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Radical Imagination, Fearless Lawyering

By Cathy Krebs – July 9, 2018

"You have the power, thus the privilege, thus the obligation to disrupt these systems."
—Shéár Avory, National social justice advocate and Biden Fellow for LGBTQ equality

On May 1, 2018, the Children's Rights Litigation Committee convened a day-long symposium to celebrate our twentieth anniversary as well as the victories in the children's rights field during the past 20 years. The symposium, *Children's Rights are Human Rights: 20 Years of Fearless Lawyering for Children*, resulted in a dynamic and interactive conversation among all attendees, who included both the pioneers of children's law as well as the newest generation of children's justice advocates, focused on where we need to be going next for our child clients. Capturing the magic of the day feels almost impossible; nevertheless, this article attempts to highlight some of the extraordinary work done that day. Note that these amazing quotes, ideas, and thoughts are not attributed to particular speakers but instead are synthesized together to simply provide an overview. To see pictures and attributed quotes, check out the hashtag #KidsRts20 on Twitter, and visit the symposium website, where there are videos from the day.

Throughout the symposium, clear themes emerged. Children need relationships, connections, and love, and that knowledge should drive all of our work. We need to listen, empower, and involve children and families because change happens from the ground up. And we need to pay attention to what the child and family need and then meet those needs, even if that means creating a new service, system, or platform. To accomplish these goals, lawyers must be fearless and make use of radical imagination.

Zealous Advocacy and Due Process

We were reminded that due process is foundational and essential. Children must have a right to (zealous) counsel when they are involved in the justice system. For children in immigration cases, deportation can be a death sentence, and so the fact that this population does not currently have a right to a lawyer is deeply problematic. Parents must also have a right to counsel in both child welfare and immigration cases. We know that providing adults facing deportation with counsel is a family reunification strategy and provides collateral benefits to an entire family. Similarly, a right to counsel for parents in the child welfare system has proven to reduce a child's time in foster care and improve outcomes generally for the child.

In the past 20 years, we've made progress in understanding what quality lawyering looks like. We know that good lawyers mean better outcomes for our child clients (and save money) and that the lack of due process leads to worse outcomes. We were advised to remember that our
cases are about our clients, not us: We stand where we stand, when we stand, only because someone is in trouble and needs our help. We should not represent our clients as just another case, but instead push every single issue. We should look to international law and educate judges and others about its importance, and we should think about our advocacy for children in the context of an international movement for change. We win one case at a time, and if the result isn't right, then we need to keep going until it is.

We were challenged to dive into understanding our own bias and question the bias of the system. Our systems were often created to perpetuate inequity, and so discrimination is built into our systems. The standard of the "best interest of the child" is often determined by a white power structure on behalf of families that are disproportionally of color, and that can often make the situation worse. We need to be guided by standards and laws that can constrain bias.

We were also challenged to look to the future to think about the following questions: Who will be the next set of leaders? What will we do to mentor those new leaders and ensure a diverse pipeline into children's law? Who is missing from the table as we think about reforming systems for children? Are there unusual suspects who should be included in that conversation who are currently being left out? (Imagine if we recruited the best multidisciplinary talent to deliver the best for kids!) What will be the next set of ideas? People's crazy ideas sometimes do become law.

Families as the Solution
Often we blame families and call them the problem. At the symposium, we were encouraged to talk about families as the solution. If our systems looked at families as the intervention, it would reorient our entire approach as we would need to be in those homes and talking to those caregivers. We also need to step back and make space for system-affected families in our system reform work because no one knows more about these systems than the families trapped in them.

We talk a lot about prevention to keep kids out of the child welfare system, but it’s time to do more than just talk. What would it look like if we actually gave families the help they needed to care for their own children and keep their own children safe? What if we had wildly creative family-centered programs to keep families together? What would it look like if we designed a courtroom to keep families together? What if we had a trauma-free environment in which families could help themselves and in which families are empowered to find the resources that they need? In thinking about prevention, we also need to acknowledge that there is an overrepresentation of people of color in the child welfare system, according to the National Conference of State Legislatures, and that we do not always help children from wealthy families. We need to address all of these issues so that fewer children (but the right children) come into the child welfare system.
For those children who are removed from their homes because of allegations of abuse or neglect, what if we had a sense of urgency for them? What if we set a goal for every child who comes into state care of 30 Days to Family? What if we found safe placements with trusted adults by asking kids who they feel safe with and who they call when they are in trouble? Families are people who love you; they do not have to be Ward and June Cleaver. If a child has a loving family who can take them, we should prioritize those placements and fix whatever issue is getting in the way, whether that's providing a needed bed, fixing a problem with the house, or expunging an old record that has no impact on the ability to care safely for the child. Families love you no matter what, and that should be the priority for each child who comes into state care.

We considered ways that we can better support families. For example, if a child needs intensive mental health services, what if instead of institutionalizing that child, we provided those intensive services right in the home (whether that home is with family, foster care, or adoptive) so they did not have be separated from their families to receive the services they needed? When parents need services, whether to prevent removal of children or after children are removed, those services need to be effective, efficient, and provided without judgment. A parent mentor can be enormously helpful and can assist by walking with the parent, helping the parent navigate the system, and respecting the parent. We need to empower parents and ask what they need—they often are the smartest about what they need to stabilize their family and keep their children safe. If they identify a need for which there is no service, then let's think about creating that service.

In the immigration arena, we were reminded that children are often described as "unaccompanied," but that is the government's term for how it defines a child at the U.S. border, not how the child views his or her life and family. Further, current U.S. policy is separating families at the border and thus rendering children unaccompanied, even if they did arrive with family. Immigration advocacy needs to consider children as part of families, rather than treating them as if they are alone. Currently, we don't consider best interest of the child in an immigration proceeding, and we don't think about family reunification or how to strengthen families once they are reunified. For an adult facing deportation, our system does not consider whether a child will be left behind as a result of a deportation. In the European Union, the prioritization is family reunification, child safety, and best interest of the child over immigration prosecution, the very opposite of U.S. priorities. What if we took a similar approach of thinking of families as the solution and asking what immigrant children and families might need to help put them back together and strengthen them?

In all of our justice systems, what if we flipped our thinking to assume families are the solution? How would our advocacy be different? How would our systems be different? That is our challenge moving forward.
Treat Children as Individuals
We talked a lot about systems that do not treat children as individuals but instead as faceless children who are all treated the same and given cookie-cutter services. Our systems focus too often on creating good consumers, not supporting children and families through challenges. We heard from one speaker who described her time in foster care as being shuttled mechanically between inappropriate placements and visits with wrong family members. No one asked her what she wanted, and if they did, the questions were perfunctory—nothing changed.

Our juvenile justice system has historically been structured around the idea of strict control, which our country has often viewed as a way to save children. As a result, we deny children their freedom in the name of control—state sanctioned and judicially enforced. Indeed, the U.S. is the only country in the world that sentences children to die in prison by imposing the sentence of life without the possibility of parole for children under the age of 18. We heard from one speaker who went to prison at age 16 and who described being on a unit with youth who had been sentenced to life in prison—they were all watching cartoons. Despite their harsh sentences, they were still, in fact, children.

We cannot think of treating children as individuals without thinking about race. We began the day discussing the history of children's rights, but we know that black and brown children were excluded from those initial conversations around child protection and rights. Race continues to pervade each of our systems and our society (indeed, as a country, we are as segregated now as we were during the era of Brown v. Board of Education). We often use poverty as a proxy for race, but it's always about race. However, our society generally denies that the U.S. has a problem with racism, raising the following question: How do we engage a problem that we deny we have? We know that there can be no reconciliation without truth. We cannot change the racism of our systems without recognizing that the systems are racist. To engage on the issue of racism, we need radical imagination (which is sometimes just common sense).

Despite the treatment of our systems, we know each child is different and needs different things at different ages. Age, gender identity, disability, race, sexual orientation, trauma history, developmental level, family, religion . . . these things and so many others are important parts of who each child is. Are we asking our clients who they are and what is important to them? If not, how can we make sure their needs are met? Are we moving beyond the caseref and being inquisitive to have authentic conversations? Are we giving our child clients agency? Are we ensuring joyful experiences for our clients in care? Fun should be a mandatory part of every day and not dependent on good behavior. Are we providing treatment and opportunities to heal from trauma? Are we recognizing the urgency of each child's circumstances? We must do all of these things if we are to provide zealous advocacy.
If you think your children have a future, then you plan for it. What if we changed our thinking on how to treat children accused of crimes? What if we never caged children? What if we considered adolescent brain science, in both juvenile and adult courts, and amenability to rehabilitation? What if we looked at the social determinants of law violations (similar to how we look at the social determinant of health to improve outcomes). How would our systems and our advocacy be different?

**Fearless Lawyering: Challenging the Status Quo**

We began the session called "What if we placed kids in the least restrictive setting?" by responding to the question "What values would form the basis for a better system than we have now?" Full results can be seen [here](#), but prominent answers were love, equity, inclusion, family, and respect. One speaker noted that what is good enough for her own daughter should be the basis of all systems and that it should include early intervention, real reasonable efforts, and courts that are accountable.

One speaker who had been system-involved herself as a child talked about the evolution of her view of justice. For her as a child, justice was the freedom from adults who couldn't be trusted with her body or spirit; later it was the right to be heard and be part of the solution; then it was procedural justice; and finally she has realized that justice is love. It's a person who looks at you and sees the world, who doesn't see you as the worst thing you ever did or your worst day. Using this lens, it is clear that "least restrictive placement" is the wrong framing. It's not about physical surroundings; it is about placing children in the "most connected environment." You cannot fix broken hearts and loneliness. These things destroy our children. We often fixate on whether children are safe, when we should be fixating on whether they are loved. Loving a baby relentlessly changes everything for the baby. We must push individually and systematically toward love. We have to focus our advocacy on love and family and consider how something supports or gets in the way of a child being loved; that should be the guide for our work.

Our current systems often have the mentality of hospice. The system will do only what it is designed to do, and you can't beat a system into being competent. For example, our current outdated technology encourages compliance-driven behavior rather than behavior that actually meets kids' needs (when, conversely, technology can be used to change the behavior of frontline workers). We don't look at our systems as a business and we never have. If a business was not succeeding, it would fail. We need to be transparent and honest about how we are failing; otherwise, nothing is going to change.

In terms of creating new systems, we have some good research and data, and we can continue with research and design to find the programs, systems, and platforms that practically use the data in a way that disrupts. We cannot put the entire burden of change on our frontline
workers; instead, we need a diversity of skill sets to solve big problems. What if we had people with a variety of different skills including management, tech, and marketing, and researchers working to redesign our systems together? What are the kinds of skills that should be at the table that could help us think very differently about the challenges at hand, particularly those skills that could overcome existing resistance to change? Our guide should be thinking about what is needed—e.g., strong connections and helping youth heal, develop, and thrive—and then building systems, platforms, and tech to make that happen.

In the nonprofit world, there are often no chances to fail and experiment, but there must be. Let's use radical imagination to restructure our systems. We can try new programs on just a few kids—not every experiment needs to be huge—and this can allow us to try big changes that might fail, because incremental change is not enough; we really do need to be thinking about big restructuring. We must be fearless, intentional, and dogged about what we know to be right.

In terms of creating laws, can we identify our top three or four long-term legislative goals for children (perhaps prioritizing their safety and their agency), while remaining flexible to address needs as they arise? Planning a long-term legislative agenda presents a challenge but also an opportunity. Once we have passed great laws and won consent decrees, we must continue to advocate for their implementation or else they will not take root.

Our approach to system change should be family-centered, youth-led, and community-based. We have to empower the people who are closest to the problem because all change comes from below. It is the people who have the problem who understand the solutions. We must invest in the leadership of those most connected to the problem. What if youth drove the policy that shaped their lives? What if we allowed them to? What if we prepared them to? Youth are our partners. Their expertise is greater than our academics'. Our young people do not need more leaders; they need more listeners. Let's bring together families, children, and frontline workers. It's terrifying, but amazing things will happen, and until that happens, we will never find the solutions.

How can we think about system change and implement everything discussed above in our work when there are so many challenges to face-to-face interactions with our clients (e.g., caseloads)? To start, we can create moments of authentic human interactions with our clients and their families. We can give kids a chance to give feedback—on our lawyering as well as on the services they are receiving. We can examine the question of whether we are compliance driven or outcome driven. We must never think that we know more than the people we serve. It will take intentional acts of courage to create systems that work better for our child clients. Too often we fixate on what is plausible and not on what is possible. It's time to think about a
long-term strategy for reform that is lasting. We must shed any fear of failure, which can be our biggest barrier, and believe all children deserve our best efforts.

**What Is Next?**

*Children's Rights are Human Rights: 20 Years of Fearless Lawyering for Children* was just the beginning of an essential conversation looking ahead to the next 20 years of children's rights. Materials from the symposium, including a podcast series and videos, can be found on the symposium [website](#). The conversation will continue over the next few months through programs, webinars, and articles. Let us know if you would like to be a part of that conversation. We have come far as a children's rights community during the past 20 plus years, but we still have a long way to go. Here is to the next 20 years and the fearless lawyering yet to be done.

"We are the ones we've been waiting for."
—Shéár Avory, national social justice advocate and Biden Fellow for LGBTQ equality

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Legal Protections for Immigrant Youth under Threat

By Martin Gauto – June 18, 2018

These days when I get ready to start work, I have that moment while I wait for my computer to power up—that moment of anxiety and uneasiness as I wait to see what's in my inbox, on the LISTSERVs, or on the pages of the newspapers I peruse to start my day. This is a feeling that is all too common for immigrants' rights advocates, particularly those who work with immigrant youth. What I fear, and what far too often awaits, is news that the Trump administration has found another way to undercut the important legal protections created to ensure the fair and humane treatment of immigrant youth by our immigration system. Without any accompanying action on the part of Congress to create or change legislation, the Trump administration is quietly taking aim at immigrant youth using the executive tools at its disposal.

The term "immigrant youth" is a broad category. It encompasses undocumented and documented youth; it includes those who are with a parent or legal guardian and those who are unaccompanied. While there are many issues that could be discussed, this article focuses on two groups. First, there are immigrant youth who were brought to the United States by their caregivers at a young age, who have grown up here and who do not know any other country. These are the so-called "Dreamers" who have been fighting for years for a fair chance to permanently legalize their status and whose plight has been well documented. The termination of the Deferred Action for Childhood Arrivals (DACA) program and the ongoing litigation trying to keep it alive are front and center for these youth and the advocates fighting on their behalf. Second, there are immigrant youth who are recent arrivals to the United States, who came alone or without a parent or legal guardian, and who were apprehended and detained by the federal government upon their arrival. These are the "unaccompanied children" whose presence in the national consciousness has been most prevalent since the surge of 2014. The majority of these youth come from the Northern Triangle countries of El Salvador, Guatemala, and Honduras. The poverty, violence, and insecurity in those countries continues to compel children to make the dangerous journey north in large numbers, and the Trump administration is taking various controversial measures to stem the flow.

The Success of DACA

In 2012, based on Congress's inability to pass legislation to protect the Dreamers, President Barack Obama created the DACA program, which provides work authorization and protection from deportation for two years for certain immigrant youth brought to the United States through no fault of their own before the age of 16. The U.S. Citizenship and Immigration Services (USCIS) approved about 800,000 initial DACA applications between 2012 and 2017. The program has been a huge success in terms of the number of undocumented immigrant youth
who were able to emerge from the shadows to seek better education and employment opportunities.

A recent survey has given an insightful snapshot of the impact that the program has had on the lives of DACA recipients and their families. This survey was conducted in 2017 by Tom K. Wong of the University of California, San Diego, United We Dream (UWD), the National Immigration Law Center (NILC), and the Center for American Progress. These are some of the study's findings:

- Ninety-one percent of recipients are currently employed.
- Sixty-nine percent reported moving to a job with better pay after getting DACA.
- Fifty-six percent moved to a job with better working conditions.
- Five percent started their own business (compared with 3.1 percent of the American public as a whole).
- The average hourly wage of respondents increased by 69 percent.

The survey also illustrated DACA's positive impacts on the economy and education:

- Sixty-five percent of respondents bought their first car.
- Sixteen percent bought their first home.
- Forty-five percent are currently in school.
- Among those currently in school, 72 percent are pursuing a bachelor's degree or higher.

Attempts to Terminate DACA

Despite the success of DACA and its undeniable positive impacts on individuals, families, local communities, and the national economy, Attorney General Jeff Sessions announced the termination of the program on September 5, 2017, threatening to hurl the approximately 800,000 approved DACA recipients back into undocumented status. The termination plan called for a six-month wind-down of the program, during which eligible DACA recipients could continue to submit renewal applications until October 5, 2017, but initial applications would no longer be accepted.

The program's termination, however, has been put on hold by federal litigation. On January 9, 2018, a federal district court judge in San Francisco ordered USCIS to resume accepting DACA renewal applications but stopped short of ordering USCIS to resume accepting initial applications. In response to the ruling, USCIS resumed accepting renewal applications on January 13, 2018, and continues accepting them to this day. A federal district court judge in
New York issued a similar ruling on February 13, 2018. The cases are still pending before the respective courts of appeals in those jurisdictions.

To make matters even more complicated, two additional lawsuits could also affect the future of DACA. On April 24, 2018, a federal district court judge in the District of Columbia ordered USCIS to begin accepting initial DACA applications again. However, the judge gave USCIS 90 days before those initial applications have to be accepted to allow the Department of Homeland Security (DHS) to explain why DACA should be terminated. Then, on May 1, 2018, seven states, led by Texas, sued the federal government to terminate DACA completely. All of this litigation leaves the status of DACA in limbo, and it's not possible to know what the future holds for the program. What we do know right now is that anyone who still has DACA status or whose DACA status expired and is eligible to renew should do so quickly. It should be done in consultation with legal counsel if there are any questions about whether a renewal application could actually harm the applicant. For example, a renewal application for a DACA recipient who had a criminal arrest or conviction after his or her initial approval could actually trigger enforcement by Immigration and Customs Enforcement (ICE).

Protection of Unaccompanied Immigrant Children
Much of the furor surrounding unaccompanied children in the United States has arisen only in the last few years. In 2014, a total of 68,451 unaccompanied children were detained at the U.S. border with Mexico and sent to shelters around the country. Most of the children were fleeing the poverty, violence, and insecurity in El Salvador, Guatemala, and Honduras. The staggering volume of arriving children could only be described as a sea change and led to extensive coverage by the national media. The federal government's infrastructure for receiving, processing, and caring for the children was strained to the breaking point. Emergency shelters, such as the one at Lackland Airforce Base in Texas, had to be established because there weren't enough beds in traditional shelters.

Despite the recent attention, this is not a new phenomenon. Unaccompanied children have been arriving in the United States from different countries and for different reasons for a long time, although not in such large numbers. For many years, unaccompanied children were held in the care and custody of the Immigration and Naturalization Service (INS). As early as 2000, a total of 3,364 unaccompanied children were apprehended at the southern border and detained by the INS. At the time, the INS was also the entity responsible for prosecuting the removal (deportation) cases of those same children, creating a clear conflict of interest. There were also serious concerns about the conditions in which the children were detained.

In 1985, the Center for Human Rights and Constitutional Law (CHRCL) and the National Center for Youth Law (NCYL) sued the federal government to challenge the detention conditions of unaccompanied children in the care and custody of the INS. This lawsuit led to the seminal 1997
Flores Settlement Agreement, a major victory that created many important child protections that are binding on the federal government to this day. The following are some of those protections:

- a general policy favoring release from detention and family reunification
- detention, if required, in the least restrictive setting appropriate to the age and special needs of the child
- the right to a bond hearing
- access to humane conditions, including drinking water, food, toilets, sinks, medical attention, and adequate temperature control and ventilation
- segregation from adults
- notice of legal rights

The Homeland Security Act of 2002 transferred the care and custody of unaccompanied children from the INS to the Department of Health and Human Services' Office of Refugee Resettlement (ORR), which assumed the responsibility to comply with the mandates of the Flores Settlement Agreement. While detention conditions have vastly improved under ORR, challenges remain. The counsel for plaintiffs in the Flores case have had to intervene on several occasions to ensure ORR's compliance with the terms of the settlement. For example, in 2017 when it became clear that detained children were not being given the opportunity to request bond from an immigration judge, counsel for plaintiffs were successful in obtaining an order from the federal court securing that right. Most recently, counsel for plaintiffs sued ORR alleging that the following practices violate the settlement:

- ORR's policy and practice to "step up" detained youth from shelters to more secure facilities and residential treatment centers without providing them meaningful notice and an opportunity to be heard regarding the agency's justification for step-up
- ORR's policy and practice to administer powerful psychotropic medications to detained youth regardless of their wishes and without securing their parents' consent
- ORR's policy and practice to deny or delay detained children's release on the grounds their parents or other available custodians have or may harm or neglect them, without providing meaningful notice and an opportunity to be heard regarding a potential custodian's actual propensity to harm or neglect.

In addition to the statutory changes in the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) codified many of the protections of the Flores Settlement Agreement and added additional legal safeguards. Under the TVPRA,
unaccompanied children seeking asylum as a defense to deportation are entitled to have their case heard first by an officer in the USCIS Asylum Office, a non-adversarial setting that is more appropriate given the unique nature and vulnerabilities of children. Only if the officer does not approve the asylum request would the case be heard in immigration court, where a trained ICE attorney will prosecute the case, including cross-examining the child, whether the child is represented by a lawyer or not. The TVPRA also ensures that unaccompanied children, other than those from contiguous countries (Mexico and Canada), are able to seek voluntary departure before an immigration judge and, if successful, are able to depart at the expense of the government. Voluntary departure is an important legal safeguard for children who wish to return to their home country or who don’t have a viable legal path to remain in the United States. It allows them to depart without the formal legal consequences of a removal (deportation) order, which create obstacles to future ability to immigrate to or enter the U.S.

Attempts to Undercut Legal Protections
Virtually of the existing legal protections for unaccompanied children are being attacked by the Trump administration, which sees them as dangerous loopholes that encourage unauthorized immigration. While bills have made their way through Congress that would alter the statutory framework of the Homeland Security Act of 2002 and the TVPRA, to date none of them have passed. Despite this, the administration, across multiple federal agencies, has made moves aimed squarely at increasing detention and speeding deportations.

Many of these moves have been made through the Justice Department, which operates the immigration courts. It issued case completion quotas for immigration judges that undermine their ability to be neutral arbiters of justice. It issued a legal opinion that states that immigration judges have the authority to revoke a child’s "unaccompanied child" status, thus stripping that child of the legal protections afforded by the TVPRA. In addition, Attorney General Sessions is taking advantage of a peculiar provision of immigration law that allows him to divert a specific case from court to himself to create binding precedent. 8 C.F.R. § 1003.1(h)(1)(i). This is perhaps the clearest illustration that immigration courts are arms of the executive branch and that immigration judges do not have independent authority to decide cases. In just the past few months alone, he has used this provision four times. As of this writing, he has reached a formal decision in two of the cases. In Matter of Castro-Tum, he stripped immigration judges of the ability to administratively close cases in most instances. Administrative closure is a procedural mechanism that removes cases from a judge’s active docket. It was often helpful in reducing the number of immigration court hearings that children needed to attend while pursuing immigration relief before USCIS. Most recently, in Matter of A-B-, he rewrote the law on asylum by attempting to place severe restrictions on claims based on persecution perpetuated by nongovernmental actors. This is significant for immigrant children,
particularly those from the Northern Triangle, because many of them are fleeing gang violence or domestic child abuse (or both).

It is anticipated that the other cases the attorney general referred to himself will similarly alter the ability of immigrants (including unaccompanied children) to have due process in immigration court. Pending decisions by the attorney general could affect the ability to

- seek continuances to pursue deportation defenses that require decisions from other courts or government agencies;
- seek asylum without having to prove their case in a short pretrial hearing.

Another significant threat to unaccompanied immigrant children is the Trump administration's approach toward Special Immigrant Juvenile status, which is designed to protect and provide a path to legal status for children who have been abused, abandoned, or neglected. Advocates across the country report that the types of cases that were routinely granted for years are now being denied. In addition, some organizations are reporting that USCIS is revoking previously approved visas at an increased rate.

Meanwhile, DHS has proposed new regulations that would replace the Flores Settlement Agreement as the binding authority on the national standards for the apprehension, detention, and release of unaccompanied children. Under these proposed rules, DHS would check the immigration status of possible sponsors of unaccompanied children and adult household members. ICE would collect biometric data of sponsors and any adults in their household—a departure from the previous policy. This move is worrisome because potential sponsors who could get children released from detention may be too scared to come forward for fear of being deported themselves. Other areas of grave concern include the separation of immigrant children from their parents and ORR's recently announced plans to detain children at military installations and perhaps even erect tent cities. Remarkably, this list of threats to immigrant youth is not exhaustive, as new ones seem to emerge almost every week.

These threats take place against the troubling background that many immigrant youth go to immigration court without a lawyer because they are not entitled to legal representation at government expense. Given that a child's deportation can sometimes result in serious harm or even death, this lack of a right to counsel is deeply troubling.

In spite of the divisive rhetoric and cruel actions on the part of the Trump administration, immigrant youth are a part of the fabric of this country, as in the case of DACA recipients, and others will continue to arrive seeking protection due to ongoing matters of life and death in their home countries. While the current situation for immigrant youth under the Trump administration is extremely difficult, advocates have been fighting for their rights for years. There have been important successes along the way, even if they are threatened to an extent...
unimaginable just a couple of years ago. What is certain is that today's advocates will not back down and will continue to defend their clients' dignity and pursue all available avenues in defense of their rights.

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20 Years of Lawyers Advocating for and with Youth Experiencing Homelessness

By Casey Trupin – July 9, 2018

Who Are Youth Experiencing Homelessness and What Are Their Legal Issues?
At least 4.2 million youth and young adults experience homelessness each year. That's at least 1 in 30 minors, ages 13–17, and 1 in 10 young adults, ages 18–24. These youth often flee homes in which they experience physical abuse or sexual abuse or both. While adolescents experience abuse and neglect at the same rates as younger children, older children are more likely to be perceived as responsible for their own maltreatment. Likely due to this perception, adolescents are less likely to receive support from a public system of support like foster care, and more likely to end being diverted to a juvenile or criminal justice system.

Those young people who do enter foster care because of abuse or neglect don't fare well when they either don't find permanency or the permanency they thought they had falls apart. One (albeit dated) report found that more than one in five youth who age out of foster care experienced at least one day of homelessness within a year of leaving care.

Living in shelters or on the streets, homeless youth are at high risk for physical and sexual assault or abuse and physical illness, including HIV/AIDS. Homeless youth also face a high likelihood of becoming sexually exploited or trafficked commercially. This is at the top of the wide range of serious risk behaviors that adolescents may engage in as a result of their past maltreatment, including premature sexual activity, unintended pregnancy, emotional disorders, suicide attempts, eating disorders, alcohol and drug abuse, and delinquent behavior.

Despite all of these setbacks, many homeless youth remain in school. A 2005 survey found that before entering shelter, 79 percent of homeless youth regularly attended school, and 78 percent of youth in transitional housing were still in school.

Given these demographics, the interactions between our legal system and homeless youth should be quite apparent. But this connection often escapes lawyers, policymakers, and service providers. To address this gap, a number of articles and resources have more clearly described what public interest lawyers and members of the private bar can and should be doing for youth experiencing homelessness.
Over the past two decades, the work of individual attorneys, private and corporate counsel, policymakers, and the youth themselves has started to flip the legal system to one that is proactive—helping youth avoid or shorten homelessness—rather than reactive, pushing hundreds of thousands of young people onto the streets. The advocacy by attorneys has been in a variety of venues: on behalf of individual youth, through legal education, through policy advocacy, and through impact litigation. Given the trajectory of the past 20 years, the role of attorneys in ending homelessness will likely grow exponentially in the decades to come.

Advocacy Programs: Lawyers Helping Individual Youth Achieve Safety and Stability

Representation of youth experiencing homelessness by civil legal services lawyers, law students, or pro bono attorneys had been going on before 1998. For example, in 1992, Kevin Ryan started his legal career representing youth at Covenant House, one of the world’s largest homeless youth service providers. Ryan now is president and chief executive officer of Covenant House. Rich Hooks Wayman started representing youth experiencing homelessness in 1993 for the Legal Aid Society of Minneapolis. Undoubtedly, there were others around the country, but their numbers were few.

By the early 2000s, a number of other organizations had begun to provide legal representation to this population, including Street Youth Legal Advocates of Washington (SYLAW), a collaboration between law students and legal services, and the Center for Children’s Advocacy in Connecticut, which operated in part in a local high school. The number of programs has grown slowly over the past 20 years.

But the real evolution in legal services has come more recently. Spurred in part by the American Bar Association’s Homeless Youth Legal Network (HYLN) and Homeless Youth Legal Network Pro Bono, an unprecedented amount of attention is being paid to this area of law. HYLN was created to increase legal services for youth and young adults experiencing homelessness. Its goal is to lift up existing collaborations, highlight best practices, and expand the reach of legal services beyond its current footprint. HYLN Pro Bono has similar goals but is focused on engaging the private bar. Both initiatives have been the focus of ABA President Hilarie Bass, marking a high-water mark for the attention the ABA has paid to this issue. President Bass has tirelessly and effectively used the attention that comes with the presidency to push for more engagement from the bar on this issue.

To date, HYLN has identified existing legal services for homeless youth in 21 states and has been working to create more.

By no means was HYLN the first effort of the ABA to extend more legal services to homeless youth. In 2002, the ABA profiled several legal programs for homeless youth, including SYLAW
and the Center for Children's Advocacy, in the publication *How to Start Your Own School-Based Legal Clinic*. In 2003, the Young Lawyers Division highlighted legal efforts for homeless youth through its One Child One Lawyer initiative. Returning to the topic in 2014–2015, the Young Lawyers Division created *Project Street Youth* (PSY), a precursor to HYLN. In addition to educating and raising awareness of the issue, PSY created a *toolkit* for young lawyers to set up legal clinics and expressly encouraged lawyers to engage in lobbying for better laws.

**Policy Advocacy: Changing the Law to Empower Youth Experiencing Homelessness**

Perhaps unsurprisingly, lawyers have played a significant role in policy advocacy—specifically, legislative policy. Often, it was the attorneys who were doing frontline advocacy who were integral to the larger policy efforts. For example, Kevin Ryan wrote the New Jersey Homeless Youth Act in 1999. Richard Hooks Wayman wrote the Minnesota Runaway and Homeless Youth Act, which ultimately passed in 2006. Numerous attorneys played a role in crafting and passing Washington's Homeless Youth Act in 2015.

Many of the national laws and regulations pertaining to this population have been the result of advocacy by lawyers at advocacy organizations, such as the National Network for Youth, Schoolhouse Connection, True Colors, the National Alliance to End Homelessness, and others.

Led by the Commission on Homelessness and Poverty and the Section of Litigation, the ABA itself has dived deep into the area of state and national policy. As early as 2004, the ABA took a stance on homeless youth and the law, weighing in on *educational access for homeless children and youth*. In 2007, it approved a *resolution on the protection of lesbian, gay, bisexual, transgender, and questioning foster and homeless youth from discrimination and violence*. In the past decade, the ABA has issued policy resolutions on myriad related topics such as support for the federal *Runaway and Homeless Youth Act*. At its most recent meeting, the 2018 midyear, the ABA passed *two resolutions*. The first called for "integrated, systemic approaches within administrative, civil and criminal court contexts to address the special needs of youth and young adults experiencing homelessness." The second endorsed the United Nations' General Comment No. 21 on Children in Street Situations, discussed in greater detail below.

But perhaps the most comprehensive domestic work the ABA has done in this area has been around model state statutes. In 2008, the Commission on Homelessness and Poverty, in partnership with the National Network for Youth, held a first-ever convening of experts to agree upon what those model statutes were. The result was *Runaway and Homeless Youth and the Law: Model State Statutes*, a comprehensive compendium of suggested statutes, along with rationale and examples of where those statutes were already in operation. The ABA has hosted other summits, as well, most recently 2016's Homeless Youth Law and Policy Summit, which

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featured numerous federal partners and focused on issues such as addressing criminalization and access to identity documents.

Work by legal advocates to push for law change has intensified and has taken different forms. For example, in 2016, Texas Appleseed staff, volunteers, and a pro bono team of more than 30 pro bono attorneys and summer associates issued *Young, Alone, and Homeless in the Lone Star State: Policy Solutions to End Youth Homelessness in Texas*. The report specifically identified policy changes needed in Texas's educational, criminal justice, foster care, and health care systems. Similarly, in 2015, Columbia Legal Services in Washington issued a report focused on policy solutions for homeless youth who interacted with the juvenile justice system, *Falling Through the Gaps: How a Stay in Detention Can Lead to Youth Homelessness*.

**Suing for Impact: Systemic Litigation for Homeless Youth**

Unlike the policy world, where action has been robust, impact litigation over the past 20 years has been sparse.

Historically, litigation was in response either to criminalizing youth homelessness or to NIMBYism, and most took place more than 20 years ago. For example, in *City of Seattle v. McConahy*, 86 Wash. App. 557 (1997), a formerly homeless youth unsuccessfully challenged an ordinance prohibiting sitting or lying down in Seattle's commercial areas. Like *City of Seattle*, more recent litigation has treated homeless youth as part of broader populations.

However, a 2013 New York case, *C.W. et al. v. City of New York*, specifically focused on homeless youth themselves. That case challenged New York City's practice of turning homeless youth away from shelter due to a lack of space, as well as discharging them from shelter after 30 or 60 days. Although the case is still pending, the New York City Council recently acted to extend stays in shelter.

Broader foster care litigation has occasionally called out youth homelessness. The settlement agreement in *Braam v. Washington State*, a class action foster care reform case, specifically addresses youth homelessness. First, the agreement required that the Washington Department of Social and Health Services revamp its policies and reduce the number of youth who were missing from foster care. Second, the agreement required the state to take steps to reduce youth homelessness by offering supportive services and out-of-home care benefits to foster youth until age 21. A settlement in a New Jersey foster care case, *Charlie and Nadine H. v. Codey*, also addressed youth homelessness. One of the key requirements in that case was to increase services to teens both in and exiting from foster care, and a requirement to develop of hundreds of transitional living units.
In the education world, many of the issues in impact litigation have related to both the rights of students in families experiencing homelessness as well as unaccompanied youth, but the cases themselves have almost solely been brought by children in families. For example, in 2015, in *National Law Center on Homelessness & Poverty v. New York*, the plaintiffs secured an agreement that the state of New York, numerous school districts, and social service providers would follow the law as it related to students experiencing homelessness, including providing complete and timely information to unaccompanied homeless youth.

**International Efforts: The ABA Expands Its Efforts Across the Globe**

It is notable that, while the U.S. has some well-developed legal systems to assist youth, it is the sole nation in the world not to have ratified the Convention on the Rights of the Child.

In other countries, international law has been directly used to address the treatment of youth experiencing homelessness. For example, in 1999, in *Villagrán-Morales v. Guatemala*, the Inter-American Court of Human Rights found that Guatemala had violated the rights of five murdered street-connected children under both the Inter-American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture. Neither of these conventions has been ratified by the United States.

But in the 19 years since the *Villagrán-Morales* decision, there has been sparse litigation even outside the U.S. There has been some movement in more recent years, including a 2011 United Nations Human Rights Council resolution on street children and a 2012 United Nations Office of the High Commissioner report on the protection and promotion of the rights of street children working or living on the street or both working and living on the street.

But there is hope for more enforcement of the rights of homeless youth domestically and internationally. In 2017, the United Nations issued General Comment 21 on Children in Street Situations, the first international legal framework to protect the rights of street children, which will provide clear opportunities for international advocacy, though with less impact in the United States.

The lead-up to and implementation of the General Comment was and will be heavily influenced by lawyers. In 2015, the ABA, working with Baker & McKenzie and international partners, hosted the first *International Summit on the Legal Needs of Street Youth*. This effort was spurred, in part, by the successful 2008 Summit on the Legal Needs of Street Youth in the United States. To assist with the preparation of the General Comment, Baker & McKenzie and the Consortium for Street Children partnered to conduct listening sessions with youth themselves in four capitals across the globe. In addition, they jointly developed a Global Advocacy Atlas to share information on policies and demographics of children in street
situations. And, in 2017, the ABA, Baker & McKenzie, and others convened international experts in Sao Paolo, Brazil, to discuss how to implement the General Comment at the International Summit on the Legal Rights of Street-Connected Children and Youth. The report that came from the summit will not only guide policy implementation across the globe but will also help with litigation for violations of international rights.

**Lawyers Get Creative: Other Legal Supports for Youth Experiencing Homelessness**

Attorneys have tried to find other ways to empower youth experiencing homelessness. Twenty years ago, educating youth experiencing homelessness on their rights was often limited to creating pamphlets with titles only slightly better than "So you want to get emancipated?" The growth of the Internet has opened up more possibilities for explaining the rights, responsibilities, and options afforded by the law.

The best example of this has been the rapidly spreading Homeless Youth Handbooks. The handbooks, all located at [www.homelessyouth.org](http://www.homelessyouth.org), have been a partnership of Baker & McKenzie, corporations like Starbucks and Disney, and local legal services providers like Texas Appleseed. The handbooks are online or coming online in 10 states and offer comprehensive information to youth and their advocates through a question-and-answer format.

The involvement of corporations in homeless youth legal issues was not unheard of 20 years ago—my Equal Justice Works fellowship to work with homeless youth had been sponsored by AT&T Wireless. But the engagement of so many mega-corporations in so many states in work that entails hundreds of staff hours was certainly not something that could have been foreseen in the late 1990s.

The ABA has also published other helpful resources to assist in the protection of the rights of homeless youth. In 2002, the ABA published the first edition of *Educating Children Without Housing: A Primer on Legal Requirements and Implementation Strategies for Educators, Advocates and Policymakers*. The ABA bestseller is now heading towards its fifth edition, and has helped students, educators, and advocates across the country understand and enforce the rights of students who are homeless. Other ABA publications have specifically detailed issues related to homeless youth, including *Lawyers Working to End Homelessness* (2006) and *Changing Lives: Lawyers Fighting for Children* (2014).

**Summary: Where Will the Next 20 Years Take Us?**

Twenty years ago, I graduated from law school and started representing youth experiencing homelessness full time. Those of us in this peculiar area of law felt lonely and encountered confused colleagues who acted as if our practice was a narrow, niche area of law—one that might fade away as the advocates turned toward more serious endeavors. Instead, in the two
decades since, it has risen to be a top priority of the American Bar Association, has seen the ranks of lawyers practicing in this area grow exponentially, and has seen domestic and international policy not only increase but also become reflective of the reality that this population intersects with as many areas of law as any.

It will be meaningless, however, if, in the next 20 years, those efforts do not result in an end (or virtual end) to youth homelessness itself. If we do get there, it will only be because lawyers have pushed upstream, to address the causes of youth homelessness, litigating and amending the legal structures that create this avoidable outcome in the first place.

At that point, in 2028, the article we write will be one that is solely historical, with no need to write about the future of lawyering for homeless youth.

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Rejecting Harsh Sentences for Children: 20 Years of Sentencing Reform

By Heather Renwick – July 9, 2018

In the past 20 years, the United States has fundamentally changed how children are sentenced. First, the United States rejected the death penalty for children and now it has reached a critical tipping point in the movement to end life-without-parole sentences for children. Just five years ago, a vast majority of states allowed children to be sentenced to life without parole. Today, half of all states ban the practice in most or all instances or do not use the punishment even if technically available. The movement to end life sentences for children is critical because the practice is a human rights violation that disproportionately affects children of color and children who have experienced trauma.

The United States Is an International Outlier in Sentencing Children to Life in Prison

A century ago, the United States led the rest of the world in juvenile justice innovation. The first juvenile court was created in Illinois in 1899, inspiring other states and countries to develop ostensibly age-appropriate, rehabilitation-focused juvenile justice systems. Today the U.S. lags behind the rest of the world in its treatment of delinquent youth, and it is the only county known to sentence its children to life without parole.

In fact, sentencing children to life in prison violates international human rights norms and laws. Article 37 of the United Nations Convention on the Rights of the Child (CRC) prohibits subjecting children to "to torture or other cruel, inhuman or degrading treatment or punishment," including the use of "capital punishment and life without the possibility of release" as a sentencing option for children under 18 years of age. The imposition of life without parole on children also violates the United Nations International Covenant on Civil and Political Rights (ICCPR), which requires children to be treated distinct and apart from adults in the criminal justice system, taking into account children’s age and capacity for rehabilitation.

Constitutional Limitations on Youth Sentencing

In the year 2000, the Children and Family Justice Center at Northwestern University School of Law convened a meeting of advocates to discuss putting together a strategy to end the juvenile death penalty in the United States. At the time, this seemed like a herculean task; yet, just five years later, the U.S. Supreme Court held that children in the United States could not be sentenced to death. At that time, the United States was the only country in the world that continued to give official sanction to the juvenile death penalty. The Court in Roper v. Simmons struck down the death penalty for children, holding that it violated the Eighth Amendment prohibition on cruel and unusual punishment. The Court emphasized empirical research
demonstrating that children are developmentally different than adults and have a unique capacity for positive growth as they mature, even children who commit serious crimes. The Court also looked to the rate of legislative change at the state level as evidence of a national consensus against the juvenile death penalty.


*Graham* struck down life-without-parole sentences for children who commit non-homicide offenses, requiring states to give children who commit non-homicide offenses a "realistic opportunity to obtain release." *Graham*, 560 U.S. at 82. *Miller* struck down mandatory life-without-parole sentences for homicide offenses committed by children, holding that sentencing courts must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 567 U.S. at 480. Most recently, in *Montgomery*, the Court applied *Miller* retroactively, holding that life without parole is unconstitutional for the vast majority of youth who commit homicide.

In this litany of cases, the U.S. Supreme Court recognized that none of the four purposes of incarceration—retribution, deterrence, incapacitation, and rehabilitation—are furthered by sentencing children to a lifetime in prison. Retribution relates to culpability, and the Supreme Court unequivocally has said that children are categorically less culpable than adults for their actions. *Montgomery*, 136 S. Ct. at 733. Deterrence is not a justification for sentencing children to life without parole because "the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." *Id.* Incapacitation does not justify sentencing children to life without parole because "ordinary adolescent development diminishes the likelihood that a juvenile offender forever will be a danger to society." *Id.* Rehabilitation is not furthered by sentencing children to a lifetime in prison, given that it "forswears altogether the rehabilitative ideal." *Id.*

**State-Level Rejection of Life Sentences for Children**

Since *Miller* was decided, the number of states that ban life without parole for children has quadrupled—from 5 to 20. A total of 25 states plus the District of Columbia now ban, ban in most instances, or do not use life without parole as a sentencing option for children. And since
the U.S. Supreme Court decided *Montgomery* in 2016, the number of individuals serving a juvenile sentence of life without parole has decreased by half, and it continues to drop.

The movement to end life sentences for children is notable, not just for its rapid rate of change but also for the geographic and cultural diversity of states enacting reform, the bipartisan nature in which bills have passed, and the overwhelming support within the state legislatures that have acted to ban life sentences for children. At least one state in every region of the country now bans life without parole—New England, the Mid-Atlantic, the South, the Midwest, the West, and the Pacific. Laws enacted in the past several years have received broad bipartisan support and have passed in historically Republican states like Arkansas, Utah, and West Virginia, and in historically Democratic states like Connecticut and Vermont. Moreover, laws that ban life sentences for children have garnered the support and co-sponsorship of Republican and Democratic lawmakers, resulting in robust passage rates.

**The Legal Community Has Rallied in Opposition to Life Sentences for Children**

The movement to end life without parole for children has garnered support across the legal community, including among defense attorneys, judges, and legal organizations. A growing number of prosecutors around the country also have begun to voice support for ending life without parole for children. For example, former District Attorney of Manhattan Robert Morgenthau called upon his "fellow prosecutors to do what makes sense: support age-appropriate alternatives to life without parole for children and reforms to our justice policies that ensure our youth are held accountable for harm they have caused. But focus on their unique capacity to be reformed." Robert Morgenthau, "Don't Let Kids Rot Behind Bars: A Life Sentence for a Teen Is Just Wrong," *Daily News*, Mar. 2, 2015.

In 2015, the American Bar Association issued a resolution calling for a complete ban on life without parole for children. The resolution urged states to "[e]liminate life without the possibility of release or parole for youthful offenders both prospectively and retroactively" and to "[p]rovide youthful offenders with meaningful periodic opportunities for release based on demonstrated maturity and rehabilitation beginning at a reasonable point into their incarceration, considering the needs of the victims." [ABA House of Delegates Resolution 107C](http://www.abanet.org/gov/resolve/107c.html) (2015).

**Life Without Parole Remains an Available Sentence for Children**

Although much of the United States now rejects sentencing children to die in prison, life without parole remains an available sentencing option in a subset of jurisdictions. *Miller* and *Montgomery* did not reach the question of whether life without parole categorically constitutes cruel and unusual punishment when imposed on children. Instead, the Court held that life without parole is unconstitutional for youth whose crimes reflect "transient immaturity" as

Yet, despite the state’s nearly impossible burden when seeking life imprisonment for a child—proving that a child is incapable of possible future rehabilitation—about 1,300 individuals sentenced as children before *Miller* and *Montgomery* continue to serve life without parole. And in new cases, children in a small subset of jurisdictions continue to be sentenced to life without parole at a rate that far surpasses that of the rest of the country.

**Children Who Have Experienced Trauma Are Disproportionately Sentenced to Life in Prison**

Children sentenced to life in prison are significantly likelier than the general population to have been exposed to adverse childhood experiences. Adverse childhood experiences are identified by experts as emotional abuse, physical abuse, sexual abuse, emotional neglect, physical neglect, violent treatment toward the child’s mother, household substance abuse, household mental illness, parental separation, and having an incarcerated household member.

In the general population, it is estimated that 25 to 34 percent of children have experienced at least one childhood trauma. In contrast, among children sentenced to life in prison, 80 percent have witnessed violence in their homes, almost 50 percent have been physically abused, and 20 percent have been sexually abused. For girls, the statistics are even more staggering. Eighty percent of girls sentenced to life in prison have been physically abused, and 77 percent have been sexually abused. See Ashley Nellis, *The Lives of Juvenile Lifers: Findings from a National Survey* (The Sentencing Project 2012).

Trauma can alter a child’s brain significantly, and exposure to trauma is associated with an increase in adolescent interpersonal violence and a lack of capacity for emotional self-regulation. Specifically, studies have found that children with histories of child abuse and other trauma often demonstrate impulsive behavior, risk-taking behavior, and decreased self-control. Trauma can reshape a child’s brain, priming survivors of trauma to respond excessively to minor triggers. And while the impacts of trauma provide critical context for children who commit serious crimes, the plasticity of children’s brains makes them especially amenable to rehabilitation, therapy, and positive growth.
Children of Color Are Disproportionately Sentenced to Life in Prison
Seventy percent of all youth ever sentenced to life without parole are people of color—primarily black and Latino—and racial disparities continue to worsen. *Miller* banned mandatory juvenile life-without-parole sentences and guaranteed all children an individualized sentencing hearing before life without parole can be imposed. Yet, despite the now-discretionary nature of juvenile life without parole and the Supreme Court's unequivocal language that the penalty may be imposed only if a child has no capacity for rehabilitation, racial disparities have increased under this new framework. Of new cases tried since *Miller*, about 74 percent of children sentenced to life without parole have been black—as compared with about 60 percent before *Miller*.

The U.S. Supreme Court Now Must Ban Life Without Parole for Children
Despite the rapid progress and reform in many states, compliance with the Supreme Court's mandate in *Miller* and *Montgomery* has been inconsistent, arbitrary, and in some jurisdictions, nonexistent. And the penalty continues to be imposed disproportionately on children of color and children who have experienced trauma.

The Supreme Court looks to proportionality and rate of change when determining whether a practice violates national standards of decency and constitutes cruel and unusual punishment under the Eighth Amendment.

[The] Court's precedents have emphasized the importance of state legislative judgments in giving content to the Eighth Amendment ban on cruel and unusual punishment. "Eighth Amendment judgments should not be . . . merely the subjective views of individual Justices." For that reason, [the Court has] emphasized that "judgment should be informed by objective factors to the maximum possible extent." The "clearest and most reliable objective evidence of contemporary values" comes from state legislative judgments.


Now that half of all states do not have or do not use life without parole as a sentencing option for children—and have abandoned the practice at a remarkable pace—the United States has reached a critical tipping point.
The U.S. Supreme Court must recognize what a growing number of states already have: that life without parole cannot and should not be imposed on any child. National consensus now dictates that the Supreme Court declare life without parole categorically to be cruel and unusual punishment when imposed on children because all children are capable of positive growth and change.

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How Lawyers Can Make a Difference in Reducing Mass Incarceration for Juveniles

By Isabel Sistachs – July 9, 2018

Juveniles are a unique subset of the prison population that are often left out of the national conversation on reducing incarceration rates. The United States locks up its citizens at a higher rate than any other country, and the youth population is no exception. Incarceration has become a problem rather than a solution, and right now thousands of our country's youth are imprisoned in place of restorative alternatives. Violent and nonviolent juvenile offenders alike are subjected to harsh prison treatment, and some are even being held in adult prisons. The negative mental health effects experienced by juveniles while they are incarcerated are far-reaching as multiple studies have shown. While they are detained they are taken away from their families and schools, placing a strain on their relationships within their communities. Lawyers have the ability to steer juvenile justice in the right direction. This article offers recommendations for how lawyers can do so in the hopes that we can soon reduce mass incarceration of our country's youth.

The Prison Policy Initiative

The Prison Policy Initiative released an extensive research report on youth confinement for 2018, offering a detailed breakdown on juvenile incarceration. The most recent data shows that there are up to 53,000 incarcerated youth in the United States on any given day, of which 10 percent are being held in adult prisons. The rest are detained in youth prisons, such as detention centers, long-term holding facilities, group homes, residential treatment centers, wilderness camps, shelters, and diagnostic centers. Youth facilities, some housing children as young as 12 years old, are not very different from their adult counterparts despite the fact that the two hold distinctly different residents. Some of the features of these juvenile institutions, such as the continued practice of solitary confinement, mirror those of adult prisons.

Of the almost 18,000 juveniles held in detention centers each year, over 5,000 are imprisoned for nonviolent, low-level offenses. Some have only committed a technical offense or status violation which can include failing to report to a probation officer, running away, or violating curfew. These minor offenses are keeping young people behind bars in emotionally taxing environments. The danger to society presented by these nonviolent, low-level offenders is arguably minimal if not absent. Yet, they are forcefully and abruptly removed from their families, schools, and communities to await a trial or serve time sometimes before they are even adjudicated. Even if an offender is initially nonviolent, the dehumanizing environment present within detention facilities could push them to engage in violent behavior fueled by
anger and indignation. The money and resources used towards incarcerating these nonviolent juvenile offenders could be reallocated to better fund educational programming for at-risk youth in high crime communities. Offering programs for at-risk youth to participate in at a free or low cost will keep them busy while simultaneously advancing their knowledge.

**Limited Access to Educational Opportunities and Services**
While these youth are detained, the unavoidable reality of the situation is that they have limited access to educational opportunities and services. The U.S. Department of Education's Office for Civil Rights (OCR) published an exhaustive report in 2016 on the status of education in justice facilities in comparison to public schools. Research found that teachers working within the justice facility school system are more likely to miss school therefore impacting their teacher-student relationships. Furthermore, justice facilities are less likely to offer core math and science courses to their students. Only 28 percent of justice facilities offer Algebra II as a course option compared to 78 percent of all high schools; these educational disadvantages will surely hold back a student population that is already behind. The OCR also found that 23 percent of youth attending school in justice facilities have been diagnosed with a disability, and many of these facilities are not equipped to offer the sufficient attention that is needed to ensure that students with disabilities can excel. Many of these facilities have been found to not have the trained faculty, such as special education teachers, needed to deal with an array of student disabilities and may not have the resources to fund specialized programming.

Mistreatment of disabled students in juvenile facilities has long been a problem. In 2016, the Office of Civil Rights found that the San Bernardino County Office of Education unlawfully discriminated against students with disabilities in their system’s juvenile facilities. One discriminatory practice they engaged in was having inadequate procedures for identifying students with disabilities. Regrettably, this is not an isolated case. Educational conditions in juvenile facilities have proven to be far less superior than their public school counterparts.

**The Effects**
The damaging effects of incarceration so early on in life can have serious consequences on the mental well-being of youth offenders as they mature. Rodney Erwin, a child psychiatrist from Northern California, wrote an article on the role of the juvenile justice system in adolescent development. His research explained that when youth are incarcerated in detention facilities they often experience negative labeling of self and those around them, negative opinions of authority figures, and feelings of rage and hopelessness, all of which lead to serious mental health issues. Moreover, confinement naturally heightens these thoughts and feelings which can further intensify an already unfavorable situation. Relationships with detention facility staff also have a tremendous impact on the well-being of the confined youth. Often, these relationships are characterized as punitive and hierarchical, which can lead to built-up
resentment towards people in power, creating a negative toll on the mental health of the juvenile offender.

The effects of incarceration have proven to be extensive and detrimental to the well-being of the youth offender. Fortunately there has been a push in recent years to reduce juvenile incarceration rates and advocate for the rights of youth through supporting alternatives to incarceration. Lawyers are at the forefront of the potential for change and there are many ways to get involved:

- Volunteer at juvenile justice clinics at a law school in your area. These clinics, operated by faculty and students, provide youth with both pre- and post-dispositional legal representation. The unfortunate reality is that many of these youth that are tried in the juvenile justice system do not have the resources to pay for lawyers. Volunteering at a clinic is a great way to contribute to reducing juvenile incarceration rates by advocating for youth clients, for example by suggesting alternatives to imprisonment. These clinics also present the opportunity to fight for a juvenile who is already serving a sentence but whose rights are being violated in the system. [Note that the Children's Rights Litigation Committee maintains a Directory of Children's Law Programs where you can find out if there is a clinic in your area.]
- Actively voice your support for candidates running for different offices, such as governors, head of states, and district attorneys, who prioritize reducing mass incarceration among the youth... and don't forget to vote for them. Prosecutors especially play a pivotal role in the future of the juvenile justice system; voting for one who believes in restorative justice and juvenile incarceration alternatives will go a long way.
- Encourage your firm to dedicate a portion of their pro bono work to juvenile representation and advocacy efforts. Imprisoned juveniles have long been forgotten when allocating resources for reducing mass incarceration. Apportioning a segment of a firm's time and money towards unrepresented juveniles in the justice system and fighting to offer them an option other than youth imprisonment will likely reduce the problem of youth mass incarceration.
- Support community-based organizations that provide youth with after-school activities, mentorship programs, and employment opportunities. This can be done in the form of volunteering your time or donating your resources. These types of programs keep young people occupied and out of trouble while simultaneously furthering their potential for success.
- Educate yourself on your state's juvenile justice profile at Juvenile Justice GPS (Geography, Policy, Practice & Statistics). Stay up to date on changes to the juvenile
justice landscape and learn the structure of your state's juvenile justice system to see if there are any gaps in which you can utilize your skills to help the cause.

Statistics speak for themselves. Lawyers can do their part in representing the disadvantaged youth that end up in the system. They can serve as advocates for this forgotten subsection of the American prison population and in doing so reduce juvenile incarceration rates through pushing for alternatives to imprisonment for adolescents. Whether it be pre- or post-placement into a detention center, lawyers can offer representation and support to the thousands of juveniles in the justice system today. You can learn more about statistics, demographics, and trends surrounding youth confinement here.

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PRACTICE POINTS

Five Steps for Addressing Compassion Fatigue

*By Cathy Krebs – July 3, 2018*

"The term 'compassion fatigue' has been used to describe the negative effects experienced by caregivers, service providers, and other employees in certain high-stress fields resulting directly from repeated exposure to traumatized victims. Research has shown that compassion fatigue leads to an increase in direct negative impacts on clients." To ensure we are providing zealous representation to our clients, we must address compassion fatigue. Here are five ways to get you started:

1. Take care of yourself. Start small. Have a cup of coffee, take a nap, read for pleasure, write, take a walk, listen to music, or find 5 minutes to meditate.

2. Connect with a friend. Pick up the phone and have a conversation or find a time to meet in person.

3. Learn to say no. Say no to working over lunch, bringing work home with you, or scheduling your most problematic cases for Friday afternoons.

4. In the work place: Find two people in your workplace who are a positive resource for you. Celebrate the silly and the irrelevant, bring in birthday cakes and have potlucks.

5. Find opportunities to purposefully engage in conversations about moving the work forward both locally and nationally.

If you want to learn more:

- Addressing Compassion Fatigue: An Ethical Mandate (90-minute teleconference)
  - Listen to the Audio Program | [MP3]
  - Download the Materials

- The Hidden Cost of Empathy: How to Address Secondary Trauma Stress in a Child Law Office (article)
- Tips for Young Lawyers: How to Avoid Burnout as a Children's Lawyer (article)
- Compassion Fatigue: Caveat Caregiver? (article)*

*Cathy Krebs is the committee director of the Children's Rights Litigation Committee.
Resources to Assist Lawyers in Advocating for Older Youth

By Cathy Krebs – May 31, 2018

Many states have extended foster care beyond the age of 18 which can make the transition to adulthood easier for foster youth, providing them with critical financial, housing and emotional support. State laws vary regarding the provision of extended foster care, the rules for extending care and whether youth can re-enter care once they’ve left. The Juvenile Law Center has released a new resource which provides an overview of each state’s law as well as recommendations on how best to provide extended foster care. This resource can assist lawyers in better understanding the laws of their own states, including information around funding, as well as providing important information to assist lawyers in advocating for needed changes in their state laws.

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