Child Law Practice

Vol. 28 No. 3 May 2009 *Helping Lawyers Help Kids*

IN PRACTICE

Cornerstone Advocacy in the First 60 Days: Achieving Safe and Lasting Reunification for Families

by Jillian Cohen and Michele Cortese

This article introduces a promising approach to child dependency cases in which a child is placed in foster care. "Cornerstone Advocacy" supports family reunification, when possible, by devoting intensive advocacy during the first 60 days of a case in the following four areas:

- **visiting** arrangements for children and their parents that are as frequent and long as possible, and most closely mimic family life;
- **placement** arrangements that support a child's connection to family and the people and institutions that the child was connected to before placement in foster care;
- **services** that address a parent and child's strengths and needs;
- **conferences** and meetings that occur out of court and provide opportunities for parents and older youth to meaningfully participate in their case planning.

Whether you represent parents or children, your legal training likely encouraged you to develop excellent investigatory and litigation skills. However, in practice you are likely to devote those skills to the trial, discovery, and motion practice.

You may not think about the longer-term permanency prospects for the family until after a trial is complete. Arguably though, the most significant and central question in most dependency cases is not whether or not a parent committed "neglect" but whether and when a child can return home safely. Cornerstone Advocacy attempts to answer this question and bring advocacy skills to bear as soon as possible in every case—because it can take months to reach a trial on the merits and, in most cases, parents want their children home and children wish to return home.[1]

About Cornerstone Advocacy

Early, consistent focus on each of the four Cornerstones yields better results for families. Since 2004, the Center for Family Representation (CFR) has brought this approach to more than 600 families in its representation of parents and has achieved reunification at a rate that far outpaces city and state averages—more than 55% of CFR's clients' children are not in foster care, and those that are have significantly reduced lengths of stay and far fewer return placements.[2]

Benefits

Cornerstone Advocacy does not replace preparing for trial, but if used with equal intensity, it has the following advantages:

- maintains a child's significant attachments to parents and family that can reduce the emotional stress for a child in foster care and increases the likelihood that a parent will stay engaged in planning;
- speeds reunification and avoids protracted foster care stays;
- ensures services are tailored to the problem that led to placement, hopefully achieving stability that avoids future child protective involvement;
- makes it easier for practitioners to make accurate, informed decisions about the ultimate permanency question in the case, *whether a family can reunify safely*.

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ABA *Child Law* PRACTICE

www.childlawpractice.org

ABA Child Law Practice (CLP) provides lawyers, judges and other professionals current information to enhance their knowledge and skills, and improve the decisions they make on behalf of children and families. Topics include: abuse and neglect, adoption, foster care, termination of parental rights, juvenile justice, and tort actions involving children and families.

CLP is published monthly by the **ABA Center on Children and the Law,** a program of the ABA's Young Lawyers Division, 740 15th St., NW, 9th Fl., Washington, DC 20005-1022.

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Subscription Prices:

- $184 individual rate (**payable by personal check only)**
- $219 institutional, agency, library, and law firm subscribers

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Send check or money order, made payable to the: **American Bar Association,** 740 15th Street, NW, Washington, DC 20005-1022

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CASE LAW UPDATE

Kansas Strikes Down Existing Indian Family Doctrine

In re A.J.S., 2009 WL 790947 (Kan.).

An unmarried couple gave birth to a child. The day after the baby was born, the mother filed a petition to terminate the father's parental rights and signed a consent to adoption by her family members. The baby was temporarily placed with the adoptive parents.

The father filed an Indian Heritage affidavit indicating he was the father and an enrolled member of the Cherokee Nation. He invoked the placement preferences of the Indian Child Welfare Act (ICWA), requested the case be transferred to tribal court, and asked that the child be placed with him in the interim.

The mother objected to the father's transfer request and requested that the child be adopted by her family. She also argued ICWA did not apply under the existing Indian family doctrine, which holds that the ICWA does not apply when an Indian child's parents have not maintained significant social, cultural, and political relationship with the tribe. The Cherokee Nation also moved to intervene in the proceedings.

At the evidentiary hearings, the mother testified that she was not a member of any Indian tribe, she had never lived on a reservation, and that she knew no tribal customs. She also said the father had never mentioned his ties to the Cherokee Nation and that he never told her that he was a tribe member.

The parties stipulated that the child qualified as an Indian child under the ICWA. However, the trial court ruled ICWA did not apply to the termination and adoption proceedings because the child had never been part of an Indian family relationship. The trial court also denied the Cherokee Nation's motion to intervene. The father and the Cherokee Nation appealed.

The Supreme Court of Kansas reversed. Kansas adopted the existing Indian family doctrine in 1982 when the Kansas Supreme Court unanimously decided *In re Baby Boy L*, 643 P.2d 168, four years after ICWA was enacted. In that case, a non-Indian mother consented to the adoption of her newborn child by non-Indian caregivers. The child's father, who was incarcerated, claimed he was an enrolled member of the Kiowa tribe and contested the adoption by non-Indian caregivers. The Kansas Supreme Court ultimately decided that the ICWA was intended to maintain family and tribal relationships in existing Indian homes, "...not to dictate that an illegitimate infant who has never been a member of an Indian home or culture, and probably never would be, should be removed from its primary cultural heritage and placed in an Indian environment over the express objections of its non-Indian mother."

Since *Baby Boy L.* the validity of the existing Indian family doctrine has been questioned by many courts and commentators. The U.S. Supreme Court has not addressed the doctrine, but has stressed the importance of the relationship between an Indian child and her tribe outside the parental relationship, *Mississippi Band of Choctaw Indians v. Holyfield,* 490 U.S 30 (1989). *Holyfield* stressed that ICWA was designed to preserve tribal interests in Indian children and the desires of parents could not necessarily overcome those interests.

In choosing to abandon the existing Indian family doctrine and overrule *Baby Boy L.*, the court in this case explained the doctrine was at odds with ICWA's goal of preserving Indian tribes and its clear policy of placing Indian children in foster or adoptive homes that reflect their Indian culture. It rejected the *Baby Boy L.* court's contention that a non-Indian mother's failure to consent to adoption by anyone other than a non-Indian caregiver foreclosed an Indian upbringing. The court explained that if ICWA applies, the child's placement is not governed by the mother's desires alone. The father and the tribe are also heard and ICWA's placement preferences are applied absent good cause. As long as ICWA is not avoided by applying the existing Indian family doctrine, there is still an opportunity to recognize or create an Indian family.

The court concluded that ICWA applied to this proceeding and that the Cherokee Nation must be permitted to intervene. It therefore reversed the district court's ruling and remanded for further proceedings.

Ordering Parent to Undergo Drug Tests in Child's Delinquency Proceeding Is Unconstitutional

State v. Moreno, 2009 WL 414467 (Utah).

A juvenile was adjudicated delinquent for possessing drugs. As part of her delinquency adjudication, the juvenile court ordered her father to undergo drug testing, claiming it had legislative authority to impose such testing as a reasonable condition on parents whose children are under court jurisdiction.

When the father failed to appear for the drug testing, the court charged him with comtempt. The father pled guilty and the court stayed his punishment on the condition that he submit to future random drug testing. He underwent one test and tested negative for drugs. When asked later to submit to another drug test, he refused and the court scheduled a second contempt hearing, which he did not attend. The court then issued a warrant for his arrest.

The father moved to dismiss the second contempt charge, arguing the court exceeded its jurisdiction over parents of children involved in delinquency hearings and that the court lacked jurisdiction to order him to submit to drug tests. He argued that under Utah statute, the juvenile court can only order parents to complete physical testing in child custody hearings and child welfare cases. He also claimed that ordering him to submit to drug testing was not a reasonable condition for the juvenile court to impose since it did not relate to the conditions imposed on the juvenile and the court had no reason to suspect he was abusing drugs. Finally, he claimed that drug testing violated his rights under the Fourth and Fifth Amendments. The juvenile court denied the father's motion to dismiss and he appealed.

The Utah Supreme Court reversed. Utah statute gives juvenile courts authority to order a minor's parent or guardian, or any other person who is a party to the proceeding, to comply with "reasonable conditions." Utah statute also permits a court to make "reasonable orders" for the best interests of the child or to protect the public. Both statutory provisions give courts broad authority regarding the remedies ordered as long as they are in the best interests of the child. Even if a juvenile court's order is found to be reasonable under the statutes, it is deemed unreasonable if it violates established constitutional rights of the parent.

The court determined that requiring the father to submit to blood tests violated his Fourth Amendment right to be free from unreasonable searches. Ordering a parent to submit to drug testing is a search under the Fourth Amendment and therefore is governed by the constitutional restrictions on searches, including the requirement that the search be conducted with a judicial warrant upon a finding of probable cause. If the search is conducted without a warrant it must fall within one of the limited exceptions, such as when there is a reduced expectation of privacy (e.g., search of a prisoner or juvenile probationer) or an administrative search required by the government for a purpose other than a criminal investigation (e.g., drug testing government employees). The test to determine if a warrantless search unsupported by probable cause is allowed involves weighing the privacy interest and government interest and then finding whether the burden a probable cause finding would impose on the government outweighs the privacy interest at stake.

Since ordering the juvenile's father to undergo drug testing was not part of a criminal investigation, the court had to determine if the search was reasonable under the Fourth Amendment. It first considered the father's expectation of privacy and whether it was reduced to justify a search based on less then probable cause. The court found nothing in the Juvenile Court Act suggests the parent of a delinquent juvenile has a limited privacy right. The court pointed out that parents of delinquent children do not take any voluntary actions that reduce their privacy interests and that they have no reason to believe their actions will be monitored more closely than if their children were not delinquent. For these reasons, the court found no basis to find the father's privacy interest was reduced.

The court next weighed the government's interest in conducting the search. The government may have an interest in ordering a parent to undergo drug tests in a juvenile delinquency proceeding when the parent's drug use is contributing to a juvenile's drug use. However, unless an immediate concern exists concerning the welfare of a child relating to the parent's drug use, there is usually time to obtain the information that will provide probable cause to search the parent. In this case, the court found little to suggest the father had a reduced privacy interest. While ensuring that parents of delinquents are good role models for their children is a commendable goal, the court did not find it as compelling as other goals, such as protecting children from abuse and neglect.

Since the burden that a probable cause requirement would place on the government's interest did not outweigh the privacy interest in this case, the court found that requiring the father to undergo drug testing had to be supported by probable cause. The court found no evidence in the record to suggest the father actually took drugs; therefore, it was unreasonable to believe that ordering him to undergo drug tests would produce evidence of drug use. Since the court's order imposing drug testing was based on less than probable cause, it violated the father's Fourth Amendment rights and was an unreasonable condition to impose as part of his daughter's delinquency proceeding.

ABA Economic Recovery Portal

In these difficult economic times, the ABA is responding to legal professionals who are facing difficulties contending with the economic downturn. The ABA has developed the Economic Recovery Resources portal on its Web site. This site serves as a portal to ABA content, resources, and benefits on six topics: job search and networking, career transitioning, practice management, professional development, stress management and savings. Two new topic areas will be added in the near future: hot recession topics and external recession resources.

Visit the Economic Recovery Resources portal at **http://new.abanet.org/economicrecovery**

Alaska

Ted v. State Dep't of Health & Social Servs., 2009 WL 792750 (Alaska). TERMINATION OF PARENTAL RIGHTS, INDIAN CHILD WELFARE ACT
Mother's temporary transfer of caregiving responsibility of child to father and designation as "Indian custodian" under Indian Child Welfare Act (ICWA) ended when mother joined child welfare agency in request to end father's Indian custodian status and resume parenting responsibility for child; ICWA does not permit Indian custodian to usurp parent's right to raise child and to rescind parent's status as Indian custodian.

Arizona

Jared P. v. Glade T., 2009 WL 448174 (Ariz. Ct. App.).ADOPTION, INDIAN CHILD WELFARE ACT
Trial court should have followed ICWA's requirements before finalizing child's adoption since child was an Indian child based on putative father's acknowledgement of paternity and membership in Cherokee Nation; putative father challenged adoption agency's petition to terminate his rights before child's birth, filed a paternity petition and wrote letters to court acknowledging paternity, enrolled in Cherokee Nation, and submitted membership card to court.

Arkansas

Grant v. Richardson, 2009 WL 700611 (Ark. Ct. App.). VISITATION, GRANDPARENTS
Grandparent visitation was in child's best interests where evidence showed grandmother had cared for children continuously for 18 months and she had clearly shown ability to provide love, affection, and guidance to children, such that severing relationship with children would be harmful.

Griffin v. Dep't of Health & Human Servs., 2009 WL 613538 (Ark. Ct. App.) ABUSE, SOLDIERS' AND SAILORS' CIVIL RELIEF ACT
Where father was found to have sexually abused foster daughter, placed on state abuse registry, and then called to active military duty, Soldiers' and Sailors' Civil Relief Act tolled time to appeal administrative decision; however, this did not help father because it gave him additional 30 days to appeal at most and he did not appeal for over a year.

California

A.B. v. A.C., 202 P.3d 1089 (Cal. 2009). TERMINATION OF PARENTAL RIGHTS, GUARDIANSHIP
Statute which allowed termination of parental rights when child had been in guardianship for over two years did not violate due process on its face and was properly applied retroactively to mother since, given her history of substance abuse, dependency proceeding would have been likely had she not consented to guardianship; though due process requires a showing of unfitness where a parent has custodial rights, this showing is not necessarily required years after those rights have been diminished.

In re B.S., 2009 WL 679243 (Cal. Ct. App.). DEPENDENCY, RESTRAINING ORDER
Issuing restraining order against father in dependency proceeding to protect child from violence was supported by evidence showing father routinely committed domestic violence against mother in child's presence, creating threat of harm to child; exclusive concurrent jurisdiction did not prevent juvenile court from entering restraining order even though criminal court had previously entered restraining order against father.

In re Nolan W., 203 P.3d 454 (Cal. 2009). DEPENDENCY, CONTEMPT
Though court had power to require mother to participate in substance abuse treatment as part of reunification plan, it could not use contempt power to compel participation; contempt may be used when a party's actions impair the functioning or dignity of the court process, but given that the statute already prescribes a penalty for violating dependency orders, namely termination of parental rights, contempt power is inappropriate for this purpose.

Connecticut

In re Anthony A., 2009 WL 314178 (Conn. Ct. App.). DEPENDENCY, GUARDIANSHIP
Mother's grandmother had standing as intervenor to appeal denial of mother's motion to transfer guardianship of child from foster parents to grandmother since trial court had granted motion to intervene in neglect petition and had concluded that transfer request was from both the mother and grandmother and therefore denial of motion was adverse to grandmother's interest in the disposition of the neglect petition.

Florida

In re G.C., 2009 WL 454580 (Fla. Dist. Ct. App.). TERMINATION OF PARENTAL RIGHTS, GROUNDS
Child welfare agency did not show that parents had not sufficiently addressed lack of housing and inadequate supervision issues to the extent that children would suffer harm if returned to their care, therefore trial court improperly terminated parents' rights.

Georgia

In re J.M.B., 2009 WL 724119 (Ga. Ct. App.). TERMINATION OF PARENTAL RIGHTS, REPRESENTATION
Trial court improperly denied mother's request for counsel at hearing on petition to terminate her parental rights since mother had not knowingly, intelligently, and voluntarily waived right to counsel; record was unclear why lawyer who represented mother at prior hearings did not represent her at termination hearing, court did not warn mother that her failure to seek advance notice of desire for counsel would be treated as evidence of waiving her right to counsel, and mother's low IQ showed she did not understand proceedings and could not proceed without counsel.

Idaho

In re Doe, 203 P.3d 689 (Idaho 2009). TERMINATION OF PARENTAL RIGHTS, ABANDONMENT
Trial court properly terminated parental rights for abandonment where parents were incarcerated repeatedly, did not pay child support, failed to otherwise attempt to maintain contact, and failed to visit even when released from prison; parents' reliance on case law overturning terminations involving parental incarceration was misplaced as cases involved parents that made diligent efforts to maintain parent-child relationships despite incarceration.

Indiana

In re N.E., 2009 WL 736065 (Ind. Ct. App.). DEPENDENCY, FATHERS
Child welfare agency alleged child was dependent as to mother, not father, thus remand was required to determine if father was suitable parent for child; since agency had made no allegations that father had been negligent, deficient, or worse in

exercising his duties as a parent or that he knew of mother's acts or omissions leading to the dependency petition.

In re T.D.S., 902 N.E.2d 332 (Ind. Ct. App. 2009). DEPENDENCY, CONTINUED PLACEMENT
Trial court did not abuse discretion in rejecting agency's recommendation to return child immediately to mother's custody even though mother had substantially complied with case plan given CASA's recommendation and child's testimony that he preferred remaining with his grandparents through the end of the school year before being reunified.

Iowa

In re K.S., 2009 WL 607564 (Iowa Ct. App.). TERMINATION OF PARENTAL RIGHTS, SUBSTANCE ABUSE
Trial court properly terminated parental rights based on finding that child could not be returned to father without remaining dependent; father's long history of substance abuse including a positive drug screen six weeks before trial, incarceration, and lack of substantial relationship with his daughter prevented any safe return of his child.

Massachusetts

In re Linus, 902 N.E.2d 426 (Mass. App. Ct. 2009). TERMINATION OF PARENTAL RIGHTS, FITNESS
Evidence did not support termination of parental rights on ground that parents remained unfit to care for children but was based only on past misconduct; testimony and documentation introduced did not show continued illegal drug use, homelessness, and there was no expert testimony indicating that removal from foster caregivers with whom children had bonded would bring future harm.

Michigan

In re Miller, 2009 WL 608480 (Mich. Ct. App.). TERMINATION OF PARENTAL RIGHTS, PRIOR TERMINATION
Trial court properly terminated mother's parental rights based on prior termination of parental rights to another child where testimony, including that of mother, indicated that little had changed since earlier termination regarding mother's housing instability and mental health problems; further, mother's claim that judge was biased against her simply because same judge had heard prior TPR cases lacked merit.

Minnesota

Ball v. Prow, 2009 WL 511343 (Minn. Ct. App.). ABUSE, HEARSAY
In proceeding in which mother sought protection order against father based on alleged abuse of son, mother's hearsay testimony about child's statements describing father's improper contact was admissible under residual hearsay exception; child made statements spontaneously, lacked motive to fabricate, used age-appropriate language, described acts not commonly known by a four year old, and made consistent allegations.

Missouri

In re M.N., 2009 WL 507112 (Mo. Ct. App.). TERMINATION OF PARENTAL RIGHTS, TIME IN CARE
Juvenile officer had discretion to seek termination of parental rights even though child had not been in care for 15 of the most recent 22 months; 15 of 22 months rule seeks to address problem of children remaining in foster care for long periods by setting a deadline for states to begin the termination process, yet it does not remove juvenile officers' discretion to file a petition earlier.

Young v. Dep't of Social Servs., 2009 WL 690129 (Mo.). ADOPTION, SUBSIDIES
Case had to be remanded for new trial where adoptive parents' request for increased adoption subsidy due to behavioral issues of children was denied; no proper legal standard was available to determine subsidy amount as agency had not established criteria contained in manual according to Missouri Administrative Procedures Act.

Montana

State v. Strong, 203 P.3d 848 (Mont. 2009). DELINQUENCY, SENTENCING
Where sentencing statutes provided that youth transferred to district court could be sentenced to the Department of Correction (DOC) and placed indefinitely in a variety of settings from imprisonment to boot camp while adult offenders committed for more than five years were sent to state prison rather than the DOC, statute was not facially unconstitutional; though youth and adults were similarly situation, state had a compelling interest in giving the court flexibility to craft a more rehabilitative sentence for youth sufficient for equal protection.

New York

In re Jessica, 2008 WL 5170584 (N.Y. App. Div.). DEPENDENCY, EDUCATIONAL NEGLECT
Preponderance of evidence showed mother neglected child by holding child from school for 44 days without backup education plan after child had been left at wrong bus stop by school bus driver; mother refused transportation money, refused to walk child to or from school, and failed to otherwise ensure child's educational needs were met.

In re Nassau County Dep't of Soc. Servs., 2008 WL 5481202 (N.Y. Fam. Ct.). DEPENDENCY, MEDICAL NEGLECT
Mother's refusal to have children vaccinated was genuine and sincere and was based on her religious beliefs, therefore exemption from mandatory immunization requirement applied; mother's religious beliefs, which were confirmed by congregation's leader, were based on biblical interpretation that forbids administering man-made medicines to cure illness and disease.

Texas

In re S.N., 2009 WL 704724 (Tex. App.). TERMINATION OF PARENTAL RIGHTS, FAILURE TO COMPLY
Termination of father's parental rights based on his failure to comply with court-ordered family service plan was warranted even though child's removal had been based on mother's abusive conduct; termination of parental rights statute does not require that parent who failed to comply with court order be same parent whose abuse or neglect resulted in child's removal to support termination order.

Washington

In re C.C.M., 202 P.3d 971 (Wash. 2009). CUSTODY, INDIAN CHILD WELFARE ACT
Where grandparent with physical custody of Indian child petitioned for legal custody, a new trial was needed because case fit under broad definition of foster care under ICWA as it involved request for removal from legal custody of parents for placement with a relative; on remand, grandparents had to prove by clear and convincing evidence that serious emotional or physical harm to child would result from continued custody by father and tribe had to be notified and allowed to fully participate in proceedings.

(Continued from page 33)

When you meaningfully pursue the Cornerstones, it is easier to be confident that a goal change to a permanency option other than reunification is appropriate, instead of the result of poor agency casework, delayed and missed opportunities for family connection and healing, overburdened professionals, or inadequate assessments about a family's potential.

Why 60 Days?

CFR chose the 60-day mark for several reasons:

- The National Council of Juvenile and Family Court Judges chose the 60th day as a best practices benchmark for the trial phase of a dependency case to be complete.
- Parents, children, service providers, and other family supports often have an intense sense of urgency about supporting the children and family when the case begins—information is easier to obtain, people are optimistic and hopeful, and neither parents nor children have had the chance to become frustrated and/or resigned to a court or child welfare process that feels slow, formulaic, and without meaning.
- The direction the case takes early on often predicts where the case will go in the long run. So, preserving family connections, maximizing parent engagement, and assuring the right service plan helps direct the case toward reunification early, before the law and a child's new attachments make reunification more difficult to choose and achieve.[3]
- Yet, while Cornerstone Advocacy should begin on day one, it can and should continue throughout the case, regardless of when a trial date is set.

Incorporating Cornerstone Advocacy

Like most child welfare practitioners, you likely carry a large caseload. You may also lack regular support from social workers or paraprofessionals. The discussions below attempt to share an easily adaptable framework in which to think about Cornerstone Advocacy strategies. They identify "small adjustments" you can make, even in a busy practice, to incorporate Cornerstone Advocacy into your practice so your clients benefit. Each Cornerstone is described, followed by specific advocacy strategies and timeframes for pursuing them in your advocacy routines.

Visiting

Clinical research reveals three things:

- Meaningful and frequent visiting is the single best predictor of safe and lasting reunification.[4]
- Supporting a child's attachment to his or her parents through visits helps ease the anxiety and confusion that often surrounds foster care because when children can see their parents often and in circumstances that make them comfortable, they can talk with the people they most need to about what has happened—their parents. Children also hear from their parents what will and could happen and are assured that they will see parents and siblings frequently.
- Agency offices, where most visits between parents and their children take place, are some of the worst places to assess family attachments and family functioning.[5]

Visiting is at the heart of parent engagement. If parents are given the chance to still perform the parenting role, it enables them to continue the relationship with their children and inspires them to keep working on getting them home. Quality visiting can help children preserve cherished rituals, share stories from school and social life, and continue to seek advice and encouragement from their parents, all of which helps them cope with foster care and eventually make a smoother transition home. [6]

Many state laws only require that children see their parents for one hour every two weeks, or at best, with no visits missed, 26 hours a year, little more than a day.[7] The challenge for practitioners is to advocate for more frequent visits with as little supervision as necessary. When possible, visits should occur outside the agency and include activities that mimic family life. Imagine the difference between sitting across a table with few toys or food in a cramped, hot office (with a worker sitting taking notes nearby) and going with a parent school shopping, or to the park or YMCA.

Small Adjustments/Key Timeframes

First court appearance:

- Raise visiting—ask that visits take place at least once a week for two hours, more often if possible. Most of the time, supervised visits are an agency's and a court's default. If visits will start with supervision, insure that they are as frequent and lengthy as possible.
- If visits will be supervised, ask that the child welfare agency state the reasons for supervision on the record.
- If your client has identified a possible visit host, ask that the agency explore that person.[8]
- If a case will not go to trial for several weeks or months and no other preliminary proceeding is scheduled, ask the court to place the case on the calendar for a status report on visiting. Include the results of any exploration of a visit host and where and how visits will take place.

Week one:

- When first meeting your (parent or child) client, ask about activities and events that might be a

focus for visiting, such as school meetings, shopping trips, movies, and birthdays. Even young children can describe things they did with parents in the past that they enjoyed and may have ideas about places where visits could take place outside of the agency.

- Ask parents and older children about relatives or other people (neighbors, close friends, guidance counselors, pastors) who could host some visits outside the agency; be sure to provide the information to the foster care agency.

Within first four weeks:

- Assess how visits are going, particularly whether a parent and child are getting appropriate support before, during, and after a visit. This may mean a phone call to a caseworker, a foster parent, or your client.
- If the case is on for a status report and you represent a child, ask for the child to be produced so you can discuss visits.
- Always ask whether the foster parent is willing to host some or most visits.

After eight weeks, and every court appearance thereafter:

- If visits are supervised, ask whether supervision continues to be necessary.
- If visits are held at the agency, ask whether visits can move outside the agency.
- Assess the timing and frequency of visits. If necessary, ask whether they can become longer or more frequent.
- Create a tickler system in your calendar to determine if visiting plans are progressing at least every two-three months.

If resources permit:

- Have a social worker, social work intern, or other staff person observe a visit if you learn of problems. Assessing a child's reaction to visits is complicated. "Negative" reactions, such as acting out or anxiety, may mean that either a parent or child needs more support before, during, or after a visit. Be careful about assuming a child's "negative" reaction to a visit means the visiting should be restricted. Sometimes it indicates exactly the opposite and visiting needs to be expanded or visiting conditions improved. Older children can often tell you what they wish could change. Sometimes, with younger, preschool-aged children, "negative" reactions, such as tantrums and bedwetting can decrease with an increase in visits—because they often need more frequent contact with an adult to maintain the secure attachment that permits them to make smooth transitions back and forth between a foster caretaker and a parent.[9]

Generally:

- Remember that emotional endings to visits (parents or children crying) are often difficult for professionals to tolerate or observe, but may signal a "good" visit and a very "normal" reaction for a family having to separate once again.
- Get short orders that address transportation, what happens when a visit is missed through no fault of the parent, arrangements for special visits (e.g., holidays), and criteria for phone or e-mail contact. Explore your state's regulations regarding visiting and visiting supports.[10]
- Explore resources in the community for visits to take place *(this is a great intern project).* Good places for visits are libraries, parks, community centers, museums, street fairs and carnivals, zoos, sport facilities, and shopping malls for older children.

Placement

Children and families experience multiple disruptions when children enter foster care. Finding a placement that appropriately supports a child's connection to family promotes reunification. Foster parents who are willing to host visits in their home, facilitate phone contact, and otherwise support a parent and child's relationship play a critical role in maintaining family ties that inspire parents to stay engaged in services.

Helping a family stay connected also permits parents to stay involved in the child's life in appropriate ways. Additionally, a placement that helps children stay connected to teachers, friends, and other community supports like therapists or physicians eases the transition to foster care and conversely, the transition back home. Ensuring continuity of services also means fewer adjustments following reunification.

Small Adjustments/Key Timeframes

First court appearance:

- Always ask whether a child can remain in his or her daycare, school, or afterschool program. If not yet explored, ask the agency to do so and report back to the parties.

First court appearance/first interview:

- Ask the agency caseworker, and parents and older youth, about relatives and anyone with a prior significant connection to a child. Godparents, neighbors, and babysitters may be willing to provide temporary care.
- If the case will not be back in court for a long time, ask the court to put the case on the calendar for a status report within *two weeks*.
- If representing a parent, ask at the first interview about services that the parent would like to continue. Ask the agency's caseworker the same questions to determine if

any are problematic.

Within first two weeks:

- Reach out to any placement resources that seem promising. Try to secure their appearance for the status report if the agency is not moving quickly to investigate the resource (sometimes a judge will issue an order to expedite an investigation if given the opportunity to see the person in the courtroom).
- Ask your client or service providers to identify any logistic (e.g., transportation, scheduling) or financial (e.g., the parent has lost Medicaid) barriers to a family continuing in previous services, so that if alternative plans need to be made, they can be made quickly.

Within first six weeks:

- Ask the foster parent about her ideas for supporting the relationship between the parent and child —you may be surprised. Ask about exchanging phone numbers and photos, and going on outings. As we would with our own children, expect that the adults involved can work together with proper support. If a foster mother does not have to drive to an agency, she might be very happy to have visits in her home or nearby.
- Kinship foster parents often can provide more consistent support for children and parents. If a parent is objecting to kin, find out why and ask questions about additional resources.

Generally:

- Explore state regulations governing placement decisions. They often provide that non-kin resources with a prior relationship to the child can be explored as foster parents as quickly as relatives.[11]
- Explore state regulations and/or local policy memos on whether and in what circumstances an agency or board of education will provide transportation to allow a child to stay in his school.
- If special education services are disrupted, take steps to insure that special education records are provided to a new school placement.

Services

Too often, agencies choose from a formulaic menu of services in making referrals for parents and children.[12] Often, foster care workers refer families to services that are close by or familiar. This results in service referrals that may not reflect a family's strengths (only their needs), may be ill-suited to a parent or child, or may create unnecessary demands on a parent who must attend programs, court appearances, and visits. Poor or inappropriate services lose legitimacy for parents and can cause them to disengage or "fail to comply."

Frontloading services may feel burdensome to child welfare staff. The time investment in the first months—family conferencing, multiple referrals, and initial obstacles—is not in vain. Families receiving stable yet flexible and creative services in the areas of mental health, substance abuse, domestic violence prevention, anger control, and parenting education will likely be allowed more time with their children and move faster towards reunification.[13]

Small Adjustments/Key Timeframes

First court appearance/within first week:

- Ask questions about a parent's strengths and what services would build on them. Does the parent have a job, an extended family, a prior good history with another provider? Make sure the case planner is aware of a parent's prior connection to services and a family's other commitments, such as a job, so any demands of a new service plan do not interfere.
- If representing a parent or older youth, ask about the experience with services and whether they are continuing. Does your client trust the service provider? Should the service provider remain involved?
- Have HIPPA and other general confidentiality releases with you in court and ask your client to sign these so that you can speak with providers throughout the case. Explain to your client why it is important that you speak with providers frequently to troubleshoot issues that may arise and assure that information is integrated into the court process.
- Determine which service goals will take a long time to achieve. If a parent needs help obtaining suitable housing, there is no time like the first time you meet that parent to start the lengthy process of applying for subsidies or supportive housing programs. Insight-oriented psychotherapy geared towards helping parents reflect on their role in the abuse or neglect is not a quick fix. An appropriate referral on day one or day 35 is much more practical than one year into the case.

Within two weeks:

- If there was no service plan discussed at the initial court appearances, contact the worker (or your client) about the service plan.
- Ask the agency (through a caseworker or counsel) why certain services are necessary.
  - If parenting is recommended, what kind?
  - Are culturally competent services available?
  - Are services geared to the right developmental stage of the parent's child(ren)?
  - Can services be consolidated? (e.g., Does a parent need anger

management classes and individual counseling or can counseling address both?)
    - How far and how often are children and parents being asked to travel and at what times?
    - Does the parent need assistance that might not be obvious from the allegations? (e.g., in a substance abuse case, assisting a mother with housing, Medicaid, or educational advocacy for her child may reduce family stress and make it easier for her to focus on treatment.)

After four weeks:

- If your client (parent or child) is still not in needed services, find out why.
- If additional court orders are necessary relating to funding, transportation, etc., pursue those.
- Take steps to ensure parents and youth are, where willing, engaged in services within six weeks of the case beginning. Delay in services usually stalls other important aspects of the case, especially progress around visiting.

Generally:

- Ask the court to direct that you be provided any documents relating to services (most states have regulations that require documentation at the 30 and 90 day mark). Often documents related to service plans reveal when services are poorly developed, a lack of clarity about which provider is responsible for what, or missing pieces in the service plan.[14] Reviewing the documents will help you avoid time wasted because aspects of the plan are unrealistic, have not anticipated payment issues, or are less than ideal for a parent or child (e.g., a family therapy appointment is far from the foster home or a parent is referred to services where no one speaks her language).
- Ask the court to permit the parent to participate regularly in a child's services, such as Early Intervention services, education or health appointments. A parent will need to be involved once the child is home, so start the lessons now.
- Continue to ask parents and older youth if services are appropriate. When service providers are positive about clients' progress, ask them to provide that information to the court.
- Request court orders for referrals to be accomplished by a certain date, or ask for status reports or short adjournments for the agency to report on its efforts and the parents' progress with services. These actions remind everyone of the sense of urgency that a family has about its own goals and can speed progress in a case.
- Learn what your state regulations say about how services and assistance should be provided and in what timeframes.[15]
- Understand the role of the attorney in the actual case planning meeting.

Conferences

You can capitalize on a national trend that is becoming a child welfare norm: family-centered child welfare practice. Many states are adopting models where child welfare-involved families participate directly in safety and service planning.[16] These meetings usually occur anywhere from a few days to 30 days after a child is removed and are sometimes referred to as family team decision-making conferences or child safety conferences. These conferences allow your clients – parents and children – to sit alongside child welfare workers, investigators, social workers, other service providers, and extended family to help make important decisions about their lives, such as:

- Will the family remain together?
- Will a family member become a foster parent?
- How often will the parent and child visit each week?
- Is the family ready for unsupervised visits?

Much decision making occurs outside court. Often, the traditional "social work/child welfare" sphere, where concrete planning takes place, and the "legal" sphere, where legally binding decisions about a family are made, do not connect. Sometimes an attorney has inadequate or inaccurate information when a case is in court, or a court appearance is the first time an attorney hears from a client that child welfare decisions made weeks before at an agency meeting are problematic. Interdisciplinary legal representation (when attorneys and social workers work together on the legal case) for parents and children is one solution to this historical disconnect. However, an attorney does not need a social worker on staff to help bring these two worlds together.

Small Adjustments/Key Timeframes

Day one/within first week:

- Find out if your jurisdiction holds family or team decision-making conferences.
- Ask about the agencies' protocols for out-of-court conferences and what kinds of documents are generated at those conferences.
- Ask the agency caseworker if certain conferences are routine in every case. If so, ask the court to direct that you be notified before those conferences so you can either arrange to attend, have someone attend, or prepare your client to attend.
- Discuss with your client what will happen in between court appearances and make sure the client knows who can accompany them

RESOURCES

Center for Family Representation, Inc. (CFR)
Information on Cornerstone Advocacy and training and technical assistance.
212/691-0950/ www.cfrny.org / info@cfrny.org.

Annie E. Casey Foundation
Information and technical assistance on family team decision-making conferences.
www.aecf.org

Center for the Study of Social Policy
Information on conferencing.
www.cssp.org

Pew Charitable Trusts
Information on parent engagement, promising service approaches, and visiting.
www.pewtrusts.org

New York City Administration for Children's Services (ACS) Office of Family Visiting and Parenting Education
Information on promising approaches to family visiting.
Contact Paula Fendall, director, paula.fendall@dfa.state.ny.us

Children's Bureau, Administration on Children, Youth and Families
Information on a variety of promising approaches to family reunification.
www.childwelfare.gov /info@childwelfare.gov

ABA Center on Children and the Law, National Project to Improve Representation for Parents Involved in the Child Welfare System
Information on effective parent representation in child welfare cases.
www.abanet.org/child/parentrepresentation/home.html

to conferences, what documents are important to bring, and to notify you ahead of time so you can counsel them just before the conference if needed.

- When representing an older youth, ask if your client would like to attend the meeting.
- Ask parent and child clients if there is someone who can accompany them to initial meetings to help make their voice heard and to challenge inappropriate service decisions.
- Make sure prior service providers are notified of meetings. If necessary, ask the court to direct that they be included. Families may distrust their child welfare workers, especially following the removal of children. Inviting families, service providers, and advocates to the decision-making table early in the case helps address those concerns.

Within two weeks:

- Help your client prepare for the first formal conference (or casework meeting).
- Use checklists to help a client remember what to raise at the conference.
- If you can, be available in person or by phone during the meeting. If you cannot be available either in person or by phone, help your client practice how to ask to step out of the meeting to contact you.
- Explain the Adoption and Safe Families Act (ASFA) to your client. A parent or older youth may hear about ASFA at a conference and may find it stressful to hear the word "adoption" so early in the child welfare process.

Within four weeks:

- Find out about your client's experience at any agency conferences if you or someone else could not go along.
- Follow up with the agency or service providers if your client feels inappropriate services have been required.
- If necessary, ask the court to recalendar the case to ensure more appropriate referrals are made.

Generally:

- Give copies of any court orders, particularly those around visits or exploring placement options to your client—having copies of orders can help a client be a better advocate for herself at an agency conference.
- Ask a parent or older youth to contact you after a conference if there is a problem.
- Research state regulations and administrative memos issued by your social services district to find out if you, as an attorney, can attend a conference, or at the very least if a parent can bring a support person. Attorneys are sometimes viewed as unwelcome (because agency staff presumes, sometimes fairly, that an attorney will bring an adversarial tone to a conference); nonetheless, if your client needs help advocating for his views at a conference, know which meetings you can attend.
- If necessary, send your client a letter referencing that regulation or administrative directive when the client attends the conference and brings a support person.

The Legal Basis for Cornerstone Advocacy

Meaningful visits, well-matched services, supportive placements, and collaborative conferencing can be promoted at every opportunity—in and outside the courtroom. Whether

you are raising one of these issues on the phone, in a meeting, in court, or in motion papers, understanding the legal underpinnings of Cornerstone Advocacy helps. This is true for legal and social work staff.

Fair or not, many agency workers and agency attorneys will work hard for a family in these four areas if they believe the law compels them to. Judges are more likely to be persuaded by arguments that are bolstered by law. A legal argument can be made to address nearly every situation that arises in Cornerstone Advocacy by combining the sources of law and authority below:[17]

- "Reasonable efforts" language exists in most dependency statutes, in many cases since the early 1980s. The passage of ASFA prompted a renewed focus on the child welfare agency's duty to make reasonable efforts to safely reunify families. Think about how visiting, conferencing, services, or placement options you are pushing can fairly be deemed a 'reasonable effort' in support of reunification.
- State dependency statutes address services and assistance.[18] Also look to any issue-specific sections of your state statute (i.e. the portion that deals with services, visits, or placement). Argue that your advocacy fulfills the spirit if not the letter of that section.[19]
- State regulations detail the obligations that agencies owe parents and children. For example, most states have regulations governing visits (including specific agency obligations around transportation, missed visits, long distance phone calls), conferences and services (including an agency's obligation to invite supports for the family, even attorneys), and placement (including helping youth stay connected to important institutions, like schools).[20]
- Administrative directives, memos, and guidelines published by state or county agencies may address visiting, placement, services, or conferences. Find these on state and county Web sites. While administrative directives and memos are not law *per se*, they typically represent social service providers' interpretation of best practices and legal obligations and thus can be persuasive in convincing an agency or a judge to move on a Cornerstone issue.

Conclusion

Regardless of staffing resources, Cornerstone Advocacy provides a paradigm for your advocacy strategy and enables you to focus on those issues which have the greatest impact on a family's chances for safe and successful reunification. The small adjustments you make to integrate Cornerstone Advocacy in turn help all professionals working with a parent or children maintain a sense of urgency about each family's circumstances and the importance of minimizing the time children spend in foster care.

Beyond this, Cornerstone Advocacy also helps to more accurately identify those cases where a parent will need a much longer-term service plan to address her needs or where a permanency plan other than return home is appropriate. Doing a good job on the trial on the merits is critical of course, but Cornerstone Advocacy also enables you, from day one, to help your clients achieve the goal that often means the most to them—the chance to have their families whole and healthy.

Jillian Cohen, LMSW, is a social work supervisor at the Center for Family Representation (CFR) and *Michele Cortese*, JD, is CFR's deputy director. CFR thanks Emily Wall, Randi O'Donnell, and Polina Mzhen, law interns who assisted in researching laws and regulations in other states for this article.

Endnotes

[1] Experience and research suggest that the longer children stay in care, the less likely they are to return home; thus, early and sustained focus on activities directed to safe reunification are critical. See, e.g., *Child Welfare Information Gateway Issue Brief: Family Reunification: What the Evidence Shows.* Washington, DC: U.S. Department of Health and Human Services, June 2006, 1, 12. Available at www.childwelfare.gov/pubs/issue_briefs/family_reunification/family_reunification.pdf; *Time for Reform: Investing in Prevention: Keeping Children Safe at Home.* Philadelphia: Pew Charitable Trusts, 2007, 4-5, 14. Available at www.kidsare waiting.org.

[2] CFR is a nonprofit law and policy organization in New York City that advocates for parents and children in the child welfare system. Currently, CFR's average length of stay for children in foster care is 3.25 months, compared to 11.5 months for children who enter care in New York City and 48 months for all other children in care. Our rate of foster care re-entry is less than 1% as compared to a citywide rate that averages between 10 and 12%.

[3] The Adoption and Safe Families Act (ASFA) requires, with certain exceptions, that any child who has been in care for 15 of the most recent 22 months should be freed for adoption. In practice, 15 months can pass quickly, particularly in cases involving a parent who is trying to overcome substance abuse, is briefly incarcerated, or is addressing a mental health issue. Missed opportunities to help a family stay connected and keep a parent engaged in services early in the case too often leads to many months passing and children solidifying new attachments to foster families and new communities. Even when professionals acknowledge more could have been done earlier, they often feel compelled to seek a goal change to adoption if many months have passed without progress toward reunification.

[4] See, e.g., Leathers, Sonya J. "Parental Visiting and Family Reunification: Could Inclusive Practice Make a Difference?" *Child Welfare* 81(4), Jul-Aug 2002, 595-616; U.S. Department of Health and Human Services, June 2006, 12; Pew Charitable Trusts, 2007, 15.

[5] See Haight, Wendy L., Jill Doner Kagle & James E. Black. "Understanding and Supporting Parent-Child Relationships During Foster Care Visits: Attachment Theory and Research." *Social Work* 48(2), 2003; see also, Smariga, Margaret. *Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know.* Washington, DC: ABA Center on Children and the Law & Zero to Three, July 2007. Available at www.abanet.org/child/policy-brief2.pdf

[6] See, Leathers, 2002, 598, 608-613.

[7] N.Y. Comp. Code R. & Regs. tit. 18, § 430.12 (minimum visiting required is once every two weeks); Cal. Welf. & Inst. Code § 362.1 and Fla. Admin. Code Ann. r. 65C-28.002 (minimum visiting required is once per month).

[8] A visit host is a person identified by a parent or a child who can monitor visits in lieu of a

caseworker. While visit hosts are often not appropriate for initial visits, it is important to explore possible candidates early, even if they will not assist with visiting right away. A visit host can be a pastor, neighbor, extended family member, foster parent, coach, guidance counselor, etc.—someone who can be trusted to insure the child's welfare but at the same time provide opportunities for a family to spend more time together pursuing family activities. For more information and to receive a copy of the *New York City Administration for Children's Services Visit Host Guidelines*, contact CFR at info@cfrny.org.

[9] See Haight, Wendy et al. *Making Visits Better: The Perspectives of Parents, Foster Parents, and Child Welfare Workers.* Urbana, IL: Children and Family Research Center, School of Social Work, University of Illinois at Urbana-Champaign, July 2001, 23-25; See also Haight, Kagle, and Black, 2003, 196-202.

[10] See, e.g., Ala. Admin. Code r. 660-5-50-.06 (visiting should be organized around events such as shopping, picnics and recreational outings and visiting arrangements should encourage parents to engage in the parenting role through such activities as doing homework, providing meals and attending school appointments); Fla. Admin. Code Ann. r. 65 C-28.002 (visiting can occur in an institutional setting only when it is "unavoidable").

[11] N.Y. Comp. Codes R. & Regs. tit. 18, §§ 443.1, 443.7 (someone with "significant connection" to child is entitled to an expedited home study, even if not kin); Cal. Welf. & Inst. Code § 362.7 (an agency should explore relatives, neighbors, clergy, and family friends); State of Florida Department of CF Operating Procedure Child and Families, No. 175-34, *Family Safety and Preservation: Removal and Placement of Children,* August 1, 1998, (nonrelative may be considered as a placement resource under policy guidelines of the social services department).

[12] U.S. Department of Health and Human Services, 2006, 4-5; Pew Charitable Trusts, 2007, 7, 15.

[13] Ibid.

[14] See, e.g. Fla. Admin. Code Ann. r. 65C-30.008(3)(a-d); N.Y. Comp. Codes R. & Regs. tit. 18, §§ 423.2, 423.4; Ill. Admin. Code tit. 89, § 302.40(c).

[15] E.g., Cal. Welf. & Inst. Code § 361.5(a)(3) (court orders may be needed if services need to extend beyond 12 months); Ill. Admin. Code tit. 89, § 315.250 (services may include family planning and "intensive family preservation services," but if the agency changes the child's permanency goal, it only needs to offer a parent visiting); Md. Code Regs. 07.01.06.02 (a-b) (specifically references "transportation to and from services").

[16] Research from the U.S. Department of Health and Human Services, the Annie E. Casey Foundation, Pew Charitable Trusts, and the Center for the Study of Social Policy Web sites found the following states use some form of family or team decision-making conferences to engage parents in child welfare cases: IA, TX, KY, NH, OH, OK, OR, RI, WY, PA, MI, NC, NY, MN, and FL. See: www.childwelfare.gov/pubs/issue_briefs/family_reunification/family_reunification.pdf, www.aecf.org/Home/CaseyPlaces.aspx, www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Foster_care_reform/time_for_reform.pdf, www.cssp.org/uploadFiles/Family_Team_Conferencing_Handbook.pdf.

[17] Whenever possible, practitioners at CFR structure legal arguments using all four elements mentioned. For assistance on crafting legal arguments for oral and written advocacy, contact CFR at info@cfrny.org.

[18] N.Y. Fam. Ct. Act §255, 1015-a; Cal. Welf. & Inst. Code § 16507(a).

[19] See N.Y. Fam. Ct. Act §§1017, 1027-a (addresses placement with relatives and siblings); N.Y. Fam. Ct. Act §1030 (addresses visiting); N.Y. Fam. Ct. Act. §§1055, 1089 (directs the court to integrate visiting plans into specific orders).

[20] See, e.g., N.Y. Comp. Code R. & Regs. tit. 18, §§ 430.12, 423.2, 423.4, 428 & 430.11; Fla. Admin. Code Ann. r. 65C-30.008(3)(a-d) and 65C-30.008 (2).

Distance Learning

New Online Tutorial: Substance Use Disorders, Treatment, and Family Recovery: A Guide for Legal Professionals

A new free online tutorial developed by the National Center on Substance Abuse and Child Welfare and the ABA Center on Children and the Law provides a primer for legal professionals on:

- alcohol and drug addiction
- substance abuse treatment and recovery
- the impact of substance abuse on children and families
- child welfare timetables and their impact on parenting
- cross-system communication and collaboration
- national resources on substance abuse and child welfare

The online tutorial provides the knowledge and tools to help all legal professionals involved in child welfare cases involving substance abuse perform their roles:

- *As a dependency court judge,* you are concerned with the safety and welfare of the child. You closely monitor the developmental timetable of the child, and decide if a child can return to his/her family, or if parental rights need to be terminated so the child can be freed for adoption. If a parent is in substance abuse treatment, you need to know if treatment is working to allow the child to return to the parent.
- *As the child's attorney,* you need to understand substance abuse and addiction as well as treatment and recovery in the context of child development.
- *As a parent attorney,* you protect the legal rights of the parent and play a crucial role in understanding your client's wishes regarding parenting, encouraging your client's engagement in substance abuse and other services, and advocating for reasonable efforts to provide these services to your clients.
- *As an agency attorney* representing the child welfare agency, social workers, or the state, you decide when to file charges and whether to refer cases to criminal courts for further action. You need an in-depth understanding of substance abuse/addiction and its role in parenting and future risks to children.

Up to 6.0 Continuing Legal Education (CLE) credits have been approved. For information on CLE credits approved by your state, visit: **www.ncsacw.samhsa.gov/tutorials/pop-tut3-desc.html**

For more information on the tutorial, visit: **www.ncsacw.samhsa.gov/tutorials/tutorialDesc.asp?cid=3.**

Groundbreaking Reforms Improve Representation for Georgia Children

Under a court order secured by Children's Rights in a landmark child welfare reform class action, Fulton County, GA (metro Atlanta) has significantly increased the number of attorneys assigned to represent abused and neglected children in juvenile court proceedings—and dramatically reduced the unacceptably high caseloads that previously prevented attorneys from providing effective legal representation to children in Fulton County foster care.

A new report filed with the federal court by the independent monitor appointed to evaluate Fulton County's progress in implementing reforms required by the court order. The report states the county has hired enough additional attorneys to bring caseloads down to a range of 47 to 91 children per attorney. When the class action was filed in 2002, attorneys in Fulton County carried caseloads of approximately 500 children each.

As a result, many children never met the attorneys assigned to represent them before juvenile court hearings at which critical decisions are made about their lives—including where they will live and whether they will be returned to their biological parents or freed for adoption.

Legal action by Children's Rights and co-counsel in 2005 resulted in an unprecedented ruling by the federal judge in the case that children have a constitutional right to zealous and effective legal representation through every stage of their time in foster care. Under a court-enforceable settlement agreement negotiated by Children's Rights and Fulton County, the county has established a Child Advocate Attorney's Office independent of the juvenile courts. It also has increased its staff of child advocate attorneys from just four at the time Children's Rights filed the case to 16 today—plus paralegals, investigators, and administrative staff.

A workload study required by the settlement was conducted in 2007 and recommended caseloads of no more than 80 children per attorney—a target which Fulton County is now meeting for all but one of its staff—with allowances for higher caseloads if the county implemented other systemwide reforms. Today's report also notes that Fulton County has made significant progress in undertaking these additional reforms; a full report on both caseloads and quality of legal services is due this summer.

The dramatic improvements in staffing and reductions in caseloads . . . are critical to ensuring that abused and neglected children in juvenile court get the zealous and effective legal representation they need. . .

"The dramatic improvements in staffing and reductions in caseloads that Fulton County has achieved are critical to ensuring that abused and neglected children in juvenile court get the zealous and effective legal representation they need, and the Child Advocate Attorney's Office deserves credit for producing these results," said Ira Lustbader, associate director of Children's Rights.

"We will be watching closely and working with the county to ensure that these improvements translate into better representation for abused and neglected kids," Lustbader said. "These children need attorneys who can fight for their rights throughout their time in foster care, especially given the dangerous problems in the broader Atlanta child welfare system that the state is still struggling to reform."

The settlement in Fulton County is part of the federal class action known as *Kenny A. v. Perdue*, brought by Children's Rights and the Atlanta law firm Bondurant, Mixson and Elmore LLP in 2002 on behalf of all of the approximately 3,000 children in the custody of the state-run Atlanta child welfare system. Attorney Erik S. Pitchal, assistant clinical professor of law at Suffolk University Law School, also serves on plaintiffs' counsel team.

A similar settlement was reached with DeKalb County, which successfully implemented the reforms and was released from court oversight in October 2008.

The *Kenny A.* case also includes a settlement with the state of Georgia requiring broader reforms of the Atlanta child welfare system under the state Division of Family and Children Services.

Learn More:

For the full text of the report and more information about Children's Rights' ongoing reform efforts in Georgia, including documents related to the *Kenny A.* case, visit **www.childrensrights.org/georgia.**

Preventing Child Abuse and Neglect through *Strong Communities for Children*

Gary Melton—a psychologist and a professor and director of the Institute on Family and Neighborhood Life at Clemson University—focuses on the links among public policy, community supports and the well-being of children and families. As vice chair of the U.S. Advisory Board on Child Abuse and Neglect in the early 1990s, he led the board's development of a neighborhood-based strategy for child protection. Dr. Melton has led the test of that strategy in *Strong Communities for Children,* a foundation-funded, community-wide initiative to prevent child abuse and neglect in parts of Greenville and Anderson counties, South Carolina.

In this Q&A, Dr. Melton talks about the success of the *Strong Communities for Children* program and why it is working so well.

Q. What's wrong with the current approach to protecting children in the United States?

A. The current approach to child protection was adopted in every state in the early 1960s and is now outdated. The hallmark of the approach is mandated reporting and investigation of cases of suspected child abuse and neglect—in essence, casefinding. This strategy was the product of an extraordinarily influential article in the *Journal of the American Medical Association.* At the time, however, the authors estimated that there were about 300 cases of child maltreatment in the United States each year, but today, we have about three million calls each year to Child Protective Services to report suspected child abuse or neglect. Casefinding isn't the problem!

The designers of the child protection system also typically assumed that there was something very wrong with parents who maltreated their children—that they were very sick or simply very evil. In the majority of cases (both reported and unreported), however, child maltreatment involves neglect, not abuse, and the neglect is not willful. Instead, neglecting parents are typically overwhelmed by a multitude of problems without having the means—both economic and social—to solve them. Their supervision of their children becomes less diligent because they are trying to cope alone with too many social and economic problems.

Unfortunately, the question that the child protection system is designed to answer is, "What happened?" not, "What can we do to help?" And it definitely is not designed to answer the latter question before abuse or neglect occurs.

As the U.S. Advisory Board on Child Abuse and Neglect concluded, "it has become far easier to pick up the telephone to report one's neighbor for child abuse than it is for that neighbor to pick up the telephone to request and receive help before the abuse happens." Instead, we spend vast resources on law-enforcement-style investigations by child protection workers—investigations that usually do not result in meaningful services.

Q. How is your new initiative in the Greenville area different?

A. We are trying to make child protection a part of everyday life. Our ultimate goal of "keeping kids safe" requires that "every child and every parent know that when they have a reason to celebrate, worry or grieve, someone will notice, and someone will care." Parents should know that someone cares and will be there without their having to become "clients" or "cases" and even without their having to ask for help.

So keeping kids safe is not just the job of the public child welfare agency. Instead, our principal allies are church members, firefighters, civic club members, school staff, pediatricians, apartment managers, real estate agents and "just folks." Primarily using volunteers, we're making help available when and where people need it. We're creating opportunities for families to get together or to seek help in ordinary places—schools, churches, parks, libraries and so forth—so that folks "naturally" recognize needs for help and then lend a hand. The number of ways that they provide help and the amount that they provide keep growing.

Q. Is the *Strong Communities* program working?

A. My standard answer is that Strong Communities has restored my faith in humanity! At a time when there is an enormous body of evidence showing that people—especially young people—are more and more isolated, unengaged and distrustful, we've enlisted more than 5,500 volunteers in seven years in an area that has about 125,000 residents. They've joined us through hundreds of churches, hundreds of businesses, virtually all of the civic clubs and active neighborhood associations, many of the schools, and all of the local governments and public safety agencies in the area. It's a movement, not a program.

And it's making a difference. Across time and compared with

parents living in similar communities not involved in the initiative, randomly selected parents who live in the Strong Communities area indicate that they've taken more active steps to protect their children, be more nurturing, and be less neglectful.

Moreover, parents, teachers and especially children themselves are more likely to perceive children as safe at school and on the way to school. All three groups also are more likely to perceive the schools as welcoming to parents.

Q. As the economy worsens, should people be especially worried about child abuse and neglect?

A. Economic security is a major factor in child safety. For example, risk increases when a family faces unemployment or high risk of losing a job, and they live in a community with entrenched high rates of unemployment. Parents begin to think that not only are their children not getting what they need, but they themselves can do little to make the situation better. When parents see other parents having the same problems and not finding a way out, they begin to feel hopeless. They may become so depressed that they don't provide adequate care, or they may become so frustrated that they lash out.

Beyond changing parents' feelings of helplessness, the reality is that it is harder for parents to care adequately for their children when times are tough. For example, when the home or the neighborhood becomes unsafe because things are in disrepair, it is easier for kids to get hurt. Similarly, when parents lose insurance, they may find it difficult to get health care for their children or themselves and their physical ability to keep things going may suffer.

At the same time, money is not the whole problem. The much longer term trend is toward increased isolation, and that problem crosses social class, although it is most common among the families with the greatest needs. About one in five parents of young children in our area report being very isolated —for example, not having anyone to call when they need emergency child care, not knowing any of the children in the neighborhood by name, and not belonging to any organizations, except perhaps a church. This social poverty occurs frequently in wealthy neighborhoods among college-educated parents, not just among those with many advantages.

Even in hard times, we can make kids safer when we reach out to parents and give them a hand.

My colleague James McDonell has shown that neighborhood cohesiveness does matter, however, in children's safety. Even when the poverty rate, occupancy rate and other measures of wealth are held constant, neighborhood quality is a very strong factor in children's safety in their own homes, as measured both by parents' accounts and by emergency-room records. In other words, in communities where neighbors no longer care enough to keep the neighborhood looking nice and when they are so afraid that they erect fences around their homes, kids' safety suffers, even in wealthy communities. Again, children are safest when parents believe that others care about them and will step in to help if needed.

Q. Is there hope? Given all of the difficulties that families are facing, can we be assured that children will be safe?

A. Yes, there is hope! There are two facts that are especially heartening. First, our volunteers in Strong Communities are representative of the communities as a whole. Men and women, older and younger folks, wealthy and disadvantaged, and white, brown and black people all are important in the movement.

However, the engagement actually has been strongest in communities that are more disadvantaged. The most disadvantaged community in our service area makes up about 10 percent of the population, but we've recruited about 40 percent of the volunteers there, and they've contributed about 40 percent hours of service.

In short, even in communities under great stress—but not just those communities—it is still possible to engage people in positive steps toward keeping kids safe. The golden rule is still a powerful motivator.

Second, looking nationally, there is substantial evidence that the prevalence of physical abuse and sexual abuse declined markedly in the 1990s, although that change did not occur in regard to neglect. My own interpretation is that the community norms across the country became clearer and stronger in regard to abuse: "Don't do it!" People stopped hitting and exploiting kids as much or as severely. We can treat kids like people, each one deserving respect and security.

However, the lack of change in the rate of neglect suggests that it is not only a more common problem but also a more difficult one. It requires changes in norms about what people should do, not what they must stop. It also requires the whole community's watching out for each other; maybe "watching over" is an even better metaphor. Strong communities build and sustain strong families. Even in hard times, we can make kids safer when we reach out to parents and give them a hand.

This interview was produced by the American Psychological Association and reprinted with permission. For more information about the Strong Communities program, visit www.clemson.edu/strongcommunities.

Federal Courts Find Childhood Vaccines Do Not Cause Autism

A decade-long debate over whether the childhood vaccine for measles, mumps and rubella (MMR vaccine) causes autism in children was put to rest by the U.S. Court of Federal Claims. Three special masters in the court were each assigned a "test case" that raised the theory that MMR vaccines and thimerosal-containing vaccines can combine to cause autism. All three special masters independently concluded that the vaccines do not cause autism.

In *Cedillo v. Secretary of Health and Human Servs.,* No. 98-916V, parents sought an award under the National Vaccine Injury Compensation Program based on several conditions, including autism and chronic gastrointestinal symptoms, which afflicted their daughter. They claimed that thimerosal-containing vaccines and the MMR vaccine was the cause. Special Master George L. Hastings, Jr. cited numerous experts and medical studies that "have come down strongly against the petitioners' contentions" and concluded the petitioners *failed* to show the child's vaccinations played a role in causing the child's problems.

In *Hazlehurst v. Secretary of Health and Human Servs.,* No. 03-654V**,** parents filed a petition under the National Vaccine Injury Compensation Program alleging the MMR vaccine, or a combination of the MMR vaccine and thimerosal containing vaccines, caused their child to develop autism. Special Master Patricia E. Campbell-Smith said that while she was "moved as a person and as a parent" by the family's situation and challenges, "the weight of the presented evidence that is scientifically reliable and methodologically sound does not support petitioners' claim."

In *Snyder v. Secretary of Health and Human Servs.,* No. 01-162V, parents also sought compensation under the National Vaccine Injury Compensation Program on behalf of their son. They claimed the MMR vaccine, combined with thimerosal-containing vaccine, caused their son to develop autism. Special Master Denise K. Vowell concluded, after carefully considering all the evidence, that it was abundantly clear that petitioners' theories of causation were speculative and unpersuasive.

Between the three cases, the judges considered 50 expert reports and heard the testimony of 28 experts—far more than most vaccination cases. The record contained 939 medical articles, 700 pages of post-hearing briefs, and 5000 pages of transcript. The special masters' decisions are final unless a party seeks review from a U.S. Court of Federal Claims judge within 30 days from the date the opinions were issued.

Evidentiary hearings in three more test cases involving a second theory of causation in autism cases were conducted in May/July 2008. Decisions are expected in those cases this summer.

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