Sara McClammer, with Hoover Hull LLP, in Indiana, believes her pro bono work has helped develop her oral advocacy skills. Sara volunteers regularly at a local clinic, doing client intake or screening interviews. In the clinic setting, she is required to think on her feet and be responsive to clients in need of real-time advice.

Pro bono cases also offer valuable client-management skills. Associates can learn how to work with a client and discover how to meet a client’s objectives and expectations (or even help clients redefine their expectations). Because pro bono clients may be less sophisticated than corporate clients, associates also must learn to communicate effectively and drop the legalese to explain the purpose and strategy of the legal proceedings.

Confidence. Gaining experience also increases a newer attorney’s confidence. There is such a steep learning curve following law school that it can be easy for attorneys to slip into the “nothing I do is good enough or fast enough” mindset. Taking a pro bono case gives associates an opportunity to try out new skills, take charge, and gain confidence from doing so.

Partners, including those the associates work with or turn to for advice with pro bono matters, may take notice of an associate’s new skills and experiences—which can lead to better work assignments and increased responsibility. That was certainly Kendra
Beckwith’s experience. Through her pro bono case, she established a relationship with a senior partner that led to new opportunities she otherwise might not have received. She earned a spot on that same partner’s next trial team and argued a case in front of a federal appellate court as a fifth-year associate.

I also credit my pro bono efforts with enhancing the role I played during one of my first trials. Just as I was to begin the trial, our local public law center announced that I would be honored as attorney of the year for my pro bono efforts. The trial judge responded to the announcement by congratulating me from the bench (out of the presence of the jury). I was second chair in that trial but once the judge congratulated me, my responsibilities increased dramatically. I questioned more witnesses than originally planned, including an expert. I also prepared and argued jury instructions and other motions, and the client looked to me more for advice and assistance.

Senior Attorneys—Pro Bono as a Path to Leadership

For more senior attorneys, pro bono can also be a path to becoming a leader in the community and the firm.

**Community leadership.** Shortly after I entered the pro bono arena, I became our office’s representative on the firm’s pro bono committee. In addition to my litigation work, I managed pro bono cases, tracked pro bono activity, and worked to ensure that my office met the firm’s pro bono expectations.

As part of my role, I became involved with a local organization (led by a retired justice of the California Court of Appeal) that hosts a yearly reception to introduce new associates to the pro bono opportunities available to them. I also participated in a community-wide, law firm pro bono effort to stop an ordinance targeted at closing a homeless shelter. Over the years, I continued to work with a local public-law center to place cases with our firm and assist with their community outreach efforts. I now proudly serve on the board of directors for that organization.

Rita Lin, of Morrison & Foerster, credits her success with a high profile pro bono case for earning her a spot on the *Daily Journal*’s list of 100 “Top Women Lawyers for 2012.” The case was *Golinski v. U.S. Office of Personnel Management*. While the case started out as a challenge to an administrative ruling denying Golinski’s request to add her same-sex spouse to her employer-provided health benefits, it blossomed into a constitutional challenge to the Defense of Marriage Act (DOMA). Golinski was one of the four DOMA challenges the U.S. Supreme Court was asked to consider when the Court agreed to hear *United States v. Windsor* (ultimately finding Section 3 of the DOMA unconstitutional). The case definitely promoted Rita internally and externally, and likely helped set her apart as she was made partner in 2013.

**Law firm leadership.** Managing a firm’s pro bono program also provides leadership opportunities. I developed leadership ability by creating and managing a more structured
pro bono program in our office, for which the firm was recently recognized with a statewide award.

Developing a sustainable pro bono program was not as simple as I first thought. There were three significant challenges in the way. First, the associates were not aware of the firm’s pro bono policies—that attorneys were expected to do 50 hours of pro bono work a year, and the firm gave full billable credit for every pro bono hour worked (even for hours over 50). Second, some associates were nervous about taking a new case for fear of not having a senior partner to guide them if they needed support. Third, associates did not know where to find cases that might interest them.

I addressed each of these aspects systematically. I made sure to inform associates of the firm’s policies and used my own experiences as evidence that the firm stood behind them. I also dispelled the notion that being in charge of a pro bono case meant associates were on their own. To the contrary, the firm required that a partner be on every pro bono case. Third, I surveyed attorneys to determine the type of cases associates and partners were looking for, and then sought to match them with those opportunities. When I found opportunities that matched an attorney’s known interest or expertise, I sent targeted emails to those individuals, made phone calls, or even walked down the hall for a face-to-face conversation about taking a new pro bono case.

To generate additional interest in pro bono, I created a program that would provide leadership opportunities to junior associates and utilize our office’s summer associates. I found discrete pro bono cases that the summer associates could work on and potentially complete during their summer. The cases were not substantively complex, but involved different skills used in the legal practice—client meetings and fact gathering, legal research and digesting certain federal regulations, and investigative research and skills. Each summer associate was paired with a junior attorney, paralegal, and a translator. We are now in our seventh year of that program.

Along the way, we began hosting the same program at a local law school. Our office now supervises six to twelve law students a year in handling these same types of cases. These cases seek humanitarian immigration relief for victims of serious crimes (including domestic violence, sex abuse, and human trafficking) who cooperate in the investigation or prosecution of the crime.

In just the past two years, the office has handled more than 90 pro bono matters benefiting more than 200 individuals, and we have donated more than 3,100 hours a year. At any given time, more than half of the firm’s attorneys are involved with pro bono matters, and most contribute to the firm’s overall efforts. The cases cover a wide spectrum and include human rights, immigration relief, adoption, elder abuse, collection defense, personal injury, employment and transactional assistance to nonprofits.
The firm’s efforts were recognized in 2012, when the office received the California State Bar President’s pro bono Service Award. That same year the office was recognized by The Public Law Center of Orange County as the 2012 Law Firm of The Year for its exemplary commitment to providing access to justice for low-income residents of Orange County.

Conclusion
It is hard to predict the hidden benefits that attorneys will find through pro bono, but based on my experience I am convinced the benefits go far beyond “doing the right thing.” Pro bono efforts certainly help those in need, but more than that, they provide attorneys with opportunities to gain leadership and case-management skills that are crucial to advancing their careers.

Keywords: woman advocate, litigation, pro bono, associates, leadership, summer associates, human rights

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NEWS & DEVELOPMENTS

Keeping Kids Out of Foster Care

Vivek Sankaran from the University of Michigan and Martha Raimon from the Center for the Study of Social Policy have just published a new article with important ramifications for legal services programs, child protection agencies, and most importantly for the families involved with child protective services. The article describes how integrating legal services with child protective services can produce better outcomes for families. The article is an excellent summary of how these programs work, and includes newer research and suggestions on integrating the work with medical legal partnerships. It provides a promising model for how agencies that provide broad based civil legal services for the poor can make an important difference for families.

— Rich Cozzola, LAF, Chicago, IL.

Breaking Down Barriers for African American Girls

The National Women’s Law Center and the NAACP Legal Defense & Educational Fund have released a report entitled Unlocking Opportunity for African American Girls: A Call to Action for Educational Equity. The report takes a comprehensive look at the barriers that African-American girls encounter in school—including overly punitive and disproportionate school disciplinary practices—and the educational and economic outcomes that result. It concludes with concrete recommendations to help advance African-American girls’ educational opportunities and outcomes. This report is a result of a multi-year study and focuses on the barriers that limit the educational opportunities of many African-American girls as well as the impact of those barriers. The report outlines potential interventions to improve the lives of young African-American women and urges stakeholders, advocates, and community members to take action to improve this situation.

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