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Improving Care for Foster Children
By Shannon Hernández – April 12, 2016

Hi there I’m Jessica* when I was 8 years old I was in foster care and I had a foster mom that had the same name as you and who worked in [xx] and lived there I was hoping I have the right person if I do please email me...

Jessica, my first foster child, whom I last saw 14 years ago, emailed me out of the blue. She was barely nine then, and I was surprised to hear from her as I had never given her my email address.

My husband and I had thought of Jessica and her younger sister Nicole many times since they left our home in 2002 to be reunified with their family. Jessica (8 years old at time of placement) and her sister Nicole (18 months)—their actual names have been changed for this article—were our first foster children, as well as the first children we ever parented (we started fostering as a newly married couple, before having our own biological children). We had thrown ourselves into parenting them, working hard to do all the things for them that we would have done were they our own birth children. Their needs were significant, as would be expected of children who have experienced the neglect, abuse, or other issues leading up to being removed from their family, and the upheaval and uncertainty of multiple foster placements.

Their trauma and sadness revealed themselves in a need to be consoled at all hours of the day and night for griefs they could not articulate, and in some significant oppositional behavior from Jessica. Not yet able to read as a third grader, Jessica also needed extra help at home to close big gaps in her learning, as well as someone to interface with her teacher on a regular basis to maintain a connection between the work being done at school and the additional help needed at home. The girls also needed all the other things that kids need to grow and thrive—including lots of our time and undivided attention. Nicole needed regular time being held and read to, and help with progressing developmentally for her age with everything from learning to count to eventual potty training. Jessica needed opportunities to explore her interests and build her self-confidence by participating in recreational activities in the community (she especially wanted to learn ballet). And both of the girls needed to experience the kinds of everyday things that make childhood special and memorable (going to see Santa Claus at Christmas, doing an Easter egg hunt on Easter, etc.). We knew we were the only ones who could provide these things for them while they were with us, as even the most dedicated birth parent in the reunification process would be unable to fulfill these daily, around-the-clock needs. We made all of these investments in Jessica and Nicole because we believed that what they experienced and learned during their time with us would shape the rest of their lives for the better and that going without fully dedicated, wholehearted parenting for even a short period during this formative time of their lives would be to their detriment in both the short and long term. This was why we had chosen to become foster parents.
While we believed that our role was to step into the shoes of parents for Jessica and Nicole, we were supportive of the reunification process and potential for them to be returned to their family. We did not think that either goal in any way excluded or diminished the other or that fully invested parenting by us in any way undermined the birth parents; rather, we believed that it simply meant that they would receive the best possible care while with us and that it was what they needed regardless of whether they were to be reunified in the short term, in the long term, or not at all—which was at that point a complete unknown. This belief has become core to all of our foster parenting efforts since then.

After a year of fostering/parenting Jessica and Nicole, we received a call from their social worker informing us that it had been decided that they would be returned to their family in a week’s time. Though we were happy for the girls, we were heartbroken at the prospect of saying goodbye. We hoped to stay in touch and even be an extended resource for the family, but we knew there was a possibility we would never see them again. As it went, we had frequent contact for the first few months and even continued to drive Nicole to day care in the mornings to assist her mother who didn’t have a car, but then one day they moved and the phone number we had for them no longer worked. From that point on, we could only wonder where life had taken them and hope for the best.

In the 14 years since Jessica and Nicole left our care, we have continued to believe that being foster parents could permanently affect the lives of the children we fostered, and we have cared for children in every age group from infant to teenagers, for periods of time ranging from three days to seven years (interrupted by two failed family reunifications). Over the years, we have experienced moments of great personal satisfaction upon seeing a positive impact from our efforts, along with a sense of despair and failure when it has seemed that nothing we did could help bring about the kind of outcome we desired for our foster children.

Despite the moments of doubt, we have chosen to bet on making a difference by fully investing in meeting the physical, emotional, and educational needs of the children who come to us—that is, by fully parenting them. We believe this is in our foster children’s best interests and expect this level of commitment from ourselves any time we accept a placement. We also believe that our foster children should be able to expect that of us.

Even with a firm commitment to provide the best possible parenting to our foster children, certain aspects of the foster care system, though doubtless well intended, can make it difficult for caregivers to fulfill this goal. The following are some of the areas that pose the biggest challenges to us as caregivers and corresponding suggestions for improvement:

**Standards and process for sharing relevant, timely information with caregivers.** Lack of in-depth information about a foster child’s background, experiences, psychological and emotional issues, behaviors (past and current), and case status and issues (especially as they relate to the potential length of the foster placement) creates barriers to providing the best parenting, which requires knowledge and understanding of these factors. However,
confidentiality rules protecting sensitive information about the child or birth family from being disclosed other than to certain parties involved in the case—typically, the social worker, birth parents, attorneys, court-appointed special advocates, therapists, and other service providers—often prevent this essential information from being shared with caregivers, who are generally not included in this group. Or sometimes when such information is deemed by the social worker or another party to be relevant to the caregiver’s job, there is a lengthy process to secure approval by the other parties and the court, at which point timeliness has been lost.

While it is certainly important to protect the birth family’s and child’s privacy, the threshold for providing information to caregivers should be redefined. The standard for what is considered “relevant” should be calibrated to what information a parent—any parent—needs to provide the most thorough and informed care and parenting to his or her child. The fact that the children in question are foster children should not result in a different standard because it ultimately affects the quality of parenting these children receive. If a therapist working with a child for 50 minutes once a week needs particular information to facilitate that work, then it is likely that the care provided by the caregiver on a daily basis and spanning all areas of the child’s life would be improved by having that same information. For example, if a child has disclosed suicidal thoughts in the past, even if not considered to be a current risk, being aware of that fact will enable the caregiver to be on the lookout for signs of concern in this area and take precautionary steps to help ensure the safety of that child as well as other children in the home. Caregivers who have been entrusted with the full-time care of a child can also be entrusted with all of the information relevant to that care. If this is not the case, then we are bringing in the wrong people to be foster parents or not training them adequately.

In addition to redefining the standard of relevance for sharing information with caregivers, implementation guidelines that include detailed examples of the types of information and materials that qualify under the standard are needed in order to reduce the propensity for varying interpretations by social workers or other parties based on individual predisposition or fear of liability for potential over-disclosure. All parties involved in the foster care system should then be trained on the standards and guidelines in order to become familiar with the rules and their correct application.

Providing the relevant information on a timely basis should also be an essential part of the standards. An additional legal process should not be necessary to obtain clearance to share information that meets the criteria for disclosure to the caregiver. All parties concerned about the best interests of the child should share a sense of urgency to getting relevant information into the hands of the caregiver responsible for the day-to-day care of the child. Days that become weeks or months of delay in providing information to the caregiver mean that during that time the child may not be receiving the same quality of parenting he or she would receive from a fully informed caregiver and, in some cases, results in the development of new or exacerbated needs.
Finally, if there is information the caregiver reasonably believes is necessary or helpful, but that doesn’t clearly fall into the identified categories for sharing (or if there is disagreement on the interpretation of the rules), there should be an established process for the caregiver to escalate the issue and seek quick resolution, if need be through an information requesting process from the court, so that these issues do not go unaddressed.

Greater ease for caregivers to share information with the court and engage in the legal process for the benefit of the child. Although caregivers are not parties to the legal case, their participation in the legal process can benefit the foster child and help facilitate more informed decisions by the court. As the day-to-day caregivers, foster parents are aware of key information and details about the child and the child’s behaviors and needs, and in some cases, foster parents may see issues or patterns that others who are not with the child on a daily basis don’t see. This information is important for other players and especially the court to be aware of when making decisions about the child. Yet, the legal requirements and process for caregivers to participate and provide information can be difficult to navigate—ironically (and sometimes humorously), even with two law degrees between my husband and me, we often find it difficult to overcome these obstacles. Sometimes these obstacles come in the form of unwritten local court rules or interpretation regarding filing requirements that have resulted in being turned away from filing caregiver information forms (or in some cases nearly turned away until escalating to a superior to request compliance with the written rules). On more than one occasion, our caregiver information form, although filed, did not reach the judge before the hearing and would have been missed if we had not attended the hearing and noted that we had submitted information. Barriers that deter or prevent caregiver information or concerns about the child from being part of the decision-making process should be entirely removed as they provide no benefit to foster children. More complex issues than information sharing, such as requesting de facto parent status, are even more difficult to navigate due to lack of accessible information and resources for caregivers on the applicable rules and processes, which deters that type of participation by caregivers.

Recognizing and supporting that the greatest asset foster families have to offer is that they are families, not institutions or paid employees. While we are deeply committed to being foster parents, we are also the parents of three biological children to whom we have a responsibility to provide the best possible childhood and family life. Our biological children have grown up with foster care as a norm, learning from an early age to share everything, from their toys, bedrooms, and even their parents, with our foster children. They open their hearts to every child who enters our home—usually with little more than a few hours’ notice—and are often more successful than we are at making them feel comfortable in the initial days after placement as they connect in ways that only children can and welcome them into our family. They quickly become playmates, and with the longer placements, they have become like siblings. This experience of family is
one of the greatest assets we can offer to children who have been removed from their own families.

Enabling caregivers to do the things that build and maintain a positive family life, and fully include their foster children in that experience, needs to be recognized and integrated into the foster care system’s values and priorities. Without this, foster children will not benefit from the best family experiences while in care, and many caregivers will not remain involved or will feel the need to take breaks from being foster parents to pursue family life.

One significant example of foster care system rules that can hinder caregivers’ ability to engage in family life and fully include their foster children is the highly restrictive rules that apply to caregivers traveling away from home with their foster children. In some locations, “travel” means spending even one night out of county—even for an overnight camping trip as little as 30 miles away or a weekend trip out of town, both common things for families to do and positive experiences for children. The rules governing this type of activity by caregivers may require the approvals of the social worker, the biological parents, the parents’ attorneys, and the child’s attorney. If the caregiver has more than one foster child from different families, approval from all these parties is required for each child. If any one party is unavailable or unresponsive to the request for approval, or if the social worker is busy or away and unable to pursue the approvals, the travel plans are disallowed under the rules. This extremely high hurdle results in foster families being greatly limited in their ability to engage in normal family activities that involve being out of county for short periods of time or in the foster children being excluded from these plans and being left in respite care. Either result is a loss for foster children, and it is unclear how the rules provide any benefit to them. Requiring approvals from as many as six individual parties and giving biological parents what may amount to a veto right over caregivers’ incidental family travel do not benefit foster children or make them safer. These kinds of rules also result in caregivers taking breaks from accepting placements near holidays and summer vacations, when families typically want to make these kinds of plans, which results in fewer quality placement options during certain times of year.

These kinds of rules should be rewritten to focus on addressing specific needs (e.g., for short-term travel that doesn’t interfere with court-ordered visits, perhaps all that is needed is for the social worker to be made aware of the plans) and should provide a balance that allows foster families the latitude to engage in normal family activities and include their foster children without having to jump through extraordinary hoops. The result of foster children being able to participate in these types of positive family activities more frequently, and preserving the asset of quality caregivers willing and able to accept placements when needed, will benefit both foster children and the foster care system.
On the day that I received the email from Jessica, the lawyer side of me urged caution in responding as I couldn’t be certain who the email was from or what she might want. Nevertheless, I wrote back right away:

> Hi Jessica - Yes, you have the right person. It’s a nice surprise to hear from you - we’ve thought of you and Nicole many times over the years. I was even looking at some photos of you from back then recently. I hope you’re doing well, and would love to hear how life is going and what you’re up to now.

Her response came almost immediately:

> Oh yeah I’m soo happy I found the right person I’m in tears. Here’s my phone number if you wanna catch up . . .

After exchanging a few more emails and texts, we made plans to talk on the phone a few days later. I didn’t know what to expect, but she seemed to want to talk on the phone and I was curious to hear her voice after all these years—when I last spoke with her she was a child and I was in a parental role to her, and now she was an adult about whom I knew very little.

Not long after giving me a brief update on her life, she launched into telling me that she had always remembered us—even referring to me as “Mama Shannon,” a name she used to differentiate me from her biological mom when she lived with us. She mentioned that she had tried to remember where our house was anytime she was near landmarks she remembered from when she lived with us. She reminisced about a family trip we had taken, on which she had some “first” and “only once” life experiences, and said she remembered us as being very nice to her. She concluded by saying she had wondered, through the years, what it would have been like if we had still been involved in her life.

In one short conversation that I never expected to have, my very first foster daughter confirmed what we have blindly hoped and believed for her and our other foster children since then: that what we did, even though it was for only a relatively short period in her life, made a lasting impact on her. Although she had gone on to be reunified with her family, the investments we made in parenting her and the life experiences she had with us during that time remained with her and created a lasting impact and memories that have become a positive part of her life story.

**Keywords:** litigation, children’s rights, foster care

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Teaming Up for Homeless Youth
By Dieter Schmitz and Jaclyn Pampel – April 12, 2016

A seventeen-year-old in the foster care system is trying to understand his rights to contact his biological mother from whom he has been separated for years by the court.

A fifteen-year-old who thinks she is pregnant is living on the street and wondering how and whether she can see a doctor.

Couch-surfing siblings want to stay in school on track to graduate but need to know if they can stay at their school while their address keeps changing.

These and so many other legal questions are brought to the attention of children’s lawyers and legal aid offices across the country every day. But the answers can be elusive with long wait lists at legal aid offices, overtaxed stakeholders in the children’s legal system, and few available resources that speak plainly about the rights of street-connected, homeless, or vulnerable youth. Eager to help do our part to address the legal needs of youth when and where they need answers, our firm, Baker & McKenzie, joined up with our similarly committed friends to work to address this need.

One of the big obstacles homeless youth face is a lack of understanding of the law and the options available to them. These knowledge gaps for homeless youth are both wide and deep. In addition, many nonlegal professionals who are committed to helping homeless youth also lack information about their legal rights. The key was to help craft a resource for not only youth but also social workers, shelter staff, school personnel, medical personnel, law enforcement, and anyone else willing to help them access the information they need.

Beginning in 2013, we worked with a team to create a much-needed and previously nonexistent legal resource to better serve homeless children in several states—the Homeless Youth Handbook. The handbook has become an invaluable resource for homeless youth, communities, and agencies across the country.

Facing the Gap Head-On
In 2013, a long-time pro bono partner of ours, Columbia Legal Services in Seattle, Washington, reached out to Angela Vigil, our pro bono partner and executive director, with a question: How can we better serve displaced and homeless youth who call and ask for small pieces of information about their rights? Seattle used to have a hotline, staffed by law students under lawyer supervision, for street-connected youth to call with questions. An unfortunate loss of funding ended this resource and started to further flood the phone lines of organizations like Columbia Legal Services, known for its advocacy for children and youth.
Not every youth needs a lawyer; unfortunately, even those who do may not be able to access a free legal representative, but they can educate and arm themselves with information about how to access their rights and better understand the rules of the many systems that govern them. So what was needed was a resource to help them do just that on their own, or in the company of caring community members who were willing to help, even when a lawyer was not available.

We started to brainstorm how we could help homeless youth through making them aware of the rights they have as well as the organizations committed to helping them access those rights. More than anything, though, homeless youth needed access to resources and information in a way that was understandable to them. It was clear to us that the homeless youth in Washington were faced with at least three major challenges: First, there are not enough lawyers for kids in need. Homeless youth, in particular, have very little access to legal counsel. Second, it is difficult to both find and understand the law as it relates to homeless youth. It can appear to be a web of overlapping and sometimes disjointed services and resources difficult to navigate. Finally, this challenge in finding and understanding the law as it relates to homeless youth is even more difficult for youth who may have less capacity to understand the law and how it affects them.

We realized quickly that helping homeless youth in the state of Washington included raising awareness of the great services that existed as well as giving them resources so they could seek help on their own. What resource could we put together to help them at a time when they needed it most?

**Teaming to Bridge the Gap**

Creating a resource to answer the wide range of legal questions faced by homeless youth demanded the best thinking, study, creativity, and advocacy the legal community could provide—all packaged together in an easy-to-use format that can be used by youth themselves or those helping youth. Perhaps somewhat naively, we thought the resource could be a simple brochure. Instead, we quickly realized it needed to be detailed enough to provide the best answers but simple enough that the youth and all of their stakeholders could find quick and clear answers.

A deep team of lawyers and other professionals was needed to research, gather, compile, summarize, and package both the questions and the answers. It was clear that this project would benefit from the perspective of many other folks across Washington who are invested in helping one of the state’s most vulnerable populations. So we turned to our friends at Starbucks, who, led by Lucy Helm, general counsel, agreed to work hand in hand with Columbia Legal Services and Baker & McKenzie to create this handbook to serve the homeless youth community in Washington.

Under the expert guidance of the Children & Youth Project at Columbia Legal Services, the team developed 18 broad categories that could be relevant to a large population of the homeless youth. Those categories turned into the handbook’s 18 chapters:
As part of each broader category, we compiled a list of questions that we anticipated many of the youth would need to answer for themselves. The team thought this question-and-answer format would provide the easiest way for the homeless youth to get answers to questions that are commonly raised. Creating a robust list of categories and targeted questions for research was a joint effort with lawyers and many others from Columbia Legal Services, Starbucks, and Baker & McKenzie, who spent countless hours to create categories and refine the questions to touch on the areas that were most pressing for homeless youth.

Once a list of categories and targeted questions was created, a group of volunteers was needed to research each chapter and write the handbook in a way that a young person (a 15- to 16-year-old) could understand. No answer could be “it depends.” No impractical answers about what the written law might technically allow but the real practice does not withstand. No law journal–like citations. Each answer had to include links to resources to help the youth or those helping them get more information. And each team needed to coordinate with other teams to make sure the handbook referenced other chapters where needed and included a glossary of terms to define any term that may not be immediately understandable. With Baker & McKenzie partner Dieter Schmitz and Alex Torres and Devon Gores at Starbucks, we set up dedicated teams for each chapter and got to work under the guidance of the experts at Columbia Legal Services.

Law, particularly in these areas, is more than what is written in black and white. Ensuring that the drafters captured not just the law but the essence of what the youth needed to know was essential to this resource. The team relied on the expert guidance of Columbia Legal Services to guide them where the practice and procedure are different than they look on paper.

The project was big—6 months and almost 1,000 hours of volunteer time from over 100 contributors, including attorneys, paralegals, communications personnel, and other professionals, resulting in the creation of a first-of-its-kind resource for homeless youth in the state of Washington. The Homeless Youth Handbook—Washington was launched in 2013. The “brochure” had morphed into a 250-page resource to help change the lives of homeless youth across the state. The handbook was created in two formats—a hard-copy resource guide and an online, searchable version. The online version was crafted to be used on mobile devices and includes active links to all resources to make additional research by the youth as easy as possible.

To get the word out to those who most needed to access the resource, we undertook a joint campaign to publicize the resource, including displaying informational posters in public places around Washington and providing hard copies of the *Homeless Youth Handbook* in schools and libraries.

**Minding the Gap Across the Country**

As the ink was drying on the *Homeless Youth Handbook—Washington*, it was clear that this resource was absolutely essential in every state. So, the very next year, in 2014, Southern Minnesota Rural Legal Services in Minnesota agreed to team with Baker & McKenzie and another client, Ecolab, to create a handbook for the homeless youth in Minnesota. Noting that Minnesota has its own dynamic, Jim Seifert, Ecolab’s general counsel, along with Dieter Schmitz, led the effort to customize the original 18 chapters and add a 19th chapter to address the special issues faced by Native American youth in Minnesota. With impressive speed and commitment, the *Minnesota Legal Issues and Options Handbook* was completed. Next we moved on to Illinois.

Like the teams that developed the Washington and Minnesota handbooks, the Illinois team was formed with an expert public interest partner, Chicago Coalition for the Homeless in Illinois, and a deeply committed client, United Airlines, eager to help homeless youth. The volunteer teams worked elbow-to-elbow under the excellent guidance of our public interest partner, putting themselves in the shoes of vulnerable and lonely youth to help answer the questions they need the answers to. The result was the *Illinois Legal Issues and Options Handbook*.

We are currently hard at work on a handbook for California with dedicated and committed public interest partners Bay Area Legal and the Youth Law Center. Following the first annual *Children’s Rights Summit* hosted at Google in 2014, Google offered to team up to create the handbook for California. Like the teams that developed all the other handbooks to date, a team of diverse volunteers from Google and Baker & McKenzie are working closely to create a much-needed resource for homeless youth under the guidance of our public interest partners.

**Next Up?**

Handbooks for New York and Texas are currently being researched and drafted. We expect these handbooks will be produced by late 2016. As in all prior versions, the pairing with organizations that are experts in the substantive areas is essential to the success of the handbooks. In New York, we are partnered with The Door and the Covenant House, and in Texas, with Texas Appleseed. Again, we’ve had the great benefit of partnering with dedicated corporate partners, Mondelez International and Weatherford for the New York and Texas handbooks, respectively.

A project like the *Homeless Youth Handbook* happens only with the dedication of a public interest partner who is a true expert on the issues, a corporate client as deeply committed to
making an impact for homeless youth, and a veritable army of committed pro bono volunteers who are always at the ready to tackle complex problems. Our pro bono volunteers take on this work not because they are experts in this field but because they know how difficult it can be for homeless youth to understand their rights and because they want to use their own skills to craft something that provides accessible, practical information. We have volunteers from varied areas of expertise around our firm and at our corporate partners as well. What it takes to be successful is a team of folks who will work hard together as a team to craft a resource guide truly aimed at youth. The substantive expertise for the volunteers happens through diligent research and analysis. It’s really the commitment to helping homeless youth that is the common thread among these teams.

The Continued Role of Innovation
The *Homeless Youth Handbook* continues to evolve to meet the needs of those it serves. Through the first few iterations of the handbooks, we have learned that homeless youth who use the handbooks are increasingly likely to use them on a mobile device. Given that, Google, our partner for the California handbook, raised the next right question: How can technology make this resource more helpful to homeless youth? As we work on finalizing the California handbook, also under development is a “next generation” handbook for homeless youth. It will meet all the objectives we’ve set out for the first generation but will allow the user to select the issues he or she is facing currently. In response to these selections, a report will be created to target the handbook’s resources to those the youth needs. In addition to partnering with Google and Bay Area Legal, we engaged with Neota Technologies to use its interactive platform to create a “demo” version of the *Homeless Youth Handbook*, which we shared at the second annual Children’s Rights Summit in December 2, 2105, at Google. Stay tuned in 2016 for completion of this handbook!

We will continue to develop this resource across the country where children’s advocates say it is needed and where caring and committed corporate partners want to join us to make it happen.

**Keywords:** litigation, children’s rights, homeless youth, legal access, legal resources, *Homeless Youth Handbook*


By Mimi Laver – April 12, 2016

We have arrived! By that I mean the field of family defense is now officially on the map with the new book *Representing Parents in Child Welfare Cases: Advice and Guidance for Family Defenders*. This publication, the first of its kind for lawyers who represent parents in child welfare cases, takes an in-depth look at what it means to provide high-quality representation. Professors Martin Guggenheim and Vivek Sankaran gathered 17 of the leaders in the field, many of whom serve as Steering Committee members for the ABA Parent Representation Project, to write this extensive manual. In an interview for the ABA Center on Children and the Law’s *Child Law Practice*, Professor Guggenheim explained some of what the book offers:

> The preface and Chapter One are designed to pull people into the field. They were written to help you appreciate that this is a subject worthy of one’s attention and that it delves into some of the most important and complicated constitutional questions the Supreme Court addresses.


The rest of the book is focused on how to be a parent defender and to be good at this work—whether a novice or a long-timer. The authors discuss basic things lawyers should be doing in each case as well as sophisticated ways to do them better.

Professor Sankaran goes on to explain how to use this book:

> It’s not a book that you need to sit down and read from start to finish. It’s one that can be read independently looking at the different chapters. If you are a reader interested in systemic change, then you should start with Joanne Moore’s chapter on systemic change. Everybody should start reading the Introduction to frame it; it’s not very long. From there, look at the Table of Contents and figure out what’s on your mind right now. The book is intended to be read out of order based on the topics.

*Id.*

In this book, the authors explain who the clients are: generally poor, uneducated women of color who often lose their children to the child welfare system for reasons directly related to poverty. Like all clients who are accused of wrongdoing, they are entitled to high-quality lawyers who know how best to support them. Research shows that high-quality lawyers improve outcomes for children by assisting their parents in accessing needed supportive services so the children can remain at home or return home safely in a timely manner. Research also shows that children who
are raised by their families have better outcomes than those who are removed. To do their job well, parents’ lawyers need information about services, assistance for their clients from professionals like social workers and parent mentors, and training. *Representing Parents* provides invaluable information for lawyers about each phase of a case from challenging removal through defending at a termination of parental rights hearing and appeal, as well as concrete information needed when working with clients who fall within special categories—such as those with disabilities, parents involved in the criminal justice system, and noncitizens—or when handling cases in which the Indian Child Welfare Act applies.

Representing parents, and doing it well, can be satisfying for the lawyer as well as the client, as Professor Guggenheim shared:

> What always kept me eager to be involved in this field was, first, the extraordinary feeling it provides to save a family, to keep a family together. It is a field where excellent lawyering makes a difference. We don’t just win judgments for some monetary award. We save families—the most important relationship in the world. We make it possible for children to be raised in their homes and for parent and adult caregivers who love their kids to have the great joy and human right to raise them. It’s hard to think of something of greater importance.


This book gives parents’ lawyers the perspective and knowledge they need to provide their clients with excellent representation so that families will remain intact and children can thrive.

To order the book, visit the [ABA Store](#).

**Keywords:** litigation, children’s rights, *Representing Parents in Child Welfare Cases: Advice and Guidance for Family Defenders*

*Mimi Laver* is the director of the ABA Center on Children and the Law’s National Project to Improve Representation for Parents Involved in Child Welfare, as well as the center’s director of legal education.
The Young Lawyer's Guide to Indigent Defense

By Cleveland M. Patterson III – July 31, 2014

Every year, thousands of students graduate from law school, ready to embark on their career in the legal profession. A fraction of these future attorneys will choose a path of public-interest law, fueled with the desire to help those who do not have the resources to help themselves. In 1963, the Supreme Court unanimously ruled, in Gideon v. Wainwright, 372 U.S. 335, that state courts are required under the Fourteenth Amendment of the U.S. Constitution to provide counsel in criminal cases to defendants who are unable to afford their own attorneys. Three years later, the Supreme Court guaranteed the right to counsel to defendants in criminal cases; and in Miranda v. Arizona, 384 U.S. 436 (1966), held that counsel would be appointed if a defendant were indigent. As result of these monumental Supreme Court decisions, defendants accused of committing crimes, no matter how big or small, will receive legal representation.

Young attorneys who wish to champion the cause of representing indigent criminal defendants often find employment with their local public defender’s office. These public defenders are salaried employees of the state and provide a great amount of indigent criminal defense in the country. Small cities often do not have a public defender’s office; therefore, the state must find other ways to retain counsel for those who cannot afford an attorney. Some courts enter into a contract with a law firm and allow associates from that firm to represent low-income defendants. There might also be a legal-aid or legal-services organization serving the community. In other places, attorneys are appointed on a case-by-case basis as legal counsel for those who cannot afford representation, or are assigned to represent indigent defendants on the court’s criminal docket. These attorneys act as independent contractors and are paid a fixed amount by the court. Although the court’s list of appointed attorneys may be long, it is very competitive among newly minted attorneys. Here are a few pointers for young attorneys on how to represent indigent defendants in criminal cases when they reside in a city where there is no public defender’s office.

Get to Know the Judges and Clerks in the Municipal Court

The criminal docket in the municipal court, which might also be known as city court, hears local-ordinance violations and misdemeanor criminal offenses. This is the perfect court for a young lawyer to cut his or her teeth as a criminal-defense attorney, by representing defendants charged with minor offenses. To be able to accept cases in this court, the attorney should, consistent with professional ethics, introduce himself or herself to the judge and his or her clerk. This might be beneficial in that the clerk has the authority to add attorneys to the appointed-counsel list. In addition, traditional wisdom suggests that developing an appropriate professional rapport with the judge might be advantageous in regard to giving an attorney the benefit of the doubt in a close case, keeping in mind the criminal burden of proof of beyond a reasonable doubt. Also, the judge will determine whether an attorney remains on the appointed-counsel list.

Observe Other Appointed Attorneys

A great way to become an effective indigent-defense attorney is to observe other indigent-
defense attorneys in court. The attorneys who have served as defense counsel in that court have experience with the inner workings of the court as well as a professional working relationship with the court officers. The new lawyer should pay close attention to how an experienced attorney addresses the court, interacts with clients, and negotiates with the prosecutor. The newbie should also take notes and not hesitate to ask questions. An experienced attorney is the greatest asset in the early stages of a career.

Talk to the Prosecutor
Contrary to what is seen on television, defense counsel and prosecutors are not always personally contentious with each other. At the end of the day, both sides would like to see that justice is served. The prosecutor may offer advice on how better to serve a criminal client, and may also assist by offering the best plea bargain that would be advantageous to the client, while also serving the city’s or the state’s best interest. Talking to the prosecutor about the client will also sharpen negotiation skills. If defense counsel believes a guilty verdict might be difficult for the prosecution to procure, then by all means he or she should stick to the zealous-advocacy guns for the client. Otherwise, counsel should negotiate the best possible plea agreement for the client.

Know the Law
This goes without saying. An attorney cannot represent an indigent client to the best of his or her abilities without knowing the elements of the alleged crime and the potential defenses to that crime. Not knowing the law is irresponsible and not in the best interest of the client. Therefore, proper legal research and case preparation are necessary, even in a seemingly minor case: It is not minor to the client, and inadequate preparation could result in an ineffective-assistance claim by the now-former client, a possible date with the disciplinary committee of the state bar, and damage to the reputation that the new lawyer wants to build.

Advantages
Being a criminal-defense attorney for indigent clients may not seem like the flashy image that is associated with being a lawyer. There will not be a six-figure salary, nor will the new lawyer likely become the next Johnny Cochran. However, there are several major perks to representing impoverished clients. First is the gain of invaluable trial experience in criminal court. Being in front of a judge and advocating for a live client, who has so much at stake, gives the feeling that the three years spent in law school were actually worthwhile. Putting the skills and knowledge gained in law school to practical use in court is one of the best feelings in the world. Second, by providing legal assistance to those who need it the most in our society, the lawyer is ensuring that their constitutional right to legal representation is protected and that they are protected from systemic injustices.

Starting a career as an attorney is very difficult. Most new lawyers are not aware of the alternatives to representing indigent defendants when there is no public defender’s office in their city. Having read this, new attorneys now have an alternate path to gain courtroom experience and to fulfill a critical public service.
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"Within Our Reach: A National Strategy to Eliminate Child Abuse Fatalities"

The Commission to Eliminate Child Abuse Fatalities (Commission) has released "Within Our Reach: A National Strategy to Eliminate Child Abuse Fatalities." The report includes recommendations focused on a "proactive approach to child safety with a more strategic response to immediate crises, we hope to make prevention of fatalities standard practice."

While overall safety for children in the U.S. is improving, child fatalities are not declining. From the report:

> Child protection is perhaps the only field where some child deaths are assumed to be inevitable, no matter how hard we work to stop them. This is certainly not true in the airline industry, where safety is paramount and commercial airline crashes are never seen as inevitable.

Every day, four to eight children in the United States die from abuse or neglect at the hands of their parents or caretakers. The Commission found that more data on these deaths is necessary, though they did find that most children who die are under the age of five. Concern about these fatalities led Congress to create the Commission to Eliminate Child Abuse and Neglect Fatalities (CECANF) in 2013. The president and Congress appointed a group of 12 Commissioners, with the goal of outlining a national strategy to end child maltreatment fatalities in the U.S.

After a listening tour around the U.S., the Commission put together a comprehensive list of recommendations centered around a public health approach to child safety that engages a broad spectrum of community agencies and systems. Recommendations focus on leadership and accountability, decisions grounded in better data and multidisciplinary support for families. The Commission was only able to find one evidence-based practice to reduce fatalities, NurseFamily Partnerships—home visiting programs.

―Cathy Krebs, Committee Manager, ABA Section of Litigation, Children’s Rights Litigation Committee
March 16, 2016

**Special Immigrant Juvenile Brochure**

U.S. Citizenship and Immigration Services has published a Special Immigrant Juvenile (SIJ) brochure for juvenile courts and child welfare professionals. The brochure provides an overview of SIJ, eligibility requirements, the role of child welfare professionals and juvenile courts as well as tips and resources. It provides helpful information for lawyers working on these issues, both full time and pro bono lawyers.

—Cathy Krebs, Committee Manager, ABA Section of Litigation, Children’s Rights Litigation Committee