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Charter Schools

REFINE
The Vaccinations Debate

ACT
Privacy Considerations for Parents

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TURNING INSPIRATION INTO ACTION

“We educated, privileged lawyers have a professional and moral duty to represent the underrepresented in our society, to ensure that justice exists for all.” Justice Sotomayor’s words capture what led many attorneys to pursue their careers. The desire to serve those most vulnerable, to be there when the need is greatest, is characteristic of our profession.

Sotomayor’s words are particularly appropriate to this issue of TYL, which focuses on childhood and the way in which young attorneys meet the legal needs and serve as protectors of our country’s youth. If you are looking for inspiring and informative articles on these important topics, this issue will become your go-to resource.

Looking to move that inspiration to action? The ABA YLD has a proud tradition of service where your talents can go to work. This year, the YLD public service project “Home Safe Home,” which focuses on educating the public about and seeking solutions to prevent different types of home violence (intimate partner violence, child abuse, elder abuse, animal abuse), seeks to protect the most vulnerable among us. Everyone should have access to a safe environment in which to grow and thrive. Visit the project’s website to get involved.

The YLD is here to support your professional development and personal growth, to help you become your best self. Thank you for your membership.

DANA M. HRELIC
2017–2018 YLD CHAIR
CHILDREN
LIVE SO THAT WHEN YOUR CHILDREN THINK OF FAIRNESS, CARING, AND INTEGRITY, THEY THINK OF YOU.
—H. JACKSON BROWN JR.

It has been said in countless ways (and will be said for generations to come) that children are our future. Looking at the world through the eyes of a child can indeed be an eye-opening experience. This issue of TYL explores various types of legal questions and considerations that may involve or impact children. From social media presence, to health-related decisions (both involving the child and parents), to ensuring proper educational frameworks, and even protecting our child entrepreneurs’ interests, each of the decisions we make can influence the path a child’s life may take. The following articles showcase some of these questions, decisions, and issues involved in making our children’s futures that much brighter—not to mention learning from our past to help build that brighter future, for all of us.

POPLAW

Entertainment Companies Get Hacked, Too

ZACHARY HECK

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inter is here for television networks and entertainment streaming services experiencing headaches over hacked programs. This summer, HBO was victimized by hacks resulting in the premature release of movies and television programs, such as Game of Thrones, Curb Your Enthusiasm, and Ballers. The hackers claimed to have stolen 1.5 TB of data from HBO, which includes unaired episodes, plotlines, actors’ personal information, and internal emails between producers and executives. The hackers have demanded millions in bitcoin, but HBO refuses to “bend the knee.”

Many companies across the nation and around the world experience headaches with data breaches. In the United States, a breach is a legal term of art that may mean something different depending upon the residing state of individuals whose data has been implicated, or the nature of the information at issue. For example, protected health information is governed by covered entities under the Health Insurance Portability and Accountability Act (HIPAA). Breach responsibility depends upon (1) location and (2) type of data involved and can lead to lawsuits and investigations as to why an individual’s personal information was not thoroughly protected.

The HBO hacks are also a great example of the importance of data governance. Although some legal action may be available both criminally and civilly if the hackers are identified, courtroom battles are anything but assured. Prevention is often the best strategy. All persons involved at each stage of production (drafting, shooting, editing, re-shooting, post-production, and distribution) should remain vigilant against their data falling into the wrong hands. Entertainment entities can curb the risk by implementing policies that spell out data classification and data mapping.

Cybersecurity professionals recommend that companies classify their data in accordance with importance and value so that the company knows where to invest its security resources. For example, a 20-second promotional commercial for the season premiere of Game of Thrones may not cause as much damage if leaked as the fully produced season finale episode. By understanding the data’s importance, the company can take appropriate safeguards. Likewise, you cannot protect data if you do not know where it is located. By mapping data, companies can understand where valuable information is located and employ appropriate safeguards.

Finally, companies and entertainment entities should invest in promoting strong technical, administrative, and physical safeguards. Coverage of entertainment hacks often focuses on the technical safeguards in place (was the data encrypted? what firewalls were in place?), but like a three-legged stool, strong data governance will only support the company if all three types of safeguards exist. Companies should make sure that all administrative staff are on the same page about how classified data is to be handled. Traditional locks and physical security can protect against corporate espionage.

The HBO hacks should serve as a reminder to all entertainment entities (and really any company) of the PR, proprietary, and business consequences that can result from a hack. Companies should not just sit back and expect that “the wall will hold.”

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Ten Years After

J.B. RUHL

We’re coming up on 10 years after the dawn of the post-normal times, so I thought I’d offer some reflections by borrowing a few lines from Ten Years After, the somewhat obscure 1970s rock band led by the late guitar virtuoso Alvin Lee.

It turns out some of the band’s song titles are eerily prescient.

I Woke Up this Morning

The run of American law firms from 1980 to 2005 was about as good as it gets. The record would have justified anyone thinking that lawyers and law firms were impervious to all but the worst of economic dislocations. Law school applications kept rising through 2010, before plummeting in 2011. Well, we all woke up one morning.

Portable People

Law firms responded quickly to the downturn but with short-term measures focused on shedding lawyers to prop up profits per partner. Law students in the class of 2008 started receiving letters asking them to defer a bit, then not to show up at all. Then layoffs began.

Let the Sky Fall

By 2011 it was clear that the legal industry was in for big changes ahead. Law school applications tanked. New equity partner spots dried up. Law firms kept trimming the fat.

Here They Come

Lower-cost alternatives began to compete with law firms in the legal services market. Consultancies began offering innovative new models for secondments and support. The UK’s overhaul of legal practice laws allowed accounting firms and other businesses to innovate how legal services are delivered. Tech solutions also have begun offering an array of document review, due diligence support, litigation prediction, and other legal analytics. Will tech replace or support lawyers? Most likely it will be more the latter but not entirely.

I’d Love to Change the World

In fact, law students and young lawyers are engaging in an unprecedented movement to change how law engages with people. Legal hackathons across the nation, such as the one my colleagues Larry Bridgesmith and Cat Moon organized in Nashville last spring, bring together legal and technological expertise to problem solve for community legal services organizations, building apps to help underserved populations navigate our complex legal system. This is going far beyond the pro bono approach.

One of These Days

If I were about to graduate from law school today with plans to start my career with a law firm, I’d separate firms into two categories based on who is running the show—there are those in senior firm management who “get it” and those who believe that one of
HYPOTHETICALLY SPEAKING

How to Do Business with Kiddie Entrepreneurs

JENNA NAND

Earlier this year, 10-year-old Bishop Curry V invented a device that protects children stranded in hot cars from dying of heatstroke. This feel-good story received national news coverage as an example of our youth saving the world through STEM education. Bishop is now reportedly seeking a patent for his intellectual property and marketing the design to automakers.

From international youth robotics competitions to kiddie hackathons, leaders in the tech industry are eager to leverage the marketing potential of partnering with children. But once the photo ops are finished and news crews depart, what are the ethical considerations of engaging in business deals with minors? And how should lawyers navigate their own ethical obligations in the attorney-child-client relationship?

This is a touchy subject as it is a widely accepted tenet that contracts with youths are voidable by the minor party. That is, no matter how ironclad a business agreement, the child can generally use age as a loophole to get out of it. (Some state laws have niche exceptions to this rule for child entertainer contracts.)

Some entrepreneurs (and lawyers) may think that an easy solution to the voidability problem is simply contracting with the legal guardian in the child’s stead. After all, money earned by children, as a rule, belongs to their guardians if they are minors. Of course, not all guardians are responsible or honest with their children’s money. You may recall the famous case of child actor Gary Coleman, who, as an adult, sued his parents for the $1.3 million that they looted from his earnings when he was a child.

Rather than direct the funds generated to the adult in the child entrepreneur’s life, an attorney could incorporate a business entity (such as a limited liability company), designate the legal guardian as a governing person of the entity, and place the entity’s shares into a trust. In this scenario, the legal guardian owns the entity and is the grantor of the asset, the child is the beneficiary, and the attorney or another responsible fiduciary could opt to act as the trustee until the child reaches adulthood. This would interpose a fiduciary between the legal guardian and the child’s earnings until the child could take control of the business. This would require the cooperation of the legal guardian, who would most likely retain the attorney in this scenario.

The adult seeking to do business with the child (and the lawyer managing the transaction) could now contract with the business entity rather than the child or the legal guardian directly, avoiding the voidability problem and ensuring that generated profits ultimately end up in the child’s hands.

As more tech-savvy children seek to solve the world’s problems before they can legally drive, savvy lawyers can help protect the money that kids earn until they can responsibly manage it.

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Charter Schools
Innovation for Free or at What Cost?

LEIGHANN SMITH ROSENBERG AND SANESSA GRIFFITHS

The quality of education in the United States is of growing concern to many. We lag in international academic performance indicators and produce disparate outcomes for different subgroups of our children. The concept of school choice has become an increasingly frequent topic within this conversation—especially when comparing the use of public funds in traditional public systems with their use in public charter schools.

Public charter schools can be formed where state law allows schools to be created outside of the typical public-school framework. These laws often exempt charter schools from many regulations applicable to traditional public schools. This can include rules for curriculum and instruction, as well as those related to staffing, budgeting, and schedules. Individual charter schools are given permission to operate by entering into a contract with an authorizing entity, which can be a local, state, or private organization. Thus, the regulation and operation of charter schools is largely grounded in contract law. (Additional, state-specific information on charter laws and authorizers is available online via the Education Commission of the States.)

Here, we discuss the strengths and weaknesses of the public charter model.

Weaknesses

Benefits remain unproven. One of the underlying theories behind charter schools is that deregulation and competition can drive innovation and, ultimately, results. Where experimentation such as this is encouraged, it is crucial to measure and respond to results. To date, there are not clear data on whether or how this deregulation benefits our system and students as compared with traditional public schools.

Inconclusive academic outcomes. Research suggests that only one in every five or six charter models perform slightly better on academic assessments than traditional public schools (with the rest performing the same or worse). And it is often unclear what may have led to these limited gains. Even more uncertain is whether the results are related to the regulations waived for those charter models.

Greater segregation. Researchers have found that charter students are more isolated by race and class than their public-school peers. And many charter models lag in providing services to students with disabilities. It is unclear whether these failures are related to deregulation and policy choices. However, most charters have not successfully addressed the rising segregation and equity problems.

Strengths

More tailored approach. Because charter schools are a product of contract law and can be individualized to fit the needs of the community, teachers, and students, charters can: use unconventional modes of instruction; allow children to attend programs that meet their particularized interests, such as music, science, and technology; or address specific needs, such as smaller class sizes.

More nimble. The ability to change as needed provides charters with flexibility that is often lacking in public schools. Without the bureaucracy that plagues many public schools, they can review their performance matrices annually and adjust accordingly. Charters also control their funding and can organize their own budgets, allowing them to implement new technologies and be more innovative and responsive in addressing poor performance.

Flexible enrollment. Some charter schools reflect segregation and equity problems, but many are not bound by school attendance zones and use a lottery system to counteract homogeneity. Diversity is also a result of the parents who choose charter schools. Other than through advertising, charter school operators cannot control which parents will seek the innovation and flexibility charter schools offer.

There is no silver bullet in education, yet the charter model is one that promises innovation and experimentation to find solutions and results. Where these models fall short of addressing pressing educational problems, greater pressure should be applied for creative solutions and measurable improvements. And where these models succeed, the policy changes leading to such results should be more readily understood to facilitate replication. Without such responsiveness, what purpose does the charter school model serve?

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WORD!

“WE CANNOT ALWAYS BUILD THE FUTURE FOR OUR YOUTH, BUT WE CAN BUILD OUR YOUTH FOR THE FUTURE.”

—FRANKLIN D. ROOSEVELT
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The Childhood Vaccinations Debate
Defining It, and Parsing It Out

Nicole Le Hudson

When the topic of childhood vaccinations comes up in our country, it may seem as though people are either pro-vaccination or anti-vaccination. However, where an individual ends up on that spectrum—yes, it’s a spectrum—is not so simple. And it gets more emotionally charged when we’re talking about immunizing children, especially our own.

This article does not profess to resolve all these intricacies. But at the very least, let’s set the stage: state laws, public health best practices, children’s rights, and parents’ decisions each influence the childhood vaccination debate. While this topic is controversial, all is not lost. We can achieve progress in controlling and eliminating vaccine-preventable diseases by openly addressing the issues and interests that underlie the discourse.

Public Health Benefits of Immunization
Breakthroughs in medical advancements in the past centuries have led to the invention and proliferation of vaccinations. When a person receives an injection of a dead or weakened version of the virus—medically speaking, the attenuated virus—the person’s immune system is “tricked” into thinking it has been infected, and it produces antibodies that allow the person to become immune without being infected. Vaccines work by stimulating a person’s immune system to produce antibodies that fight against specific antigens to build immunity.

Most healthy children and adults can receive vaccinations with low risk. However, newborns, older adults, and those whose immune systems are compromised (e.g., cancer patients) may not be strong enough to fight off even the weakened virus present in the vaccines.

One cannot underestimate the boon that vaccines have bestowed upon the world. Immunization saves millions of lives around the globe each year. The World Health Organization (WHO) and the U.N. Children’s Fund (UNICEF) report that more than 2.5 million deaths per year are prevented by vaccinations against diphtheria, tetanus, pertussis, and measles alone. Not only are inoculated individuals immunized; their communities benefit too. The broader goal is that, if enough people in the community receive the vaccines, the community at large would become immune, even if individuals with high medical risk cannot receive them. The high-risk individuals who do not receive the vaccines would be “free riders” who benefit from those who do receive the vaccines. This concept is known as “herd immunity” or “community immunity.”

Achieving the goal of vaccination compliance by every medically eligible individual in the community would virtually eliminate the epidemic breakout of many infectious diseases that once claimed, quite literally, the lives of many, many more. Focusing solely on the medical benefits of vaccination, this idea seems fantastic. However, for families, the vaccine debate isn’t only about inoculation. Laws, ethics, and deeply held beliefs about vaccinations—in particular, for children—profundely shape what’s being said.

Laws Regarding Childhood Immunization
As there are no federal rules concerning routine childhood immunization, each state is left to legislate its own requirements. Parents of young children who have not yet entered preschool or elementary school generally face the decision of routine immunizations when they take their children to regular check-ups at the doctor’s office. However, the socioeconomic differences of families across the United States vary from poverty-stricken to privileged. The disparity along this socioeconomic spectrum suggests that not every child or parent has access to the same quality or quantity of information. Parents who have less information may be unable to make well-informed decisions regarding whether to vaccinate their children.

As children grow and become school-aged, parents face the requirement to show documentation of immunization records so their children can enroll. Depending on each state, various exemptions may be available for parents to opt out of vaccination. Three of the most common types of exemptions are based on medical conditions, religious beliefs, and other personal beliefs.

Medical Exemption
It would be expected that an exemption for a legitimate medical reason would not be terribly controversial. As discussed above, contraindications of vaccines upon children with health problems—most commonly immunodeficiency disorders such as HIV or cancer—would exempt a patient from required immunization.

Religious Belief Exemption
Conversely, the opportunity to opt out based on religious beliefs adds much fuel to the vaccination debate. Many states provide for such an exemption. The standard of proof will depend on where you live, but often, states will require a signed affidavit affirming that the immunization is contrary to the parent’s or child’s religious beliefs. Across the states where this exemption exists, there is one thing in common: a parent’s decision to opt out of a vaccine is not substantially scrutinized or second-guessed.

In effect, the exemption empowers parents to reject vaccines despite medically proven benefits to the children themselves, as well as to the states and communities in which the children grow. A religious exemption raises several inter-
resting (and admittedly, difficult) issues.

On the most basic level, should a parent continue to wield such power? Would state legislators be justified in rolling back a religious exemption to protect the child and her community peers? Or at the very least, should the state be able to review a parent’s exemption power along with a third-party advocate fighting for a child’s best interests? Relatedly, should additional evidence in support of the exemption be required to ensure that a parent has exercised a genuine, well-informed decision to opt out? It’s a Catch-22. Having a meaningful conversation would implicate the individual rights that Americans hold so dear. But by staying silent, we may be rendering children and communities susceptible to highly contagious and fatal diseases.

PERSONAL BELIEF EXEMPTION

Religion is just one of many personal beliefs that parents may rely on to exempt their children from vaccination. Depending on the state, a parent's personal beliefs can serve to exempt a child from immunizations. A common thread among those states with the exemption, though, is a broad power to opt out based on “personal beliefs” alone.

What sorts of beliefs may compel parents to opt out? Sometimes, there may be suspicion and mistrust of vaccines. Some advocacy groups contend that vaccines have contributed to the rise in autism despite an absence of supporting clinical or scientific proof. Or, parents may not believe in the need for vaccines; a family may prefer alternative medicine instead. It could also be steeped in one's experience; parents may lack firsthand knowledge of the lethal diseases that children may contract. Perhaps parents themselves received routine childhood immunizations and were inoculated from them. Still others may lack knowledge of how widespread immunity is better for the community.

Even those parents who understand herd immunity may nonetheless assume an individualistic stance. Parents may focus on their own priorities and disregard the benefit to the community from vaccination. Relatedly, resistance to immunization may stem from opposition to perceived government intrusion into families’ lives and parents’ rights. Not surprisingly, many of the same issues regarding religious belief exemptions are also implicated in considering personal belief exemptions more generally.

PARENTAL RIGHTS

Laws that mandate compulsory vaccination of children raise ethical and policy issues that push debates to the polarized extremes. Reasonable minds already disagree on general health policy, which tries to delicately balance individual rights with community interests. Disagreement over child immunization policy is further complicated by the fact that another party—a parent—may be objecting to immunization on behalf of a minor. As legal guardians, parents enjoy rights and assume responsibilities to ensure that their children’s health care needs are being met. States generally have laws concerning medical neglect, which is defined as a parent’s failure to obtain adequate medical care for a child despite the ability to do so. While failing to immunize one’s child could arguably qualify as child abuse, state laws with vaccine-related exemptions may insulate parents from liability under child protection statutes. As discussed above, the tension between parents’ rights to refuse immunization for their kids, and the children’s right to receive adequate and available medical care is difficult to reconcile. Thus, policy makers are left with the lofty task of balancing parents’ rights to raise their children according to their own standards, children’s rights to receive health care based on objective scientific findings, and community and states’ interests to be protected from vaccine-preventable diseases.

CONCLUSION

The vaccination debate won’t be going away anytime soon. However, we need to have an honest conversation about the issues that surround childhood vaccinations to develop an effective, well-informed policy. Public educational programs should be developed and implemented as early as possible for parents or guardians to demystify any misconceptions of or misinformation about vaccines. The information should be objective and as relatable as possible across the socioeconomic spectrum. Parents should be able to appreciate the benefits and risks of vaccines well before their child is due for immunizations. Ongoing efforts to strengthen the community immunity through educational campaigns for parents and greater access to preventive health care in general will allow parents to make well-informed decisions, which will benefit kids and communities alike.

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Millennial women, including young women lawyers, are starting families later than ever. And while women’s bodies haven’t changed, fertility technology has. What does this trend mean for the future of the never-ending struggle to achieve work-life balance? Is egg freezing really the key to “having it all,” or are we just procrastinating?

WHAT’S THE RUSH?

The Centers for Disease Control report that between 2000 and 2014, the proportion of first births to women aged 30–34 rose 28 percent, and first births to women aged 35 and over rose 23 percent. But biology remains constant. Women are still born with a finite supply of eggs, which rapidly decreases in quantity with age and the quality of which drastically diminishes over time. Older eggs lead to increased risks for chromosomal abnormalities that can cause birth defects and miscarriages. This shift toward delaying motherhood is due, at least in part, to elective egg freezing. This option is an increasingly available, attractive one for many women who may not be ready to become pregnant now but want to try to ensure their ability to do so in the future.

FASHIONABLY LATE

Marketing strategies have capitalized on this opportunity: Trendy “ladies’ night out” themed cocktail party events hosted by fertility specialists; stylish slogans such as Smart Women Freeze, Baby-Making on Ice, and Stop the Clock; and hip social media campaigns such as #LetsChill. These promotions pledge that virtually all women, but especially those with higher education and promising career prospects, should be jumping on the egg-freezing train, either as a deliberate life plan, or as an insurance policy. You know, as the responsible thing everyone can and should do, just in case.

Even an episode of the millennial–favorite series The Mindy Project ended with a monologue from Dr. Mindy Lahiri during a presentation to an auditorium full of NYU girls who had come to learn more about egg freezing and her clinic:

Let’s be honest, guys, most men are complete garbage. OK listen, listen... when I was your age, I thought that I was gonna be married by the time I was 25. But it took a lot longer than that. And unfortunately, your body does not care if you are dating the wrong guy, or [if] the guy you’re with is also sleeping with the rest of your dorm. Your body and your eggs just keep getting older, which is why freezing them is actually a pretty smart idea, because it gives you a little more time so that you can try to find that one diamond in the crap heap of American men. Because even if you find the right guy, you’re gonna want a little extra time . . . because being an adult is messy and hard. It’s not just all smiley face emojis wearing sunglasses.

FREEZING YOUR ASSETS

All jokes aside, even if egg freezing is successful, it won’t come cheap: costs typically add up to at least $10,000 per round (with at least two rounds recommended for most), plus $500 or more for annual storage. There are risks to leaving your frozen eggs in a storage facility. For starters, if you need to move, eggs that are damaged in transit can prove disastrous.

And, contrary to popular belief, a successful freeze doesn’t guarantee a successful pregnancy. It was only four years ago that the American Society of Reproductive Medicine (ASRM) and its affiliate, the Society for Advanced Reproductive Technology (SART), deemed egg freezing to no longer be an “experimental procedure,” because “[t]he success of oocyte cryopreservation has improved dramatically over the past decade, and preliminary data for safety are reassuring,” boosting interest in egg freezing.
According to ASRM and SART, the ideal candidates for oocyte cryopreservation are young women or adolescent girls undergoing chemotherapy or radiation, placing them at high risk for infertility, and women with genetic mutations that place them at a high risk of ovarian cancer, spurring them to remove their ovaries as a preventive measure before they have had children. ASRM/SART cautions that there is "not yet sufficient data to recommend oocyte cryopreservation for the sole purpose of circumventing reproductive aging in healthy women," and that "[m]arketing this technology for the purpose of deferring childbearing may give women false hope and encourage women to delay childbearing."

The lack of data to support the effectiveness of egg freezing in healthy women is due largely to the fact that, because the option is relatively new, most healthy women who have undergone their eggs have not yet tried to use them. As a result, their likelihood of having a healthy baby from those frozen eggs is not yet known.

In theory, the idea of freezing their eggs can be empowering in that it gives women a sense of control—the perception of more time to focus on their careers and tune out the sound of their biological clocks. This is largely due to the way that egg freezing has been, and continues to be, portrayed as the next big step in women’s reproductive liberty and as the ultimate road to “having it all” (i.e., a career and a family). But when women believe the exaggerated claims about the success rate of egg freezing, some may naively assume they are “insured” against natural fertility decline, postpone parenthood, and subject themselves to increased pregnancy risks in older age. But for those women who know that there is only a small chance that any of their frozen eggs will become a baby, that chance can be better than nothing. For them, freezing their eggs is as much a way to find peace of mind in the short term as it is about a future family.

Even if a woman chooses to freeze her eggs, what is the right number? Dr. Janis Fox, a reproductive endocrinologist at the Brigham and Women’s Hospital and an assistant professor at Harvard Medical School, led a team that published a 2017 study in the journal Human Reproduction on this precise question. Dr. Fox’s “BWH Egg Freezing Counseling Tool (EFCT),” which predicts the likelihood of live birth for elective egg freezing in women ages 24–44 undergoing fertility counseling, can be found at https://goo.gl/31kBCT. EFCT predicts the likelihood of having at least one, two, or three live births, using only two data points—age and number of mature oocytes. The tool incorporates the likelihood that an embryo will have a normal number of chromosomes to help determine whether undergoing additional egg freezing cycles would result in a meaningful increase in the likelihood of having a live birth.

### PROBABILITY OF AT LEAST ONE, TWO, OR THREE LIVE BIRTHS

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**PICKING UP THE TAB**

For various reasons, some employers have begun to financially support their women employees’ pursuit of egg freezing. As of 2016, global consulting firm Mercer reports that egg freezing is now covered by 5 percent of all large employers and, among employers with 20,000 or more employees, 10 percent. Notable examples include Apple, eBay, Facebook, Google, Intel, LinkedIn, Netflix, Snapchat, Spotify, Time Warner, Uber, and Yahoo. While employers’ support may reward women who delay childbearing for professional growth, some are concerned that young female workers may feel pressure to take the offer and show their commitment to the company and their career.

Similarly, the jury is still out as to how such an initiative at, say, a large law firm would be received by attorneys. Glenn Cohen, co-director of Harvard Law School’s Petrie-Flom Center for Health Law and Policy, Biotechnology and Bioethics, has expressed concerns. Cohen asks if “potential female associates [would] welcome this option knowing that they can work hard early on and still reproduce, if they so desire, later on . . . [w]ould they take this as a signal that the firm thinks that working there as an associate and pregnancy are incompatible?”

**BEFORE YOU HEAD FOR THE FREEZER**

Like the decision to start a family, the decision not to start a family—at least not yet—is an equally serious one. If you’re seriously considering freezing your eggs to [maybe] preserve the option of starting a family later in life, make sure to do your research first. Speak with your treatment providers regarding potential health and pregnancy risks, at present versus later in life. And if you are going to freeze embryos that have been fertilized by a significant other—married or otherwise—make sure to contact a family law attorney who specializes in fertility agreements, as these things tend to get very messy when folks split up and do not agree on what to do with their mutual genetic property. With expert advice in hand, you will be better equipped to make decisions that align with your long-term childbearing goals.

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Can Our Children Trust Us with Their Future?

Juliana is a reminder that the government’s purpose is to be a guardian for future generations.

RICK REIBSTEIN

The 2016 ruling in Kelsey Cascadia Rose Juliana v. USA is one of the greatest recent events in our system of law. (See Opinion and Order, Case No. 6:15-cv-01517-TC, US District Court for Oregon, Eugene Division. Anne Aiken, Judge, filed 11/10/16.) A group of children between the ages of eight and nineteen filed suit against the federal government, asking the court to order the government to act on climate change, asserting harm from carbon emissions. The federal government’s motion to dismiss was denied. Although I am not involved in the case, I am a lifelong environmentalist, and I teach environmental law (to non-law students). This case is a shining example of what law can be. This case gives me hope that we will not continue to cooperate in our own destruction, and future generations will be able to rely on us to uphold the spirit of the law and purpose behind government.
General Welfare

What does it mean that in the introduction to the US Constitution the authors stated that their purpose in forming a government was to promote the General Welfare? This means we cannot turn away—and we must not allow our government to turn away—when a key common resource is being destroyed. It is not ok to do nothing about the instability of the planet’s temperature or rising acidity or height of the oceans, particularly when our actions are causing these immense problems.

The plaintiffs—who, along with the children, include an association of environmental activists called the Earth Guardians and Dr. James Hansen, recognized by the court as “acting as guardian for future generations”—point out that even though the federal government has long known about how greenhouse gases were causing terrible problems, it has “continued to permit, authorize, and subsidize fossil fuel extraction, development, consumption and exportation—activities producing enormous quantities of CO₂ emissions that have substantially caused or substantially contributed to the increase in the atmospheric concentration of CO₂.” The plaintiffs asserted in their first amended complaint (9/10/15), that “[t]hrough its policies and practices, the Federal Government bears a higher degree of responsibility than any other individual, entity, or country for exposing Plaintiffs to the present dangerous atmospheric CO₂ concentration.” It is not just through inaction, but through actions, that we have allowed the destabilization of life systems on Earth.

Indeed, it is our government that should be acting as guardian for the rights and general welfare of future generations, and it is we, the citizens, who should be ensuring that the government does fulfill that function. So far, the plaintiffs have survived motions to dismiss the case, and if the outcome of this case is that the court does issue the order (i.e., that a plan to reduce CO₂ emissions be developed), then the court will be doing what the people of this country have failed to do. Long ago we should have told our legislators and our executives to take actions in furtherance of initiatives that promote the interests of our children and our future. We shouldn’t rely on courts to do this for us. However, in instances where we don’t act and the courts do, we must be grateful for the third branch.

Responsibility to Humanity

The plaintiffs in this case are asking the court to order the government to take responsibility for the actions of today, and the impacts they have on the future. The original idea behind the United States was to come together for the greater good—first in combination to declare independence, then to confederate, and finally to unite as one nation. In Federalist 37, Madison pointed out that there is no unitary theory in the US Constitution—it’s a kind of mish mash. No one ideological approach or structure won out, but rather the Constitution represents a series of balances between many views. So why did people agree to it? It was due to a “deep conviction” of “sacrificing private opinions and partial interest to the public good.” (See Mary Sarah Bilder’s Madison’s Hand.) That is why this Juliana case is so important. It provides us with a concrete example of responsibility to the whole of humanity—to all living things. We first need to recognize and then affirm that concept.

Retaining Trust

The Juliana case also articulates a “trust” responsibility to act to protect the environment, a concept set forth decades ago by Professor Joseph Sax, an icon of environmental law, and more recently by Mary Cristina Wood of the University of Oregon and the author of the 2013 Nature’s Trust. Wood applied the concept in what she calls Atmospheric Trust Litigation, which is now a legal movement to hold governments accountable for reducing carbon pollution. You may recall learning in law school about a case in which the government was said to have a trust responsibility, which allowed a court to void the giveaway of the shoreline of Lake Michigan to railroads.
Note that we don’t seem to have similar case precedent for arguing that the federal government must act to protect the air. Is that important? Does it matter if there was never a case before wherein a court explicitly found that agencies must act to protect a natural resource, such as air, as a “trust” responsibility? Maybe it didn’t need to be said.

But a judge who seems to step out too far can be castigated and overruled. There will be much discussion of the separation of powers. But what about when the legislature fails to act, and has failed to act for years, and there is a public emergency? Must the court sit on its hands as well, joining in the abdication of responsibility? Must plaintiffs be left without any remedy? It is, as Chief Justice John Marshall said, the role of the court to say what the law is.

The Purpose of Courts and the Law

In a monarchy, law is the tool of the king, but in a democracy, the people are sovereign. If the law is not serving the people’s interests, it is not working as it should, and it is the role of the courts to do something about it.

What the courts do is another question entirely. In Juliana, the plaintiffs ask for: “(1) a declaration their constitutional and public trust rights have been violated and (2) an order enjoining defendants from violating those rights and directing defendants to develop a plan to reduce CO₂ emissions.” Perhaps you are remembering the early cases on whether state or federal constitutions provided for rights to a clean environment — judges were reluctant in those cases to decide those questions. Some quoted Judge Learned Hand who said that it was not “desirable for a lower court to embrace the exhilarating opportunity of anticipating a doctrine which may be in the womb of time, but whose birth is distant.” Well, the concept of the crucial importance of ecosystem viability has been gestating for long enough. It is time for this doctrine to be born.

In addition, in the early environmental rights cases, judges wanted to see some movement from legislatures and the Supreme Court, and now they have. In Massachusetts v. EPA, for example, the Supreme Court said the EPA could not just turn away from the job of addressing greenhouse gases. The Court didn’t tell the EPA what it had to do, but it said it was arbitrary and capricious to just shrug off the problem. That’s clear precedent that action is necessary. The EPA was acting — its Clean Power Plan was one example, but the stopping of the system now brings back before the judicial branch the basic question of whether we can continue to deny the necessity of environmental protection as essential to just governance.

Judge Aiken in Juliana found that while the case raised political issues, it was not barred by the political question doctrine, and though the court would “be compelled to exercise great care to avoid separation-of-powers problems in crafting a remedy,” it was squarely within its powers to begin the process of doing so. Concerning standing, the court found the plaintiff’s allegations to constitute injury in fact:

Lead plaintiff Kelsey Juliana alleges algae blooms harm the water she drinks, and low water levels caused by drought kill the wild salmon she eats. Plaintiff Xiutezcatl Roske-Martinez alleges increased wildfires and extreme flooding jeopardize his personal safety. Plaintiff Alexander Loznak alleges record setting temperatures harm the health of the hazelnut orchard on his family farm, an important source of both revenue and food for him and his family. Plaintiff Jacob Lebel alleges drought conditions required his family to install an irrigation system at their farm.

These injuries were considered by the court not to be non-justiciable “generalized grievances” (note that “the most recent Supreme Court precedent appears to have rejected the notion that injury to all is injury to none for standing purposes.” See e.g., Pye v. United States, 269 F.3d 459, 469 (4th Cir. 2001)).
The plaintiffs alleged that “our country is now in a period of carbon overshoot, with early consequences that are already threatening and that will, in the short term, rise to unbearable unless Defendants take immediate action.” The harm is imminent.

Judge Aiken also accepted that the plaintiffs had sufficiently alleged that their harm was traceable to the actions of the defendants—and she stated she was bound to accept this “at this stage” in the case, for it is beyond the court’s expertise to know that it would be “impossible to introduce evidence to support a well-pleaded causal connection.” (Page 23, Opinion and Order.) Hopefully other judges called upon to consider this case will not only understand that “between 1751 and 2014, the United States produced more than twenty-five percent of global CO² emissions” but also the consequences of this production, and that there is causation from the actions of the defendants. These actions include: leasing public lands for oil, gas, and coal production; undercharging royalties relating to those leases; providing tax breaks to companies to encourage fossil fuel development; permitting the import and export of fossil fuels; and incentivizing the purchase of sport utility vehicles. There may be a legal standard of proof that makes it difficult to obtain court action, but that does not mean the causation and the responsibility are not plain to see.

Value in the Notion that Action Is Necessary

In a discussion of whether the rights infringed upon are fundamental, the judge in Juliana quoted Justice Kennedy, writing in the equal marriage case (Obergefell):

> The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights . . . did not presume to know the extent of freedom in all its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning.

> “Exercising my ’reasoned judgment,’” Judge Aiken wrote in Juliana, “I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society.” She then discussed how this need not open the door too widely, to admit any kind of claim of environmental harm. While the ideas governing Judge Aiken’s reasoning behind denying the defendant’s motion to dismiss the case represent wealth beyond compare for a civilized society that wishes to be comprised of responsible adults, it is in the discussion of public trust that the case emits a bright light. Judge Aiken begins this discussion by pointing out that “[i]n its broadest sense, the term ‘public trust’ refers to the fundamental understanding that no government can legitimately abdicate its core sovereign powers.” She notes that this goes back to ancient Roman law, quoting the Institutes of Justinian: “the following things are by natural law common to all—the air, running water, the sea, and consequently the seashore.” In discussing Illinois Central RR v. Illinois, the fa-
Pro bono representation of a dependent child makes an enormous difference in both the child’s life and the lawyer’s life. Whether it's handling a trial in a dependency case, an evidentiary hearing, or an appeal, you will add valuable legal experience to your resume, and become more confident and passionate about the practice of law while also giving a voice to a dependent child.

The Vital Role of the Dependent Child’s Attorney
Dependency proceedings involve the court’s jurisdiction over children who have been abused, neglected, or abandoned. Depending on the state, a lawyer may be appointed to represent the parents but not the child. Sometimes a child will receive a guardian ad litem, but this is not the same as an attorney.

An attorney for a dependent child represents the child's legal interests and expressed wishes. By contrast, a guardian ad litem advocates for the child’s best interests. As the ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Proceedings explains: “[T]he child is a separate individual with potentially discrete and independent views. To ensure that the child's independent voice is heard, the child’s attorney must advocate the child’s articulated position. Consequently, the child’s attorney owes traditional duties to the child client consistent with [Ethics Rule] 1.14(a) of the Model Rules of Professional Conduct.” The dependent child’s attorney gives the child client a voice and provides the same undivided loyalty, confidentiality, and competent legal representation the attorney would provide to an adult client.

Making a Difference
Organizations that facilitate pro bono opportunities for children, such as Lawyers for Children America (LFCA), provide legal assistance to children in dependency court and other legal forums. LFCA recruits, trains, and supports pro bono lawyers who serve as attorneys for dependent children and protect their legal rights. By providing pro bono representation to a dependent child, you not only will make a profound difference in a child’s life, but you will also advance your legal career.

The next time you find yourself buried in paperwork, consider taking a child’s case through an organization like LFCA. You may also reach out to your local or state bar association or judges in your local court for children’s pro bono opportunities in your community or search online for programs through the ABA Directory of Children’s Law Programs, many of which accept pro bono lawyers. Practice tools and resources are available on the websites of the ABA Center on Children and the Law, the ABA Section of Litigation Children’s Rights Litigation Committee, and the ABA YLD Children and the Law Committee.
Starting a Family Means Investing in Your Children

AMANDA VANN

As a family law practitioner, I provide advice on many topics relating to kids, including the financial impacts of starting a family. As a mom of a two-and-a-half-year-old and nine-month-old twins, I have personal experience and understand that nothing can be more powerful to you as a parent than investing in your children. But investing in your children isn’t easy.

- **Compare monthly expenses and income to budget.** Itemize your monthly expenses and compare your total to your monthly income to determine if you have a shortfall. If so, what expenses can you cut back on to stay in your budget? Being honest about your spending habits can be an eye-opening experience but will allow you to compare the expenses that are must-haves to those that are discretionary to find ways to cut back to stay in your budget. Although I’d love to eat out more often, the reality is that saving that money allows us to take our kids on more adventures and expose them to new things.

- **Determine how long you can afford to be off work.** Too many parents find themselves rushed back into the workforce, because they need a paycheck and their employers do not provide any paid maternity or paternity leave. Make sure you plan for the financial impact if you can’t return to work when you planned because of a complication in your recovery or a health issue with your new child. Do your best to save a three-to-four-week financial cushion so that, if necessary, you can remain out of work and still pay your bills.

- **Consider day care expenses.** Paying for day care for three kids in some areas, such as where I live in the suburbs of Washington, D.C., can cost more than a mortgage. Don’t be discouraged because you can’t afford to send your child to the Harvard of day cares. But remember the importance of investing in your child’s early years of learning. If you do your research and leave yourself enough time, you can find a loving, nurturing environment where you feel comfortable and where your child flourishes, all within your budget.

- **Entertain low-cost (or free) alternatives for your kids’ necessities.** In the early months, babies need a lot, but you don’t need everything available at Buy Buy Baby. Babies bring about giving in people, and if you ask around, you will be pleasantly surprised at the number of things people will give you. Instead, invest in services that can help make your life easier. I’m an Amazon Prime mom and easily pay for my membership in one month with the amount of baby items that I automatically reorder with “subscribe and save.” (There are a ton of apps and social media networks that will help you save money when buying things for your kids.) Another way I save is by buying consignment t-shirts for a dollar so that when my toddler demolishes her “play” clothes, I don’t feel bad throwing them out.

- **Reap the greatest return on parental investment—quality time with your child.** You don’t need a fancy vacation to bond with your child. Some of the best times our family had when the twins were first born, and we couldn’t venture out into the winter weather, were building forts out of blankets and sheets in our living room, reading stories with hot chocolate by the fireplace, and having paper airplane competitions down the hallway in our home. Your kids yearn for time with you. Take time away from work and all your electronic devices to play and connect with them. At first blush, I’m never thrilled about my husband teaching my kids to make mud pies, but the laughs and giggles are completely worth the extra loads of laundry.

Parenthood is one of the most difficult challenges I’ve ever faced, but it’s also been my biggest blessing. When it comes to parenthood, I advise my friends and clients the same. Take a minute to decide what works and doesn’t work financially for your family before making any decisions, because investing in your children is the most important part of the job.

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Before You Share that Photo of Your Child
Privacy Considerations for Parents

NICHOLE STERLING AND EMILY FEDELES

Most of us were using social media before our parents. Whether we’re on every social media platform or none at all, we’ve grown up controlling our own digital identities. But now, as parents, social media savvy adults are assuming the novel responsibility of managing their children’s digital identities.

Studies show two-thirds of parents worry about their children’s privacy. Yet, studies have found more than ninety percent of two-year-olds have a social media presence, and average parents share more than 1,500 pictures before their child turns five. Roughly half of parents share their child’s name at birth, and a quarter share the child’s birth date. Data brokers are happily mining this information to create profitable marketing profiles; the government may even be creating surveillance files from this information. How many lists do you want your child on?

We could all think more critically about what we post, especially when it concerns children. American privacy laws protect children from unauthorized third-party disclosures by requiring parental authorization before sharing many types of sensitive personal information. But, these laws do little to protect children from what their parents share. The parent assumes a dual role as protector and curator of the child’s public data.

Of course, parents can share about their lives, which often center on children. Parents find valuable support and affirmation through their online communities. They keep far-flung family members close through social media; create public blogs detailing their children’s struggles; and even accidentally unleash memes. Simultaneously, they are creating an indelible digital footprint for their children. Perhaps then, it is equally valuable to give children a voice in creating their online narratives and shaping their digital identities.

Last spring, Professor Stacey Steinberg at the University of Florida, Levin College of Law, considered the issue of “sharing”—the habitual use of social media to share about your children. Perhaps then, it is equally valuable to give children a voice in creating their online narratives and shaping their digital identities.

Parents should identify their children in photos and videos so others can recognize them. This may prevent unauthorized third-party disclosures, including images, quotes, accomplishments, and challenges. Include your child in his or her online narrative construction as age appropriate, and respect his or her (potentially inconsistent) opinions.

Parents should consider not sharing pictures that show their children in any state of undress. Limit the audience for these pictures, which can be targets for pedophiles.

Parents should consider the effect that sharing can have on their child’s current and future sense of self and well-being. Before you share, consider whether you—not you now, but you as an awkward, insecure teenager—would want people seeing the post.

Parents should consider the details they share about their children. It is incredibly easy to piece together seemingly irrelevant information to identify a specific person.

Parents should consider sometimes sharing anonymously. If you are sharing private health information with others, anonymizing names and other identifying information protects your child.

1. Parents should familiarize themselves with the privacy policies of the sites with which they share. Know who will see what you are sharing and what the site does with your data. Confirm and update your privacy settings regularly, reviewing any changes.

2. Parents should set up notifications to alert them when their child’s name appears in a Google search result. Especially important when a child’s information is shared publicly, the alert notifies you if your child’s information appears somewhere new.

3. Parents should consider sometimes sharing anonymously. If you are sharing private health information with others, anonymizing names and other identifying information protects your child.

4. Parents should use caution before sharing their child’s actual location. Turn off photo location-tagging features on social media when you post real-time pictures of your child; consider it for other pictures.

5. Parents should give their child “veto power” over online disclosures, including images, quotes, accomplishments, and challenges. Include your child in his or her online narrative construction as age appropriate, and respect his or her (potentially inconsistent) opinions.

6. Parents should consider not sharing pictures that show their children in any state of undress. Limit the audience for these pictures, which can be targets for pedophiles.

7. Parents should consider the effect that sharing can have on their child’s current and future sense of self and well-being. Before you share, consider whether you—not you now, but you as an awkward, insecure teenager—would want people seeing the post.

8. Parents should consider the details they share about their children. It is incredibly easy to piece together seemingly irrelevant information to identify a specific person.

9. Parents should clearly state their wishes to others who might share information about their children on social media. Whatever guidelines you follow, share them with your friends and family and monitor their social media in case you need follow-up conversations.

10. Parents should use these interactions with their children as teaching moments for the children’s own social media use. By involving your children as age appropriate, you can facilitate an open dialogue and begin to address issues that may arise when your children establish their own social media accounts.

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Welcome, Youth

Welcome, youth, to the legal profession! This will be much better than whatever you wanted to be as a child.

You’re probably wondering: “youth—is that singular or plural?” Well, “youth” can be either singular or plural, like “moose,” or it can refer to young people in the abstract (i.e., “youth eventually regret going to law school”). See Oxford English Dictionary, “youth, n.” (2017) (defining “youth” to mean, inter alia, “a young person”; “young people (or creatures) collectively”; or youth “personified, or vaguely denoting any young person or persons”; see also id. at 6a (1837 Dickens Pickwick Papers 328 “[T]he muffin youth, and the baked-potato man”); 4 (1675 T. Brooks Golden Key 27 “Youth enclines to Wantonness and Prodigality”); and 5 (Beowulf 66 “Odþ þæt seo geogoð geweox.”).

If you think all that was irritatingly pedantic, I say again, welcome to the legal profession.

And yes, Odþ þæt seo geogoð geweox, how true that is. I often muse on it as I sit here in my offensive regal Partner Chair while one or more youth drone(s) on and on about subrogation or the Rooker-Feldman Doctrine or the Unitary Wind Tunnel Act of 1949 or whatever that day’s fascinating topic happens to be. Odþ þæt seo geogoð geweox, I think to myself, pretending to listen but actually wondering what all the levers on this chair could possibly do.

But here we are. Having passed the bar exam, probably, you are now entitled to practice law and, more importantly, receive a copy of TYL magazine, containing this article by me, a partner. Yes, now it must all seem well worth it.

No? Well then, let me start adding value.

Second, you’ll be meeting a lot of people. Here are some tips for remembering all the new names:

• When a person tells you his or her name, repeat it out loud. Do this as many times as necessary to be sure it sticks. Thirty or forty times is usually enough.
• Make some sort of hand or arm motion that you will forever after link with that person’s name. Make this motion whenever you see the person, or just randomly.
• If their name is complicated, consider a brief interpretive dance.
• Change your name to that person’s name.

I don’t think any of those are necessary, but I’d enjoy hearing that somebody tried one of them.

Third, know where the exits are, so if you see that one partner looming at the end of the hall, probably wanting someone to do a memo on the Unitary Wind Tunnel Act of 1949, you can duck out before it’s too late. Be aware that if the closest exit leads into a stairwell, the door will probably lock behind you and you’ll have to walk all the way down. Those in tall buildings should start working on their quads.

Fourth, you might as well start stockpiling food and water. Trust me on this one. Also, the window-washers are not what they seem.

Well, unfortunately for you I have reached my word limit, so further helpful tips like these will have to wait until the next issue. Until then, I wish you good luck.

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