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SPECIAL ISSUE
CHILD MALTREATMENT AND THE LEGAL SYSTEM

The Supreme Court, Hearsay, and *Crawford*: Implications for Child Interviewers
Thomas D. Lyon, JD, PhD

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The Supreme Court, Hearsay, and *Crawford*: Implications for Child Interviewers

Thomas D. Lyon, JD, PhD

We are entering the golden age of child interviewing. After years of research emphasizing how children's statements may be corrupted by coercive questioning practices, a number of researchers have shifted their focus toward finding means of increasing the accuracy and completeness of children's reports. Interviewers can now refer to a body of research identifying good interview practice (Lamb, Hershkowitz, Orbach, & Esplin, 2008).

However, recent changes in Constitutional law have posed challenges to the admissibility of forensic interviews at trial. In *Crawford v. Washington* (2004), the United States Supreme Court profoundly changed how hearsay statements are analyzed under the Confrontation Clause. If a hearsay statement is "testimonial" (hearsay that is akin to testimony), then the statement cannot be admitted against a criminal defendant unless the defendant had the opportunity to cross-examine the hearsay declarant. Any non-cross-examined testimonial hearsay is inadmissible, no matter how reliable. The decision has resulted in reversals of convictions in a number of cases in which essential evidence against the defendant was hearsay statements by a child who failed to testify at trial. As a result of *Crawford* and its progeny, many child interviewers are asking whether and how they should modify their interviewing approaches to reduce the likelihood that the interview will be found inadmissible at trial.

The purpose of this article is to explain the implications of *Crawford* for child interviewing. The bottom line is that interviewers should remain committed to best practice; that is, they should continue to pursue approaches that increase the accuracy and completeness of children's reports. It would be a mistake, for example, to stop videotaping interviews in the hopes that this would render interviews non-testimonial. As for prosecutors, *Crawford* suggests that greater efforts should be made to enable children to testify at trial. In this article, I will briefly review the research on best practices in interviewing, discuss *Crawford* and the limits it places on testimonial hearsay, and explain how interviewers and prosecutors should best respond.

Best Practices in Interviewing: Calling for a Narrative

The most extensively researched interview approach focuses on the need for increasing the use of open-ended questions and reducing reliance on closed-ended questions (such as yes-no and forced-choice questions). The interviewer initially asks the child questions about nonsubstantive issues, using invitations (Tell me about things you like to do; Tell me what happened on your last birthday) and open-ended follow up questions (Tell me more about [action mentioned by child]; What happened next?) (Sternberg et al., 1997). Once the child is comfortable and talking, the allegation is introduced in a nonleading fashion (Tell me why you came to talk to me), with only a gradual move toward more direct questions should the child fail to disclose (I heard you talked to a policeman. Tell me what you talked about). When the child first discloses, the interviewer asks the child to "Tell me everything that happened," and elicits further details as much as possible without closed-ended inquiries. The resulting interviews are both more productive and less suggestive (Lamb et al., 2008).

Research has also revealed the value of interview instructions at the outset of the interview, which include instructing the child on the acceptability of answering "I don't know" and correcting or questioning the interviewer. A structured approach facilitates the use of instructions that are carefully phrased to be comprehensible to even the youngest child and include the appropriate feedback so that they increase accuracy rather than encourage response biases (Lyon, 2005). A promise to tell the truth has been found to increase nonmaltreated children's willingness to disclose a minor transgression (Talwar, Lee, Bala, & Lindsay, 2002, 2004), and we have recently found that the promise increases maltreated children's honesty under a variety of conditions, including situations in which they have been coached either to falsely deny or falsely assert that events occurred (Lyon & Dorado, 2008; Lyon, Malloy, Quas, & Talwar, 2008).

Unfortunately, interviewers are quick to learn but slow to change. For training to be effective, it is not enough to increase interviewer knowledge (Aldridge & Cameron, 1999; Cederborg, Orbach, Sternberg, & Lamb, 2000; Stevenson, Leung, & Cheung, 1992; Warren et al., 1999). Effective training requires explicit guidance, review of interviews, and refresher sessions over time (Lamb et al., 2008).

Videotaping (or some form of taping) is an integral part of effective interviewer training and ongoing peer review. Videotaping has other benefits as well. Videotaping enables one to capture the full details of children's reports, something even verbatim note taking cannot match (Berliner & Lieb, 2001; Lamb, Orbach, Sternberg, Hershkowitz, & Horowitz, 2000). Videotaping vividly documents the child's disclosure, typically months or years before testimony.

Of course, not all questions regarding best practice have been resolved. There is uncertainty over the best approach to interviewing children who have never disclosed, are reluctant to disclose, or have recanted their allegations (Faller, 2007; Lamb, et al., 2008). Research has only just begun on methods for overcoming reluctance to disclose, with evidence that some forms of reassurance may be effective (Lyon, et al., 2008). There is currently considerable debate over the utility of body diagrams in questioning children about sexual abuse. The use of diagrams has been found to increase the number of details provided in sexual abuse interviews (Aldridge, et al., 2004), but inaccurate reports of genital touch also increase (Brown, Pipe, Lewis, Lamb, & Orbach, 2007). Suffice it to say that there is general agreement that a sound approach is to attempt to elicit a narrative before questioning children with drawings.

The Potential Effects of *Crawford* on Forensic Interviewing

In *Crawford v. Washington*, the U.S. Supreme Court held that criminal defendants have a constitutional right against the admission of uncross-examined testimonial hearsay. The principle is that testimonial hearsay should not be admitted against a criminal defendant unless that defendant had an opportunity at some point to cross-examine the hearsay declarant. In a child abuse case, this means that if a child fails to testify at trial, and has not testified at a preliminary hearing, then her hearsay statements may be constitutionally barred from admissibility if they were testimonial hearsay.

There is language in *Crawford* that is sure to give child interviewers pause. In attempting to define what hearsay is *testimonial*, the Supreme Court considered it significant whether the statement was recorded and was elicited through structured questioning. Indeed, some lower courts have pointed to this language in holding that forensic interviews were testimonial. For example, a federal Court in Minnesota recently held that a defendant's rights under *Crawford* were violated by the admission at trial of the uncross-examined statements of a young child accusing the defendant of sexual assault (*Bobadilla v. Carlson*, D. Minn. 2008). The decision is particularly noteworthy because to hold for the defendant, the Court had to hold that the Minnesota Supreme Court's opinion in the case was an "unreasonable application of clearly established law." The Court reasoned as follows:

> There was nothing spontaneous or informal about the interview. Rather, [the interviewer], who had been trained in a "forensic" method of interviewing children, subjected [the child] to a highly structured series of questions. [The interviewer] followed the "CornerHouse protocol, which...consists of establishing rapport with the child, ascertaining the child's terms for parts of the anatomy, ascertaining whether abuse occurred, and closing with a 'safety message.'" *Crawford* specifically identified "structured police questioning" as a hallmark of a police interrogation. (*Bobadilla v. Carlson*, 2008 at 9 [citations omitted])

The court's logic would apply not only to the CornerHouse protocol but also to any other routine aspect of forensic interviewing. To avoid the label of *testimonial*, one might conclude that interviewers should return to the day in which they concocted questions on the fly without training or advance preparation. Similarly, one might avoid videotaping interviews—because this constitutes documentation—or avoid eliciting a promise to tell the truth—because this looks too much like testimony. However, child interviewers should be careful not to overreact to cases like *Bobadilla.* To do so would not only violate principles of good practice but would also misread the likely legal effects of a return to informality.

First, it is important to remember that *Crawford* applies only to criminal cases. The right to cross-examine testimonial hearsay is based on the Confrontation Clause, which does not apply in civil and dependency court proceedings. Most substantiated child abuse cases never find their way into criminal court, largely because of the greater burden of proof in criminal proceedings. Second, if the child testifies at the preliminary hearing or the criminal trial and is willing to answer questions on cross-examination, then there are no constitutional limits to testimonial hearsay.

Third, the bulk of the opinion in *Bobadilla* emphasizes an approach adopted by most lower courts interpreting *Crawford*: Hearsay statements by children are testimonial if they are given to the police or agents of the police. In *Bobadilla*, for example, the social worker who questioned the child responded to a request to do so by a police detective who attended the interview.

When children give statements to social workers or other professionals investigating the safety of the child's home or the child's physical and psychological health, then the courts are divided regarding whether the statements are testimonial (see, for example, the Connecticut Supreme Court's discussion in *State v. Arroyo*, (Conn. 2007)). A number of different factors are potentially relevant. Was the interview conducted shortly after the initial suspicion of abuse? How did the interviewer explain the purpose of the interview to the child? What did the child (or a typical child of the same age) believe is the purpose of the interview? What form of cooperation existed between the interviewer and law enforcement (assuming it was established that the interviewer had not been merely an agent of the police)?

As the purpose of the interview moves from prosecution on one end of the spectrum to protection on the other, it is less likely to be classified as *testimonial*. If the interview is conducted shortly after the initial suspicions, the courts are more likely going to view the goal as protection rather than prosecution. Analogously, even statements made to law enforcement have been found by the Supreme Court to qualify as non-testimonial if they were made during an emergency (*Davis v. Washington*, 2006). If the interviewer instructs the child that the purpose of the interview is to ensure that the child is safe and cared for, and the child (or a child of the same age) appears to share the interviewer's goals, then the interview is more likely to be non-testimonial.

Hence, the child's statements are more likely to be considered non-testimonial if the interviewer is independent of law enforcement, instructs the child that the interviewer's job is to keep the child safe (and the child shares these views), and the interviewer conducts the interview shortly after the initial suspicions of abuse arise.

A happy coincidence is that legal doctrine defining what constitutes a *non-testimonial interview* accords in many ways with best practices. When interviews are conducted shortly after the initial allegation, the child's memory is more likely to be fresh, and the child's report is less likely to be tainted by external influences, whether they be deliberate attempts to distort the child's report or inadvertent suggestive influences created by repeated questioning. Given the realities of intervention, in which social services efforts to protect children are far more common than prosecutorial effects to prosecute perpetrators, a move toward emphasizing the protective goals of child interviewing is beneficial. Undue focus on what law enforcement perceives as essential details for prosecution often results in age-inappropriate questioning of children regarding the dates and numbers of abuse (Lyon & Saywitz, 2006). Moreover,

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district attorneys will often insist on inquiries into the child's testimonial competency (discussed next), which has little relation to accuracy (Lyon et al., 2008) and which young children are likely to fail despite their honesty. To the extent that interviewers are free to focus on the child's report of the perpetrator's actions and the child's reactions, they are likely to elicit what is ultimately a more accurate and credible report of abuse.

Some difficulties remain. Cynical characterization of forensic interviews as nonprosecutorial in order to avoid the *testimonial* label are likely to be viewed with suspicion by the courts. However, creation of a wall between law enforcement and other agencies who work with abused children may be more convincing to the courts but may undermine the worthy goals of agency cooperation in order to reduce multiple interviewing and ensure that information does not fall between the cracks. Again, the best approach is to do what seems best for children's welfare without regard to the courts' latest definition of *testimonial* and to let attorneys make their best arguments.

The Real Effects of *Crawford* and the Need for Prosecutorial Adjustment

My emphasis on how *Crawford* need not effect changes in interviewing practice is not meant to understate the effects of *Crawford* on the prosecution of crimes in which children are witnesses. When children make statements to the police (or their agents) in nonemergency situations, and those in which the child's safety is not at stake, these statements will be deemed testimonial. It is easy to identify cases in which convictions were reversed because the child witnesses failed to qualify to take the oath or were too afraid to testify, rendering their testimonial hearsay inadmissible under *Crawford*. For example,

- In *State v. Henderson* (Kan. 2007), a 3-year-old girl with gonorrhea disclosed in a videotaped interview with a social worker and a police detective that the defendant "touched my body and it was hurting," adding "with the ding ding," the defendant's term for his penis. The defendant acknowledged being tested and treated several times for sexually transmitted diseases, and the mother reported that the defendant was the only man who had unsupervised contact with the victim. When the child could not qualify as competent to testify, the trial court admitted the videotaped interview after assessing its reliability. The conviction was reversed on the ground that the videotaped interview constituted testimonial hearsay.

- In *State v. Siler* (Ohio 2007), a 3-year-old boy saw his father beat and then hang his mother in their garage. In response to questioning by a detective, the child stated that his mother was "sleeping standing" in the garage. The child told how "Daddy, Mommy fighting" in the garage had scared him. He described how "the yellow thing" had held his mother upright in the garage and responded that "Daddy" had put the yellow thing on her. The "yellow thing" was a cord around the mother's neck. Despite this vivid account of the murder and other corroborating evidence of threats the father made against the mother as well as past incidents of domestic violence, the conviction was reversed because the child's out-of-court statements were testimonial.

- In *State v. Pitt* (Or. App. 2006, 2007) the 4-year-old victim, while living with her mother and the defendant, began to resist being alone with the defendant and disclosed sexual abuse to her mother. She made consistent statements to a physician (who also found physical evidence of abuse), a psychologist, and a child advocacy center interviewer in a videotaped interview. The child also disclosed having seen the defendant sexually abuse the child's 5-year-old cousin, who confirmed abuse of both girls in a videotaped interview. The state presented both girls at trial, but they appeared too upset and frightened to answer questions and were declared unavailable. The videotaped interviews of both children were admitted, but the conviction was reversed because the videotapes were testimonial and deemed to violate confrontation.

- In *Bell v. State*, 928 So. 2d 951 (Miss. Ct. App. 2006), the victim's daughters (ages 4 and 5) were the only witnesses to their mother's murder. The younger daughter told police officers that her father (Bell) "asked [her mother] for money" and that her mother "emptied her purse out on the floor." She then told the officers that "Bell pushed [her mother] down over a table, broke the table . . .broke a mirror in [the] bathroom . . . [and] used a small knife to put 'blood on [her mother's] back.'" The child's statements were corroborated by the physical evidence—police found an overturned coffee table, a purse with its contents emptied, a broken mirror in the bathroom, and multiple knife wounds in the mother's body. Both girls were found unavailable after they were unable to endure a mock pretrial practice session. The conviction was reversed because the statement was testimonial. (These and similar cases were discussed in an amicus brief filed by APSAC and the National Association of Counsel for Children in *Giles v. California* (2008), available at http://works.bepress.com/thomaslyon/55/).

The reversals based on *Crawford* are not predicated on assumptions about children's inaccuracies. Indeed, the hearsay in these cases was often admitted under special hearsay exceptions for children's statements that require the court to assess the reliability of the hearsay before admitting it into evidence. The legal principle in applying *Crawford* is that the defendant must be given the opportunity to cross-examine the child who makes the hearsay statement. Hence, in order to introduce testimonial hearsay, it is essential for the prosecution to make the child available for cross-examination. It is not necessary that the child testify to the event; she may have forgotten. Her willingness to answer questions is what satisfies the defendant's confrontation rights.

Once the child testifies, there are no constitutional limitations on the admissibility of the child's hearsay. Interviews are likely to be admissible under various hearsay exceptions, the rules for which vary from state to state, but they include recorded recollections, prior inconsistent statements (particularly if the child recants), prior consistent statements (particularly if the defense argues that subsequent police and prosecutorial questioning altered the child's story), and special exceptions for children's abuse reports.

The key in complying with *Crawford* is for prosecutors to maximize children's abilities to testify at either the preliminary hearing or at trial. The simplest and easiest step is to adopt sensitive methods

for assessing young children's testimonial competency. Far too often, children are kept off the stand not because of their incompetency but because of the limited competency of their interrogator. Children should not be asked whether they know the meaning of *truth* and *lie* or asked to define the terms. They should not be asked whether they have ever told a lie. They should not be asked hypothetical questions about the consequences of lying, particularly hypothetical questions in which they are the speaker (What would happen if you told a lie?). Many children will perform poorly at these questions despite being quite capable of identifying statements as true or false and recognizing that lie-tellers are punished (Lyon, 2000; Lyon & Saywitz, 1999). A simplified competency task is available without charge (Lyon & Saywitz, 2000, see http://works.bepress.com/thomaslyon/9/).

Even children who have not learned labels for true and false statements are capable of rejecting false statements, and some courts have held that this demonstrates an incipient understanding rendering the child competent to testify (Lyon, Carrick, & Quas, 2008). There are complications here; for example, courts differ regarding the necessity of competency inquiries and the oath itself. One interesting question is whether the defendant should waive the competency inquiry in order to obtain his right to cross-examine the child. Otherwise, the defendant can both vigorously fight to keep a child off the stand and complain of his inability to cross-examine the child on the stand.

For children who are simply too scared to testify, the solutions are more difficult. Of course, prosecutors have options for reducing the child's fears of the courtroom, including preparation (Sas et al., 1991; Saywitz & Nathanson, 1993), support persons, and special accommodations. If the child remains incapable of testifying, and her fears can be attributed to the actions of the defendant, then it may be possible to argue that the defendant forfeited his right to confront the child in court, eliminating constitutional objections to the child's hearsay. This doctrine is called "forfeiture by wrongdoing" and was the subject of the Supreme Court's recent opinion in *Giles v. California* (2008).

At first glance, the Court in *Giles* appears to define *forfeiture* very narrowly, expressing the view that it should apply only if the defendant's actions were in some way intended to keep the hearsay declarant off the stand. However, this is only a plurality opinion, and one can combine the concurring and dissenting opinions and find a majority of the court endorsing forfeiture in cases of repeated domestic violence, based on the assumption that this reflects the use of violence to control and silence the victim. In many cases involving child witnesses, there is evidence of repeated violence or abuse, and the dynamics of child abuse often mirror that of domestic violence, in which the perpetrator both nurtures and exploits the victim's dependency.

The difficulty with the forfeiture argument subsequent to *Giles* is that in that case, it was clear that the defendant's actions caused the witness' unavailability, because he murdered her. In APSAC's amicus brief in *Giles*, we argued that forfeiture should apply in child witness cases when the defendant could reasonably anticipate that the child would be too young or too intimidated to testify at trial. The defendant may not have *caused* the unavailability in many child witness cases, but fairness dictates that defendants should be equally responsible for *exploiting* unavailability. In a future case, the Court may recognize the dynamics of child abuse—particularly in trusting relationships—in which perpetrators take advantage of children's vulnerabilities, sometimes quite strategically, sometimes opportunistically (Elliott, Browne, & Kilcoyne, 1995; Lang & Frenzel, 1988).

The evidence for forfeiture can often be found in interviews with the child. Asking a child what led her to disclose (or what kept her from disclosing) can reveal attempts to silence or inducements to lie. These questions, however, are not merely devices to aid prosecution. Asking a child about prior disclosures uncovers other potential witnesses, and helps to explain delays and inconsistencies that might undermine the child's credibility. The existence of pressures on the child to recant affects social workers' judgments regarding a family's ability to protect a child against further abuse. Researchers have found that the same methods used to productively elicit abuse reports (including open-ended questions) are useful in uncovering children's reasons for when and how they disclosed (Hershkowitz, Lanes, & Lamb, 2007). Again, good interviewing practice is consistent with legal doctrine.

Conclusion

Although *Crawford* was a major change in constitutional analysis of hearsay admissibility, it should not have major effects on the content of child interviews. In particular, interviewers should not sacrifice best practice, including videotaping and carefully structured questioning, in the face of fears that they render interviews testimonial.

The major issue confronting agencies that serve children is the extent to which law enforcement exercises control over interviews conducted by social services, medical personnel, child advocacy centers, and other professionals. As law enforcement involvement increases, the likelihood that the interview will be deemed testimonial also increases. This may or may not matter much to policy makers, who should keep in mind that testimonial hearsay is only an issue in criminal trials in which the child fails to testify. Ultimately, local governments may decide that coordination of law enforcement effort with other agencies serving children is a more important consideration. The bottom line is that focusing on children's immediate safety is always critical, and that whatever the purpose of an interview, expecting young children to provide dates and numbers (sometimes thought essential for criminal counts) is unrealistic.

Crawford means more to prosecutors, who should take additional steps to make testimony more age-appropriate and child-friendly. It should be relatively easy to improve the competency questions asked of children willing to testify; overcoming some children's unwillingness to take the stand is a more serious challenge. Ultimately, best practice and the best interests of children provide the clearest guidance in an era of legal uncertainty.

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When Qualified Immunity Protects Social Workers From 42 U.S.C. §1983 Lawsuits

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Social work has developed into an increasingly seasoned, mature, and specialized profession. The role of social workers has also changed, resulting in an increased expectation that social workers will be aware of and will satisfy legal responsibilities owed to their clients. While many public sector social work administrators and practitioners are concerned about liability litigation, no national studies of appellate cases have been synthesized to illustrate when suits against social workers succeed, and when social workers can rely on the doctrine of qualified immunity. This article explores when social workers are and are not successful in asserting qualified immunity when sued in civil court under 42 U.S.C. §1983.

42 U.S.C. §1983

Courts have generally recognized the need to protect government employees from unduly burdensome and baseless litigation that may interfere with the exercise of lawful discretion in their official functions. However, under 42 U.S.C. §1983, any person may bring a civil action against an individual who acted under color of any law (with the exception of judges, who are generally immune from such suits when concerning official action) and who caused a deprivation of any Constitutional right or federal law.[1]

Many courts characterize an individual who acted under color of any law as an "official." There is consensus among courts that social workers may be considered to be officials. The social workers who were successfully sued in the cases described in this article are described as caseworkers in state and county child protective services agencies, social workers in various departments of public health and human services, in mental health departments, and in foster care and child placement offices. "It is well-settled that the immunity to which a public official is entitled depends not on the official's title or agency, but on the nature of the function that the person was performing when taking the actions that provoked the lawsuit."[2] Thus, an official, including a social worker, can be sued under §1983 for constitutional violations if she sets in motion a series of events that she knew or reasonably should have known would cause violations of the plaintiff's constitutional rights.[3]

While liability clearly seems to attach under §1983 to actual participants in constitutional violations, it is not enough for a plaintiff merely to show that a defendant was in charge of other state actors who actually committed the violation. "Instead, just as with any individual defendant, the plaintiff must establish a deliberate, intentional act by the supervisor to violate constitutional rights."[4] "In order to overcome the qualified immunity of a supervisor, a plaintiff most [*sic*] show that the defendant-supervisor took deliberate action in directing the constitutional violation, or had actual knowledge of the violation and allowed the violation to continue."[5]

A social worker can be considered a state actor or official for the purposes of 42 U.S.C. §1983, and liability can attach if the following conditions are met: a violation of a constitutional or other federal legal right has occurred, the law protecting a right was in existence at the time of the claimed violation, and a reasonable person (social worker) would have known that the action would cause a violation of that right. Furthermore, the social worker can be held liable under §1983 if his or her actions caused others to violate the right.[6]

Qualified Immunity

Although states and officials acting in their official capacity are generally absolutely immune from lawsuits, especially if they are acting in prosecutorial-like functions,[7] "[s]tate executive branch officials receive qualified immunity if they could have reasonably believed that their conduct did not contravene federal law, which depends on the facts of their actions and the nature of the federal rule in existence at the time. Thus, ...1983 essentially establishes a tort-based exception to state sovereign immunity because recovery requires that a government official have [*sic*] acted unreasonably."[8]

Qualified immunity is a judicially created mechanism that protects state officials who are sued in their individual capacity for civil damages under 42 U.S.C. §1983. Qualified immunity generally shields government officials performing discretionary functions from individual liability for civil damages under §1983 "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[9] It is an entitlement that provides an immunity from suit rather than a mere defense to liability. As such, it "is effectively lost if a case is erroneously permitted to go to trial."[10]

When claiming qualified immunity, social workers tend to file 12(b)(6) motions to dismiss, based on the theory that due to immunity, no legal claim can be made. Defendants can affirmatively plead qualified immunity, and the plaintiff has the burden to prove that the government actor is not entitled to the qualified immunity. When considering a 12(b)(6) motion, all the facts alleged in the complaint are assumed to be true and are read in the light most favorable to the nonmoving party. Thus, if there is any way in which the facts can support the claim brought by the plaintiff, the case will not be dismissed.[11] Conversely, if social workers are properly using discretionary powers as part of their job, and if the facts alleged in the complaint cannot be construed to amount to a constitutional violation or deprivation of rights, then the case will be dismissed if qualified immunity has been asserted by the social worker. A district court's denial of a claim of qualified immunity, to the extent that it turns on an issue of law, may be appealed as a "final decision" within the meaning of 28 U.S.C. §1291, notwithstanding the absence of a final judgment.

The following cases exemplify situations wherein motions filed by social workers to dismiss, based on qualified immunity, were not granted. Note that in these cases, the issue is only whether the case against the social worker should be dismissed on the basis of qualified immunity. Denial of a motion to dismiss does not mean

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that the social workers were found liable for the alleged deprivations—only that the case was allowed to proceed and be tried on the facts.

Cases Demonstrating When Qualified Immunity Is Denied to Social Workers

When evaluating claims for qualified immunity, courts must first determine if the plaintiff has alleged a deprivation of a law or constitutional right, whether the law was clearly established at the time of the alleged violation, and finally, whether a reasonable official could understand that what one is doing violates the law or constitutional right.[12] The subjective intent of the public official being sued for direct action or inaction is not the question. It is, rather, an objective inquiry as to whether a reasonable person would understand the law and would know that their action was in violation of it.[13]

When suits have been brought against social workers under §1983 for violations of constitutional rights, the most common claims are based on unreasonable search and seizure (Fourth Amendment) and due process (Fourteenth Amendment). Typically, when social workers seek dismissal based on the doctrine of qualified immunity, they attempt to show that the plaintiffs have either failed to allege a constitutional deprivation, or that even if they asserted a violation of a constitutional right, the right was not clearly established. However, in each case where this affirmative defense fails, it is because the facts alleged are always read in a light most favorable to the plaintiff, and the actions of the social worker would have been illegal or unreasonable taking the facts as presented as true.

Unreasonable Searches and Seizures

The Fourth Amendment of the U.S. Constitution, incorporated by the Fourteenth Amendment, protects, in relevant part, against unreasonable searches and seizure. Thus, seizure alone is not enough for §1983 liability—the seizure must be unreasonable. Of course, *reasonableness* is not precisely defined and will be dependent on the particular facts of a case. However, it is clear that "the *Fourth Amendment* applies to [social workers], as it does to all other officers and agents of the state whose requests to enter, however benign or well-intentioned, are met by a closed door. There is … no social worker exception to the strictures of the *Fourth Amendment.*"[14] "A person has been 'seized' within the meaning of the Fourth Amendment…if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."[15] Many courts have found that "in the context of removing a child from his home and family, a seizure is reasonable if it is pursuant to a court order, if it is supported by probable cause, or if it is justified by exigent circumstances."[16]

The following is an example of a motion to dismiss, based on qualified immunity, which was denied on the basis of a Fourth Amendment violation. The facts, as presented, supported allegations that a social worker seized a girl at her high school with no legitimate justification, demanded that she leave her mother's care and return to her abusive father (while there was an existing court order assigning temporary custody to the girl's mother and forbidding the father from contacting the girl).[17] No qualified immunity was permitted by the court for the social worker, as the seizure was an "obvious and outrageous" violation of the Fourth Amendment, since an emotionally vulnerable 16-year-old would not have felt free to terminate the encounter.

In another example, qualified immunity was not granted to a social worker due to a determination, based on an unreasonable seizure, that the defendants (a social worker and police officer) dressed in plain clothes, allegedly arrived during evening hours in an unmarked car, entered the home without knocking or identifying themselves, seized the children, and refused to identify themselves when asked. The defendants grabbed the screaming children from the home in a manner suggesting to the children and their parents that they were being kidnapped.[18] This case demonstrates that even if a court order directed a child's removal, or exigent circumstances or probable cause justified the seizure, "the manner in which the defendants seized [the child] may still make his seizure unreasonable."[19]

First Amendment

Freedom of religion is another claim that has been successful in defeating the qualified immunity claim of social workers under §1983. Religious beliefs are tricky in terms of determining child endangerment. Generally speaking, if parental actions, such as punishments or medical decisions based on religious beliefs, are the basis of neglect and a removal, exigent circumstances will be difficult to show, except in the most extreme circumstances. Further, courts have coupled the free exercise clause of the First Amendment, which prohibits governmental regulation of religious beliefs, with the interest in familial relations as protected by the substantive due process of the Fourteenth Amendment.[20]

Due Process

A removal without a warrant, absent imminent, immediate danger, has been universally held to be in violation of due process, leading to unreasonable seizures.[21] Additionally, qualified immunity assertions have been defeated by procedural due process claims based on the constitutional inadequacy of post-deprivation hearings.[22] Some courts explicitly distinguish between procedural and substantive due process.[23] An example is a case involving a child who, while in foster care, repeatedly suffered abuse and injuries. The court denied the social worker qualified immunity based on a *substantive* due process claim, holding that deliberate indifference by state officials to the safety and welfare of a child in foster care constitutes a violation of the child's substantive due process rights and is actionable under §1983.[24] However, the court found that the *procedural* due process violation was not actionable against the social worker under §1983, holding that "only when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise."[25] The court concluded that the state's laws provided a constitutionally adequate postdeprivation remedy.

Other jurisdictions have made similar distinctions between procedural and substantive due process. Even when there is a finding of adequate state procedures, and thus qualified immunity was afforded the social worker for the procedural due process claims, many courts have found that no qualified immunity is applicable to the substantive due process claims.[26]

Another substantive due process claim that has defeated the assertion of qualified immunity by social workers is the liberty interest in familial relations. Under the Fourteenth Amendment, parents have a protected liberty interest in the care, custody, and control of their children.[27] However, cases claiming governmental interference with the right of family integrity are balanced with the state's interest in protecting children and family privacy. "The balance here, however, is no different than that developed in the Fourth Amendment context."[28]

Where defendants (social workers) provided false information to a district attorney who filed a petition seeking to take custody of children, the plaintiffs asserted that their substantive due process right to familial integrity was violated.[29] While the court noted that the Supreme Court has long recognized family relations as one of the liberties protected by the due process clause of the Fourteenth Amendment, they noted that parents have no constitutional right to freedom from child abuse investigations. Nonetheless, the court held that the social workers were not entitled to qualified immunity, as the facts indicated that they knowingly made false accusations of abuse and neglect. Since the facts as presented did not establish an objectively reasonable suspicion of imminent danger, and the protection of family integrity was well established, the social workers (or, at least a reasonable person) would have known that their actions were unconstitutional. Thus, the motion to dismiss based on qualified immunity was denied.

In another case, a social worker and police officer were denied qualified immunity for a coerced entry into a home and the interrogation and strip search of a child, all conducted without a warrant or exigency.[30] The reasoning concerning the warrantless search is much the same as discussed above, but concerning the strip search, the court ruled that a "social worker is not entitled to sacrifice a family's privacy and dignity to her own personal views on how parents ought to discipline their children" finding that "there is a very substantial interest, which forcing the mother to pull the child's pants down invaded … the mother's dignity and authority in relation to her own children in her own home."[31] Thus, this court appears to have embraced a right to dignity as well as privacy and authority in support of familial rights.

The following is an example of denial of qualified immunity under 42 U.S.C. §1983 for individual social workers, based on a different aspect of substantive due process. The complaint alleged that the defendants, who were caseworkers in a family services agency, must have known they were placing the minor in a sequence of foster homes that were detrimental to the child's mental health. The court held that the due process clause requires that state officials take steps to prevent children in state custody from deteriorating physically or psychologically.[32] This case cites one of the "negative liberties" under the due process clause—to be free from governmental oppression.[33] The court concluded that while there is no constitutional right to governmental protection against physical abuse by parents or other private persons not acting under the direction of the state, the state, having removed a child from the custody of parent, cannot place the child in a position of danger without violating her rights under the due process clause of the Fourteenth Amendment. "[O]nce the state assumes custody of a person, it owes him a rudimentary duty of safekeeping no matter how perilous his circumstances when he was free."[34]

In a case where a child was beaten to death after being placed for adoption, the court granted summary judgment to one social worker based on qualified immunity because the undisputed facts showed that she exercised professional judgment, but qualified immunity was denied for another, as there were issues of material fact as to whether the social worker violated the child's substantive due process by failing to investigate several suspicious events during the period when she was directly responsible for the child.[35] The court held that while state officials are generally not responsible for the actions of third parties under the substantive component of the due process clause, the state may have a special relationship with children in state custody. Thus, "if the state or its employees knew of the asserted danger to minor children in state custody, or failed to exercise professional judgment with respect thereto… and if an affirmative link to the injuries the children suffered can be shown, then the state or its employees violated plaintiffs' constitutional rights."[36]

In another substantive due process case, a court dismissed the civil rights action under 42 U.S.C. §1983 for all defendants (various mental health professionals and administrators) based on qualified immunity *except* for the suit against the social worker.[37] The suit arose from the involuntary commitment of a minor to a state mental heath facility, during which time the minor hung himself. Summary judgment was denied to the social worker because of her failure to monitor the boy after having been warned that he had tried to commit suicide numerous times in the past. The court found that based on the alleged facts, she demonstrated deliberate indifference under the Fourteenth Amendment, which affords him a right to reasonably safe conditions of confinement, and she did not communicate the boy's past actions and threats to the other defendants. The other public officials in the case were granted qualified immunity based on the facts of this case, showing that a reasonable public official could have believed that his or her actions were lawful, in light of clearly established law and the information possessed by each official. The social worker's actions were found to be deliberately indifferent, and thus not entitled to qualified immunity under §1983.

Conclusion

Understanding qualified immunity is important for all public agency social workers. It has been clearly established that social workers are "officials" for the purpose of being entitled to utilize qualified immunity when acting in their individual capacities in accordance with their discretionary functions. Provided that social workers remain aware of laws and constitutional rights, follow appropriate procedures, and act with reasonableness and good faith, the doctrine of qualified immunity is a viable defense against suits brought against them in their individual capacity under 42 U.S.C. §1983. Social workers acting within the scope of their employment should be immune from prosecution for taking any legal actions they reasonably believe are necessary and proper in the performance of their functions.

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State and local governments indemnify their employees against court judgments incurred in the scope of their employment. Also covered are the costs of defending the lawsuits. The affirmative defense of qualified immunity, if appropriately asserted and granted, will prevent cases from proceeding to trial. Thus, it is imperative that government administrators are keenly aware that the conduct of public sector social workers may have profound fiscal as well as legal implications.

Notes

1. The relevant part of the code discussed in this article reads as follows: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."
2. Mabe v. San Bernadino County *et al.*, 237 F3d 101, 1106 (9th Cir. 2001).
3. A social worker cannot rely on following a state law that enables a constitutional violation to invoke qualified immunity. *See* Brown v. State of Montana *et al.,* 442 F. Supp. 2d 982, 996 (D. Mont. 2006).
4. Rinehart v. U.S. Dist. Court for the Western District of Oklahoma, 2006 U.S. Dist. LEXIS 35764 (2006), quoting Foot v. Spiegel, 118 F.3d 116, 1423 (10th Cir. 1997).
5. *Id.,* quoting DeAnzona v. City and County of Denver, 222 F3d 1229, 1234 (10th Cir. 2000).
6. *See* Brokaw v. Mercer County *et al.*, 235 F.3d 1000, 1014 (7th Cir. 2000) (a Deputy Sheriff and a social worker were claimed to have falsely removed children based on knowingly false claims of neglect, because they disapproved of the parents' religious practices and beliefs. Regarding the social worker, even though she was not present during the actual seizure of the plaintiff, when the allegations were read in the light most favorable to the plaintiff, the court found that she directed the removal of the children, and that was enough to affix liability).
7. Butz v. Economou, 438 U.S. 478 (1978). The Supreme Court has held that §1983 preserves common law immunity; social workers and other officials are immune from §1983 if they were immune from tort liability at common law. See also Imbler v. Pachtman, 424 U.S. 409, 418, 420.
8. Jesse H. Coper & John C. Yoo, "Essay: Who's Afraid of the Eleventh Amendment? The Limited Impact of the Court's Sovereign Immunity Rulings," 106 Colum L. Rev. 213 (January 2006).
9. Harlow v. Fitzgerald*,* 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 96 (1982).
10. Mitchell v. Forsyth, 472 U.S. 511, 526 (1985).
11. *See* Conley v. Gibson, 355 U.S. 41, 45–46, 2 L.Ed. 2d 80, 78 S. Cit. 99 (1957).
12. See *Mabe* at 1106–1107; Villanueva v. San Marcos Consolidated Independent School district *et al.*, U.S. District Court for the Western District of Texan, Austin Division, 2006 U.S. Dist. LEXIS 68280 (2006).
13. See *Villanueva*, page 7. See also *Jones* at 1229 ("To defeat a claim of qualified immunity, plaintiffs need not point to a prior holding that the specific conduct at issue is unlawful; rather, the unlawfulness of the alleged action must have been apparent.") See also *Starkey* at 18, quoting Pierce v. Gilchrist, 359 F3d 1279, 1298 (10th Cir. 2004, discussing Hope v. Pelzer, 536 U.S. 730, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002).
14. *O'Donnell* at 802, quoting from Walsh v. Erie County of Job & Family Servs., 240 F. Supp. 2d 731, 746-47 (N.D. Ohio 2003). *See* also Jones v. Hunt *et al.*, 410 F.3d 1221, 1125 (10th Cir. 2005), citing Dubbs v. Head Start, Inc., 336 F.3d 1194, 1205 (10th Cir. 2003).
15. *Brokaw* at 1010 (determining that a child who was carried from his house, placed in a car and driven away was not free to leave and thus was "seized" within the meaning of the Fourth Amendment), quoting from United States, v. Mendenhall, 446 U.S. 544, 554, 64 L. Ed. 2d 497, 100 S. Ct. 1870 (1980).
16. See *Brokaw* at 1010, listing other cases discussing Fourth Amendment seizures of children.
17. Jones v. Hunt at 1223. Further, qualified immunity also may not protect individual defendants when acting on false or incomplete information. The test remains whether a reasonable person would recognize that the seizure was unreasonable.
18. *Brokaw.*
19. *Id.* at 1011. Additionally, some social workers have been found liable on the basis of the "danger creation" theory. Under this theory, state officials can be liable for acts of third parties, if it can be shown that the state actor played a part in creating the danger, or their actions rendered the plaintiff more vulnerable to the danger. *See* Briggs v. Oklahoma ex rel. Oklahoma Dept. of Human Servs., 2007 U.S. Dist. LEXIS 7092 (W.D. Okla., Jan. 31, 2007). *See also* Johnson v. Holmes *et al.*, 455 F.3d 1133, 1145 (10th Cir. 2006) (enumerating six elements that must be met to establish liability under a danger creation theory).
20. *See* Starkey *et al.* v. U.S. District Court for the District of Colorado, 2006 U.S. Dist. LEXIS 84768 (2006).
21. See *Mabe* at1106–1107.
22. See *Brokaw* at 1021.
23. See *e.g., McCall.*
24. *Id.* at 1367.
25. *Id.* at 1369.
26. See *Brokaw*, where the plaintiff claims that he was removed based on knowingly false statements of child neglect, and that the defendants removed him from his home without an investigation, a predeprivation hearing, or exigent circumstances, and the court allowed the procedural due process claim to proceed against the defendants, including the social worker.
27. Santosky v. Kramer, 455 U.S. 745, 753, 71 L.Ed. 2d 599, 102 s. Ct. 1388 (1982). See also *Brokaw* at 1017–1019, and *Mabe* at 1107.
28. *Brokaw* at 1019 (note that the claim is separate from a Fourth Amendment unreasonable seizure claim; this claim under substantive due process is for a continuing violations that occurred during a 4-month separation from the child's parents, due to his removal being arguably not justified by a sufficiently compelling governmental interest.).
29. See *Rinehart.* See also *O'Donnell* at 826.
30. Calabretta v. Floyd *et al.*, 189 F.3d 808 (9th Cir. 1999).
31. *Id.* at 819, 820.
32. K.H. v. Gary T. Morgan *et al.*, 914 F.2d 846 (7th Cir. 1990). The plaintiff was discovered at the age of 17 months to have gonorrhea contracted in vaginal intercourse. When she was removed from the custody of her parents, she was placed with four sets of foster parents in the course of a year, then returned to her parents briefly and removed again after 3 months on the basis of neglect. After several more placements, she was found to have been beaten and sexually abused by foster parents.
33. *K.H.* at 848, citing to Youngberg v. Romeo, 457 U.S. 307, 315–316, 73 L. Ed. 2d 28, 102 S.Ct. 2452 (1982).
34. *Id.* at 849. "The state, having saved a man from a lynch mob, cannot then lynch him, on the ground that he will be no worse off than if he had not been saved."
35. Johnson v. Holmes *et al.*, 455 F.3d 1133 (10th Cir. 2006).
36. *Id.* at 1143 (internal quotations omitted).
37. Dolihite v. Maughon *et al.*, 74 F.3d 1027 (11th Cir. 1996).

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Child Welfare Class Action Litigation: A Framework for Assessing Its Effectiveness in System Reform

Madelyn Freundlich, MSW, JD, LLM

In 1973, Marcia Robinson Lowry launched, for the first time, a class action lawsuit against a public child welfare system, suing the New York City foster care system in *Wilder v. Sugarman*. In the case, Lowry asserted that New York City's practice of placing children in foster care with private agencies on the basis of religious affiliation harmed children and violated their federal constitutional rights (Bernstein, 2001). *Wilder* was named after one of the plaintiffs, 13-year-old Shirley Wilder, an abused child who had run away and whose childhood had been shaped by the foster care system. Within a year of Lowry's filing the lawsuit, Shirley would give birth to a son and relinquish him to the same foster care system that Lowry maintained had failed Shirley. Over the course of close to 20 years of litigation, New York City's practice of placing children in foster care based on religion changed, but other foster care practices were identified as detrimental to the safety and well-being of children.

Wilder ushered in an era of class action litigation against state, county, and city child welfare systems as a strategy to broadly reform foster care systems (Berstein, 2001). Following *Wilder*, Children's Rights (Lowry's organization) and other child advocacy organizations, including the National Center for Youth Law, the Youth Law Center, the Bazelon Center for Mental Health Law, and state-based child advocacy organizations, brought more than 35 class action lawsuits against child welfare systems across the United States, including Arizona, Arkansas, Connecticut, the District of Columbia, Illinois, Kansas, Louisiana, Maryland, Missouri, New Jersey, New Mexico, New York, North Carolina, Rhode Island, Tennessee, Utah, and Washington State (Child Welfare League of America & American Bar Association, 2005). Since 2005, Children's Rights has initiated an additional four lawsuits: one against Mississippi, *Olivia A. v. Barbour*, settled in 2007 (Children's Rights, 2008a); a suit against Michigan, *Dwayne B. v. Granholm*, settled in 2008 (Children's Rights, 2008b); a suit against Oklahoma, *D.G. v. Henry*, filed in 2008 (Children's Rights, 2008c); and a suit against Rhode Island, *Sam and Tony M. v. Carcieri*, filed in 2008 (Children's Rights, 2008d). Other suits have been initiated by the National Center for Youth Law in Clark County, Nevada, *Clark K. v. Willden*, (National Center for Youth Law, 2008a), and by the Youth Law Center in Oregon, *A.S.W. v. Mink* (Youth Law Center, 2008).

Despite the prevalent use of class action lawsuits against child welfare systems as a reform mechanism, there has been relatively little work undertaken to determine how the impact of this strategy in achieving reform can best be evaluated. The process of evaluating class action litigation is undeniably complex given the issues that this type of litigation addresses and its goal of comprehensive system reform. However, given the resources devoted to the utilization of this strategy—in preparing for, litigating, and settling on the part of plaintiffs and defendants; the court costs involved; the ongoing implementation strategies and monitoring; and often, continuing appearances in court—a framework to guide a more in-depth evaluation of this strategy would seem essential. In this article, I describe the nature of class action litigation, review the use of class action litigation against child welfare agencies, and consider the practice and policy issues that child welfare class action litigation has addressed. I then consider the larger context of class action litigation as a means of system reform and propose a framework that might be useful in assessing the effectiveness of this strategy in planning, implementing, and sustaining reform of child welfare systems.

The Contours of Child Welfare Class Action Litigation

Class action lawsuits against child welfare systems have much in common with respect to the general procedures that are used, but they also are as variable as the individual political, social, practice and policy environments of the jurisdictions that are the subject of these suits.

In a class action lawsuit, one or more parties file a complaint on behalf of themselves and all other people who are similarly situated; one party or a group of parties sue as representatives of a larger class of individuals (Law Library, 2008). Class action litigation has been used as a vehicle for seeking judicial redress for harms done to large groups of people in a variety of situations, including employment discrimination, toxic environmental exposure, prescription drugs, and defective medical devices (Hensler, Pace, Dombey-Moore, & Giddens, 2000; Viscusi, 2002) as well in the child welfare arena. In the United States, class action litigation may be brought in federal or state court. Federal class action lawsuits are governed by federal law (28 USC section 1331(d)) and by the Federal Rules of Civil Procedures. State law governs class action litigation brought in state court.

Whether filed in federal or state court, a class action lawsuit is filed with one or several named plaintiffs on behalf of a proposed class that consists of a group of individuals or business entities who have suffered a common injury or injuries. After the complaint is filed, the plaintiff must file a motion to have the class certified. The defendants may object to whether the issues are appropriately handled as a class action, whether the named plaintiffs are sufficiently representative of the class, and their relationship with the law firm or firms handling the case. Generally speaking, a class action lawsuit must meet the following requirements: (1) the class must be so large as to make individual suits impractical; (2) there must be legal or factual claims in common; (3) the claims or defenses must be typical of the plaintiffs or defendants; and (4) the representative parties must adequately protect the interests of the class. In many cases, the party seeking certification must also show (5) that common issues between the class and the defendants will predominate the proceedings, as opposed to individual fact-specific conflicts between class members and the defendants, and (6) that the class action is a superior vehicle over individual litigation for resolution of the disputes at hand (Rubenstein, 2005).

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In child welfare class action litigation, the class is often all children in the state's, county's, or city's foster care system, and the named plaintiffs are individual children whose experiences and foster care outcomes are representative of the experiences and outcomes of the larger population of children in foster care. One of the key first steps in class action litigation is having the class of children certified. When the class is certified and the case moves forward, the case may be resolved in a variety of ways. Most often, the case is resolved through a settlement agreement, occurring between the plaintiffs and the child welfare agency, and through a consent decree, a judicial decree that expresses a voluntary agreement between parties to a suit approved by the court. Rarely, the case is fully litigated and ultimately resolved through an order of the court.

Table 1 provides examples of child welfare class action lawsuits brought by Children's Rights, the National Center for Youth Law, the Youth Law Center, and the Bazelon Center for Mental Health Law (formerly known as the Mental Health Law Project). Cases in this table were selected to illustrate the types of suits brought by each organization, the range of issues that these lawsuits have identified as needing systemic reform, and the status of each lawsuit.

Table 1. Child Welfare Class Action Litigation: Selected Cases

State	Lawsuit	Focus of Lawsuit	Status
Alabama (Bazelon Center for Mental Health Law, 1991)	*R.C. v. Hornsby* (also *R.C. v. Fuller*) Filed by the Bazelon Center for Mental Health Law	Large backlog of uninvestigated child abuse and neglect reports. Children in foster care for extended periods of time. Children with serious emotional problems on long waiting lists for services, often ultimately provided in institutional settings far from their homes.	Settled in 1991; the state developed a strengths-based perspective and a collaborative model for serving children and families; placed emphasis on family preservation; developed a new model for child welfare safety, permanency and well-being; developed a new system of home- and community-based care for emotionally or behaviorally disturbed children already in or likely to need foster care.
Connecticut (Children's Rights, 2008e)	*Juan v.Rowland* Filed by Children's Rights	Failure to adequately investigate reports of child abuse and neglect. Failure to provide appropriate placements for children. Extremely high caseloads. Poor training for foster parents and inadequate reimbursements for children's care.	Settled in 1991: required infrastructure improvements, including staff increases, the development of a training academy and data system improvements; in 2003, plaintiffs filed a motion to hold the agency in contempt when reforms were not being implemented; the court ordered the state to transfer management authority over the child welfare system to the federal court; in 2004, a comprehensive exit plan was developed; in 2005, management authority was returned to the state; plaintiffs initiated contempt proceedings; in July, 2008, the court required the agency to take aggressive action.
District of Columbia (Children's Rights, 2008f)	*Lashawn A. v. Barry* (also *Lashawn A. v.Fenty*) Filed by Children's Rights	Extremely high caseloads. Lack of services. Overcrowded foster homes. Virtually no adoptions being arranged for children in foster care who are free for adoption.	Court order in 1991; plaintiffs and the District's child welfare agency developed a comprehensive Remedial Order to correct management and service delivery problems; after 3 years, the agency failed to meet the requirements of the plan and was placed under court-supervised receivership and was placed in the hands of a receiver in 1995; improvements were noted in a number of areas; receivership ended in controversy; the District regained control of the agency in 2000, after establishing a cabinet-level Child and Family Services Agency (CFSA) and committing to major reform; in 2008, plaintiffs filed a motion of contempt against the District, citing large backlogs of unresolved abuse and neglect investigations, failure to move children quickly into permanent homes, and frequent moves for children in foster care; that motion was pending at the time of this writing.
Florida (Youth Law Center, 2007)	*Susan C. v. Florida Department of Children and Family Services* Filed by Youth Law Center	Filed against the Florida Department of Children and Family Services and a private contract foster care agency, asserting: Failure to find appropriate and licensed foster care placements for children. Requiring foster children to sleep for multiple nights in an agency conference room.	Settlement with the private contractor in 2006, in which the agency agreed to set a policy prohibiting overnight stays in offices, conference rooms, or other unlicensed placements; in 2006, court ordered the Department and private contract agencies to obey Florida state law and to only use licensed facilities for the placement of children; case ended in 2007 when the Department agreed to abide by the court's order.

Table 1. Child Welfare Class Action Litigation: Selected Cases (cont'd)

Georgia (Children's Rights, 2008g)	*Kenny A. v. Perdue* Filed by Children's Rights	Extended stays for children in emergency shelters. High rates of maltreatment of children in foster care. Multiple moves while children are in foster care. Extended time in foster care. Inadequate health care and educational services.	Settlement agreement reached in July of 2005, requiring the state to meet specific reform benchmarks in 31 areas of service to children; two independent monitors to report on the state's performance; in August 2008, plaintiffs filed a contempt motion against the state, citing its failure to meet court-ordered requirements; the motion was pending at the time of this writing.
Tennessee (Children's Rights, 2008h).	*Brian A. v. Bredesen* Filed by Children's Rights	High rates of placement of children in institutional and other group settings. Placement of children in emergency shelters and other temporary facilities for extended periods of time. Extremely high caseloads for caseworkers. Multiple moves for children in foster care.	Settlement agreement reached in 2001; in 2003, plaintiffs filed a contempt motion against the state which was resolved with a new agreement between the parties regarding a technical assistance committee; oversight of implementation currently in place.
Utah (National Center for Youth Law, 2007).	*David C. v. Leavitt* Filed by the National Center for Youth Law	Abuse and neglect investigations and child protective services. Quality and safety of out-of-home placement. Health care and mental health care for foster children. Caseloads and staff training. Case planning, case review, and permanency planning.	Settlement reached after class certification in May 1993; in 1996, the Monitoring Panel concluded that the state had complied with only 4 of the settlement agreement's 95 areas; plaintiffs filed a motion to enforce and asked the court to appoint a receiver; receiver not appointed but court ordered that a Comprehensive Plan be developed; in 1998, plaintiffs sought to extend the settlement's 4-year term and to implement the Comprehensive Plan; in 2002, plaintiffs filed a Motion to Enforce the Settlement Agreement; oversight of implementation continued; in 2007, parties finalized agreement to terminate the lawsuit; court approved the agreement.
Washington State (National Center for Youth Law, 2008b).	*Braam v. State of Washington* Filed by the National Center for Youth Law	Multiple placements while children are in foster care. Other practices causing children in foster care emotional and psychological harm.	Settlement reached in 2004 that created a blueprint for reform of the child welfare system in that state; independent, five-member oversight panel of national child-welfare experts established to develop and monitor reform during the 7-year settlement period (2004–2011); panel's initial report in 2006 found that the Department had not completed 32 of 45 action steps required during the first monitoring period; the Department required to propose a compliance plan; oversight to continue through 2011.

As Table 1 shows, child welfare class action lawsuits focus on a range of issues that are common across public child welfare systems, including the following:

- Failure to properly investigate reports of child abuse and neglect in a timely manner
- Failure to place children with foster families when they enter care, relying instead on unlicensed settings or institutional, group, or emergency shelter settings
- Failure to ensure the safety of children in foster care
- Failure to provide children with needed health and educational services
- Failure to ensure adequate parent-child and sibling visits with children in out-of-home care
- Failure to ensure permanent families for children in foster care
- Failure to ensure that social workers have manageable caseloads, sufficient training, and effective supervision
- Failure to provide children and families with adequate planning and review (Child Welfare League of America & American Bar Association, 2005).

As these demonstrate, the key issues span the range of responsibilities of public child welfare systems: child protective services investigations, placement of children in foster care, child safety, services for children in foster care, and permanency planning. They also encompass infrastructure issues believed to promote more positive outcomes for children, such as manageable caseloads and staff training.

Cont'd on page 14

Between 1995 and 2005, 35 consent decrees and court orders were issued resolving child welfare class action lawsuits (Child Welfare League of America & American Bar Association, 2005). These consent decrees and orders addressed a range of issues within seven categories: protective services, out-of-home placement, services, adoption, case planning, judicial/legal issues, and caseworkers. As Table 2 shows, caseworker training is, by far, the most common issue addressed, and 25 consent decrees/court orders focus on this issue. Consistent with general observations regarding the types of issues in child welfare class action litigation, the issues on which these suits most often focused were child protective services (investigations and assessment), foster care placement (placing children together, appropriateness of placement/least restrictive placement, support for relative placements, residential facility placement, and reduction in the number of placements), safety (improved response to child abuse/neglect in foster care), child welfare practice issues (parent-child visits and caseworker visits with parents), services (education and mental health services) and the child welfare infrastructure (caseload sizes, case reviews, case planning: permanency, and adequacy of foster parent reimbursement) (Child Welfare League of America & American Bar Association, 2005).

It is interesting to note the least frequently addressed issues in these 35 consent decrees/court orders. Few consent decrees (two, three, or four) addressed the following practice issues:

- Child protective services intake, including screening of cases for investigation
- Licensing of group homes; minimizing placement disruptions
- Ending inappropriate punishment of foster children
- Permanency goal updating; reductions in the length of time that children remain in foster care; subsidized guardianship/adoption; nondiscriminatory adoption practice
- Family preservation services; family reunification services; housing services; provision of respite care; postadoption services
- Sufficient work space and supplies for caseworkers

Finally, judicial and legal concerns were among the least frequently addressed issues in consent decrees/court orders with only one decree addressing parents' opportunity to be heard in proceedings involving their children, two addressing procedural safeguards, and

Table 2. Most Frequently Addressed Issues in Child Welfare Class Action Litigation Consent Decrees, 1995–2005

Issue	Number of Decrees/Court Orders
Caseworker Training	25
Foster Parent Training	17
Child Protective Services Assessments	16
Adequate Numbers of Qualified Foster/Adoptive Homes	16
Medical Care for Children in Foster Care	16
Education for Children in Foster Care	15
Case Review for Children in Foster Care	14
Caseloads	14
Caseworkers' Visits With Child	14
Child Protective Services Investigation	13
Residential Facility Placement	13
Placing Siblings Together	13
Promoting Parent-Child Visits	13
Appropriateness of Placement and Placement in Least Restrictive Environment	12
Licensing of Foster Parents	12
Support for Relative Placements	12
Mental Health Care for Children in Foster Care	12
Permanency for Children in Foster Care	12
Caseworker Staffing	12
Adequacy of Foster Care Reimbursement Rates	11
Improved Responses to Alleged Abuse/Neglect in Care	10
Reduction in the Number of Placements	10

Source: Child Welfare League of America & American Bar Association, 2005.

three addressing the timeliness of court proceedings and children's legal representation (Child Welfare League of America & American Bar Association, 2005).

The variation seen across consent decrees/court orders may be attributed to a number of factors. Individual state consent decrees/court orders may reflect an assessment of the specific issues that were of greatest concern in the particular jurisdiction and/or an assessment of the areas on which the litigation had the greatest probability of making systemic improvements. The absence of attention to legal and judicial issues may be based on the fact that litigation is directed against the child welfare agency and sets limitations on orders regarding judicial and legal practices. Nonetheless, the variation across consent decrees/court orders, the focus on some issues and not others in individual consent decrees, and the greater prevalence of a focus on infrastructure issues such as training raise questions about the extent to which systemic reform is being achieved through these mechanisms.

An Assessment of Class Action Litigation

There has been considerable debate about the benefits of class action litigation. Proponents of class action litigation maintain that a key benefit is it aggregates a large number of individualized claims into one representational lawsuit. Bringing claims in one lawsuit on behalf of a class can increase the efficiency of the legal process and lower the costs of litigation. When there are common questions of law and fact, aggregating claims into a class action can avoid the necessity of repeating "days of the same witnesses, exhibits and issues from trial to trial" (*Jenkins v. Raymark Indus. Inc.*, 1986, at 473). Class action lawsuits also are seen as overcoming "the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights" (*Amchem Prods., Inc. v. Windsor*, 1996, at 617). A class action lawsuit can ensure that a defendant who engages in widespread harm—but who does so minimally against each individual plaintiff—must compensate those individuals for their injuries or rectify the harm done to all. Class action lawsuits also avoid the possibility that different court rulings could create incompatible standards of conduct for the defendant to follow.

With respect to child welfare class action litigation, proponents emphasize that this approach never has been used as the first choice for resolving the complex problems of child welfare system but is "often the last hope for disempowered constituencies with no other means of access to institutions that profoundly shape their lives" (Center for the Study of Social Policy [CSSP], 1998, p. 4). Proponents of child welfare class action litigation further maintain that this type of litigation is usually made necessary by a failure of the political process and the need to hold policy makers and child welfare program administrators accountable for outcomes for a disempowered clientele (CSSP, 1998).

However, there are criticisms of class action lawsuits. One criticism is that class members often receive little or no benefit from class actions (Epstein, 2002; Greve, 2005). In the arena of child welfare class action litigation, children and youth in foster care are not awarded money settlements as is the case with mass tort and other types of class action litigation. However, child welfare agencies charged with serving children and families often commit significant resources to defending these lawsuits, which, it is claimed, would be more appropriately used to provide services and supports for children and families and strengthen the infrastructure of child welfare systems. Criticisms regarding benefits to clients often also extend to the fees paid to plaintiff attorneys when the litigation is successfully concluded on behalf of the plaintiff class (Class Action Litigation Information, n.d.). Some have expressed concerns about the attorney-client relationship in class action litigation, noting that the ethical dilemmas created by the nature of the lawyer-client relationship in the class action are not sufficiently addressed by current ethics regulations or existing class action decisional law (Scott, 2002).

Other criticisms have been raised specifically with regard to child welfare class action litigation. One is that this type of litigation is often protracted, spanning in some cases more than 2 decades (see Table 1). Questions are raised about the effectiveness of litigation in the planning and implementation of system reform, particularly in light of the need in a number of cases for plaintiffs' attorneys to return to court in efforts to hold child welfare agencies in contempt or to enforce implementation of plans (see Table 1). Of particular concern is the issue of sustainability when reforms are achieved. As one example, the Bazelon Center for Mental Health Law reported that *R.C. v. Hornsby* in Alabama spurred significant improvement in engaging families and meeting children's needs, largely because it was driven by principles of good practice and grounded on partnerships among state agency workers, families, foster parents, communities, and the providers of all the services a child and family need. The Bazelon Center noted that the political climate in Alabama has always been a factor in implementing the *R.C.* decree, as it has been in advancing systemic reform in any context. Following many years of successful implementation of *R.C. v. Hornsby*, Governor Fob James took office in 1995, and in March 1996, he appointed a new child welfare commissioner who shared his negative views of judicial solutions. The collaborative reform spirit that had prevailed under the former child welfare commissioner and his successors faded quickly. Much of the infrastructure that supported the reform effort was dismantled.

Finally, despite the prevalent use of class action lawsuits against child welfare systems, it is not clear to what extent systemic reform, the thrust of this type of litigation, has been accomplished. It is clear that organizations that bring these lawsuits are able to point to specific results from individual lawsuits. Children's Rights (2008i), for example, noted the following outcomes in three of its lawsuits:

- In Washington, DC, reforms resulting from litigation efforts more than tripled the annual number of adoptions of children in foster care.
- In Connecticut, litigation and monitoring ensured that more than 90% of abuse and neglect allegations are investigated promptly—and the quality of the investigations has markedly improved. The state's rate of abuse among children in foster care placements has dropped 80% over the past 5 years.
- Tennessee has cut the number of children living in orphanage-style institutions and other nonfamily settings in half since 2002.

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These types of outcomes reflect progress on key outcome indicators, but they do not address the extent to which class action litigation has accomplished comprehensive, sustainable system reform. Because child welfare class action litigation is designed to reform failing child welfare systems, it appears that a framework is needed for evaluating its impact in affecting broad changes in child welfare system design and implementation and the achievement of improved outcomes for children, youth, and families served by child welfare systems.

A Framework for Assessing the Impact of Child Welfare Class Action Litigation

Evaluating the systemic impact of child welfare class action litigation can be strengthened by a framework setting forth the key inquiries that can guide the development of an evaluation methodology. Such a framework has not been developed to date, no doubt because the organizations that bring class action lawsuits are focused initially on successfully prosecuting the litigation and then are focused on postlitigation monitoring of child welfare systems for adherence to implementation plans. State, county, and city child welfare systems are focused on meeting the requirements of implementation plans and assessing their own performance, rather than evaluating the impact of the lawsuit on their efforts. Given that more than 35 child welfare class action lawsuits have been filed and prosecuted and additional lawsuits are pending, an assessment of the effectiveness of this approach to system reform seems wise, particularly given the costs associated with this system reform mechanism.

A possible framework to begin evaluation of the impact of class action litigation on child welfare system reform would have three key components: (1) inquiries to assess whether class action litigation is the appropriate mechanism for child welfare system reform in the particular jurisdiction; (2) inquiries to assess the impact of class action litigation on system design and implementation; and (3) inquiries to assess the impact of class action litigation on substantive outcomes for children and families.

Inquiries to Assess the Class Action Litigation as the Appropriate System Reform Mechanism

The following domains of inquiry might prove useful in determining the viability of class action litigation as an appropriate child welfare system reform mechanism in a particular jurisdiction at any given time.

The Environment

Executive and Legislative Leadership. Is leadership at the executive and/or legislative levels concerned about the jurisdiction's child welfare system? Is the leadership open to changes in the child welfare system at the systemic level? How would executive and legislative leadership respond to a class action lawsuit against the child welfare agency?

Child Welfare Leadership. What is the leadership within the child welfare agency? How long has the commissioner/director of the child welfare agency been at his or her post? What has been his track record? What efforts has she made to strengthen the child welfare system and improve outcomes for children and families? How strong is the child welfare agency's senior management team? How would the child welfare leadership respond to a class action lawsuit? Is the current leadership able to implement system reform?

Existing Financial Resources. How well is the child welfare system resourced? Are there adequate financial resources for all key child welfare functions? What resources would be available to implement systems reform efforts?

Existing Child Welfare Expertise. What is the level of child welfare expertise in the jurisdiction: professors at schools of social work, child welfare researchers, expert practitioners, and child welfare policy analysts? How involved are these child welfare experts with the child welfare system and implementation of new programs, practices and policies? To what extent would these child welfare experts be resources in assessing the child welfare system and supporting and implementing reform efforts?

Previous Child Welfare System Reform Efforts. Have efforts previously been made to reform the child welfare system? If so, by whom and how? With what results? Have all reasonable nonlitigation reform efforts been tried—without success? What can be learned from previous reform efforts in relation to the prospects of success of a class action lawsuit?

Current Reform Efforts and Public and Private Reform Initiatives. Are there reform initiatives currently underway—through the public child welfare agency or through private efforts (foundation-funded efforts or efforts by private agencies)? If so, by whom and with what focus? With what results? How would a class action lawsuit relate to these efforts? What coordination would be needed?

Advocacy Groups. Are child welfare advocacy groups active in the jurisdiction on child welfare issues? What is their assessment of the current functioning of the child welfare system? To what extent would these advocacy groups be resources in assessing the child welfare system and supporting and implementing reform efforts?

The Child Welfare System Infrastructure

Existing Child Welfare Agency Infrastructure. Where is the child welfare agency situated in the state agency organizational framework? How is the agency itself organized? How strong is the agency's infrastructure in terms of staffing levels, expertise, and capacity for planning and implementing reform efforts? Would significant changes be needed in the child welfare agency infrastructure to strengthen the agency's capacity to implement systemic reform?

Child and Family Services Review (CFSR) Results. What have been the substantive and systemic results of the Child and Family Services Reviews (CFSR) for the jurisdiction? What are the strengths and the "areas needing improvement"? Is there consensus at the agency and advocacy levels that these areas need improvement? If the jurisdiction has completed the second round of the CFSR, has there been improvement in the results? If yes, where? If no, why not?

Performance Improvement Plan (PIP) and Ongoing Progress Reports. What has the jurisdiction planned to do to improve substantive and systemic outcomes as measured by the CFSR? What progress is evident from the progress reports? Where has progress not been made?

Desired Outcomes

Substantive Outcomes for Children and Families. What are the key substantive outcomes—in terms of safety, child and family well-being and permanency—that a class action lawsuit would address? What are the priority substantive outcomes that need to be achieved? What are the probabilities that a class action lawsuit could affect these outcomes?

Systemic Outcomes. What are the systemic issues that a class action lawsuit would address? What are the priority systemic factors that would need to be changed to achieve the desired substantive outcomes for children and families? What are the probabilities that a class action lawsuit could impact these systemic factors?

Cost Effectiveness of Litigation

Projected Costs. What are the projected costs of litigating the plaintiffs' case and the likely attorney fees award that would be awarded if the case is successfully prosecuted? What are the projected costs of defending the case? What are the projected court costs?

Projected Benefits. What impact can be expected from a class action lawsuit in generating new resources to serve children and families involved in the child welfare system?

Project Cost Savings. What is the projected impact of cost savings to child welfare system as a result of system reform that a class action may bring about?

This first level of analysis involves an assessment of the current political, service, and resource environment, the current child welfare agency structure, the planning and implementation processes associated with federal mandates, the desired outcomes, and cost effectiveness projections—and conceivably other factors. The current environment is likely to present factors that both support and potentially undermine the viability of systemic reform through class action litigation. As an example, the executive and legislative leadership may have focused on the quality of the child welfare system through Blue Ribbon Commissions or legislative reports that have not led to systemic improvements (a factor that suggests that litigation may very well be an appropriate reform mechanism), but there have been frequent turnovers in child welfare leadership and senior management staff and there is limited child welfare expertise within the agency (a factor that may suggest that the agency lacks the capacity to implement systemic reform, irrespective of the method used). The need to clearly articulate desired outcomes is paramount, with either consensus reached among the plaintiffs, advocates and key leaders in the state (a factor that would support litigation) or lack of agreement as to what needs to be changed (a factor that may undermine the success of a litigation strategy). A cost-effectiveness analysis would result in projections that the costs of litigation would be counterbalanced by greater benefits to clients and the system itself (indicative that litigation is a viable option) or would not be counterbalanced (indicating that litigation may not be the appropriate option). The overall assessment of these—and perhaps other—factors could provide a foundation for evaluating the viability of pursuing class action litigation and, it is important to note, provide a basis for subsequent assessments of the systemic impact of class action litigation when it is pursued.

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Inquiries to Assess the Systemic Impact of Child Welfare Class Action Litigation

A second component of assessment would focus on the impact of child welfare class action litigation at the systemic level. This assessment could include the following domains related to system functioning:

System Development and Infrastructure: To what extent has class action litigation

- Strengthened the agency's organizational structure through enhanced management activities and/or more robust integration of programs and services
- Resulted in more comprehensive and effective staff training and professional development
- Strengthened supervision as quality assurance mechanism
- Resulted in the recruitment and retention of highly qualified staff
- Led to manageable caseloads in each service area
- Generated the resources needed to support staff, including computers, supplies, and access to transportation to visit with clients

Practice Model: To what extent has class action litigation

- Resulted in clearly articulated principles that drive practice and service delivery
- Led to a strong practice model that responds to the needs of children, youth, and families for safety, well-being, and permanency

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- Led to a practice model based on active engagement of families, children, and youth and shared planning and decision making
- Promoted strong leadership commitment to the practice model
- Generated the resources needed to support the practice model

Service Delivery: To what extent has class action litigation

- Resulted in the development full array of services, ranging from family support and preventive services to post-permanency services
- Resulted in resources to ensure an adequate number of trained staff to provide quality services
- Ensured evaluation and accountability mechanisms that provide key information on the results of the services provided and methods for continuous quality improvement

Coordination With Other Systems and Initiatives: To what extent has class action litigation resulted in the child welfare system's effective coordination with

- The courts
- The medical system
- The mental health care system
- The education system
- Services that address housing and homelessness
- Private child welfare agencies

Assessing systems reform by examining infrastructure, the resulting practice model, service delivery, and coordination with other systems and initiatives could provide foundational evaluation domains for interim and final assessments of the impact of litigation on child welfare system reform. It can be expected that any child welfare class action lawsuit would address each of these domains (though, depending on the jurisdiction, to a greater or lesser extent). The evaluative questions are the degree to which a lawsuit brings about these impacts and what level of impact across these domains would be expected to consider the lawsuit "effective." These are not easy questions, but the clear articulation of the domains where impact should be expected may provide a starting point for assessment.

Inquiries to Assess Substantive Outcome Improvements for Children, Youth, and Families

The third—and vital—component in assessing the impact of child welfare class action litigation on systemic reform would focus on the extent to which strengthening infrastructure, the agency's practice model, service delivery, and coordination with other systems and initiatives results in improved outcomes for children, youth and families. This assessment would draw on the federal outcomes monitored through the Child and Family Service Reviews (CFSRs) and the desired outcomes articulated in the initial assessment phase regarding the intended consequences of class action litigation. In this phase, evaluation would test the hypothesis that systemic changes (system development and infrastructure, practice model, service delivery, and cross system and cross initiative collaboration) produce improved substantive outcomes for children, youth, and families.

These core elements form a working framework on which evaluation methodologies could be developed to assess the effectiveness of child welfare class action litigation in effecting system reform. It is at best preliminary but provides some of the key considerations that can shape a robust evaluation approach.

Conclusion

Class action litigation against state, county, and city child welfare systems has become an established reality since *Wilder* was filed in 1973. Since that time, at least 35 suits have been filed. Several are pending resolution; many have been resolved through consent decrees or court orders; and most systems under consent decrees and court orders continue to be monitored by the organizations that initiated these suits. Much has been learned over the course of the last 35 years, and more could be learned through more systematic efforts to assess the impact of class action litigation on child welfare system reform. This article provides a beginning framework that could guide more in-depth work in developing evaluation methodologies that provide a clearer understanding of the impact of child welfare class action litigation on the complex task of reforming child welfare systems.

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The Court as the Last Resort: When the Child Welfare System Fails, Litigation Provides a Last Line of Defense for Children in Trouble

An Interview With Marcia Robinson Lowry

By Carolyn Beeler

Marcia Robinson Lowry, JD, is Executive Director of Children's Rights, a national advocacy group based in New York that is working to reform failing child welfare systems on behalf of the abused and neglected children who depend on them for protection and care. Caroline Beeler interviewed Ms. Lowry for the APSAC Advisor *in May 2008.*

Recent law school graduate Marcia Lowry was working at a legal services office in New York City when the staff instructed the group of new lawyers to pick a legal specialty. Lowry chose children's issues because she thought it seemed the most interesting. Decades later, she has represented hundreds of thousands of children through child welfare litigation.

Lowry is the founder and director of Children's Rights, a nonprofit advocacy group that uses litigation to reform the child welfare system. Since spinning off from the American Civil Liberties Union in 1995, after the project began in 1973 at the New York Civil Liberties Union, Children's Rights has filed 11 class action lawsuits in an effort to assure accountability in a system where, she argues, there is none. Though the organization litigates at the local and state levels, it aims to affect system-wide change.

Marcia Robinson Lowry

The Children's Rights Web site (www.childrensrights.org) makes the following pledge: "We won't rest until every state in the U.S. lives up to its constitutional and statutory obligation to provide basic services, care and protection to abused and neglected children." By creating an environment in which good systems are the norm rather than the exception, and by providing a model for change that can be emulated across the country, Children's Rights hopes to use litigation at the state level to improve systems across the nation.

From Tip to Trial

Investigation of a specific state will usually begin with concerned citizens, often a foster parent group, juvenile court judge, or mid-level official in a state agency who contacts Children's Rights when frustrated with the level of care provided to children by an inadequate system. According to Lowry, the problem in the state has typically been documented for a number of years before anyone calls Children's Rights, but the state has failed to take real action. Occasionally, there is a disconnect between the perceptions of upper management and what is actually happening on the ground.

In Michigan, a new child welfare plan was developed and nominally implemented; but in fact, it wasn't being followed. "They may have intended to implement it, but they didn't have the staff, they didn't have the supervision, they didn't have the management to actually do it. So they thought that they were, and I think that the top-level commissioner who wasn't down at the field level may have believed it, but she didn't find out whether it was true," Lowry said.

After initial contact with a source, Children's Rights launches a preliminary investigation to establish whether the system is bad enough to warrant legal action. Due to the monetary and other costs associated with these suits, they are embarked upon as a last resort. "These cases are extremely time consuming, very expensive, and we have such limited resources. There are so many candidates, unfortunately, that we wouldn't go into a state unless we really thought litigation was necessary," Lowry reported. If Children's Rights determines that avenues for improvement haven't been exhausted, the organization remains in contact with the state and continues to monitor the situation in case legal action becomes appropriate.

If, however, the situation is appropriate for litigation, Lowry and her team begin the exhaustive process of developing a case, researching first by using public information and then by conducting interviews with an ever-widening network of sources. The team meticulously documents all findings to be used in settlement proceedings. "By the time we've concluded an investigation, we've talked to literally hundreds of people," she said.

After about a year of fact gathering, Lowry files suit. Early on in the case, she establishes class certification, meaning that the children she represents don't just speak for themselves but for all of the children in the system. After a lengthy discovery process, Children's Rights and the state usually enter settlement proceedings. (Because settlement is mutually beneficial in these cases, only two cases since 1995 have actually gone to trial.) During these talks, Lowry and the state develop a plan, spending months negotiating solutions to the issues that were uncovered during the fact-finding process. When the state and Children's Rights agree on a plan of action, Lowry receives a legally enforceable court order that gives Children's Rights the authority to hold the state accountable to the plan. Once the judge approves the plan, the state remains under court monitoring, and Children's Rights retains contact with the state, checking in periodically to assess progress. If the agreed-upon changes aren't being implemented,

Children's Rights can file contempt of court charges to try to enforce completion of the plan.

Controversial Success

Children's Rights reports compelling results. According to the organization, reforms resulting from litigation in Washington, DC, more than tripled the annual number of adoptions of children in foster care. In Tennessee, the number of children living in orphanage-style institutions and other nonfamily settings has been cut in half since 2002 (after a suit filed in 2000). In Missouri, Children's Rights helped to overturn a state law that cut aid to parents adopting kids from foster care. In 2007, after a suit filed by Children's Rights, New Jersey broke a state record for the number of children adopted out of foster care.

But the agency is not without its detractors. Critics argue that fighting litigation diverts time, money, and resources from the real work of child welfare systems, burdening already overtaxed agencies. Lowry has no patience for this argument. "If they were improving their systems, they wouldn't have to deal with the litigation. It's a last resort. It should be done, and we don't do it unless there's nothing else," she said. Others criticize the legal fees that Children's Rights collects in successful suits, fees that, as in all vindicating civil rights cases, are paid by the state or city. And with each new case, there are those who criticize the policy changes that result. But though Lowry vehemently believes that what she is doing is right, she is the first to acknowledge that her work isn't perfect. In talking about *Marisol A. v. Giuliani*, the landmark 1996 case against New York City that tore open the city's child welfare bureaucracy, Lowry acknowledges that even after more than a decade has passed since she filed suit, the system is still far from where it should be. "The lawsuit had a big impact on getting better, but it's not good. I haven't achieved what needs to be achieved. But I'm still working on it."

Questions and Answers

Have you always been interested in child welfare issues?
"No, I was always interested in civil rights work. I went to law school to do civil rights work, and when I got to the legal service program [a New York City legal backup services agency where Lowry worked after law school], they told us that we had to specialize in something. . . . Because children's issues are really interesting and can have the biggest effect on people's lives, I decided to specialize in that. But it wasn't really a field or body of law at that point, so I basically made it up as I went along. I liked it very much and continue to like it to this day."

Before that time, had you ever considered doing work in that area?
"Children's issues? No, I was well known for not liking children."

What do you think is wrong with the child welfare system in the U.S.?
"It's unaccountable. There are no consequences for state government for damaging children who are dependent on state government for their care, protection, and for their lives. No consequences. They're difficult systems to run, and if they're run poorly..., children's lives get destroyed."

Do they do anything right?
"Sure they do. Some children have good experiences; there are many wonderful foster parents and many wonderful workers who really care and work very hard, but that's serendipitous. If the kid happens to get a good worker and wind up in a good home, then the kid is lucky. But there's no system designed to require that. If the kid is unlucky and has ten different placements by the time she's [age] 2, then the kid is destroyed."

Do you think it is possible to fix the child welfare system?
"Oh, I do. It's not possible to make it perfect. But I do think it's possible to make child welfare systems far better than they currently are. "

What do you see as your role in fixing the system?
"I think our role is twofold—to make state government aware that . . . these systems can be made to work well and . . . these children have rights to have the system work in a way that benefits them. If the state doesn't make sure that's the case, [it] may get sued. It's too bad that lawsuits are necessary. I do think that, but . . . at this time in this country, it is necessary. Ideally, the state does it itself. But when the state doesn't, children have rights that may not get enforced."

Do you think you're being successful in meeting these goals?
"In the systems we're involved in, we've seen a great deal of improvement in what happens to the children, and I think that we've had an impact on other systems by example. I don't think I can rest assured that kids aren't going to get hurt in the future, but we're being relatively successful in raising the level of attention. We're really giving children a voice and some power that they don't otherwise have because they don't vote."

Are you the last resort in child welfare?
"We are definitely a last resort. We think of ourselves that way because we don't think that litigation should be taken lightly.... The states ought to try to fix their own problems, and it's only when the states fail to act that we become involved. We don't like to get into a situation unless other means of resolving the situation have been exhausted."

Do you ever lose?
"Yes, we lost in Nebraska, I think about a year and half ago. But mostly we don't."

Is that your only loss?
[Long pause] "I'm trying to think.... I hope I haven't blocked it out. I certainly haven't lost in a long time.... I don't believe we have. We sometimes lose small pieces, but we don't lose the whole case."

Do you think litigation is the most effective way to change how states function?
"I don't know whether it is in all areas, but it certainly is in child welfare. Because child welfare services are really a stepchild of state government, when a state has to cut funds as so many of them do, it's easy to cut funds from a part of the state system that people aren't going to complain about getting cut. That's why there are

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often huge budget shortfalls and mismanagement in child welfare, and nobody complains about it. It's all due to a lack of accountability, so the only way you can put pressure on these systems is by external intervention, through a court order. I wish it were not so, but it is."

What do you say to people who say that fighting litigation from you draws time and resources away from them improving their systems?
"If they were improving their systems, they wouldn't have to deal with the litigation. It's a last resort. . . ; we don't do it, unless there's nothing else."

In 2000, you added a policy department to your organization, which was charged with studying issues pertinent to child welfare and advocating at the state and federal levels for public policies that improve public child welfare systems. Do you place more importance on litigating or developing policy?
"The primary emphasis is on reforming child welfare systems. We have found that the most effective way to do that is through very carefully structured and supported lawsuits. We use the policy people in the lawsuits to help us understand what is going on, to help us craft better solutions, and to help ensure that that whatever settlement we get is in fact implemented."

What kind of legal responsibility do you have to the children you represent after you receive a court decision or settle out of court?
"We have a great deal of responsibility. When our case goes to resolution, there's a legally enforceable court order, and we're in charge of ensuring that the provisions of the court order are actually enforced. We make sure that the kids who are supposed to benefit from the court order really do. The states are responsible for fulfilling the plan, and then there are usually neutral monitors that collect information about how the state is doing on specific provisions of the settlement and issue reports. We meet with the state about every 2 to 3 months, and if we think the state is not doing well, we negotiate with the state and sometimes take it back to court on contempt proceedings."

Do you think other agencies, agencies that you aren't suing, are noticing what you're doing and improving their operations?
"I don't know that they're improving, but I think they're noticing. We want to document more of what we do so people will see that it is doable. We haven't done enough to get the word out about how a system can deinstitutionalize children, for example, or how we can get permanent homes for kids in much greater numbers and much more quickly…. We see these results in our individual cases, but other people don't know that it's doable. I think that's very important for both public perception and for the people who run these systems."

Are you satisfied with what Children's Rights has accomplished to date?
"I'm never satisfied…. I'm proud of what we've accomplished, but we have much work to do."

What's in the future for Children's Rights?
"Our plan is to expand and to bring enough lawsuits so that we get enough systems on the path to reform [so] that the perception of the systems changes. Right now the perception is that they're all lousy and that's the best you can expect. And I think that perception has to be changed. If we can get enough reforms underway and enough systems to actually do it, then the perception will shift. We want to make really bad systems the anomaly rather than really good systems. That's the goal."

And how many trials do you think that's going to take?
"I think there's a critical mass. I don't think it's got to be all 50 states. Once we have enough examples out there of systems that we've fixed, then the ground rules will start to shift."

When do you think you'll reach that critical mass?
"We ought to be able to see some really significant change before 10 years, but how short of 10 years I don't know. We need to gear up, we need to add to our staff and get ourselves in a position to be able to get that significant of a campaign underway. We want to very much increase the amount of work we do."

What's the hardest part of your job?
"The hardest part is being impatient and wanting things to change quickly when they can't. Looking at a dysfunctional system, one that is harming children every day, and knowing there's no way it can be turned around in a short period of time is very hard to accept. You have to sit there for a couple of years and know that kids are going to continue to be abused in care, be moved from place to place, or be denied adoption or whatever it is. It's very frustrating."

So why do you keep doing this work every day? Where does your passion for child welfare law come from?
"It comes from a belief that society has to help its dependent, vulnerable citizens. Children are our most vulnerable citizens—it is the most extreme form of social injustice not to give children the opportunity to grow up to be happy adults. And it also comes from a deep anger that we are spending all of this public money to damage children when we could be giving them an opportunity for a much better life."

You've pioneered an entire body of law and become the authority on child welfare class action lawsuits. You've risen to the very top of your field—why do you work so tirelessly in this area?
"Because this is life and death work. There are many important public interest jobs to do in a whole range of areas—education, prisons, mental health, all of them are important—but this is life or death."

About the Author

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Be Prepared, Be Proactive, and Be Professional: Key Points to Testifying in Child Abuse Cases

Viola Vaughan-Eden, PhD, LCSW

The key to being a great expert witness is summed up in the adage "Proper Prior Planning Prevents Poor Performance" (Tracy, 2007). In addition to always being prepared, a great expert witness must also be Proactive and Professional.

Oftentimes the thought of testifying in court is daunting, not to mention just plain frightening. Although fear and anxiety regarding testifying may lessen with experience, it helps many of us keep our eye on the ball. However, just being prepared increases your likelihood of success and decreases the stress and anxiety surrounding testifying.

Let's take a step back … actually take several. Visualize the moment you receive a subpoena or the telephone call from the attorney who informs you to appear in court on a particular day. Many times, you received a subpoena or letter requesting your presence in court with no prior notice. Like many of us, your initial response is one of irritation or confusion, or both.

The first questions you invariably ask yourself are "Why have I been summoned?" and "What do they think I know that could help their case?" Both are excellent questions! However, often we stop there. We might look at our schedule in hopes of not being available, but once we mark it on our calendars, we begin the waiting game. We assume the attorney who requested us to appear will now call us to prepare.

False assumption! Although there are some attorneys who believe in the 6 "P"s, many more are operating in crisis mode. Essentially whatever fire is in front of them gets the attention. By law they are required to provide prior notice of a specified number of days, usually a minimum of one week. But they may have forgotten the case is coming up or that they issued you a subpoena.

Our ethical obligation is to our clients, which includes being prepared for court. So, this is where another "P" comes into play; being a good expert witness requires being Proactive. Don't wait for the attorney to call you, because he or she may not. Although your testimony may be important to the case, it's likely that you are not a priority on the attorney's agenda until he has time to focus on this specific issue. Therefore, you might get a call in advance, or you might get briefed about the purpose of your testimony in the hall 5 minutes before the hearing starts.

For this reason, pick up the phone and call the attorney yourself. Don't wait! Once you receive a subpoena, verify that you have a release of information on file allowing you to speak with the attorney. Then, contact the attorney's office to clarify why you have been subpoenaed. Attorneys are often hard to reach and are notorious for contacting witnesses at the last minute, if at all. Be persistent with leaving messages or speak directly with the paralegal or secretary assigned to the case. Often you will have to leave more than one message. Don't waste time or energy becoming frustrated; it is what it is. Many times you can speak with the paralegal assigned to the case and have a message relayed. Additionally, paralegals and secretaries can often be great sources of information, especially to those who convey a pleasant demeanor and a sincere wish to be prepared. It is important to emphasize that you want to be prepared for the hearing and need to speak with the attorney before the day of court.

If all else fails, call the client. Explain to the client your desire to be prepared and your need to know why you have been summoned. Encourage the client to get in touch with the attorney and ask that she contact you. Recognize that the client is likely feeling stressed about the upcoming court day. Therefore, it is important to approach the situation in a calm and professional manner. Sometimes clients have meetings scheduled with their attorney in the week prior to the hearing and you can piggy-back on their meeting. Ask to be called during their scheduled meeting time to discuss the plan for your appearance.

Once you have the attorney on the phone, ask the specific reason for the hearing. Essentially, what is the question before the court? Just because you were told by the client that the hearing is to resolve a certain matter, don't assume that it is the only question on the docket, or that due to a technicality a more pressing matter may take precedence. Clarify your role with the attorney and the expectations for your testimony so that you are not asked on the stand to testify about something that you have no knowledge of, or that you are not qualified to testify about. Without this conversation, you may arrive at court only to find out you are not actually needed because the attorney thought you knew something you didn't, or he wasn't clear about your actual role in the case. Only a judge can officially release you from a subpoena, but the attorney who subpoenaed you can tell you that your testimony will not be needed and, therefore, not to come to court.

If an attorney releases you from a subpoena, ask for written confirmation. You might not get it, but take notice and document the conversation just in case he forgets. Once a subpoena is issued, you are legally obligated to appear. Make a habit of faxing the attorney written confirmation of your conversation days prior to the hearing.

If you have received a subpoena without adequate notice and truly cannot appear because of a prior commitment, check your specific state's law regarding this issue. Once you know how many days' notice is required, it is sufficient to write a brief letter to the clerk of the court explaining the reason you are unavailable and send a copy to the attorney who sent the subpoena. Never contact the judge directly by phone, e-mail, or in writing, unless you have specific permission to do so, essentially in a court order. Because the law is very clear about such communication, you may be viewed negatively for doing so, not to mention publicly admonished by the judge.

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If you have been provided with ample notice but are truly unable to appear, you are at the mercy of the attorney who summoned you. Generally, attorneys will work with you because they want your testimony. However, you also need to be accommodating and flexible with your schedule. Just because the hearing is inconvenient doesn't mean you can decline an appearance.

Let's assume the attorney has explained the reason for the hearing and you are available to attend as an expert witness. According to Federal Rule of Evidence 702, the definition of an *expert witness* is someone who by knowledge, skill, experience, training, or education will assist the trier of fact (a judge or a jury) to understand the evidence or to determine a fact in issue.

How do you best assist the trier of fact? Again, a good place to start is in preparation. You have to thoroughly review the case. Don't rely on your memory to get you through. Depending on the complexity of the case, you may need a few hours, a few days, or in some cases a few weeks to prepare. Generally, if you have stayed current on the latest research through continuing education or by reading the current literature, you will be farther ahead in your readiness to testify. However, if you don't regularly attend conferences or read the professional literature, you will need extra time to prepare. It's important to note that many attorneys attend special trainings on how to discredit expert witnesses, and many more are learning the child abuse literature so they can debunk witnesses who aren't properly prepared. Once you know the specific questions to be addressed and the related literature, your preparation can become more focused. However, your time needs to be concentrated both on reviewing the materials and making any collateral contacts.

You may not be permitted to look at notes while you are on the stand. It also looks very unprofessional to be fumbling thorough your notes searching for names and dates. Some courts do not allow you to look at records while on the stand unless you can state you have exhausted your memory. Also, you should understand that any notes you have with you on the stand are subject to discovery and review by the attorneys. Essentially, if you take it with you, you may have to turn it over.

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You should thoroughly review all case records prior to taking the witness stand, and you should be able to accurately describe your role and activities in the case from beginning to end. Carefully and thoroughly review all social history information, case notes, letters, reports, and E-mails. You should also create a timeline of your involvement in the case. At times, you might realize that a significant amount of time has elapsed since you last saw the client. Further, while you may have good case notes, you may not remember what your shorthand means or you may not be able to read your own writing, and you will need to reconstruct the events of the case. Additionally, if you have written any letters or reports, thoroughly review them word by word because you will likely be asked on the stand why you chose to use a given word or phrase. You must be able to explain the relevance of your work with the client as it relates to the question before the court. If you want to be viewed as credible by a judge or jury, you can't stumble over documentation you authored.

You might also consider whether you should consult another professional to review the case. Consultants may or may not already be involved in the case. If there are other professionals involved in the case and you think you need input or clarification, now is the time to do it, since once the hearing has started, legal rule often prohibits discussion of the case, even if it is continued for many months. Depending on your role in the case, you may want to contact guardians-*ad-litem*, social workers, teachers, doctors, and therapists to find out how the client is currently progressing. You will need an up-to-date signed release of information to contact these collaterals, and depending on how long it has been since you initially saw the client, the authorization for release of information may have expired. If your role as an expert is to review other people's work, do so in an ethical and unbiased manner, and be sure your opinions can be supported by the literature and standards of practice in the field.

It is also important to review reports written by other professionals. You may have reviewed the report when you initially saw the client and feel you have a clear recollection of its content. However, if the report was used in any way as the basis for forming your opinion, you need to have a thorough line-by-line understanding of what it says in relation to your work with the client. If the report contradicts your findings and recommendations, you need to be able to articulate several likely reasons for the difference.

Simple things are often overlooked when planning to testify. Know how many times you met with the client and the dates of those meetings. Know who was present for the meetings, and if you met with a child, know who brought the child to your office. If you met the child at a location other than your office, be able to explain the circumstances and rationale for that decision. If you reviewed someone else's work, know how many times they saw the client and on what dates.

As the day of the hearing draws near, it is important to always reconfirm the day before to make sure the case has not been continued at the last minute. It may still be continued once you get to court, but you might save yourself an unnecessary trip to the courthouse if something has changed.

On the day of the hearing, arrive at least 30 minutes early. Usually the attorneys are there and you can get a last-minute update on the direction of the hearing. Attorneys often use time before the hearing to confer with one another. Attorneys also have meetings with each other and clients just before the hearing, which may change the order of or decrease the number of witnesses needed on that day. You can save yourself some unnecessary stress by arriving early to check the plan, tone, and direction the attorneys have planned for the hearing.

Always have an updated copy of your resume or curriculum vitae. The best practice is to regularly add trainings and continuing education to your resume as you attend them. Also, review the information on your resume prior to court. If you want to appear credible, you can't stumble over dates and information from your own professional history.

Regardless of the fact that a judge has ruled that you are an expert, having attended only one or two trainings in child maltreatment doesn't make you an expert. Remember, if you are not properly prepared, you could jeopardize someone's life, and being an expert starts with a commitment to regularly attend trainings and conferences put on by nationally recognized organizations and leaders in the field. It also requires a commitment to read the latest journal articles and books published by reputable sources. Additionally, it's important to consult with other more experienced professionals regardless of your role in the case. Ethical practice requires you to be objective and willing to acknowledge your limitations.

Never assume you know all the answers, or that your day in court will be a cakewalk. While many attorneys don't know what you do or the jargon you use to describe your professional attributes, don't underestimate the well-versed attorney who knows the research literature in your field better than you do. A seasoned attorney may just wear you down by asking you minute details or undermine your confidence by implying you are incompetent. Even an inexperienced attorney can ask you to explain a definition or term that catches you off guard. It's amazing we do our job day in and day out but when asked on the stand, we struggle to adequately explain what exactly we do and why it's important. Review your job description and practice with a colleague by explaining to her as clearly and concisely as you can what your role is in a child maltreatment case.

Be honest both before and during your testimony about what you know and what you are qualified to talk about. Don't exaggerate your qualifications or allow yourself to be sucked into talking about topics of which you have no firsthand knowledge, or topics that are outside your area of expertise.

Be professional at all times in your dress and demeanor. Regardless of what you are allowed to wear at work or how well you may know the judge or attorneys, wear appropriate business attire. Arrive at court in a timely manner. However, understand you will likely have to wait once you are there, so bring a book. Do not allow yourself to become so frustrated by having to wait that you forget what you are there to testify about. Do not discuss your potential testimony with anyone, even with people who may be familiar with the case. Attorneys should take you to a conference room or somewhere out of ear shot of others if they want to talk with you. Further, once you have been sworn in, do not discuss your testimony with other witnesses because you could be held in contempt of court, taint the case, or be disqualified.

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Maintain a courteous and professional demeanor and tone at all times regardless of how others behave toward you. Know that opposing counsel often attempt to rattle witnesses so they don't give their best performance. Be calm and appropriate. Realize that your style of answering questions may not match the attorney's style of asking, but you are required to follow his lead. Do not answer questions until the attorney has fully asked the question, and then be certain there is no objection to the question. If you don't understand the question, ask that it be repeated. Even though the attorney is asking the questions, be sure to look at the judge and jury when answering.

If you are asked about a particular document, regardless of how familiar you are with it, if you do not have a copy in front of you, ask the attorney to show you the document. Don't operate on memory when she has it in black and write. Attorneys are trained in wording questions to solicit agreement if it serves their purpose. Never assume that a document says what they say it says. Usually when you call them on it, they will back down. If not, request a moment to read the document. Don't get lured into reading only the sentence in a paragraph without knowing what was said before or after that statement. Things are often taken out of context in the course of a hearing.

After your testimony, it is important to ask for feedback on your performance from the attorneys or other professionals. If given the opportunity to review a transcript, do so with an eye for how you can improve. If you have reason to believe that your testimony

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may have placed you at risk, leave the building with others or ask the sheriff to provide you an escort to your car.

In summary, remember these key points: be prepared, be proactive, and be professional. Be prepared by knowing why you were summoned, knowing the question before the court, thoroughly reviewing the case material, staying current on the research literature, and attending trainings specific to the issues of child abuse and neglect. Be proactive by taking the initiative to get releases of information, to contact attorneys and collateral sources, and by doing everything necessary to be prepared. Finally, be professional by presenting a calm, objective, and knowledgeable demeanor, and wear proper professional attire. Finally, this article is not intended to provide you with legal advice. If you are uncertain how to proceed, you may want to consult legal counsel.

The field of child abuse and neglect is continually evolving. To stay current, you must know who the leading authorities are in the field and you must have a good understanding of the current professional literature. APSAC publishes journals, practice guidelines, and handbooks on child maltreatment that can help you stay current. Additionally, you can meet many of the current researchers and practitioners at APSAC's annual colloquium and training sessions.

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About the Author

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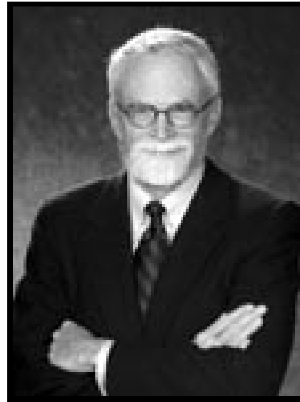
A Profile of John E. B. Myers, BS, JD

Judith S. Rycus, PhD, MSW and Ronald C. Hughes, PhD, MScSA

Despite the critical importance of the law in child welfare practice, only a small number of experts at the national level have devoted their professional lives to researching, teaching, and writing about these issues. One of them is John E. B. Myers, Distinguished Professor and Scholar and Professor at Law at the McGeorge School of Law, University of the Pacific, in Sacramento, California. John has been a long-time contributor to APSAC's development, including, first, Associate Editor of the *APSAC Advisor* and, subsequently, as the lead Editor of the *APSAC Handbook on Child Maltreatment, Second Edition,* in 2002. He continues his support as Editor of the upcoming edition of the *APSAC Handbook* and through his informative and always well-received legal workshops at APSAC conferences.

As one of the country's leading authorities on legal aspects of child abuse, domestic violence, and elder abuse, John has authored or edited eight books, written many book chapters and more than 100 articles, and presented over 400 seminars and trainings in the United States, Canada, Europe, and South America to judges, attorneys, police, physicians, mental health, and child welfare professionals. His writings have been cited in 140 Appellate Court and Supreme Court decisions, all related to evidentiary issues in child maltreatment. His groundbreaking publication, *Evidence in Child Abuse and Neglect Cases,* published in three successive editions, was recently replaced by *Myers on Evidence in Child, Domestic, and Elder Abuse Cases* in 2005. His recent book, *Child Protection in America: Past, Present, and Future* (2006), presents a broad view of the historical and social contexts of child protection, presents a vision for child protection in the future, and grapples with the challenges we will have to face if we are to achieve it.


John E. B. Myers

John's decision to professionally integrate child welfare and the law appears to have come naturally. Born and raised in Salt Lake City, he started college as a preschool education major and graduated in 1973 with a degree in sociology. At that point, he debated whether to attend law school or graduate school in social work and contends that he chose law school because the application process was easier. Yet, his early work in the Navy and as a young practicing attorney strengthened his long-standing interests in the human services. As a Navy tech at Oakland Naval Hospital, his interest in psychology was piqued by his work with patients who had schizophrenia. He worked his way through college driving an ambulance. He did a stint as a legal aid attorney, and later worked as Director of the Legal Center for the Handicapped in Salt Lake City, serving children with handicapping conditions and advocating for their equal right to education.

John's first direct exposure to child protection issues came while employed at Utah Legal Services. He was assigned to represent a teenager with mental retardation who had become pregnant. The local child welfare agency had requested that the court take custody of the unborn baby to allow the agency to place the child for adoption as soon as it was born. John argued that the mother had the right to try to parent before her rights were permanently terminated. He subsequently published an article based on the case in the *Duquesne Law Review*, entitled "Abuse and Neglect of the Unborn: Can the State Intervene?" (1984, Vol. 23, pp. 1–76).

John's experience as an attorney with Utah Legal Services also helped him get his first academic appointment as Associate Professor of Law at the University of Wyoming in 1983. In addition to teaching classes, he operated the university's law clinic. Looking for something in which to specialize, he determined that the topic of legal issues in child abuse was a calling in need of an advocate. At the time, there were no academic lawyers researching and writing about child abuse issues full time, and he saw it as an important niche waiting to be filled. The rest is history. He accepted a position as Professor of Law at the McGeorge School of Law in 1984, and by 1987, the first issue of his book *Evidence in Child Abuse and Neglect Litigation* was published. John describes the motivation for this publication: "If you're going to prove a child is maltreated in court, how do you do it? It involves issues of children as competent witnesses; children's suggestibility; hearsay evidence in children; cross-examination of children; medical evidence; psychological evidence; expert testimony…" (personal communication), which represents only a small listing of the topics covered in several successive editions of *Evidence*. Written clearly and concisely in easily understandable language for a large and diverse audience, the book also reproduces statutory language and legal citations that fully support the content. It is a one-of-a-kind resource, unprecedented in scope, and invaluable to the field.

John's view of current trends in the field is mixed. He contends we have largely figured out issues around suggestibility and interviewing in children—there is a broad consensus that we have greatly improved the quality of interviewing child victims. But, he also contends that this represents a very narrow advance, one that is limited to one legal aspect of child maltreatment intervention. In the broader sense, we've had little impact because we haven't done anything to eliminate poverty, one of the primary causes of child maltreatment.

John also believes that in contrast to the high status attributed to constitutional, business, international, and environmental law, the low status attributed by the legal system to family law in general, and child protection and juvenile justice law in particular, is undermining our effectiveness in protecting vulnerable children. Almost 30 years after John began his work integrating child maltreatment and law, there are still very few full-time professionals or academicians working on these issues. Further, most law schools don't even address issues of child maltreatment in their curricula. Whether students are exposed to this content depends entirely on whether their professor has a personal interest in it. Even more troubling—attorneys who choose to represent children can't get good-paying jobs. John contends that many make even less money than newly hired social workers—widely acknowledged as one of the most underpaid professions on the planet.

John's personal pursuits are as interesting and energetic as his professional ones. He teaches karate, drives fast cars, and was recently engaged and is soon to be married. He apparently is actively involved in all these pursuits, but he mostly talks about his love of cars and racing. The proud owner of a new Porsche, he says his racing skills are steadily improving, and he looks forward to driving in the 25 hours of the Thunder Hill endurance race, the longest sports car race in the world. I can't tell from my scribbled notes whether John says he always finishes "last" or always finishes "fast." Next time you see him at an APSAC event, you'll have to ask him.

Journal Highlights

Tamara Davis, PhD and Beth Ann Rodriguez, MSW

Balancing Child's Best Interest and Right to Self-Expression

Articles 3 and 12 of the United Nations Convention on the Rights of the Child focus specifically on children's rights in "juridical or service delivery context." Article 3 focuses on the consideration of the child's best interests, and Article 12 deals with children's rights to express their feelings and wishes. Since the ratification of this Convention, countries have struggled with how to represent children's views in their court systems while also protecting their best interests.

The authors searched social care and law databases to review and compare models used by several English-speaking countries to appoint and organize child guardians-*ad-litem* and other child representatives in court proceedings. This article focuses only on public law cases. Models compared were from France, New Zealand, Australia, Germany, United States, Scotland, England, Wales, and Northern Ireland. A description along with the strengths and weaknesses of each model are presented.

The different models of child representation offered the following common themes. Children need representation, especially in public legal proceedings. However, unless attorneys receive specialized training, they cannot provide this type of child representation. The dominant view expressed was that a guardian has a dual responsibility to address best interest issues and to accurately convey the child's views, except in the case of older children who have the capacity to clearly articulate their own feelings and wishes. Many court settings tend to create an environment where listening to children's views is often secondary to the adults' views of what is in the best interest of a child. Although consideration of a child's needs and best interest should not be minimized, a more balanced approach is needed.

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The authors conclude that a model that assigns an advocate for a child, whose only responsibility would be to represent the child's views, may enable better representation of the child's perspective in court proceedings and may be more in line with the purpose of Article 12. This would require a major change in judicial and child welfare systems and would present a challenge because it is difficult to predict its impact on the courts' decision making.

Bilson, A., & White, S. (2005). Representing children's views and best interests in court: An international comparison. *Child Abuse Review, 14*(4), 220–239.

Conflicting Goals of Child Welfare and Courts

This article reports the results of a two-stage qualitative study to investigate known effective and problematic child welfare judicial systems in Louisiana. In the first stage of the study, the researchers used systematic observation of courts that were identified as the most effective and least effective in each of the 10 regions of the Louisiana public child welfare system. A Court Observation Protocol was designed to record these observations. The information gathered was used during the second stage of study to guide interviews with judges, attorneys, and child welfare staff.

The researchers sought to answer several questions The first three focused on the role of caseworkers in court hearings, professional communication, and the relationship between court and agency staff. The study found that relationships and communication between agency staff and court staff ranged from respect to disrespect and even antagonism. The fourth question sought to determine which factors impacted situations in which decisions by the court were either in line or not in line with agency case plans and recommendations. The findings indicated that decisions and congruency of case plans were impacted by the quality of information communicated by caseworkers to the courts, and issues of efficiency related to court processes and personnel.

The fifth research question addressed how court and agency interaction either facilitated or created barriers to timely and safe permanency for children. The study identified six factors that could either facilitate or hinder permanency: interest and responsiveness of legal representation; mutual focus on the needs of children; court rules, procedures, and courtroom decorum; the extent to which courts held parents accountable for making required changes; the degree of agency staff follow-through with court orders; and the clear communication of key information by agency staff. Additional factors affecting permanency attainment were obtained through interviews with key informants; these included beliefs and philosophy of participants, agency-court relationships, and the court's view of agency staff competence and diligence.

These study results highlight the considerable conflict between the goals and processes of child welfare agencies and courts. There appears to be a great imbalance in power and authority between two entities that were intended to partner to provide services to children and families. The authors suggest the creation of new legislation to improve the systems, including increasing funding for additional personnel to lower caseloads so caseworkers and judges

can better address the needs of individual children and families. The child welfare system must work to increase the minimum qualifications of its workers in order to increase their competence and professionalism. The authors further suggest more content and skill-based legal training for child welfare staff, and training for judges and court staff in human behavior and issues of child maltreatment, such as separation and attachment and the value of therapeutic interventions.

Ellett, A. J., & Steib, S. D. (2005). Child welfare and the courts: A statewide study with implications for professional development, practice, and change. *Research on Social Work Practice, 15*(5), 339–352.

LGBT Youth Rights in State Care

All youth in state custody have legal rights guaranteed by federal and state law. The authors describe how, unfortunately, these rights are often violated for many lesbian, gay, bisexual, and transgender (LGBT) youth, leaving them unprotected against harassment and violence. At times LGBT youth are subjected to differential treatment and are denied needed services. It is important for child welfare and juvenile justice professionals to understand the significant federal constitutional rights of LGBT youth. Those rights include the right to safety, the right to freedom of speech and expression, and the right to equal protection. LGBT youth also have protections under state laws including nondiscrimination laws in some states.

This article was written by two attorneys and provides an overview of two successful claims made in federal court by youth in the child welfare and juvenile justice systems. In the first case (2003), a transgender young woman placed in an all-boys group home filed a claim against New York City Administration for Children's Services (ACS) because the group home would not allow her to express her female gender identity in her attire. In the second case (2005), three youth identified or perceived as LGBT in a youth correctional center sued the facility, in which they had experienced anti-LGBT abuse and harassment.

Under current laws, youth in child welfare and juvenile justice systems have the "right to safety," including in foster care, defined as the right to be protected against threats to their physical, mental, and emotional well-being. For LGBT youth in care, safety includes protection from harassment or mistreatment because of their sexual orientation or gender identity. To ensure such safety, placement decisions made by child welfare professionals must consider the unique needs of LGBT youth. In addition, LGBT youth have the right to services that help prevent psychological harm. The child welfare profession must work to avoid setting up services for LGBT youth that will expose them to inappropriate or unethical practices.

The authors contend that child welfare professionals must provide LGBT youth with appropriate monitoring, supervision, and case planning. LGBT youth are at higher risk for mistreatment due to prejudice and misinformation, and professionals should be prepared to be in regular contact with these youth to ensure their safety.

Estrada, R., & Marksamer, J. (2006). The legal rights of LGBT youth in state custody: What child welfare and juvenile justice professionals need to know. *Child Welfare, 85*(2), 171–194.

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Kin Care Grandparents Lack Access to Child Welfare Resources

This article describes a qualitative study whereby family life history interviews were conducted with 26 grandparent caregivers (19 with one grandparent and 7 with a married couple dyad) in Montana to explore how their experiences were framed within the context of child welfare law and policy. The authors reported that grandparents are currently raising an estimated 2.4 million children in the United States, primarily outside of the child welfare system. These grandparents are typically older, single, and less educated; have poor health; and live below the poverty level. This study intended to detail the legal and policy dilemmas encountered by these informal grandparent caregivers (IGCs).

After a brief review of policies impacting grandparent caregivers, the authors suggested that some policy efforts aimed at increasing the number of homes available to children have unintentionally resulted in differential treatment of kin and non-kin foster families, specifically leaving kin families without needed financial and service support. These issues were supported by the findings from this study.

Content analysis resulted in four specific legal or policy contexts emerging as barriers to IGCs. First, the lack of a kinship care navigation system left IGCs without information to effectively access needed financial and service resources for their grandchildren. Most grandparents reported having received the children as a result of family crisis. Second, there is a real lack of legal rights for IGCs. This restricted many grandparents from accessing institutions (e.g., health care, education) critical to meeting the children's needs. It also raised concerns that biological parents could retrieve their children at any time, regardless of what would be in their best interest. Third, IGCs expressed a fear and distrust of the child welfare system, believing they were always at risk of losing their

Cont'd on page 30

grandchildren to the system. Finally, disparities between informal and formal kinship care policies have created a tiered system in which non-kin foster families have access to greater amounts of financial and service resources. Many IGCs have depleted their private resources to care for the grandchildren who came to them unexpectedly, and they, too, are in need of system support to ensure the well being of their grandchildren.

The authors conclude by making several policy recommendations, including further state adoption of Kinship Navigator systems, further passage of medical and educational consent laws, implementation of de facto custodian policies, further study to examine the feasibility of expanding subsidized guardianship programs, broadening definitions of foster care licensing standards, provision of child care assistance, respite care, and mental health services to grandparent caregivers.

Letiecq, B. L., Bailey, S. J., & Porterfield, F. (2008). 'We have no rights, we get no help': The legal and policy dilemmas facing grandparent caregivers. *Journal of Family Issues, 29*(8), 995–1012.

Consumer Impressions of CASA Volunteers

This article reports the results of a mixed method exploratory study that sought to examine consumer satisfaction with CASA volunteers and determine any differences between three consumer groups: families, child welfare workers, and legal professionals (judges and attorneys). The researcher mailed a cross-sectional survey to 2,465 consumers from 17 different states; 742 of the surveys were returned for a 34% overall return rate. The parent return rate was the lowest at 22%; surveys were returned by 50% of the child welfare workers, and 55% of the judges.

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Judges and attorneys expressed the most satisfaction with the work of CASA volunteers, while child welfare workers and families expressed the least satisfaction. Most of the mean scores were above 3.0 across groups. However, three items had an overall average score of 2.9 across participant groups: (1) Volunteer CASAs/GALs provide an objective opinion (all groups), (2) the volunteer CASA/GAL visits the children regularly (workers and parents only), and (3) the volunteer CASA/GAL understands the child welfare system (all groups). One survey finding suggested that some child welfare workers and parents believed that CASA volunteers are biased against parents and the child welfare system, which could account for the previous survey scores. The item "I understand the role of the CASA/GAL volunteer" consistently received the highest score, indicating that all groups understood the role of CASA volunteers.

The researcher suggested that the qualitative findings offer the most value gained from the study. These data provide information to CASA programs, such as examples of activities that CASA volunteers perform that make a difference to children. Overall, the author concluded that findings from this study point to the need for more evaluation of training for CASA volunteers and their need for a better understanding of the complexity of the issues related to work with children and their families.

Litzelfelner, P. (2008). Consumer satisfaction with CASAs (Court Appointed Special Advocates). *Children and Youth Services Review, 30*(2), 173–186.

Comparing Mandatory Reporting Laws of Three Countries

This article systematically reviewed and compared child protection mandatory reporting laws and policies of three countries. Legal analysis was conducted on each country's current legislation, obtained from official government online legislative databases. Although the authors noted that laws are often vague and open to reporter discretion, they also found common elements across the countries, four of which are detailed in their review: (1) designation of persons required to report, (2) types of abuse and neglect requiring a report, (3) degrees of harm required before the duty to report is triggered, and (4) stipulations around reporting only past abuse or neglect and whether reports are also required for suspected risk of future abuse or neglect.

Designated reporters typically include professionals most likely to have routine contact with children as a function of their work. This is the approach most often taken in the United States. An alternative approach, used in most of Canada and in 18 U.S. states, is to require all citizens to report abuse and neglect. Only Western Australia was found to have no mandated reporting legislation. Along with neglect, mandated reporting by most jurisdictions across countries included three primary categories of abuse: physical, sexual, and psychological abuse.

Laws differed in the extent of suspected harm required to trigger the duty to report neglect and types of abuse. U.S. laws varied among several approaches to physical abuse, and all countries generally mandate reporting any suspected sexual abuse. Similarly, psychological abuse typically requires there be substantial functional impairment before reporting, and some jurisdictions specify the types of injuries required to report. Terms surrounding

mandated reporting of neglect were found "ambiguous" except for medical neglect. The authors found that poverty-based neglect is usually expressly excluded from mandated reporting in the United States. Finally, the review found clear differences across and within countries related to mandated reporting of past versus future abuse. Some jurisdictions require reporting only past abuse while others require both past and potential for future abuse. Although legislation within the United States often requires reporting of both, the authors again found that ambiguous language made it difficult to distinguish between obligations for reporting. The authors suggest that governments be aware of the different approaches to legislating mandated reporting, attempt to clarify language, and provide training to mandated reporters to ensure reporting requirements are understood and followed.

Matthews, B., & Kenny, M. C. (2008). Mandatory reporting legislation in the United States, Canada, and Australia: A cross-jurisdictional review of key features, differences, and issues. *Child Maltreatment, 13*(1), 50–63.

Self-Perceived Rights of Maltreated Children

Recent research about children's thinking and understanding of their rights has primarily focused on children who have not been maltreated. The authors of this article contend that maltreated children's conceptions of their rights may have enormous implications for their welfare and development. Their rights have already been violated in the maltreatment that brought them into care and they continue to be more vulnerable because of their living situations.

This study, conducted in Toronto, Canada, focused on the views and attitudes of 100 maltreated children about their rights to nurturance and self-determination. All children were 10 to 18 years old and in permanent state custody, residing either in foster homes or group homes. The researchers had two goals: (1) learn the children's perceptions of rights to nurturance and self-determination and compare them with those of other children in previous studies, and (2) determine whether children's experiences of maltreatment and placement in out-of-home care influenced their perceptions of their rights.

Each child participated in a 45-minute semi-structured individual interview divided into three segments. The study found that even though maltreated children living in state care have conceptions of rights that are similar to those held by children who have not been maltreated, their understanding of rights was informed by particular concerns and perspectives emanating from their individual circumstances. The rights they identified are not only those rights they have experienced but also those rights they desire to experience. Their conceptions of their rights also appeared to be shaped by their present rather than historical circumstances. The children in the study appeared to focus greatly on rights related to protection and access to basic needs, which indicates that these rights are still very relevant to them. The authors were encouraged by the findings, which suggest that educational materials relative to children's rights have been made available to the children in their child welfare settings.

Peterson-Badali, M., Ruck, M. D., & Bone, J. (2008). Rights conceptions of maltreated children living in state care. *International Journal of Children's Rights, 16*(1), 99–119.

Child Sexual Abuse Case Resolution Time Periods Don't Meet Standards

Citing detrimental mental health effects of lengthy court experiences on children, this study sought to help fill a gap in knowledge related to the length of time it takes to prosecute child sexual abuse cases. The authors compared the length of prosecution time and explored potentially related predictive case characteristics for child sexual abuse cases among three sites within one metropolitan county. They additionally compared case resolution time with benchmarks set by the American Bar Association (ABA).

The study sample across all three sites included children of varying ages who were primarily female and white. A little over half of the children's sexual offenders were family members. The majority of children in the sample had disclosed the incident, and most cases had additional evidence available. About half of the offenders were arrested initially, and the majority of all offenders were charged with aggravated sexual assault.

The findings indicated that after offenders were charged, it took 31 to 60 days to obtain an indictment in 60% of the cases, with 85% of the cases reaching indictment within 90 days. Resolution was obtained within 180 days in 20% of the cases, while it took over 2 years in 30% of the cases. Overall, total processing time (from charge to resolution) took over 2 years in 36% of the cases, with only one third of cases being completely processed within a year. The authors noted that these findings were grossly inconsistent with ABA standards and state statutes of 180 days and one year, respectively, for general felony criminal prosecution. The study found little relationship between case characteristics and time to resolution with one exception. In cases where an initial arrest had been made, case resolution was significantly faster.

The authors indicate that overall their findings for sexual abuse cases are similar to findings in other studies on child abuse. They express grave concern for the length of time it takes to resolve child abuse cases and suggest that the field give some priority to gathering relevant data to effect necessary policy changes. They further suggest that more research is needed to understand how the time to resolution impacts the well-being of children.

Walsh, W. A., Lippert, T., Cross, T. P., Maurice, D. M., & Davison, K. S. (2008). How long to prosecute child sexual abuse for a community using a children's advocacy center and two comparison communities? *Child Maltreatment, 12*(1), 3–13.

About the Authors

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Washington Update

Thomas L. Birch, JD
National Child Abuse Coalition

Congress Passes Foster Care Reform Legislation

For the first time in over 10 years, Congress has passed significant federal child welfare reform legislation to improve protection and promote permanent placements for children in foster care. The House passed the Fostering Connections to Success and Increasing Adoptions Act (H.R. 6893) by voice vote on September 17, and the Senate approved it by unanimous consent on September 22. This legislation focuses on extending support for relative caregivers, improving outcomes for children in foster care, providing tribal access to foster care and adoption support, and increasing incentives for adoption. President Bush signed the measure into law on October 7.

The chief House sponsor of the legislation, Jim McDermott (D-WA), Chairman of the Ways and Means Subcommittee on Income Security and Family Support, noted that he looked forward to developing an expanded child welfare measure in the coming legislative session with a new Congress. Advocates anticipate the opportunity to develop legislation that would promote investments in prevention and treatment services by allowing states to redirect funds that they now lose (e.g., for reducing foster care caseloads) to support the full range of services aimed at preventing child abuse and neglect.

The final child welfare reform measure approved by Congress and signed by the President into law would do the following:

- increase the incentives for states to secure adoptive homes for children in foster care, with a special incentive for the adoption of older children and children with disabilities;
- allow adoption subsidies to all children in foster care by "de-linking" eligibility for assistance from the outdated Aid to Families with Dependent Children (AFDC) income qualification standards, ensuring that all children with special needs are eligible for adoption assistance (not just those from a family eligible for the AFDC program, which no longer exists);
- provide federal assistance subsidies not available under current law for children to be cared for by their own relatives, giving families the resources needed to create a permanent home for many children—taking some 15,000 children out of the foster care system;
- create New Family Connection Grants to support Family Group Decision-Making meetings and other activities aimed at involving extended families in better caring for their children;
- offer opportunities for older children who might no longer be eligible for foster care services because of their age, by allowing youth who turn age 18 in foster care without permanent families to remain in care to pursue education, training, or work up to the age of 21 with continued federal support to increase their opportunities for successful transition to independent adulthood; and
- extend support for American Indian and Alaska Native children by giving Indian tribes the same direct access to federal funding for foster care and adoption services that states currently receive.

The child welfare legislation was authored in the Senate by Sen. Max Baucus (D-MT), chair of the Finance Committee, Sen. Charles Grassley (R-IA), and Sen. Jay Rockefeller (D-WV). House authors were Rep. McDermott (D-WA) and Rep. Jerry Weller (R-IL).

Congress Prepares Omnibus Funding for 2009

With the 2009 fiscal year looming at the end of September, Congress chose to pass an omnibus continuing appropriations bill before adjourning for the year, carrying FY09 spending at the 2008 funding levels for most federal agencies well into the 2009 calendar year. Extending the date for the continuing resolution into March 2009 allows Congress to postpone any budget negotiations until a new President takes office. Democratic leaders in the House and Senate are opposed to calling legislators back for a lame duck session to deal with budget issues after the November 4 elections.

By the August 2007 recess, the House had passed all 12 money bills, and the Senate Appropriations Committee had approved all funding measures for floor consideration. This year, Congress had not cleared a single one of the 12 regular appropriations bills for the fiscal year starting October 1. Only one appropriations bill was voted on the House floor—the funding for military construction and veterans affairs—and none was voted in the Senate.

The Democratic leadership on Capitol Hill has been eager to avoid a replay of last year's battles over the budget's bottom-line spending. Early in 2008, President Bush had made known his intention to veto any spending bill with total dollars above the amounts proposed in the administration's FY09 budget plan sent to Congress in February. A budget stalemate between Congress and the administration was created by the insistence of legislators to set their own spending priorities, as well as a continuing debate in Congress about offshore oil drilling that was tied to spending legislation. This left the appropriations bills far from enactment with the new fiscal year drawing closer.

A scheduled mark-up of the Fiscal 2009 Labor-HHS-Education Appropriations Bill before the House Appropriations Committee in June was abruptly adjourned when Republicans tried to force the committee instead to take up the funding bill for the Department of the Interior with plans to offer a series of amendments that they intended to use to lower fuel prices. Since then, Republicans effectively halted the budget process through their efforts to use the appropriations bills to force politically charged votes on offshore drilling and other energy policy proposals aimed at addressing the issue of rising gasoline prices.

A continuing resolution with a lift on the ban on offshore drilling settled the issue for the time being and allowed legislators to go home to campaign for the November elections.

House Votes Teen Residential Treatment Protection

The House of Representatives on June 25 voted 318–103 to pass H.R. 5876, the Stop Child Abuse in Residential Programs for Teens Act of 2008, authored by Rep. George Miller (D-CA) to address the problem of abuse and fatalities in residential treatment programs for teens by establishing standards aimed at preventing child maltreatment in these programs. The measure, which was not taken up by the Senate, is expected to see action again early on the legislative agenda in the new Congress next year.

The bill would set standards, with enforcement provisions, to prevent child abuse and neglect in teen residential programs, including therapeutic boarding schools, wilderness camps, boot camps, and behavior modification facilities. Although residential treatment facilities may provide safe and effective services designed to help children with extreme behavioral problems, including substance abuse and mental health problems, many exist without any state monitoring or regulation.

The legislation would create new national safety standards for private residential programs enforced by HHS and the states, prevent deceptive marketing by residential programs, and hold programs accountable for violating the law. Through provisions added to the Child Abuse Prevention and Treatment Act (CAPTA), states *would be required to set similar standards of protection and conduct unannounced site inspections at these facilities at least once every 2 years.*

Prior to the House action approving the bill, HHS Secretary Michael Leavitt wrote to Congress expressing the administration's opposition to the Stop Child Abuse in Residential Programs for Teens Act, objecting to an expanded role for the Administration for Children and Families proposed in the measure, which would require federal investigations of child abuse and neglect and child fatalities at these programs.

Leavitt also raised the concern that, by adding additional responsibilities for states through the Child Abuse Prevention and Treatment Act (CAPTA), states might reject the basic state grant funds rather than comply with the new requirements.

Hearings held in April by the House Committee on Education and Labor, chaired by Rep. Miller, focused on the results of undercover work carried out by the Government Accountability Office (GAO) into the allegations of child abuse and deceptive marketing at residential programs for teens, which are attended by tens of thousands of U.S. teenagers with the expectation of help for behavioral, emotional, or mental health problems.

The GAO investigation, requested by the Miller committee, built upon a report delivered to Congress in 2007 regarding allegations of abuse and death in private residential programs. Investigators examined the facts and circumstances surrounding cases in which a teenager died or was abused while enrolled in a private program. The investigators concluded that ineffective management and operating practices, in addition to untrained staff, contributed to the death and abuse of youth enrolled in the programs. The use of physical restraint figured prominently in three cases, with one or more staff members physically holding down a youth.

While states might license and monitor residential facilities, GAO's testimony revealed oversight gaps reported by state agencies that place youth in these facilities. Some types of facilities are exempt from state licensing requirements, and state agencies reported an inability to conduct yearly on-site visits to facilities because of insufficient staff. While some facilities are under federal purview, and several receive Medicaid or federal juvenile justice funding, federal oversight is ineffective, according to the GAO report, and federal agencies do not always even include these residential facilities in their oversight reviews.

The two GAO reports presented at the April hearing are available in the following two reports: *Residential Programs: Selected Cases of Death, Abuse, and Deceptive Marketing* (GAO-08-713T) and *Residential Facilities: State and Federal Oversight Gaps May Increase Risk to Youth Well-Being* (GAO-08-696T).

House Panel Approves Home Visiting Bill

In June, the House Education and Labor Committee approved by voice vote HR 2343, the Education Begins at Home Act, introduced by Rep. Danny Davis (D-IL) and Rep. Todd Platts (R-PA) to authorize funding dedicated to expanding access to early childhood home visitation programs. The Education Begins At Home Act would provide grants to states to establish or expand voluntary, early childhood home visitation services to pregnant women and parents of young children.

During the committee's consideration of the legislation, two amendments offered were defeated in voting largely along party lines with the Democrats prevailing. Rep. Mark Souder proposed targeting early childhood home visitation services to families with incomes at or below the poverty line, or to families living in "communities in high need of home visitation services," such as those with high proportions of single-parent households, high rates of teen pregnancy, high incidences of child abuse, high incidences of drug abuse, low student achievement, high rates of children with developmental delays or disabilities, or large concentrations of military families.

The second amendment offered by Rep. Randy Kuhl (R-NY), which also failed to pass, would have limited home visitation services to "individuals who are citizens, or legal permanent residents, of the United States."

It is expected that the home visiting measure, which was not scheduled for floor vote in the House, will be reintroduced in 2009 for early action in the next legislative session.

About the Author

Since 1981, Thomas Birch, JD, has served as legislative counsel in Washington, D.C., to a variety of nonprofit organizations, including the National Child Abuse Coalition, designing advocacy programs, directing advocacy efforts to influence congressional action, and advising state and local groups in advocacy and lobbying strategies. Birch has authored numerous articles on legislative advocacy and topics of public policy.

Call for Nominations for the APSAC Board of Directors

Jon Conte, Chair of the Nominations Committee of APSAC, invites APSAC members to nominate professionals to run for election to the APSAC Board for a 3-year term beginning January 2009. Please address letters of nomination to Jon Conte at: contej@u.washington.edu, or Box 1459, Mercer Island, WA 98040. Letters should describe the nominee's discipline, areas of child maltreatment practice, and expertise. The Nominations Committee will select a final slate of candidates that reflects regional and professional variations and maintains a diverse board of directors. Questions about the nomination process can be directed to Jon at contej@u.washington.edu.

APSAC Institutes Slated for January in San Diego

APSAC's Advanced Training Institutes will be held in conjunction with the 23rd Annual San Diego International Conference on Child and Family Maltreatment, on January 26, 2009. APSAC's Advanced Training Institutes offer in-depth training on selected topics. Taught by nationally recognized leaders in the field of child maltreatment, these seminars offer hands-on, skills-based training grounded in the latest empirical research. Participants are invited to take part by asking questions and providing examples from their own experience. Institutes during the San Diego conference include the following:

Advanced Forensic Interviewing Techniques for Children: The Cognitive Interview and Beyond
Julie Kenniston, LSW and Chris Ragsdale, LCSW

A Medical-Legal Update on Abusive Head Trauma in Infants and Young Children
Robert N. Parrish, JD, Vincent J. Palusci, MD, and Lori D. Frasier, MD

Skill-Building Training in Spanish Forensic Interviewing
Toni M. Cardenas, LCSW, Caridad R. Moreno, PhD, and Linda Cordisco Steele, MEd, LPC

Details and registration materials are available on the APSAC Web site under the Events & Meetings tab, Event List. APSAC members: Please remember to log in with your username and password to save time during registration.

APSAC Library and Career Center Added as Web-Site Tools

This past summer, APSAC added two new services to its Web site at www.apsac.org.

The *APSAC Advisor Library*, powered by OmniPress, provides you with direct access to the vast amount of knowledge that has been published in the association's quarterly news journal, the *APSAC Advisor*. The *APSAC Advisor Library* is exclusively available to APSAC members. Simply log in with your username and password and visit the Members Only section for access.

The APSAC Career Center, powered by JobTarget, was constructed to help connect our members and associates with new employment opportunities. Visit the Career Center on the APSAC Web site to begin your job search or employee recruitment process. Job seekers will also have access to tools designed to help them be successful. The Career Center is open to APSAC members and the public. Members receive significant discounts when posting job openings. Resume posting is free.

APSAC Forensic Interview Training Clinics Scheduled

Consistent with its mission, APSAC is presenting two Forensic Interview Training Clinics during the first half of 2009 to build the skills of professionals responsible for conducting investigative interviews with children in suspected abuse cases. Interviewing alleged victims of child abuse has received intense scrutiny in recent years and increasingly requires specialized training and expertise.

These comprehensive clinics offer a unique opportunity to participate in an intensive 40-hour training experience and to have personal interaction with leading experts in the field of child forensic interviewing. Developed by top national experts, APSAC's curriculum emphasizes state-of-the-art principles of forensically sound interviewing, including a balanced review of several models.

The 2009 Clinics will be held March 9–13 in Virginia Beach and June 1–5 in Seattle. Details and registration are available on the Web at www.apsac.org.

APSAC Committees

The following list names current APSAC committees, subcommittees, and task forces, as well as their current chairs or co-chairs. If you are interested in volunteering for a committee, please contact the APSAC office at 877.402.7722.

Awards, Viola Vaughn-Eden
Cultural Diversity, Sarah Maiter
Finance, Jon Conte
Long Range and Strategic Planning (ad hoc), Jon Conte & Viola Vaughan-Eden
Membership, Arne Graff
Nominations, Jon Conte
Operations, Pat Lyons
Prevention, Vince Palusci
Professional Education, Rob Parrish
Publications, Elissa Brown
State Chapters, Kathy Johnson
Task Force on Membership Dues and Structure, Arne Graff, Michael Haney & Pat Lyons
Underserved Disciplines (ad hoc), Arne Graff & Susan Samuel

APSAC Colloquium This June in Atlanta

APSAC will host its 17th Annual Colloquium June 17–20, 2009, at the Omni at CNN Center in Atlanta, Georgia.

The Colloquium will feature Advanced Training Institutes, the Cultural Institute, and nearly 100 seminars from which to choose. In addition, the Colloquium offers ample networking opportunities, poster presentations, exhibits, and an awards ceremony.

Seminars are designed primarily for professionals in mental health, medicine and nursing, law, law enforcement, education, prevention, research, advocacy, child protection services, and allied fields. The sessions will address all aspects of child maltreatment, including prevention, assessment, intervention and treatment with victims, perpetrators, and families affected by physical, sexual, and psychological abuse and neglect.

Mark your calendar today and plan to attend the 2009 APSAC Colloquium.

APSAC Members Invited to Assist Campbell Collaboration's Child Welfare Interest Group

The Social Welfare group of the Campbell Collaboration has recently formed a child welfare interest group to help promote the production of systematic reviews of research on topics that are highly relevant to child

welfare practice. Systematic reviews are methodologically rigorous syntheses of evidence using explicit and transparent search procedures and, where appropriate, meta-analysis (statistical synthesis of findings from multiple studies). The child welfare interest group is being led by Trudy Festinger (New York University), Aron Shlonsky (University of Toronto), and Judith Rycus (North American Resource Center for Child Welfare). As part of its objective, the group is seeking input from child welfare practitioners, policy makers, and academics to help develop a comprehensive list of potential systematic review topics. Specifically, the group is inviting APSAC members to help identify essential or "burning" practice and policy questions that remain unanswered and could potentially be answered by a systematic review.

Feel free to E-mail Judith Rycus, Associate Editor of the *APSAC Advisor* (JSRycus@aol.com), with your thoughts about the critical practice issues facing the child welfare field and topics that would benefit from a stronger empirical base. Please provide a one- or two-sentence explanation of why the topic is important. Additionally, if you are aware of similar surveys that have previously been conducted, please send information and/or Web links to Dr. Rycus. Researchers who are interested in learning more about the child welfare interest group or the Campbell Collaboration can contact Dr. Shlonsky (Aron.Shlonsky@utoronto.ca) or any of the committee members. More information on the Campbell Collaboration can be found at www.campbellcollaboration.org.

CONFERENCE CALENDAR

January 26–30, 2009
23rd Annual San Diego International Conference on Child and Family Maltreatment
San Diego, CA
E-mail: lkwilson@rchsd.org; jnelson@rchsd.org, or Visit: www.chadwickcenter.org

January 30, 2009
CALSWEC California Child Welfare Evidence-Based Practice Symposium
San Diego, CA
E-mail: barrettj@berkeley.edu

February 23–25, 2009
4th International ACTION Conference on Post Adoption Services
Cambridge, MA
E-mail: katherinew@kinnect.org, or Visit: www.kinnect.org/training.html#ACTION

February 23–25, 2009
2009 CWLA National Conference: Children Today...America's Future!
Washington, DC
Visit: www.cwla.org/conferences/conferences.htm

March 8–10, 2009
2009 BACW Annual Conference
Long Beach, CA
E-mail: registrations@icycc2009.com, or Visit: www.blackadministrators.org

March 23–26, 2009
25th NCAC National Symposium on Child Abuse
Huntsville, AL
E-mail: mgrundy@nationalcac.org, or Visit: www.nationalcac.org

March 30–April 4, 2009
17th National Conference on Child Abuse and Neglect
Atlanta, GA
E-mail: 17conf@pal-tech.com, or Visit: www.pal-tech.com

April 6–7, 2009
Children's Justice Conference
Seattle, WA
E-mail: jamt300@dshs.wa.gov, or Visit: www.dshscjc.com

April 19–22, 2009
27th Annual National American Indian Conference on Child Abuse and Neglect
Reno, NV
E-mail: isla@nicwa.org, or Visit: www.nicwa.org

May 3–9, 2009
39th Annual National Foster Parent Association Education Conference
Reno, NV
E-mail: info@NFPAonline.org, or Visit: www.nfpainc.org

May 14–16, 2009
2009 Biannual Center on Children and the Law National Conference
Washington, DC
E-mail: childlaw2009@abanet.org, or Visit: www.abanet.org/child/

May 26–29, 2009
9th Triennial International Child and Youth Care Conference
Fort Lauderdale, FL
E-mail: registrations@icycc2009.com, or Visit: www.icycc2009.com/abouttheconference.html

June 2–5, 2009
2009 American Humane's Family Group Decision-Making Conference
Pittsburgh , PA
E-mail: info@americanhumane.org, or Visit: www.americanhumane.org/site/PageServer?pagename=pc_fgdm

June 17–20, 2009
17th Annual APSAC Colloquium
Atlanta, GA
E-mail: apsaccolloquium@charter.net, or Visit: www.apsac.org

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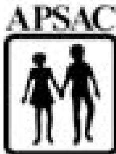

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