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UN Comment from Paper to Practice: Realizing the Human Rights of Children and Youth Who Are Street Connected

By Cathy Krebs – December 15, 2017

The ABA Commission on Homelessness and Poverty and the ABA Section of Litigation Children’s Rights Litigation Committee were the lead ABA sponsors of the International Summit on the Legal Rights of Street Connected Children and Youth.

Approximately 100 leaders, experts who work every day with street connected children and youth, gathered in São Paulo, Brazil, for the International Summit on the Legal Rights of Street Connected Children and Youth (Summit) at the law firm of Trench Rossi on November 28–29, 2017. Attendees shared one common goal: to work together to examine the mandate provided by the United Nations General Comment No. 21 on Children in Street Situations (UN Comment) and to draft Principles that would assist governments and communities in understanding how best to implement the UN Comment.

The American Bar Association (ABA), under the leadership of ABA President Hilarie Bass, decided to build on the success of the first International Summit on the Legal Needs of Street Youth held in London in June of 2015, with a focus on bringing together street youth experts across the globe for only the second-ever convening focused on the legal rights of street youth as a path to ensuring dignity and human rights for a population often forgotten or ignored. The ABA found a strong partner in Trench, Rossi & Watanabe (a cooperating firm with Baker McKenzie), which agreed to host the event in its São Paulo offices. This entailed not just providing space but also coordinating logistics such as food, translators, and video conferencing for attendees and speakers from all over the world. The United Nations was also an active participant with four members of the UN Committee on the Rights of the Child speaking on plenary panels.

Attendees came from all over the globe, from countries that included Japan, Australia, India, the Democratic Republic of the Congo, Kenya, Tanzania, the United Kingdom, Canada, Bolivia,
Mexico, Uruguay, and the U.S. Translation was essential as not all attendees spoke the same language. Yet despite the diversity of attendees, there was a shared community and affection that made the International Summit unique and special.

Bernard Gastaud, a member of the UN Committee on the Rights of the Child from Monaco, opened the Summit by declaring that children in street situations have the same rights as all other children, no more, no less. All children are equal. He discussed the articles within the UN Comment and reminded attendees that the Comment must be used as a tool for all of us to fully implement the UN Convention on the Rights of the Child.

Next, Sarah Thomas de Benitez, a senior international researcher and consultant with decades of experience, spoke about one of the many themes that continued to emerge throughout the event: the enormous power of story in driving change. She noted that one of the first narratives of the street connected child was one of a victim waiting to be rescued. Policies based on this dehumanizing myth failed because they were not based on reality. More recently, the narrative has become focused on a child with connections to the street who has rights. Policies based on this narrative are rooted in evidence and rights. She commended the UN Committee on the Rights of the Child for their bravery in writing the UN Comment, for informing their work with consultations with children and for writing a radical and robust document that clearly states that a welfare and repressive approach has no place in a rights-based document.

ABA President Hilarie Bass and Judge Eduardo Rezende Melo of the International Association of Youth & Family Judges and Magistrates in Brazil moderated the opening panel which consisted of Benyam Mezmur, a member of the UN Committee on the Rights of the Child, the chairperson of the African Committee of Experts on the Rights and Welfare of the Child, and associate professor of law at the Dullah Omar Institute of the University of Western Cape in South Africa; Mikiko Otani, a member of the UN Committee on the Rights of the Child from Japan; Kavita Ratna, the director of advocacy at The Concerned for Working Children in India; Pablo Bassi of Gurises Unidos in Uruguay; Susana Tierno of the National Childhood Institution of Uruguay in Uruguay; and Iain Byrne of the Amnesty International in the UK. This opening plenary panel focused on accountability, children as agents of change, the important role for lawyers and judges, the example of Uruguay as an early adopter of the UN Comment, and the need for adequate, flexible approaches based on the needs of each family. Kavita Ratna elevated the voice of youth when she told the story of a youth consultation held in India to assist in the drafting of the UN Comment. Although participating children were of different ages and from different places, they were asked what they all had in common. Their answer was "courage."
Next came the youth panel which was a highlight of the entire Summit. Presenting on the panel were Dieumerci (last name withheld), a Street Outreach Worker with PEDER (Programme d'Encadrement des Enfants de la Rue) from the Democratic Republic of the Congo; Jessica Medeiros of Street Child United in Brazil; Claudiane das Dores Santos of Street Child United in Brazil; Liya Ngalam, a Street Child United ambassador from the United Kingdom; Sam Smith, a Street Child United ambassador from the United Kingdom; and Courtney Smith, a youth advisor with National Network for Youth in the United States who served as moderator. One presenter talked about how too many people connected the experience she was having on the street with who she was as a person. Another asked why does it have to be luck whether someone can leave the street? Instead, shouldn’t it be based on something more concrete like good programs and policies? Together presenters reminded attendees that the perception of street connected children and youth needs to be changed, that representation matters, that youth need opportunities to succeed, and that personal connections are much more important that policies. One presenter stated the need to work with vulnerable youth so that the world that our grandchildren live in will be better—that is what she wants for her own grandchildren and why she does this work. Last, the panel moderator reminded us that this advocacy can be the difference between life and death.

After the opening plenary panels, the real work of the Summit began. After lunch all attendees broke into nine small working sessions, with each group consisting of approximately 10 people. The sessions were based on topic areas of the UN Comment and addressed: non-discrimination based on social origin, property, birth/other status; discrimination of LGBT Youth; children with disabilities (including disabilities from trauma); destigmatize homelessness/change the story; birth registration and identity; nongovernmental organization (NGO) and lawyer collaborative advocacy; violence and social cleansing; health, drug and substance abuse; and standard of living and structural poverty. Each
session had a facilitator or co-facilitators who wrote draft Principles prior to the Summit, and each group focused their conversation on finalizing those Principles during their small group discussions. Principles are very much focused on how governments and communities can implement the UN Comment. These conversations were incredibly dynamic and productive with participants sharing expertise and best practices from around the world.

After a short break, attendees attended a different second small group session. Some of the sessions from the first group were repeated and new topics were added, including: education; comprehensive child welfare system; access to information and privacy; and the criminal justice system. Some of the youth held their own small group sessions to share their expertise and feedback on the Principles as well. Portuguese and Spanish translations were offered in several sessions to ensure that everyone could participate.

To assist with the work, each small group had a notetaker who captured the conversation and revised the Principles based on the input of attendees. Northwestern University School of Law generously paid for the travel of five law students to São Paulo so that they could take notes during each session, and Trench, Rossi & Watanabe provided the remainder of notetakers and volunteer translators. The work of the Summit would not have been accomplished without the generosity of these two organizations.

At the close of day one Casey Trupin of the Raikes Foundation in the United States and Irene Rizzini, a professor at the Catholic University of Rio de Janeiro and president of the International Center for Research and Policy on Childhood (CIESPI) in Brazil, moderated the plenary panel "Strategies for Implementation at the Sub-National Level—How to Raise Awareness (of Citizens and Political Authorities) on the General Comment and Involve Youth in Implementation of the Comment." They had a lively conversation with panelists Ann Skelton, a member of the UN Committee on the Rights of the Child and director of the Centre for Child Law at the University of Pretoria in South Africa; Caroline Ford, the executive director of the Consortium for Street Children in the United Kingdom; and Tushar Anchal from Plan India. Panelists focused on concrete strategies as well as challenges for sub-national implementation of the UN Comment, and they all agreed that participation of youth will be critical for implementation. As Ann Skelton noted, youth were very innovative in providing suggestions for the UN Comment, and they can be equally effective in communicating these suggestions back to communities, especially if supported by NGOs and governments. Stakeholders and youth from each country should develop a national plan of action that should include goals and indicators so that achievement can be measured. Day one concluded with a reception hosted by Trench, Rossi & Watanabe, where all attendees were able to reflect upon and continue conversations begun during the day.
The second day of the Summit began with a short overview of the small group sessions from the first day as well as a presentation on destigmatizing homelessness and changing the story for street connected children and youth by Kurt Shaw from Shine a Light in Brazil and Joe Hewitt of Street Child World Cup. Kurt and Joe shared some insights from the small group discussions that they moderated on this topic on day one. They talked about how communication is not merely a luxury, but an integral part of the implementation of the UN Comment. Storytelling about the courage of individual children connected to the street is the most powerful way to overcome the two most prevalent stereotypes: as victim or delinquent. Communications should not be limited to the media, but must include real-life meetings between children from different walks of life. Children must be part of any campaign creation, so they can show, as well as speak about, their courage. Communications strategy must focus on children and their parents, police officers, and policymakers. Communication must focus on the general public, as public opinion is key to prompting action by those in power. Lastly, professional communications strategists should be engaged (preferably on a pro bono or volunteer basis) to assist with strategizing, as most NGOs do not have the resources or experience to launch an effective campaign.

Following this plenary session, attendees once again broke into nine small group sessions that addressed: right to peaceful assembly; right to be heard and to expression; structural discrimination; right to family (reconnection to family); trafficking (sex and labor); prevention from entering the street; employment; children and youth participation in the implementation of the UN Comment; and access to justice. Once again, conversations were focused on practical suggestions on how the UN Comment can be implemented in each country and community. After lunch, session four began, the last set of nine breakout sessions, which included some of the topics from session three along with the following new topics: child rights approach as opposed the child protection; systems that discharge children and youth to homelessness; gender, and factors underlying girls’ development of street connections; and the police (police sweeps; specialized training for the police).
Following the completion of the breakout sessions, attendees reconvened for the final plenary session. After a brief overview of the small group sessions held on day two, Trenny Stovall of the DeKalb County Child Advocacy Center moderated a panel on "New and Private Partnerships" with panelists José Carlos Meirelles from the law firm Pinheiro Neto Advogados in Brazil; Caroline Ford from the Consortium for Street Children in the United Kingdom; and Koji Fukumura, chair of the ABA Section of Litigation. Panelists discussed how private law firms, corporations, and bar associations can partner with NGOs to work on behalf of street-connected children and youth, including descriptions of successful partnerships.

The final session was focused squarely on the future: "Moving forward with the UN Comment: Where Are We Going Next?" Sarah Thomas de Benitez, who assisted in opening the summit, spoke about how we as a community need to humanize and value street-connected youth, challenge misunderstandings and lazy thinking, read and understand UN documents, and use solutions-based language. Mikiko Otani, a member of the UN Committee on the Rights of the Child from Japan, spoke about how each country can dialogue with the UN Committee on the Rights of the Child. Finally, Dieumerci, the street outreach worker with PEDER, shared a stunning reminder of why this work is so important. He shared the story of his friend, a thirteen-year old girl whose murdered body was found with ropes still tightened around her neck. She had no family and lived on the street, so nobody could claim her. Her pregnant body uncollected, and her street youth community’s outrage unaddressed, the boy and several other youth went to speak to government officials about the violence she, and others like her, suffered. But they were turned away. They were told they would not be heard. They had no right to speak because they lived on the street. Their voices were silenced.

Angela Vigil of Baker McKenzie in the United States concluded by describing the next steps for the Principles developed during the Summit. During the month following the Summit, the Principles for each session will be edited and prepared for dissemination. Once they are finalized, they will be shared with the ABA House of Delegates during the ABA Midyear Meeting in February 2018. In spring 2018, those Principles will be sent to the leader of every country around the world to assist in the implementation of the UN Comment. In addition, each Summit attendee will be asked who in their country should receive a copy of the Principles.
will then be able to leverage those Principles to further the work of implementing the UN Comment within their own country.

The work done at the International Summit on the Legal Rights of Street Connected Children and Youth was an important step forward for the realization of human rights for children and youth who are street connected. But even more, attendees talked about being energized by the connections made and the work done. We move forward with new partnerships, practical tools, and a renewed energy to realize the human rights of children and youth who are street connected.

Cathy Krebs is the committee director for the ABA Section of Litigation Children’s Rights Litigation Committee.
G.R.A.C.E. Court . . . Providing an Outlet for Children Involved in Human Trafficking

By Janice Haywood – January 16, 2018

C.C. (her initials are being used to protect her identity) came into the child welfare system at the age of 14, when she was arrested for prostitution. Due to the Safe Harbor Act, which protects children from prosecution for prostitution, she was treated as a human trafficking victim, not a criminal. Once she was in the system, she was assigned a therapist and participated in a drug program. She had treatment interventions that helped her with her depression, irritability, sleep issues, and social withdrawal, among other issues. This year, C.C. graduated from high school, was accepted at the University of Florida, and has decided to pursue both medical and law degrees. Her success is a result of her involvement in G.R.A.C.E. Court.

According to the National Human Trafficking Resource Center, Florida is third in the nation in ranking by number of calls per capita. The National Human Trafficking Hotline (1-888-373-7888) is a national anti-trafficking hotline serving victims and survivors of human trafficking and the anti-trafficking community in the United States.

Perhaps because of these high numbers, the Eleventh Judicial Circuit of Florida launched the G.R.A.C.E. Court—Growth Renewed through Acceptance, Change and Empowerment—in 2016. G.R.A.C.E. Court is a specialized court devoted to children who have been identified as victims of commercial sexual exploitation and labor trafficking. Judge Maria Sampedro-Iglesia is the associate administrative judge of the Juvenile Division and the head of G.R.A.C.E. Court, the first known trauma-informed unified family court in the country that deals with all aspects of human trafficking juvenile victims. Judge Sampedro-Iglesia specializes in human trafficking and understands the dynamics and what services and interventions need to be ordered for the victims and their families. This knowledge is extremely important and is key to the success of G.R.A.C.E. Court, which currently has approximately 160 cases.

Commercial sexual exploitation of children (CSEC) is defined as "any sexual activity involving a child in exchange for something of value, or promise thereof, to the child or another person." The child is treated as a commercial, sexual object. CSEC is recognized as a form of child sexual abuse. Sex trafficking is defined as "the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act." 22 U.S.C. § 7102(10).

Youth who appear in court are at a high risk for CSEC, so a Benchbook has been created as a reference guide for judges, attorneys, and social workers who assist children known or suspected of being victims of human trafficking. The publication was developed with the
assistance of Judge Sampedro-Iglesia; Keyla Bade, division chief for the Department of Children and Families; and Elisa Hevia, a Harvard Law School student intern. The information contained therein includes such things as human trafficking street terminology, CSEC resources and contact sheet, and information on what should be done when encountering a suspected victim of human trafficking.

The Benchbook guides juvenile court judges in identifying situations that may involve elements of human trafficking and determining what steps may be taken to protect a juvenile in a dependency case or delinquency case who might be a victim of human trafficking. Trafficked juveniles may be involved in activities such as pimp-controlled prostitution, escort services, residential and underground brothels, pornography production, cyber-pornography, massage parlors, and work in bars or clubs. Other activities might include gang activity, drug use/sales, and illegal peddling. The Benchbook acknowledges that human trafficking can be difficult to identify, because it can be difficult to recognize what juvenile criminal behavior is a result of victimization, rather than criminal intent. Presenting even more of a challenge, trafficking victims may not view themselves as victims, but might instead believe that, despite repeated abuse, the trafficker is a loving boyfriend, protector, or parent. Therefore, it is important that juvenile court judges not rely on the representations made by children regarding whether they see themselves as a victim. Victims of human trafficking might also have a history of antisocial behavior and may be uncooperative and distrustful of people in authority. In other words, victims may not meet expectations as to what a victim should look or act like. Juvenile court judges are also advised that it is equally important to identify juveniles who may be at risk for human trafficking. Juveniles who commit status offenses, such as running away or skipping school, are highly vulnerable to victimization.

Juvenile court judges are instructed that they need to be aware of safety issues that may arise if a case comes before them that involves possible human trafficking activity. For example, the trafficker might be a family member or custodian who may be in the courtroom making a human trafficking victim reluctant to answer certain questions. Judges also need to be thoughtful regarding placement of the child. If a child is placed at home, he or she may be placed where the trafficker resides. If a child is placed in a juvenile detention or residential juvenile facility, he or she might be able to recruit new victims. Dealing with human trafficking victims involves many facets, and juvenile judges are provided information in the Benchbook so they can be aware and on alert as to what they need to consider when dealing with a victim's case.

When CSEC is suspected in a dependency, delinquency, family law, or domestic violence case, child protective investigators (CPIs) and case managers are required to utilize the Human Trafficking Screening Tool (HTST) (found on page 33 of the Benchbook). The HTST is designed to identify juvenile victims of both labor trafficking and CSEC as early as possible and to increase
the accuracy of reports regarding the number of trafficking victims who enter the Florida juvenile justice and child welfare systems. The tool will also inform CPIs and case managers which services are necessary to meet the complex needs of these children. Once a case is identified as human trafficking, it is transferred to G.R.A.C.E. Court for handling.

When a child is accepted into G.R.A.C.E. Court, the court evaluates his or her needs and ensures that the child is referred to the appropriate service providers. The core services and provisions available to CSEC victims are: food and clothing, housing, medical care, counseling, substance abuse treatment, education and vocational support, employment opportunities, mentoring, and intensive case management. The goal of the services is to provide support in order to recover from victimization, successfully transition to independence, and begin to lead a healthy life—physically, mentally, and emotionally. It is hoped that the services and support will also reduce any further victimization. According to Bade, the managing attorney for the Department of Children and Families in Miami-Dade and Monroe Counties, without therapeutic intervention, G.R.A.C.E. Court would not be successful.

Children in G.R.A.C.E. Court are referred to the Citrus Helping Adolescents Negatively Impacted by Commercial Exploitation (CHANCE) Program for residential placement and/or treatment services. There are currently 15 homes which accommodate only one child at a time and which are open to boys or girls. The foster parents are specially trained in dealing with CSEC children, according to Dr. Kimberly McGrath, the clinical coordinator for foster care at Citrus Health Network. She supervises therapists for the victims and their families. If there is not a CHANCE home available, the child can be placed in a foster home within the specialized therapeutic foster care (STFC) system. The goal of STFC is to enable a child to manage and work toward resolving his or her emotional, behavioral, or psychiatric problems in a highly supportive, individualized, and flexible home setting. STFC foster parents are specially trained to care for children with mental, emotional, or behavioral health needs, and they receive 24 hours of human trafficking training as well. STFC requires one parent to be a stay-at-home parent because he or she must be available 24/7 to respond to crisis or to provide specialized therapeutic interventions.

Even if children are not in a CHANCE placement, they will still receive wraparound services from CHANCE, through an in-home clinical team. The goal of the CHANCE Program is to either stabilize a placement or provide a stable placement. The clinical team, which is available 24/7, consists of a family therapist, an individual therapist, a targeted case manager, and a life coach, who is a survivor of human trafficking. There are plenty of issues they deal with—for example, if they are dealing with a runaway, they try and identify what the triggers are, determine individual realistic goals, and redefine what success means to the child, which can vary depending on his or her circumstances.
To achieve its mission, G.R.A.C.E. Court was established with the understanding that collaboration is essential. G.R.A.C.E. Court utilizes a collaborative, multidisciplinary team staffing model. Staffings are held twice a week with the therapist, case manager, child, attorney from the Department of Children and Families, guardian ad litem, and attorney ad litem, who represents the child. Coordination of care makes a huge impact on the cases involved in G.R.A.C.E. Court and allows the child to actively participate and be involved in his or her own case and understand what is going on when the court hearing occurs.

Members of G.R.A.C.E. Court are also involved in a task force that has a human trafficking child planned recovery aspect, which focuses on locating children who are missing. This task force is a multidisciplinary meeting that occurs once a month and includes the Miami-Dade State Attorney's Office, a missing child specialist, a victim advocate from the FBI, a therapist, and a case manager. If the task force plans an operation to recover a child, it is coordinated with the clinical team, so that a bed can be made available and an on-call therapist can be available to respond once the child is found. According to Yinay Ruiz, the Our Kids of Miami-Dade/Monroe County Miami CARES project manager, this has proven to be a successful model, and they have recovered approximately eight children so far.

G.R.A.C.E. Court celebrates all successes of children involved in the court. The successes they celebrate can range from a child returning from runaway back to his or her foster home placement to a child living independently to a child going off to college with a full scholarship. Cupcakes are brought to court, and there is a reward closet that the child can pick from, with items such as clothes, cosmetics, nail polish, and shoes, which are all donations received by G.R.A.C.E. Court. "Little steps in recognizing them go a long way. We make a big deal out of it," according to Yinay Ruiz.

G.R.A.C.E. Court does have its challenges. Funding is one of the main ones, though Dr. McGrath notes that "[t]his is a short-term cost that will result in long-term savings" as a result of a significant reduction in runaways and an increased ability to keep children safely in their homes. Additional challenges include the lack of knowledge/expertise for children who are victims of human trafficking and the lack of an appropriate step-down placement when a child has successfully completed his or her stay within the STFC.

Judge Sampedro-Iglesia, the judge who took on the challenge of creating this court, states, "[W]e know these children are challenging; however, if all you have to share is something negative please do not. Do not present me with a problem without a possible solution." There is currently no other court in the country like G.R.A.C.E. Court, though it has certainly shown itself worthy of replication.

Janice Haywood is the supervising attorney at the Office of the Attorney General, Children Legal Services Division in Fort Lauderdale, Florida.
20 Years of Policy Advocacy Against Zero Tolerance: A Critical Review

By Rosa K. Hirji – January 16, 2018

As of the writing of this article, officials from the U.S. Department of Education are meeting to discuss the scrapping of a 2014 school discipline guidance passed by the agency under President Obama. This will follow the rescission of two other Obama-era guidances that addressed the discrimination of transgender students and student sexual assault.

The outcomes of the last 10 years of policy-based advocacy may potentially be eviscerated by one stroke of Education Secretary Betsy DeVos's hand.

What Is the Lesson?


The lesson . . . is simple. Even if a national consensus turns against zero tolerance and harsh discipline, the shift will have little effect on the lives of students in many communities. Only judicially enforced rights can bring justice and fairness to these communities. Even if policy could eventually resolve the problem, courts should not ask students to wait on states and schools to respect their rights. Constitutional rights exist to protect citizens against the whims of local, state, and federal majorities. Each unjustifiably imposed suspension and expulsion is a deprivation of a right that demands a response. Each suspension or expulsion represents a potential educational death sentence and second class citizenship.

I would also add to this that the compartmentalization of school discipline as a policy-based issue, without understanding its place in the weakening of fundamental civil and political rights of the most vulnerable in our society, resulted in lawyers promoting narrow solutions over broader structural changes. We did not sufficiently challenge the political and legal foundations that drive the school-to-prison pipeline.

Zero tolerance legislation occurred in the context of an era starting in the 1980s that saw a rise in mass incarceration, and shocking disproportionate rates of incarceration of people of color. Driven by the "War on Drugs," the Clinton administration promoted harsh sentencing laws such as three strikes laws and mandatory minimum sentences. During the mid-1990s, arrest rates for juveniles reached never before seen levels. It is in that context that the Clinton administration
signed into law a zero tolerance policy that mandated expulsion from school for certain offenses.

This fomented a nationwide zero tolerance mania that expanded the web of zero tolerance offenses. Advocates responded.

**ABA Efforts and Policy**

The American Bar Association (ABA) passed a 2001 resolution stating that it opposes "'zero tolerance' policies that mandate either expulsion or referral of students to juvenile or criminal court, without regard to the circumstances or nature of the offense or the student's history." Robert G. Schwartz, executive director of the Juvenile Law Center in Philadelphia and one of the authors of the resolution, stated that he hoped the resolution and report would "remind folks that due process still applies in schools."

Much of the early efforts of both the advocacy community and the Children's Rights Litigation Committee of the ABA Section of Litigation (CRLC) involved exposing stories of the extreme nature of how zero tolerance policies were applied to school-based misbehavior. We never talked about it in the context of mass incarceration.

Since 2001, the CRLC and other groups within the ABA participated in a coalescing national movement consisting of community-based organizations, social justice organizations, and civil rights organizations to use data, stories, and public advocacy to expose the systemic disproportionate impact that students of color face in school systems that rely heavily on policies—including overreliance on suspension, expulsion, and zero tolerance discipline and policing—that criminalize school-based misbehavior. We were only able to come to this understanding because we worked in coalitions with community-based organizations, educators, and policy advocates.

In 2009, the ABA passed a resolution promoted by the ABA Commission on Youth at Risk, urging legislation and policy to limit the exclusion of students from school in response to disciplinary problems, provide full procedural representation in disciplinary proceedings, and reduce criminalization of truancy, disability-related behavior, and other school-related conduct. Furthermore, the resolution urges monitoring the implementation of civil rights in school discipline.

Also in 2009, the CRLC convened a national summit in Chicago, where we worked with advocates and community organizers from around the country to develop a Model School Code that presented a set of recommended policies to schools, districts, and legislators to help end school pushout and protect the human rights to education, dignity, participation, and freedom from discrimination.
In 2012, the president of the ABA, Laurel Bellows, submitted a statement before a U.S. Senate Committee for a hearing on the school-to-prison pipeline. In addition to reaffirming the ABA’s opposition to zero tolerance policies, Bellows put forth policy proposals to end harsh school discipline, provide full procedural protections in disciplinary hearings, end the criminalization of truancy and disability-related behavior, and implement strong civil rights monitoring and enforcement.

Continuing the policy-based efforts, the ABA Joint Task Force on Reversing the School-to-Prison Pipeline convened a series of national Town Hall meetings to discuss issues surrounding disproportionate outcomes for certain students involved in the school-to-prison pipeline. The Town Hall meetings accumulated an impressive array of anecdotal information of how the school-to-prison pipeline was affecting communities on the ground. An extensive report recommends that the ABA take steps to adopt resolutions, convene meetings with stakeholders, provide trainings, and support legislation and policy that removes or ameliorates punitive punishment. The report sheds a critical light on the role of law enforcement in schools.

However, the report provides no recommendations for training lawyers to represent students in disciplinary proceedings or juvenile delinquency proceedings, or for the legal community to engage in political and litigation campaigns to preserve and strengthen our civil rights. There is no discussion on the impact of school privatization on the constitutional rights of students.

**The Right Approach?**

In the last few years, the work of the CRLC involved placing political pressure on the Department of Education’s Office for Civil Rights (OCR) to engage in policy reform. The CRLC, in solidarity with the larger advocacy community, celebrated the OCR’s announcement in 2010 that it would take a more aggressive approach to enforcing civil rights in educational outcomes, discipline disparities in particular, using a "disparate impact" analysis. The new policy for analyzing discrimination complaints represented a major shift in practice at the OCR because the George W. Bush administration pursued cases mostly using a "different treatment" or "intentional discrimination" standard.

Using a disparate impact analysis broadened the scope of the OCR investigations and provided a vehicle to substantiate the movement’s long-standing claim that the problem was systemic and that alternative solutions are viable. The CRLC issued a legal memorandum designed to assist lawyers in filing disparate impact claims with the OCR.

But as advocates we supported these policy-based reforms, at the expense of other traditional legal and political strategies—that lawyers are uniquely situated to pursue. One CRLC member wrote: "It is often difficult for attorneys to take a back seat, but school policies are and should
be a community concern, and community-based and community-directed actions have proven
to be the most effective means of achieving meaningful policy change. Children's rights lawyers,
especially, can provide needed leadership, guidance, and support because they understand the
stakes."

This represents a regressive position, inasmuch as it parallels the rationale of many federal
courts which, despite the U.S. Supreme Court decision in *Goss v. Lopez*, claimed that discipline
was within the purview of educators and not the courts. However, school discipline that
deprives students of their entitlement to public school is a concern for lawyers.

Even as leaders of the CRLC supported the filing of disparate impact claims with the OCR, we
*expressed caution* with the Department of Education's policy reforms. In a previous article, my
coauthor and I *wrote*: "The OCR's commitment to remedy disparities in school discipline and
the school-to-prison pipeline is vulnerable to political influence, depending on the level of
support it gains from the current administration."

We began to express concern that while the Obama administration was making positive steps
in the area of school discipline, it was at the same time creating the conditions that would allow
for a significant increase in privatized schools and that would undermine civil rights. In 2014, I
*wrote*:

> Charter schools promote the idea that, like public schools, they are tuition free and
> open to all students. However, public schools cannot be selective about the students
> that they enroll and keep. On the other hand, charter schools—according to recent
court decisions from the California Court of Appeal and a U.S. district court in Hawaii—
have the discretion and ability to dismiss students in a manner that would be
unconstitutional if done by a public school. As it becomes more apparent that students
in charter schools do not enjoy the same rights as they would in public schools, the
"public" nature of charter schools is called into question.

This movement toward privatization has in fact set the foundation for the Trump
administration’s two goals in education: to significantly limit the role of the federal government
in rights-based enforcement, and to maximize the role of the market in the public school
system. Both of these are inherently disruptive to civil rights.

It is now manifestly clear that the Trump administration’s primary goal in education will be to
privatize and defund public schools, and significantly withdraw the role of the federal
government. President Trump's budget proposal includes slashing the budget of the
Department of Education, while at the same time increasing funds to support school
privatization efforts such as charter schools and voucher programs. At the very least, advocates
can no longer count on the Department of Education to enforce civil rights laws in the context of school discipline.

Under our noses, the Obama administration created the legal environment for school privatization to become essentially a federal mandate. In reflection of this, I have recently written: "The lasting effects of the Obama administration's education policy will not be in the reforms intended to reverse the school to prison pipeline but those that set the stage for a withdrawal of the federal government's role in the arena of educational equity and civil rights through neoliberal policies. In such an environment, there will be no enforcement mechanism available to protect the civil rights of students caught in the pipeline."

**Where Do We Go from Here?**

Let's go back to the basics:

- The grassroots and political fight for civil rights in the 1950s and 1960s led to legal challenges to school segregation and the Civil Rights Act, both of which transformed our educational systems and forced our society to operate and see education in a completely different way. It was a sea change. It could not have occurred without the struggles and sacrifices of people on the ground. Lawyers, too, played a significant role. It is time to step up again.
- We must fund programs and train lawyers to provide defense to students undergoing school and delinquency proceedings that disproportionately criminalize them and push them out of the school system. We must litigate in order to forestall the weakening of constitutional and civil rights in the courts.
- We must fight back against school privatization by exposing it as a direct threat to equality and access to education.
- We must ally with and support political movements that are fighting for the civil rights of young people and people of color.

The school-to-prison pipeline is not a problem that can be compartmentalized. It is deeply intertwined with the mass incarceration of people of color and inequality in our society. Policy solutions are short-lived. Instead, advocates need to respond to the attacks on the very nature of public education and the reversal of federal structures that protect civil rights. Efforts must focus on preserving those rights that are necessary to fight against the school-to-prison pipeline: the right to due process, equality, and a public education.

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Seeking Justice from the Bench
By Hon. Bridget Mary McCormack – January 16, 2018

This article is adapted from a speech given at the Fifth National Parent Attorney Conference sponsored by the ABA Center on Children and the Law on April 26, 2017.

Thank you to my dear friend, Marty Guggenheim, for thinking of me to be with you today. When I showed up at NYU Law School in 1988, Marty put his trust in me, without any good reason to, and mentored me and grew me professionally in ways I will never be able to repay. How lucky I am.

In chatting with Marty last week about these remarks, he almost scared me off. He casually mentioned that Bryan Stevenson delivered this address [at the First National Parent Attorney Conference] eight years ago. And he shouldn't have told me that. Because that is an impossible act to follow, even eight years later.

I am honored to have the opportunity to address you, a group of lawyers for whom I have so much admiration. I have never practiced child welfare, or represented the client group you represent in the proceedings you represent them in. But I feel like my lawyering work makes me a close cousin. My first job was as a public defender in New York, and I then I spent another 20 years representing people in trial and appellate courts who were accused of doing pretty terrible things. And so I know what it feels like to be on that side of the courtroom. And to explain what you do to nonlawyers. And sometimes even to lawyers, too.

I often say that being a Legal Aid lawyer was the greatest job I've ever had, and that's saying a lot because as you've heard I have been pretty lucky in the job category. Part of why I say that is because while it isn't always easy being on the side of the underdog, I actually got a lot of satisfaction from the challenges and opportunities that role provided me. I liked the upside potential. And every once in a while someone, other than my clients, would express gratitude for what I was doing, too.

This is a fun detour: In maybe my second year of practice, around 1993, I was finishing a trial in a courtroom where, by sheer fortuity, Bill Kunstler was starting one. Bill must have been 72 or 73 then, having practiced for 50 years. And because we were sharing this courtroom and this judge, he watched my summation (he was sent to pick a jury), and I watched his voir dire (my jury was out). Kunstler spent a lot of time talking to the venire of about 100 potential jurors about how difficult it is for a jury to say not guilty. The pitch went like this: the police and
prosecutor have gone to all this trouble to charge and prosecute the defendant, and they believe he is guilty. And yet you are going to promise the judge that you will stand up and say not guilty if the prosecutor has not convinced you beyond a reasonable doubt of the defendant's guilt. That's just a hard thing to do. I think if we all do it together right now it might help with that problem, at least a little bit. And then, on the count of three Bill Kunstler and 100 prospective jurors stood up and said "not guilty" in unison. I don't know of any other lawyer who could pull that off. Kunstler and I spent the better part of a day together in that courtroom. When my jury returned, and my work was done, I said goodbye and wished him luck with his. He hugged me, and said, "Thank you for protecting my Constitution." I left with a skip in my step.

That was not an everyday occurrence, of course; I suspect you can relate.

I am honored to be here today to address you exactly because I have so much gratitude for the important work that you do. And I want that to be the thing I say most emphatically today.

Transition to Argument
I have three specific points I want to make that I hope and believe reflect my experience from serving four plus years on the bench of Michigan's highest court, where I see every kind of case, including termination cases. Here is a preview:

1. Just because something has always been done a certain way doesn't make it the best way, or the lawful way, or the constitutional way.

2. I understand that the trial court process is the critical moment for your clients, but I want to encourage you to have the appellate courts in mind as it is happening.

3. Courts are only as good as the lawyers who serve them. I want you to keep pushing judges to do what we are supposed to do. You need to ask us hard questions.

Just Because We Always Do It This Way Doesn't Make It the Right Way
When I was first at the University of Michigan Law School, I was representing a lot of women accused of domestic violence in my clinical practice. As was the case in many jurisdictions, Michigan had a mandatory arrest statute for cases where domestic violence was involved in a 911 call, and Washtenaw County—where Ann Arbor is—had a Department of Justice grant to prosecute domestic violence cases. As a result, there was a substantial domestic violence docket in our local courts and also a surprising number of women charged as defendants on that docket.
My students and I were the go-to lawyers for the local domestic violence shelter when one of its clients was charged. And, as you might imagine, many of the women I represented were not batterers; they were more often victims who fought back. A lot of these cases went to trial.

A regular practice in the trial court was for the prosecutor to play the 911 tape for the jury, especially when the complaining witness was uncooperative. This is how it would go: the prosecutor would authenticate the tape through the 911 operator (when you would not stipulate), play it after overcoming a hearsay problem with the excited utterance exception, and then the jury would hear the complainant say that my client committed the crime with which she was charged.

The local prosecutors were not pleased with a lawyer who insisted on authentication of the tape. And imagine their reaction when my students argued that—authenticated or not and despite the excited utterance exception—the tape was not admissible because admitting it violated their client's Sixth Amendment confrontation right. I don't think they ever won that argument. But they preserved it in every case.


* * *

Your field has so many unique hurdles. Your cases are usually emergencies. Your clients' problems are almost never confined to the court proceeding you represent them in. The courts you practice in are burdened, and you are overworked and underpaid. I suspect that one of the recurring problems you face is inertia or the reality that, when you show up for a hearing, there is a strong push to do things the way they have always been done. It's efficient. And it's been the practice for decades. And challenging it might have negative consequences for you and for your client and maybe for your other clients too.

But just because we have done something one way for decades does not make it the best way to do it, nor does it make it legal, or constitutional.

In Michigan, for many decades the long-standing practice in termination cases was that when the rights of one parent had been terminated, the rights of the other parent could be interfered with by default, without any individual adjudication as to that other parent. The thinking was that once the court had jurisdiction over the child it could impose whatever conditions it wanted on the nonadjudicated parent. This practice was not driven by any statute but rather by
court practice. It simply evolved as the way things were always done. And it became baked into the doctrine. It had a name: the one-parent doctrine.

And then, in 2012 Vivek Sankaran began representing Lance Laird, whose children's mother's rights had been terminated. And, therefore, the state imposed a series of conditions including parenting classes and substance abuse and psychological evaluations on Mr. Laird without making any individual allegation that he needed these conditions, but rather by operation of the one-parent doctrine. Laird objected: he argued that the one-parent doctrine violated his constitutional right to parent his children.

Mr. Laird lost in the Court of Appeals and we granted leave. A majority of my court agreed with Mr. Laird; we held the one-parent doctrine unconstitutional. In re Sanders, 852 N.W.2d 524 (Mich. 2014). And that was that. Now no parent in Michigan can have her constitutional right to parent her children interfered with absent due process.

In a way, that seems like it shouldn't have been such a big deal and certainly shouldn't have taken so long. But I suspect that for lawyers appearing as repeat players in the courtrooms where their clients have so much to lose it was probably a very hard argument to make.

Of course, it took a few years for Mr. Laird to get to that answer. And I understand that that kind of time is critical in any parent-child relationship. So I fully appreciate that winning your cases on appeal is definitely not your first choice outcome. And, therefore, managing how you achieve results for your clients in the trial courts must be your focus. Which leads nicely to my next point.

Win Your Client's Case in the Trial Court, but Keep the Appellate Courts in Mind
I recently examined what percentage of termination cases in Michigan are appealed, and what percentage of those are reversed. The numbers surprised even me.

I looked at five years of Michigan caseload data: Michigan trial courts receive around 7,080 new protective proceeding files a year. (About 25 percent are resolved before trial in the parents' favor, 56 percent are disposed of by guilty pleas or admissions, and only a small group—16 percent—go to trial, and the last 3 percent get transferred, perhaps to a tribal court or out of state, etc.) Only about 400 of those 7,080 termination cases—approximately 5 percent (5.649718 percent if you want to get more specific)—are appealed to the Michigan Court of Appeals. And of the 400 that are decided by the Court of Appeals, only about 9 percent—or 36—of those Court of Appeals' decisions are appealed to the Michigan Supreme Court each year.
Over the last five years, the Michigan Supreme Court decided three of those by opinion, and the remaining applications for appeal were handled by orders, either denying the application for leave to appeal because the issues were not jurisprudentially significant or, after reviewing the already developed record, we directed the Court of Appeals or trial court to take some specific action.

And while those numbers surprised me on the one hand, they also make sense given the high stakes involved in getting your cases right as soon as possible. Winning on appeal is better than never winning, but winning on appeal means significantly more time that the family you are working for is unsettled or worse.

And I suspect there is a corresponding sense of the urgency of finality in termination cases in the appellate courts among judges. Appellate judges have a very acute understanding of the disruption that might be caused to families when stability is undermined. The preference for finality is a very, very strong force against appellate intervention. I know you know that, and I know you know that the appellate courts know it. And of course, on top of this urge, add the deferential standards of review and the stinginess of preservation rules. It is uphill to be sure.

But having acknowledged all of that, I would encourage you to have thought through the framework you give to your objections and concerns at the front end, in case the opportunity does arise at the back end for us to address them. This does not have to be the focus of your trial court strategy, and in fact, the kind of framing I am thinking about often can be done before you are in the midst of a trial.

At the Supreme Court level, we are rarely going to step in and right an error that does not have significance beyond the immediate case. This is our charge, of course, but it is a charge that our caseload requires us to be good servants of. (I can't tell you how many times at conference we are talking about a case and I will say, "I think the rule of law should be XXX, and have no idea what that means for who wins.) When we take a case, we take it because something in it has some importance beyond the instant dispute. There is some question that needs our answer to bring clarity or predictability or fair process to an area of the law, not just to an individual litigant.

Your practice is still full of just those questions. There are simply underdeveloped constitutional and other legal theories lurking all over your clients' cases. And all over the statutes and court rules and other norms that govern your clients' litigation. I want to encourage you to always be thinking about those bigger picture questions, even when you are doing the important work of trying to get your client the best result in the trial court. These objections can be made before trial starts, and preferably in writing, and you do not have to even expect to win them. But by
making them—by registering a complaint about the way things have always been done—you will give the appellate courts a better chance at taking a close look.

This is another example: the Michigan termination statute probably looks a lot like many other state statutes in its description of the grounds for termination. Except maybe for one part of it: our statute permits the state to terminate parental rights when a parent has had her rights terminated previously as to another child. Or at least it did, until a lawyer complained about it. And once the Michigan Court of Appeals had that question squarely before it, it held that part of the statute unconstitutional. *In re Gach*, 889 N.W.2d 707 (Mich. Ct. App. 2016).

Sometimes it just takes expressing your objections to a certain practice or procedure in constitutional terms at the front end. You do not have to expect to convince the trial court today, or even maybe the appellate court in this case. But without your small steps at the front end, systemic improvements are not possible. Which brings me to my final point.

**Courts Are Only as Good as the Lawyers Who Serve Them**

I think this might just be a way of saying both earlier points one more time: Never underestimate the critical role you lawyers play in advancing the rule of law for your clients. It really is all up to you.

You know this: There have been times throughout our country's history when the work of lawyers and courts was instrumental in shaping what we sometimes can take for granted as fundamental to the rule of law—where litigation was instrumental in forging the legal architecture of our democracy. In these instances, litigation proved to be the crucial catalyst to bring about foundational change that we now associate as central to our form of constitutional democracy.

The centrality of procedural due process, for example, so basic to our legal system today, was ushered in through cases like *Goldberg v. Kelly*, 397 U.S. 254 (1970). As you will recall, in *Goldberg* the U.S. Supreme Court held that the due process clause requires that before a recipient of government benefits can be deprived of those benefits she is entitled to an evidentiary hearing. And so now due process likewise protects any legal entitlement.

And structural features of our criminal justice system that we consider so basic today were the result of lawyers' work in cases like *Gideon v. Wainwright*, 372 U.S. 335 (1963). And, of course, the NAACP lawyers whose victory we now know as *Brown v. Board of Education*, 347 U.S. 483 (1954), where, again, litigation brought by lawyers on behalf of individual clients, though with a larger vision of the social good, brought our legal system and its rule of law closer to the ideals of basic justice.
Legal progress can take different forms at different times, but lawyers have always played the critical role during different chapters in our history as legal rights are recognized, expanded, and extended. Lawyers like you.

There is a proud and patriotic tradition of this kind of lawyer serving the rule of law. John Adams made his reputation this way when he represented Captain Preston in 1770 for having murdered American citizens in Boston. Adams's view was that the principles of the justice system were worth the personal reputational cost. He later described his representation of Captain Preston as "one of the best pieces of service I ever rendered my country." *Diary and Autobiography of John Adams* (L.H. Butterfield ed., Belknap Press 1961) (1815). Captain Preston was acquitted.

When you protect and advance your individual clients' rights, you are also serving your community. You are serving our system of justice. You are serving the rule of law itself.

Every now and again we are reminded why the rule of law is so critical to a constitutional democracy. Procedural due process is a bedrock principle of the American legal system. But it wasn't always, before the lawyers. And equality for all races and religions, too. But it wasn't always, before the lawyers.

The unique and independent role the courts play in our constitutional government, especially when there is instability with respect to the rule of law itself, has proven our Framers' genius.

But courts are conservative (small c) and don't typically answer questions that have not been asked of them. In other words, the courts are only as good as the lawyers who serve them. So please continue to be Goldberg lawyers. And Gideon lawyers. Ask us hard questions. Make us answer them.

You all know that there is great satisfaction in lawyering on behalf of clients who otherwise would have no voice in the system that governs the most important relationships in their lives. And there is also great personal satisfaction in working to ensure more and better justice not
only for your individual clients but also for the rule of law that will protect future litigants who will stand where your clients stand now.

There are big and small victories yet to be won on behalf of your clients. I am eager to see you win them.

I hope you hear my optimism. There are a lot of dragons left to slay in your field, and I am confident you are perfectly positioned to slay them.

Thank you for the work you are doing and will continue to do as patriotic guardians of your clients' families and of the rule of law. I am so grateful for all of it.

*Justice Bridget Mary McCormack* is a justice for the Michigan Supreme Court in Lansing, Michigan.
PRACTICE POINTS

Tools to Assist You in Improving Education for Court-Involved Youth

By Sophie Prown – December 22, 2017

During the 2017 ABA Annual Meeting, the ABA House of Delegates enacted policy to adopt the Legal Center for Foster Care and Education (LCFCE) Blueprint for Change: Education Success for Children in Foster Care (LCFCE Blueprint) and the Legal Center for Youth Justice and Education (LCYJE) Blueprint for Change: Education Success for Youth in the Juvenile Justice System (LCYJE Blueprint). These Blueprints are designed to support professionals in the education, juvenile justice, court, and child welfare systems to improve education for court-involved youth through practice, policy, and systemic alterations.

It is well known that educational success for children in foster care is an indicator of lifetime success overall. Advocates can use the LCFCE and LCYJE Blueprints in their practice to improve education outcomes for youth in foster care. At a high level, the LCFCE Blueprint has eight core goals advocates should focus on. The first is that, where possible, youth should be able to remain at their same school as a source of stability and as a tie to their home community. The second goal specifies, in the event of a school move, that schools and districts facilitate a smooth transition so that no academic time is lost to the student. The third goal states that young children begin school ready to learn by ensuring there are no physical or mental barriers to their success. The fourth goal focuses on the ability and encouragement of youth to engage completely with the school experience. Next, youth are supported to stay in school through truancy, dropout, and disciplinary action prevention measures. The sixth goal empowers youth to participate in their education, educational planning, and educational advocacy. To support the student in his or her educational empowerment, the seventh goal requests that an adult is invested in each youth’s academic career during and after out-of-home care. The final goal relates to the provision of supports leading up to, and during, postsecondary education.

Implementing the goals outlined in the LCFCE and LCYJE Blueprints will strengthen the ties between systems and advocates to jointly support the success of court-involved youth in school. Technical assistance for implementation is offered by both Blueprints. They can work within a jurisdiction to determine the assets and barriers that exist in order to formulate solutions for implementation. With the ABA's endorsement comes a strong call to action for
legal professionals to advocate for the incorporation of these policies and practices to support the educational success of court-involved youth.

*Sophie Prown* has her MSc in Social Policy and Development from the London Schools of Economics and volunteers with the ABA's Children's Rights Litigation Committee.

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**How to Inform Parents of Students with Disabilities of Their Rights in Private School Programs**

*By Sophie Prown – December 18, 2017*


GAO's report supports NDRN's position that much needed resources for the public school system should not be redirected to publicly funded private school programs as this is harmful to the quality of public schools overall. It is NDRN's belief that scarce public dollars should be earmarked for public schools to address the academic and behavioral requirements of their students, especially students with disabilities.

This report also highlights that parents of students with disabilities are uninformed regarding the limitations of enrolling their child in a private school using public funds. Often parents do not know the rights and protections they are forfeiting through these enrollments.

The GAO urges Congress to require states to notify parents and guardians that a change in special education rights may occur when moving a student with disabilities from public to private school. In addition, the report brings to light that states are sharing false information relating to their programs regarding rights under the Individuals with Disabilities Education Act (IDEA). Lawyers and advocates should work to inform parents of their rights as well to be sure that parents are making the best and most informed decisions for their children.

Beyond GAO's report, NDRN voices concern that students of color with a disability are disproportionately removed from voucher schools due to disability-related behaviors. This data is reflected in national trends of removals of students from public and charter schools,
however, the data is limited. To address this, NDRN recommends that voucher programs be required to include removal data so that parents of students with disabilities are better informed about the rights they lose when moving their child into a voucher program.

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