KidsCounsel®

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a newsletter for attorneys representing children in Connecticut

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Honorable Barbara Quinn

Chief Adminstrative Judge, Superior Court for Juvenile Matters

Vision for the Future – The Juvenile Court in Connecticut

At a recent Center for Children's Advocacy KidsCounsel Training Seminar, held at University of Connecticut School of Law on November 8, 2005, Honorable Barbara Quinn, Chief Administrative Judge, Superior Court for Juvenile Matters, presented her vision for the Juvenile Court in Connecticut. Her thoughtful presentation is reprinted here in its entirety.

The title of this essay makes me slightly uneasy as a judge's focus must of necessity be on specific cases and the unique set of facts surrounding each such case. As jurists, we are required to make impartial decisions about the matters presented to us and such a task-specific view describes what is at the heart of the court's daily work. At some level, all views of what the court is and what it should be in the future must be anchored in that central daily reality and not lose sight of its importance.

But judges and others in the legal community know that the processes by which the judicial system addresses specific cases can have as much impact on the people involved as the actual outcome itself. Some of the system's impact relates to how people personally experience the court process and how they are treated by staff. Much of it is also related to how well they understand the process to which they are subjected. The hearings in which individuals before the court participate often result in significant decisions about their future. When participants fail, for whatever reason, to understand why they are in court, the resulting decisions can have catastrophic and debilitating consequences. In addition, some of the system's impact on participants is related to the management mechanisms and processes the system uses to make sure individual cases proceed in court in an orderly fashion to a timely conclusion. And some of the impact of the system in the Juvenile Court is connected to the various agencies with which the juvenile court must work and whose staff carry out much of what the court determines to be appropriate in an individual case.

In any discussion of the future, it is always instructive to look at the outset at the past. And in the last ten years, there have been some enormous changes in the juvenile system in Connecticut. A review of one specific change, how removal hearings or orders of temporary custody are conducted by the court, is instructive when thinking about how process changes can result in dramatic substantive change without the addition of significant financial resources or major restructuring of the system which exists. Through statutory change, effective on 10/1/1998, each parent is now entitled to a timely challenge to the state's rights through DCF to intervene in their family and remove their children from their care. Had I been asked, given the system as it existed prior to that change, whether the juvenile court could have provided to each parent a meaningful evidentiary hearing with ten days of the time the case first came to court, I would have said, "impossible."

It is fortunate that the creative minds that tackled this legislative sea change did not take as negative a view at the time. Prior to the effective date of the act, the Judicial Branch responded in a meaningful way to those directives. And now, Connecticut is one of only a few states that provide an early right to an evidentiary hearing around removal issues. The response was to set up an OTC protocol which provided for the early intervention of Court Services Officers to meet with counsel at the time the case first came to court. The court also developed lists of standby counsel to meet with parents on that day to represent them and advise them. Each parent then had a right to contested hearing on the removal issues within 10 days. Where the courts

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Center for Children's Advocacy seeks Staff Attorney, Child Abuse Project

Description

Applications are being accepted for the position of Staff Attorney in the Child Abuse Project at the Center for Children's Advocacy, a non-profit organization affiliated with the University of Connecticut School of Law and dedicated to the enhancement of the legal rights of poor children.

Responsibilities include individual legal representation in the areas of abuse and neglect, special education, and mental health, as well as systemic and legislative advocacy on child abuse issues. The attorney will be expected to supervise law students; provide pre-service training and mentoring to attorneys new to juvenile court practice; and participate in the Center's special projects such as the KidsCounsel Training Program and Interdisciplinary Teams with law, medical, and social work professionals.

Qualifications

The Center is seeking an attorney who has a demonstrated commitment to providing quality legal representation for children and advocacy through public policy as well as traditional litigation. Knowledge of education law and child welfare law preferred as well as some management experience. Applicant must be able to take initiative and work independently. A minimum of three to five years of related legal experience is required.

Salary/Benefits

Salary and benefits are commensurate with experience and are within the general range of salaries for public interest organizations. CCA is an equal opportunity employer.

To Apply

Send cover letter, detailed resume, and two references *immediately* to:

Martha Stone, Executive Director
Center for Children's Advocacy, Inc.
University of Connecticut School of Law
65 Elizabeth Street, Hartford, CT 06105

mstone@law.uconn.edu

*CCA is accepting applications for **summer interships for law students.***

CCA has two internships available.

For information about the summer internship at CCA, please contact Ann-Marie DeGraffenreidt at 860-570-5327 or adegraff@kidscounsel.org.

For information about the summer internship with CCA's Medical-Legal Partnership Project, please contact Gladys Idelis Nieves at 860-545-8581 or gnieves@kidscounsel.org.

Connecticut Campaign 4 Youth Justice:
Keep 16 and 17 Year Olds Out of Adult Criminal Justice System

Campaign 4 Youth Justice

Connecticut is one of only three states where youth aged sixteen and seventeen are automatically charged as adults, regardless of how minor the offense. There are approximately 200 sixteen and seventeen year old boys incarcerated at Manson Youth Institution, who are incarcerated with adults aged eighteen through twenty-one. There are up to five girls incarcerated at Niantic at any given time, who are incarcerated with adults of any age.

Serious consequences of youth being tried and sentenced as adults

Youth in the adult criminal justice system receive an adult criminal record, may lose access to financial aid for higher education, and, may lose the right to vote before even having a chance to exercise it. Youth in the juvenile justice system are not at risk of losing financial aid or the right to vote.

Dangers of incarcerating sixteen and seventeen year olds with adults

When youth are incarcerated with adults, consequences can be life threatening. Research shows that under these circumstances, youth are at greater risk of assault, rape, and death.

Youth incarcerated with adults are more likely to re-offend faster, more frequently and more violently than youth who remain in the juvenile justice system. This data undermines the belief that treating youth as adults will reduce crime committed by youth.

Expand Jurisdiction of Superior Court Juvenile Matters

In 2003, the Connecticut General Assembly passed a statute creating a commission to consider what would be required to expand the jurisdiction of Superior Court Juvenile Matters (SCJM) to include sixteen and seventeen year olds. Data gathered by the Commission revealed a significant gap in services for youth within the adult criminal justice system that still exists. The report was submitted to the legislature in 2004, but the legislature never implemented the Commission's recommendations.

The Connecticut Juvenile Justice Alliance (Center for Children's Advocacy is a founding member) has agreed to work with organizations in Wisconsin and Virginia as one of three states in partnership with the national Campaign 4 Youth Justice (C4YJ). The goals of the partnership are to increase the age of jurisdiction of SCJM to include sixteen and seventeen year old youth, and to assure development of a complete continuum of services to address the needs of this population once they are again under the jurisdiction of SCJM. National partners in the campaign include the Youth Law Center, the Justice Policy Institute, the National Network of Juvenile Justice Coalitions, the National Juvenile Justice & Delinquency Prevention Coalition and the Coalition for Juvenile Justice.

Connecticut campaign

The Connecticut campaign includes community organizing, youth organizing, legislative advocacy, and research. The research component involves interviews with youth incarcerated in the adult correctional system in Connecticut, adults who were incarcerated before they turned eighteen, and their families. The goal of the interviews is to understand how youth are treated in Connecticut's adult correctional facilities, what services youth receive while incarcerated and how they feel about being incarcerated with adults.

The Campaign will host a series of informative breakfast meetings throughout the state to raise awareness and enlist support among community leaders. Upcoming meeting dates include January 10 in New Haven.

If you would like to be involved in Connecticut's Campaign 4 Youth Justice, please contact Abby Anderson at the Connecticut Juvenile Justice Alliance (203) 579-2727.

– *Ann-Marie De Graffenreidt, JD,*
Director, TeamChild Project, Center for Children's Advocacy

Important Changes for Adolescents at Manson Youth

Concerns About Programming Prompt Changes to Programs and Services

During this past summer, child advocates strengthened their cries for sweeping changes at the John R. Manson Youth Institute in Chesire, Connecticut. Manson Youth Institute is a high security prison that houses offenders that range in age from 14 to 21 years old. Following multiple visits to the facility, Martha Stone, Executive Director of the Center for Children's Advocacy, in a letter to Gonzalez Warden and Correction Commissioner Lantz detailed concerns that the programming does not adequately respond to the mental, emotional, and educational needs of the youth and adolescents. Tragically, days later the suicide of a 17 year old adolescent at the Manson Youth Institute loudly proclaimed the desperate need for retailoring of the programs, protections, and services provided to the population.

Immediate changes were implemented in the programming of the facility in the wake of this tragedy, and in response to the Center's letter. Specifically, additional staff members were hired to meet the state requirements with regard to educational instruction. An increase was made in recreational activities, and the orientation period for incoming adolescents was revised to reduce the time that the young men spend in isolation.

Interagency Collaboration to Recommend Steps to Protect Rights of Incarcerated Youth

Another notable step was taken towards addressing the needs of the adolescents and young adults at Manson Youth Institute with the formation of an interagency collaboration comprised of representatives from agencies and other groups involved with the promotion of the needs of youth and the protection of their rights. The interagency collaboration was formed to reduce the communication barriers between agencies in the state involved with youth, and to protect the rights of children and adolescents. The recommendations from the interagency collaboration are expected to be distributed within the next few weeks. It is hoped that the recommendations will aid in drafting legislation to address the unmet needs of the population of youth and adolescents at Manson Youth Institute.

– *Johanna Francis, Law Student Intern,*
Center for Children's Advocacy

Changes in Eligibility for HUSKY

Husky Update

In June 2005, the Connecticut Legislature made several administrative changes to the Husky Program. The legislature reduced the period of Transitional Medical Assistance (TMA) from two years to one year. All families with TMA on July 1, 2005 will maintain their Husky benefits for no more than 12 months.

Presumptive eligibility for Husky A children was restored effective July 1, 2005. Expedited eligibility for pregnant women remains in effect, however, the Department of Social Services has up to five days, versus 24 hours, to act on "non-emergency" applications submitted by pregnant women.

The new bill also orders the Department of Social Services (DSS) to institute a 12-month health plan lock-in period for clients in Husky A or B beginning on July 1, 2005. Clients are allowed to claim good cause for changing plans before the end of the year.

The bill also sought to increase premiums for families on Husky B. Husky B provides state-subsidized health insurance to low-income children who do not qualify for Husky A, i.e. Medicaid. However, the Connecticut General Assembly went into special session on November 2, 2005 and approved a late version of the bill addressing cost-sharing requirements for those receiving insurance under the state-subsidized Husky B plan.

Under the revised bill, DSS is prohibited from imposing premiums on Husky B Level 1 families, families with incomes between 185 % and 235% of the federal poverty level (FPL). Husky B Level 2 families, families with incomes over 235% and under 300% of the FPL, will pay the old premium of $30 per child with a maximum of $50 per family.

The bill also eliminates a requirement that DSS increase premiums for higher-income families and codifies the premium levels that apply to this group. Moreover, the bill requires the state to pay refunds – totaling $2.2 million – to any families that fall into these two income categories who paid the new or higher premiums, which took effect October 1, 2005.

This bill is effective upon passage.

– *Gladys Idelis Nieves, Esq.,*
Senior Staff Attorney, Medical-Legal Partnership Project,
Center for Children's Advocacy

Connecticut to Participate in National Teen Dating Violence Awareness Week: February 6 -10, 2006

Growth in Teen Dating Violence

Teen dating violence is a serious and growing problem which is finally getting some significant state and federal attention. One in five female high school students report being physically and/or sexually abused by a partner. Over forty percent of surveyed male and female high school students reported having been victims of dating violence at least once.[1] The goal of the national, and Connecticut based, Awareness week is to raise the awareness of this problem and take preventative action.

The American Bar Association (ABA) Steering Committee on the Unmet Legal Needs of Children has launched a teen-driven initiative to combat the incidence and cultural acceptance of teen dating violence in the United States. Last Fall the ABA invited high school students from across the country to a TDVPI Summit in Washington, DC where they developed a national "toolkit" to guide schools' awareness-raising activities.

With the help of US Senator Mike Crapo (Idaho), they have succeeded in establishing the Awareness Week. National Teen Dating Violence Awareness and Prevention Week is recognized and supported by members of the United States Congress as a week of nation and community-wide awareness and educational activities designed to reduce the high incidence of violent teenage dating behaviors currently occurring in every state, territory, and community.

Connecticut's efforts will begin with a summit at the State Capitol on February 6, 2006

Connecticut's Teen Dating Violence Prevention Initiative (TDPVI) is headed by the Office of the Child Advocate and consists of representatives from the Center for Children's Advocacy, Connecticut Coalition Against Domestic Violence, Connecticut Sexual Assault Crisis Services, schools, the statewide association for school principals, CT Department of Children and Families, CT Department of Social Services, CT Children's Medical Center's Violence Prevention Program, the Girl Scouts, Court Support Services Division, local youth service bureaus, and other state and local agencies. The CT TDVPI put forth a concerted effort to involve over 35 schools who will be receiving toolkits and participating in

(continued on following page)

Teen Dating Violence Awareness: National Toolkits for Distribution

DVD
The "Teen Dating Violence Awareness" DVD features teenagers, representative of various U.S. regions and cultures, talking about their personal knowledge and experiences with teen dating violence.

Book: Prevention Recommendations
The nine-part indexed book contains prevention recommendations, warning signs and facts targeted at nine key groups deemed critical to prevention: teenagers, parents, school officials, school counselors and mental health professionals, medical doctors, judges, police, victim attorneys and prosecutors, and domestic violence organizations.

Teacher's Guide
The "Teacher's Guide" gives teachers suggestions for classroom projects and discussions that not only coincide with specific subjects being taught in various classes, but also address components of teen dating violence.

Awareness Week Slogan Posters
National Awareness Week posters state the official Awareness Week slogan, which was developed by the teenagers who attended the Teen Dating Violence Prevention National Summit in 2004: "Dating And Violence Should Never Be A Couple."

Emergency Wallet Cards
Every Toolkit contains 200 credit card-sized wallet-cards. These cards contain the national emergency hotline, plus blank areas to write in local emergency information.

Disk
The Toolkit's Disk contains the Prevention Recommendations and Teacher's Guide in a reproducible format, to enable the school's teens to distribute them to people and organizations they address within their community and their school. The Disk also contains a student survey tool. Students will be surveyed before, and at a designated time after, they have participated in the National Awareness Week. This important survey is the first of its kind and will not only provide much needed national data concerning teen dating violence behaviors and attitudes, but will measure the effectiveness of the National Awareness Week and the Toolkits. The results of the survey will be compiled into a comprehensive report and distributed to state and federal leaders.

Toolkit Instructions
Instructions will guide school officials and teachers on the Toolkit's use, in order to reach optimum effect and influence a reduction in the incidence and effects of teen dating violence in the United States.

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Connecticut to Participate in National Teen Dating Violence Awareness Week: February 6 -10, 2006

(continued from previous page)

Teen Dating Violence Awareness Week. Donations have been given by the Hartford County Bar Association to support toolkits for 10 schools in Hartford County, and additionally, Milford County Bar Association supported a toolkit for a local school.

TDVPI Awareness Week will begin with a Teen Dating Violence Prevention Summit at the state Capitol on February 6, 2006. A feature of the event will be the premier showing of a film produced by the ABA and youth from around the country that underscores the prevalence of teen dating violence. In DVD format, the film will be available for schools and programs working with youth. It serves as a mechanism to kindle what could be life-saving discussions about healthy relationships. The CT TDVPI is also developing a resource booklet filled with speakers, programs, films, written materials and other helpful things to promote awareness and prevention of teen dating violence. Additionally, there will be a press conference to highlight this issue on a national and statewide level.

For further information on how you can participate or offer any donations, please contact Stacey Violante Cote at (860)570-5327, Director, Teen Legal Advocacy Clinic, Center for Children's Advocacy.

– *Stacey Violante Cote, Esq., MSW,*
Director, Teen Legal Advocacy Clinic,
Center for Children's Advocacy

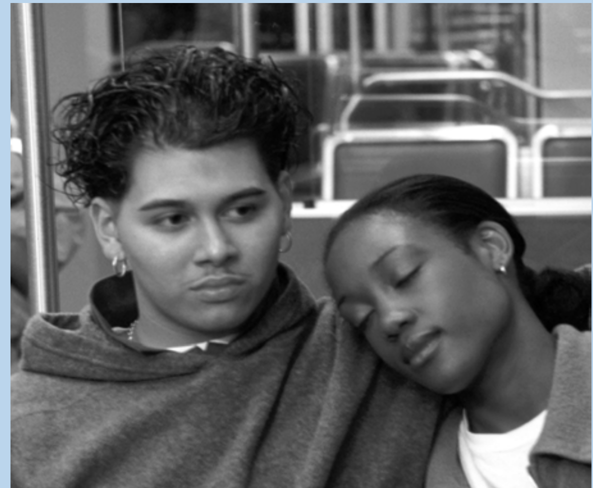
(footnotes)

[1] American Bar Association Steering Committee on the Unmet Legal Needs of Children,National Teen Dating Violence Prevention Initiative Fact Card (2005).

Is Love Supposed to Hurt Me?

"Is Love Supposed to Hurt Me?" CCA's brochure on Teen Dating Violence, is available from the Center for Children's Advocacy. To order, please call 860-570-5327.

CCA Offers Brochure Series for Teen Clients



The Center for Children's Advocacy has published a series of brochures for teen clients. Topics include:

Teen Dating Violence, Child Support for Teen Mothers, Child Support for Teen Fathers, TFA (Cash Assistance), Homelessness, Financial Aid for College, Emancipation, DCF's Independent Living Program, Truancy, and Confidential Health Care.

For more information, or to order copies of the Center's brochures for teen clients, please call 860-570-5327, or go to www.kidscounsel.org/publications.

CCA Staff Recognized for Contributions to the Children of Connecticut

Christina D. Ghio, Director of the Center's Child Abuse Project, was chosen by the CT Law Tribune as one of Connecticut's "New Leaders of the Law"—"for attorneys admitted to the Bar for ten years or less who have made important contributions and who serve as role models."

Gladys Idelis Nieves, Senior Staff Attorney for the Center's Medical-Legal Partnership Project, was recognized by the Progreso Latino Fund for her character and the impact of her leadership in the community.

Wheeler Clinic recently recognized Martha Stone, Executive Director of the Center for Children's Advocacy, for her important work in improving the systems that serve children at risk in Connecticut.

United States Supreme Court Weighs In on Special Education: Who has the Burden of Proof in a Due Process Hearing?

Schaffer v. Weast: U.S. Supreme Court Rules on Special Education Law

In a decision that may have far reaching implications for disabled students eligible for special education services, the United States Supreme Court ruled that the burden of proof in an administrative "due process" hearing challenging the student's education plan is placed on the party *seeking relief*, whether that party is the disabled child or the local school district. In Schaffer v. Weast[1], the Court entered the murky waters of special education law, as defined by the Individuals with Disabilities Education Act ("IDEA") and opted to tip the balance against state's rights in its attempt to define the scope and of administrative proceedings. As a result, in states that have not determined which party maintains the burden of proof in special education due process hearings, parties seeking relief in those proceedings will now be required to carry the burden of proof, placing the already cumbersome task of challenging a local board of education on a much higher footing.

Brian Schaffer, the disabled plaintiff, suffers from learning disabilities and speech-language impairment. From grades kindergarten through seven, he attended a private school where he struggled academically. After his seventh grade year, his mother proceeded to contact the local educational authority ("LEA")[2] seeking a public school placement for him the following year. The LEA evaluated Brian and convened an Individualized Education Plan ("IEP") meeting offering him a placement in one of the county's two middle schools.[3] The parents demurred from this offer, placed Brian in a private school catering to his academic needs, and initiated a due process hearing seeking compensation for the private school tuition. The due process administrative law judge ("ALJ") held that the parents had the burden of proof and ruled in favor of the LEA. The parents brought a civil action pursuant to 20 U.S.C. §1415(i)(2) challenging the administrative decision, where the District Court reversed and remanded the case after concluding the LEA had the burden of proof in administrative proceedings under IDEA. The LEA appealed to the Fourth Circuit Court of Appeals, which vacated and remanded the case to the District Court after learning that the ALJ reconsidered the case, deeming the evidence truly "in equipoise," and ruled in favor of the parents. Eventually, the case wended its way back to the Fourth Circuit, which, in a split decision, concluded that there was no persuasive reason to depart from the normal rule of allocating the burden of proof to the party seeking relief,[4] thereby ruling in favor of the LEA.

In a short decision authored by Justice O'Connor, the Court opted to follow the traditional legal pathway in a statutory cause of action, whereby the party seeking relief has the burden of proof in an administrative proceeding.[5] Absent explicit statutory language, which does not exist in IDEA, the Court seemed unwilling to change the long held belief that placing the entire burden of proof on an opposing party (here the LEA), would be imprudent and defy statutory precedent. In addition, the more comprehensive analysis of IDEA provides ample justification to refute the parents' contention that the LEA should always possess the burden of proof in due process hearings. Assigning this burden to the LEA's will not necessarily ensure that disabled students receive a free appropriate public education pursuant to IDEA, but the resulting shifting of marginal resources would put an undue burden on already financially strapped LEA's.

– Jay E. Sicklick, Esq.,
Director, Medical-Legal Partnership Project,
Center for Children's Advocacy

(Footnotes)

1. Montgomery County Public Schools System, Montgomery Maryland.

2. An IEP meeting is the generic description for a team meeting to develop a child's IEP under IDEA. Connecticut refers to its IEP meetings as planning and placement team meetings, or PPT's.

3. When he reached high school age, the LEA agreed to place Brian in a high school with a special learning center. The litigation continued, however, as the parents sought compensation for the private middle school tuition.

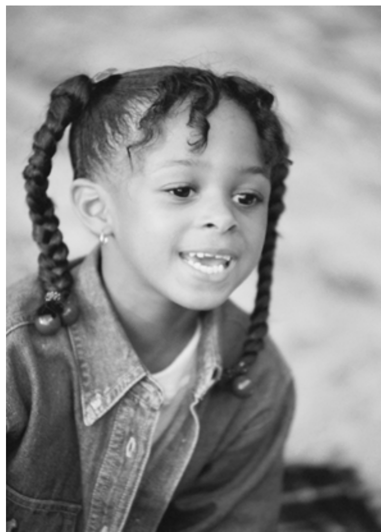
4. The Court substitutes the terms "burden of proof" with "burden of persuasion" interchangeably in the decision. Although traditionally the term "burden of persuasion," wherein a party loses if the evidence is closely balanced, is utilized to describe the adjudicatory process, the opinion relies on "burden of proof" as its general term of art, and therefore "burden of proof" is used here.

5. See Regs. Conn. State Agencies 10-76h-14.

No Child Left Behind: How to Secure Supplemental Education Services for Your Client

Legal Advocates Need To Use the Supplemental Education Services (SES) Provisions of the NCLB

The No Child Left Behind Act (NCLB) of 2001 is the reauthorization of the Elementary and Secondary Education Act of 1965. NCLB has as its centerpiece the requirement that public school students reach proficiency in reading and math by the 2013-2014 school year, with sanctions on schools that fail to make progress as expected toward this benchmark. Schools must report on students by subgroup (i.e., ethnicity, disability, English language learners, and low-income), and members of all sub-groups must be proficient in order for the school to meet the NCLB standard.



Supplemental Education Services (SES) are services delivered outside the regular school day, such as tutoring, remediation, after-school programs, and summer school, provided to students at no cost to parents through NCLB. Although many students are already taking advantage of SES, large numbers of eligible students have not yet signed up. For example, only about 10-20% of eligible students across the country participated in free tutoring during the 2003-04 school year.[1] Evidence suggests that families frequently do not know about SES or are receiving confusing or limited information about their tutoring options.[2]

Who is Eligible for SES?

To be eligible for SES, a student must meet all of the following requirements:

1. Be eligible for free or reduced-price lunch.

2. Attend a Title I school. Title I schools receive Federal Title I funds, which aim to help students in high-poverty schools meet state academic and student performance standards.[3]

3. Attend a school in its second year of "in need of improvement" status.

- Whether a school is designated as "in need of improvement" is based on its ability to make Adequate Yearly Progress (AYP). AYP is the minimum performance that districts and schools must reach every year on state achievement tests. AYP aims to ensure that all students are proficient in reading and math by 2014. Connecticut uses the state's Connecticut Aptitude Performance Test (CAPT) and Connecticut Mastery Test (CMT) scores to track AYP.

- A school is identified as "in need of improvement" if it fails to make AYP for 2 consecutive years in the same content area. During the second year that the school fails to make AYP, the school is in Year 1 of "in need of improvement" status.

- If that Title I school remains in "in need of improvement" status because it fails to make AYP for 3 or more consecutive years in the same content area, then it must offer SES.

How Can I Find Out If My Client Attends A School That Qualifies for SES?

School or district

The school principal, other school staff, Title I director or a parent coordinator will be able to help.

State

Go to *www.tutorsforkids.org*, visit the "SES by state" page, select your state, and you'll find the phone number and email to contact your state SES coordinator.

Who Are the Providers of SES?

Each state develops and approves a list of organizations that can offer SES to eligible students. These organizations apply to the state to become "approved SES providers."

How and When Do Families Find Out About SES Providers?

NCLB requires that a school district "promptly provide" notice to the parents of eligible children that they have the right to receive SES. See 20 U.S.C. § 6316 (b)(6)(F). The federal guidelines provide further direction on when notification should occur.[4] They strongly encourage a school district "to notify parents at the beginning of the school year about SES, and begin offering services in a timely manner thereafter" (p. 31).The guidelines also state that a school district "should make certain that parents have sufficient time, information, and opportunity" to decide which service provider to choose for their child (p. 23).

No Child Left Behind: How to Secure Supplemental Education Services for Your Client

The parental notice must include the following, according to the guidelines (p. 22):

- Identification of service providers;
- Description of services, qualifications and evidence of effectiveness for each provider;
- Description of procedures and timelines that parents must follow in selecting a provider; and
- Be easily understandable, in a uniform format, and to the extent practicable, in a language the parents can understand.

How Is SES Funded?

Funding is not available to serve every eligible child interested in receiving SES. The cap on the amount that a school district is required to spend on SES and school choice combined is equal to 20% of its Title I funding. This amount is then divided as follows: ¼ must go to school choice; ¼ must go to SES, and the district can spend the remainder on either school choice or SES, depending on parent demand and/or district preference (pp. 41-42).

For Hartford Public School District this year, 20% of their Title I funding was $4,055,364. This translates into SES for a maximum of 1,425 students. (This figure is the maximum because it assumes that ¾ of the $4,055,364 is spent on SES with only the minimum requirement of ¼ of the Title I funds going to school choice.) Although there are 1,425 slots available for tutoring, there are 21 Hartford Public Schools that are eligible to receive SES with a combined total enrollment of approximately 14,000 students.[5]

– *Emily Breon, Esq., MSW, Equal Justice Fellow*
Center for Children's Advocacy

(Footnotes)

[1] U.S. Department of Education Press Release "Spellings Announces Further Flexibility, Continues Common Sense Approach to No Child Left Behind," dated September, 1, 2005, at http://www.ed.gov/news/pressreleases/2005/09/09012005.html

[2] Supplemental Educational Services Quality Center, *SES in Action: A Toolkit for Parents and Community Leaders* (2005) at http://www.tutorsforkids.org/ToolkitDownload2.asp

[3] A projected list of Title I School Districts is available on the U.S. Department of Education website at http://www.ed.gov/about/overview/budget/titlei/fy05/index.html

[4] The U.S. Department of Education, Supplemental Educational Services Non-Regulatory Guidance, dated June 13, 2005, at http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc

[5] Enrollment data obtained from http://www.greatschools.net/

Thanks to Christine Ruman, Program Manager for SES at the Connecticut Department of Education, and the Supplemental Educational Services Quality Center for thier valuable assistance.

For more general information on SES:

Connecticut State Department of Education at *www.csde.state.ct.us/public/cedar/nclb/psc_ses/index.htm*

Supplemental Educational Services Quality Center at *www.tutorsforkids.org*

U.S. Department of Education, Choice and Supplemental Educational Services, Frequently Asked Questions at *www.ed.gov/parents/schools/choice/choice.html*

For more information on the No Child Left Behind Act:

The Civil Rights Project at Harvard University at *www.civilrightsproject.harvard.edu*

Connecticut Department of Education at *www.state.ct.us/sde/nclb*

Connecticut Parent Advocacy Center at *www.cpacinc.org/no_child_left_behind.htm*

U.S. Department of Education at *www.ed.gov/nclb*

(continued from page 1)

were unable to provide a hearing within the required time frame, the matter was referred to the Child Protection Session, to which one additional judge was assigned to hear such cases on a weekly rotation.

It has been some years since this change was made. But its importance cannot be underestimated. First, prior to the adoption of such legislation, such hearings hardly ever occurred and neither DCF nor the court were challenged or held accountable for the intervention in a meaningful way. Since the adoption of the legislation, the court is in a position to make better decisions about the appropriateness of the removal of a child from his or her home. Many more times than not, there is no challenge to that right, but an acknowledgement by the parents that their children need help, at least for now. DCF and the court are now held accountable by this process in a way that is beneficial to the children we strive to protect And, by this changed process, the court now has an opportunity to review visitation early on to determine whether, for example, fathers or relative caregivers could provide care. In my experience and opinion, both the court and the Department of Children and Families make better decisions about services that can be offered to parents to assist them.

With this change as an example, albeit legislatively driven, a consideration of the future of the juvenile court must involve a review and then the implementation of small process changes in a number of areas to create substantive changes, to bring about as big a change as the OTC procedure did when it began. I want the Superior Court for Juvenile Matters to reach its tipping point to provide the best it can for the families and children than come before it.

The "Tipping Point: How Little Things Can Make a Big Difference" is a volume of collected articles written by Malcolm Gladwell,[1] a *New Yorker* staff writer. As one reviewer noted, the book offers a "theory of social dynamics that is bound to provoke a paradigm shift in our understanding of mass behavioral change. Defining such dramatic turnarounds as the abrupt drop in crime on New York's subways, or the unexpected popularity of a novel, as epidemics, Gladwell searches for catalysts that precipitate the "tipping point," or critical mass, that generates those events. What he finds, after analyzing a number of fascinating psychological studies, is that tipping points are attributable to minor alterations in the environment, such as the eradication of graffiti, and the actions of a surprisingly small number of people ...[2]"

Serious students of these matters and academics have stated that Mr. Gladwell's thesis is facile, and perhaps it is. But in the juvenile court, the OTC changes provided all of us with one example of the kinds of changes for the better that our system is capable of, if we all work together to reach such a paradigm shift.

As the Chief Administrative Judge of Juvenile Matters, I confess that I possess no uniform or grandiose vision, but that I, as well as other judges, am engaged in a careful look at where we have been and where we might want to go. While undertaking this scrutiny, I hope to learn with others, including my fellow judges, which small steps we can take to ensure that the system works better than it did before, and as we examine what changes we have made, to refine them so that the court works the best as it possibly can. One promising area of process change is to implement uniformity of case processing in the courts around the state; using the best systems we can identify to address providing timely contested hearings in those cases that require them. Another area to investigate is whether the court system can jointly create with other agencies effective programs to properly provide for the children of the state who come into contact with the juvenile court, either on the child protection or the juvenile justice side of the court.

The careful examination of processes and reflection on possible changes illustrated in "The Tipping Point" as applied to the Juvenile Court holds promise, not only because process changes do not necessarily require huge sums of money and resources, but also because the impetus toward significant change can be created by committed small steps towards the goals identified and set by the court. The resulting small successes should then permit all involved to imagine and dare larger changes with greater hope for successes.

One area of investigation for me began with studies that show participants, particularly youth, do not understand the legal system in which they participate, the role of the judge, the public defender and the judge. I suspect their parents often do not understand either. A recent article in the summer issue of the Juvenile and Family Court Journal reviewed the knowledge of detained juveniles about the Juvenile Justice System and found it to be sadly lacking in all areas.

An educational focus in the courts could assist with the knowledge gap that apparently exists. For example, there are

some written materials available through the Office of the Child Advocate, which could be more widely distributed to parents. These materials, undergoing revision at the present time, describe in detail the court processes as well as administrative procedures within the Department of Children and Families to which parents can have access. The material is written in accessible English and Spanish in the same volume. In addition, the court might, in the future, develop some materials for parents and others in the court. The court now shows a video to prospective jurors on their first day of jury service that explains the process to them. Something similar might in the future be made available to participants in the juvenile court process. We are beginning to take a close look at what we can do to enhance understanding in a meaningful and effective way and to perhaps create an information tool that can be used many times for many people.

In addition, the court system must continue to look at the manner in which cases progress from beginning to end and the length of time it takes for this to occur. We all understand that there is a cost to continuances and other delays in terms of permanency for a child. The court system has of recent years had tremendous success with shortening the average length of time to trial through case management changes on the civil side. Cases pending are being managed tightly and heard within a significantly shorter period of. I understand and appreciate that we cannot use the exact same methodology in juvenile matters cases. But the court is looking at pretrial and trial assignments to determine optimal methods to make sure all cases that are or will be contested are addressed without delay. The special Child Protection Session in Middletown, established in 1996, assists the court substantially in that process. It is now returning to its core function of providing continuous trial dates in all contested termination of parental rights cases which are more than two days in trial time length. By special referral, other contested matters which cannot be accommodated within a reasonable time can also be heard by this court. The ultimate goal is to give reality to Judge Fredrica Brenneman's admonition to "discontinue continuances," and make sure all matters are heard expeditiously.

Next, all too often the court reacts to crises which occur. It would be beneficial to begin some affirmative preventative planning. Towards that end, a long term discussion is beginning amongst the judges about what our court would look like if we could have everything we wished for. Such a discussion will permit us to establish goals and work toward those goals without letting ourselves be defeated in our thinking about the resources we now have and those that we might in the future require. What may be possible in the future and what is desirable should not immediately be undermined by such practical considerations. Rather, let us dream first and, once we have the dream in mind, we can jointly reshape it to a more realistic measure. There are some twenty other judges assigned to the superior court for juvenile matters along with some experienced judge trial referees who collectively have many years of experience. It is the goal to use these available and tremendous human recourses collectively to continue an open dialogue about suggestions and initiatives for improvement to shape our systems and articulate the wish list for the future

As has happened in the past, there remain some legislatively imposed challenges to which the court must respond. In that effort, the system seeks to work cooperatively with the Department of Children and Families and other concerned agencies on proposals of mutual concern. One such area concerns itself with the 2005 legislation about Families With Service Needs, the FWSN cases which place children who come before the court under orders of what they need to do: attend school, obey the rules their parents put in place and so on. These are the so called "status offenders" who have not yet committed a criminal offence. Nonetheless, as they violate court orders and sometimes become more seriously defiant, the court on occasion holds them accountable and places them in detention facilities. As of October, 2007 the court will no longer have that option.

On the legislative forefront, there are also gaps between statutes, and conflicts between certain provisions. Gaps exist, for example, in the interface with the probate court around transfer of guardianship claims and which court has jurisdiction when a parent is seeking return of guardianship after a period of time. Where there are conflicting directives, the court is trying to deal affirmatively through collaborative discussions with the Chief Probate Court Administrator about proposed changes, or with the Department of Children and Families.

The court is also proactively considering and implementing programs which might address such emerging issues. On the FWSN side, there is a joint DCF-Judicial Branch FWSN protocol which provides a DCF worker as a liaison in the courts, to assist probation to divert kids into voluntary programs either before the FWSN complaint has actually been filed, or when it is filed. There is a joint commitment to share resources, make voluntary services and systems of care available to children from families with services needs and work together to strengthen families in their communities. I cannot take credit for this vision as this was an agreement signed at the end of 2003, but I do intend

to continue to implement the program. This program should have coordinators physically in juvenile court locations throughout the state by year end. In most areas, these individuals are shared, not full time. The liaisons attend hearings and are available to work with probation staff to break through some of the red tape at DFC in coordinating programs for the families without formal judicial involvement. The protocol is an excellent example of the types of collaborative programs that can be developed.

There is already a discernable difference in New Britain Superior Court for Juvenile Matters where the protocol was implemented late in the summer. There is access to programs not previously available to such youth. While there are no formal measurement tools in place, it is expected and hoped that there will be some prevention effect in the voluntary delivery of services to families, and that the youth who are successful in these programs will not become further involved with the court system.

There are other issues concerning youth which require better court intervention. There are some young people who run away from their families, from their foster families and from the treatment programs in which they may be placed. The court is considering ways to respond judicially and to convene hearings concerning young people who are AWOL. The AWOL program will seek to establish some concerted court action to get such youth either back into care, or back into the community if they are less at risk. The Department of Children and Families has lists of runaway youth who are committed to the care of the Department. The court is now in the process of establishing methods for the sharing of such data, methods by which those children are made known to the court, and further steps to be taken. If the court can provide some safety for a few such youth, it will be better than the present system in which a judge might hear that a youth, age 15, ran away from his foster home 4 months ago. Often, when the court asks pointed questions, there is someone in attendance who can provide some information on which the court can act to secure some safety for the child. If the process of questioning can begin with two weeks, rather than four months, it will be a substantial improvement.

To effectively intervene for run-away youth will require collaborative action with DCF and with the police. It also will require more creative planning, because once the young people are returned to care, a careful assessment of their needs must be performed and, most likely, additional services must be provided. A recent study reviewing youth who ran away from placement over a 10 year period in Chicago, Illinois, determined that such youth typically run early on in their placements. [3] Often, those placements are not well tailored for them. So, it is the case that it is not enough simply to get them back from where they have run to, but also to plan for additional court assessment once they are returned.

The court is taking the beginning steps for AWOL youth. The Commissioner of DCF has approved the general concept and now the detailed planning must begin. We must determine which procedural steps must be implemented to effectively receive data and provide the information to the regional courts. Then, once the court receives the information, we must determine the processes by which the court will start to deal with these cases. Although the information is important, it is only the tip of the problems that need to be addressed for AWOL committed youth. Revocation of such youth's commitment to the care of the DCF should be the response of last resort.

There are also pressing issues that relate to permanency planning for children committed to the care of the Department of Children and Families. The court's oversight function is sometimes very effective and sometimes less so, and this is another area which could use better case management. In particular, for older children for whom the plan is long term foster care or independent living, the court and the Department are not addressing well the needs of older children who are not able to return home and do not wish to be adopted. These are challenging teenagers at the best of times, but just because of such challenges and their emerging adult awareness, they deserve more concerted effort on the part of the courts and others responsible for their care.

There are also a number of Judicial Branch initiatives already underway which should herald some important changes. Again, these are changes for which I cannot claim any credit whatsoever, but I am proud to be able to assist in their implementation. The Court Support Services Division (CSSD) is in the process of contracting for Juvenile Risk Reduction Centers around the state. In the past, many areas of the state have had Juvenile Justice Centers with programming to provide community alternates to confinement or detention centers. New programming for youth is now being implemented, based on research of what works best. For example, changes are being made in how children are grouped at the Centers, so that they do not learn from those more advanced in the juvenile justice system than they are. Changes in programming provide youth with skills training that will help them succeed in school

and continue in their homes. With these changes in program design, the juvenile courts will be able to serve more children in the Centers each year. In rural communities where a Center is not feasible, there will be specifically targeted outreach programs for youth involved with the court.

As part of this work, CSSD seeks to implement strength-based assessments of young people, carefully looking at their individual strengths and how programming can work around positive features. To assist in this, the division is implementing innovative interviewing techniques for probation staff.

There are some areas which remain a challenge. One is to implement gender specific programming for girls, for whom current programs, designed for boys, are not very effective. Recently, there have been reports in the press of difficulties with some of the facilities we have for girls. The lack of secure placements remains of concern and I know that there are changes in DCF's planning now underway. Clearly and admittedly, Connecticut has a need to have safe places for girls, which are at present not always available.

It is also apparent that youth within the juvenile courts are struggling educationally and often have poor education outcomes. Their school failures are predictive of their ability to do well in the future and to lead productive lives. The Judicial Branch, through CSSD, is investigating whether to use simple educational screening tools when youth are placed in detention. The hope is that effective screening might assist targeted educational planning. The emphasis continues to be on evidence-based effective practices and tools in this area that help design appropriate referral. This effort is in the development phase at this time and remains under consideration.

In addition to these efforts, there are a number of other pilot projects under way in the education arena. There is a model Truancy Court Prevention Project in the Hartford School System, sponsored by the Center for Children's Advocacy. In New Britain next spring, Center for Children's Advocacy, the Connecticut Bar Association and the Connecticut Bar Foundation, through the efforts of Attorneys Martha Stone, Peter Arakas and Howard Klebanoff, will begin a truancy reduction program, using volunteer lawyers (with access to lawyers with expertise in education law) to represent youth with FWSN matters pending in court. The volunteers will serve as mentors for the young people whose FWSN cases they handle. In New Haven, Judge Conway meets with school officials to monitor what is happening with truancy issues. These are all prevention efforts to keep some young people from ever entering the juvenile justice system. By investing time, effort and money before the legal difficulties for such youth truly begin, the court hopes that they will have a better future.

Such efforts are akin to addressing graffiti and broken windows in the community policing arena, discussed in detail in "The Tipping Point." The education failures of some youth are our early warning system that something is amiss. It is crucial that we reach affirmatively into prevention and not just to react when things are already bad for a child.

On November 7, 2005, *The New York Times* OpEd page ran an "Op Chart" by Harry Levin, professor of economics and education at Columbia University; and Nigel Holmes, graphic arts designer, entitled "America's Learning Deficit," which is highly relevant to the impact of such prevention efforts. The article estimated that a one year increase in average number of years of school for dropouts would reduce the murder and assault rate annually by almost 30 per cent, motor vehicle theft by 20 per cent, arson by 13 per cent and burglary and larceny by 6 percent. Increasing the high school graduation rate by just one percent for all men ages 20-60 would reduce costs in the criminal justice system by as much as 1.4 billion a year. The authors estimate that $7.9 billion to $10.8 billion could be saved annually by improving the educational attainment among recipients of TANF and removing them from the assistance roles.

Many of the children who are in the juvenile court belong to such families. And such data has clear implications for our courts as well as the adult court. Educational attainment remains a key predictor of the ability of young people to have an independent, financially adequate life in the future, a core goal of rehabilitation as the juvenile court attempts to define it. If we can cooperatively improve educational outcomes for court involved children, we will have provided a tremendous benefit. Along such lines, alternative high schools are a positive development, as is the collaborative work between school officials and the truancy projects briefly described.

The Judicial Branch is also responding to mandates set for its juvenile court by the federal courts. The Emily J. settlement agreement addresses the mental health issues of children within the juvenile justice system who are in detention, and mandates certain changes in our procedures. Many of the services and available treatments for such children are provided by the executive branch through DCF and other agencies. Nonetheless, judges have an independent obligation to monitor and carry out these aspects of the

agreement, to which we are a signatory.

Recently, there have been reports in the press about conditions at the one children's psychiatric facility in the state, Riverview Hospital, which is operated by the Department of Children and Families. Those reports demonstrate how difficult it is to deal with increasingly disruptive and severely mentally ill youth (particularly girls) and how to properly stabilize them and then transition them to less intensive forms of care. Such concerns remain a constant and ongoing challenge.

The Judicial Branch and agencies which have responsibility for children, whether still in their homes and communities or in out-of home care, need to encourage staff to remain open to the many ways we can accomplish the tasks we are statutorily obligated to undertake in the most effective manner possible. We hope to use tools and programs which have been demonstrated to be effective and to develop new ones as new challenges are identified. There are some efforts under way. On the juvenile justice side, the Department of Children and Families and the Judicial Branch as a "Juvenile Justice Joint Strategic Plan" (still in draft form) will guide DFC and Judicial Branch for the next three to five years. This plan details methods to implement collaborative programs for secure facilities and other initiatives for boys and girls.

One of the most important tasks we need to undertake is to determine where we have been and where we are going in the matters pending before the court. For that, we need accurate and detailed data management and reporting. On the Juvenile Justice side of the court's work, we have recently implemented a case management program which coordinates information between the court and probation staff, so that accurate and updated information about a youth can be available instantly to all who are entitled to access it. Such data is crucial to accurate, timely and good decisions about children, families and their programming needs.

The case management program available for the Juvenile Court is not available for child protection matters. The need for more accurate data was recently identified as one of our critical needs at a conference called "Justice for Children, Changing Lives by Changing Systems "recently attended by a five person team from our state: two judges, one of our court operations staff, the assistant commissioner of DCF and the director of DCF's legal office. The ability of our data collection process to track and generate reliable reports was one of the important items identified which requires action to be taken. The case management procedures on the child protection side are working reasonably well, but are not currently designed to identify whether federal statutory mandates under ASFA are being met. Such data on outcomes for children is crucial from a substantive point of view, as well to answer the question as to whether the courts are completing work appropriately and in a timely manner for the children in care. Such data are also important under the Juan F. exit plan under which DCF needs to meet certain timelines. In that process, the Judicial Branch and the courts have a large role to play. And we are beginning to start a number of work groups to identify what types of reports we require, what we can easily generate from what we have, and what additional data points need to be added to be able to answer these questions well.

The last part of the process of data collection includes the adoption of children whose parents' rights to them have been terminated. Such data is in the exclusive hands of the probate courts of this state and we have now begun to implement a data exchange with the probate courts to capture this data on a timely basis for outcomes for our children. The coordination of the data is an ongoing multi-year project which should be able, when fully implemented, to help us identify areas of need and properly address such areas as may be identified as needing attention when the process is operational.

With respect to children removed from the care of their parents or needing assistance while in their care, a constant refrain is the timely and appropriate delivery of services to the parents to assist them in caring for their children. I recall a discussion in 1997 with DCF about this, and it is well past the time where changes must be made to the methods by which service providers offer such resources to families. Such delivery of services is not directly a judicial branch function, but it is critical to the ways in which the cases which the court hears can proceed in a timely and appropriate manner. I am encouraged by the initiatives that DCF has begun and the ways in which the agency and the branch can work together collaboratively

Are any or all of these things going to make a difference in how the courts function? I believe so. I know some of them may not develop in the ways that we envision today. And yet other initiatives may surprise us in their effectiveness. I am encouraged by some of the significant positive changes I see since I was last assigned to the court in 2001 and my return earlier this year as chief administrative judge. There is a new spirit of collaboration between the various agencies and an emphasis and reliance on evidence based models of

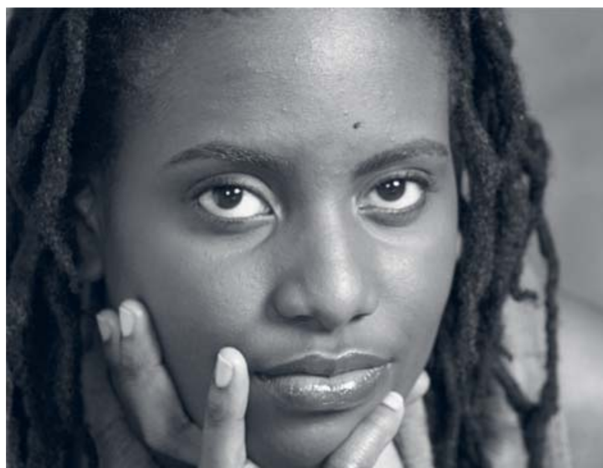
Honorable Barbara Quinn

intervention, and services with proven track records. We need to maintain that joint momentum and build on the strengths that we share together. There is now a more open view of matters that are of joint concern, and no longer an attitude which announces, with arms crossed, “We cannot do that.” Now people are saying, “We will do that and we can work together” to determine a cost effective way to accomplish the task.

There always remains much more to be done, but I am a strong believer in the view that small changes can bring us to a tipping point. With a little additional effort, we can add to those changes already made and benefit the children involved with the juvenile court. Those with a committed interest in children in the care of the state, either because they need protection or because of their own conduct, can add to that effort and add their vision for change to the process. If we all continue to work together to implement change, we can reach the tipping point to create a paradigm shift. Such a shift will enable all of us together to provide not only what we must, but much more, for the benefit of the children of this state who come before the Superior Court for Juvenile Matters.

(Footnotes)

[1] *The Tipping Point – How Little Things can make a Big Difference,* Copyright @2000 by Malcolm Gladwell,
[2] A review of the book by Donna Seaman, in *Booklist.*
[3] Chapin Hall, Center for Children at the University of Chicago, *Youth who Run Away from Out-Of-Home Care*, by Mark E. Courtney, Ada Sykles, Gina Miranda, Andrew Zinn, Eboni Howard and Robert M. George, *Issue Brief # 103,* March, 2005.



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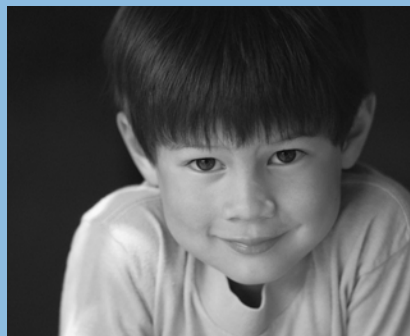

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Area Law Firms Join with CCA to Provide Legal Representation and Training Opportunities

Robinson & Cole Brings Hartford Public High School Students to In-House Law Day

The Hartford office of Robinson & Cole, LLP, recently hosted 17 youth from Hartford Public High School for a Law Day at their downtown office. The event, organized by Attorney Megan Naughton, who practices in the firm's immigration practice area and provides pro bono assistance to the Center's clients, and the Center's Teen Legal Advocacy Clinic, linked high school students who have an interest in a career in law to the various careers within a law firm. The students heard from lawyers, paralegals, employees in the information technology department, as well as the Managing Partner, Eric Daniels. The students enjoyed the event saying, "I learned a lot," and "I hope we can do that again."

Thank you to Attorney Naughton and Robinson & Cole for their generous support of the Center and the clients whom we serve.

McCarter & English Provides Pro Bono Legal Assistance to Help MLPP expand Outreach and Intervention

The Center for Children's Advocacy's *Medical-Legal Partnership Project* has reached an agreement with the prestigious firm of McCarter & English to provide additional resources and advocacy on behalf of Connecticut's poorest children. Attorneys from McCarter & English, a national law firm with offices in New York City, Newark, Philadelphia, Baltimore, Wilmington, Delaware, Stamford, and Hartford, will work with the MLPP attorneys to provide direct legal representation on cases involving issues that affect children's health and well-being.

The MLPP-McCarter & English joint venture is the latest in a series of steps taken by the MLPP to expand its outreach and legal advocacy intervention to more families served by its collaborative partners.

Jay Sicklick, MLPP director, believes that drawing in law firms to handle additional cases uncovered by the MLPP is an excellent opportunity to broaden interdisciplinary access and increase advocacy to the regions' poorest residents. "We think McCarter & English is a perfect fit in helping us meet our mission – that of improving children's health outcomes through this unique collaborative atmosphere," Sicklick noted. "The firm will provide first rate legal assistance in a number of cases going forward, and we couldn't be more pleased with their eagerness to get involved with this project."

Sicklick hopes to involved McCarter & English and other area law firms in an attempt to broaden the MLPP's systemic advocacy agenda – through both policy advocacy and litigation.

Recent Developments in Child Law: Important Case Summaries

Abuse and Neglect

In re Heather L.

274 Conn. 174 (2005)
Connecticut Appellate Court

June 21, 2005

The court, in this matter, denied a father's motion for a mistrial and upheld the lower court's decision to terminate his parental rights. The trial court terminated his parental rights due to findings of abandonment, failure on his part to rehabilitate, and lack of a continuous parent-child relationship. As a basis for requesting a mistrial, the father alleged that the trial judge was biased against him. It was the father's contention that since the trial judge had presided over previous proceedings regarding the termination of the father's rights in relation to Heather's sibling, and was thereby familiar with some of the facts of this case in advance of hearing it, the judge was biased against him and should have been disqualified from hearing the case regarding Heather.

The court concluded that the information the trial judge had been exposed to in the course of hearing the termination proceedings relating to the father's other child was not necessarily a source of bias or prejudice in this case. Since the father failed to present adequate evidence to demonstrate actual bias on the part of the judge, the court rejected the his claim that the judge should have been disqualified from hearing this matter.

Interestingly, the father's attorney in this case hadn't objected to the admission of the portion of the record from the sibling's case, which he appeared to be concerned about as being potentially prejudicial. Since it was clear to the court that the trial judge had not been exposed to any additional information as a result of having heard the sibling's case, there were no grounds for the disqualification of the judge.

This case may be accessed by going to the state Judicial Branch website at: *http://www.jud.state.ct.us/external/supapp/Cases/AROcr/CR274/274CR79.pdf*

– Sarah Peterson, Legal Intern, Center for Children's Advocacy

In re Alejandro L.

91 Conn. App. 248 (2005)
Connecticut Appellate Court

September 6, 2005

The appellate court affirmed the termination of the appellant mother's four children where substance abuse appeared to be the single most devastating factor contributing to the termination. The events that resulted in termination began in March 2001, when the youngest child was born five weeks premature and tested positive for the presence of cocaine. The mother failed to complete two admissions to an outpatient substance abuse and mental health treatment program, and in May 2001, the mother twice left her children unattended in an automobile for lengthy periods, resulting, not surprisingly, in an order of temporary custody placing the children with the Department of Children and Families (Department). After three subsequent attempts and failures at rehabilitation, the Department successfully sought an order adjudicating all four of the children as neglected. The mother continued to struggle with substance abuse (failing to comply with numerous treatment regimens), and she was arrested on a burglary charge and convicted of criminal trespass which carried a sentence of eighteen months of probation (conditioned upon substance abuse counseling and treatment). By May 2002, the court committed all four children to the Department's custody, and her struggles with cocaine continued to spiral out of control. Meanwhile, the four children (three oldest in one home, with the youngest in another) have all thrived in their foster care setting, and both sets of foster parents appeared ready and willing to adopt the four children. As a result, the Department moved to terminate the mother's parental rights, and the trial court terminated those rights in May 2003, finding by clear and convincing evidence that the mother had failed to achieve a sufficient degree of rehabilitation, and that it was in the children's best interest to do so.

In a brief section, the appellate court agreed with the trial court's findings, indicating that the evidence adduced at trial supported the overwhelming conclusion that the mother in

this case repeatedly failed to attend and complete numerous substance abuse treatment programs, and that she repeatedly failed in her attempt to comply with or participate in counseling sessions designed to guide her along that path. In addition, the mother maintained a relationship with the children's father despite the fact that her drug counselors had advised her to sever the relationship because he was "an impediment to her obtaining and maintaining sobriety." In addition, her long-term history of drug abuse and failure to complete recovery programs left her children's stability and welfare at risk - thereby necessitating removal and placement in a foster care setting. The need for permanency and stability carried the day - and the court agreed that it was in the best interest of the children to affirm the termination.

This case is available on line at: *www.jud.state.ct.us/external/supapp/Cases/AROap/AP91/91AP476.pdf*

In re Nicholas R.

92 Conn. App. 316 (2005)
Connecticut Appellate Court

November 15, 2005

In a short but interesting case, the appellate court affirmed an order of temporary custody (OTC) obtained by the Department of Children and Families (Department) in September 2004. The facts of the case are relatively straight forward – but the language used by the appellate court regarding the nature of consent, and the evidentiary consequences that result from forced or coerced circumstances in child protection matters may resonate in future cases.

On September 22, 2004, Nicholas' parents brought him to the Department of Social Services (DSS) while they applied for public assistance benefits. While at DSS, another DSS client alleged that Nicholas' parents had shaken and struck the ten-week old baby on the face and in the back while in the reception area. Events unfolded – and a Department social worker arrived at the DSS office to investigate the allegation. Upon arrival, the Department social worker requested that Nicholas be medically cleared by either the child's pediatrician or an emergency room physician. Unable to reach their child's pediatrician, the parents suggested they go to the emergency room, where an examination revealed no head trauma, but a fracture of Nicholas' left arm at least a few weeks old. The Department immediately invoked a ninety-six hour hold, and a subsequently sought and obtained the OTC.

On appeal, the mother claimed she was forced to obtain a medical examination in order for the Department to establish probably cause to invoke a ninety six hour hold pursuant to Conn. Gen. Stat. § 17a-101g, and without the coerced exam, the Department would not have had probably cause.[1] Following that path, Nicholas' mother claimed that the court abused its discretion in considering the medical evidence as it was obtained without probable cause.

The court did not find her argument compelling, holding instead that based on the objective standard used to judge consent, Nicholas' mother did not demonstrate that she felt coerced or forced into bringing Nicholas to the hospital for the examination. See State v. Yusef, 70Conn. App. 694, cert denied, 261 Conn. 921 (2002). The court then indicated that as this was not a criminal trial, the "strict rules of evidence" need not apply. Since child protection proceedings are civil, and not "quasi criminal" in nature, see In re Samantha C, 268 Conn. 614 (2004), the court was charged with the responsibility of looking at the well-being of the child, and the exclusionary rule did not apply.[2] Because the exclusionary rule is not used in a non-criminal case – the fruits of the poisonous tree doctrine did not apply to the evidence of the arm fracture. And, the court opined in an interesting sidelight, because this was a civil court, even if the parents had been forced to seek a medical examination for Nicholas, the exclusionary rule would not have applied and the evidence would have been admissible. As a result, the court upheld the OTC.

This case may be accessed on the Judicial Branch website at *www.jud.state.ct.us/external/supapp/Cases/AROap/ap92/92ap33.pdf*

(Footnotes)

[1] The father did not take part in the appeal.

[2] The court cited two non-child protection cases in support of this proposition, a probation violation hearing, State v. Foster, 258 Conn. 501 (2001), and a driver's license suspension hearing for driving while under the influence, Fishbein v. Kozlowski, 252 Conn. 38 (1999).

– Jay E. Sicklick, Esq.,
Director, Medical-Legal Partnership Project,
Center for Children's Advocacy

New Commission on Child Protection Begins Work

Improving the Quality of Legal Representation for Child Abuse and Neglect Cases

The newly formed Commission on Child Protection[1] held its first meeting on October 7, 2005, and quickly set in motion the process to hire the state's first Chief Child Protection Attorney.

The Commission, which will administer the attorney appointment system in child protection cases, exists for administrative purposes, under the Office of the Chief Public Defender but will operate independently.[2] The Commission consists of eleven members including:

- Michael A. Mack, Deputy Chief Court Administrator;
- John Turner, Superior Court Judge;
- Anthony Candido, Chief Judicial Marshall, Waterbury Judicial District;
- Paul Chill, Esq., Associate Dean of Academic Affairs and Clinical Professor of Law, University of Connecticut School of Law;
- Ann P. Dandrow, University of Connecticut A.J. Pappanikou Center for Excellence in Development Disability, Education, Research and Service;
- Monique Mattel Ferraro, Assistant Professor of Criminal Justice at Post University;
- Thomas Foley, Founder and Chairman of the NTC Group, Inc.;
- Shelley Geballe, J.D., M.P.H., President and Co-founder, CT Voices for Children; and
- Gregory T. Stokes, Sr., Senior Minister at Cornerstone Bible Church in East Windsor, CT.

The chair of the Commission is Anthony Lazzaro, Deputy Legal Director of the Office of Policy and Management. As of December 15, 2005, Senator Looney had not yet appointed his designee but the appointment is expected to occur in the very near future.

The Commission's first order of business is to hire the Chief Child Protection Attorney. The Commission published a job announcement early in December 2005 and expects to hire the Chief Child Protection Attorney by January 2006.

Once hired, the Chief Child Protection Attorney will be charged with establishing, by July 1, 2006, a system for the appointment of attorneys in child protection matters and certain family matters and ensuring that the system is appropriately administered. The Chief Child Protection attorney must provide initial and in-service training for attorneys providing legal services to children and indigent parents pursuant to the law and establish training, practice and caseload standards. The standards will apply to any attorney who represents children or indigent parents and must be designed to ensure (1) a high quality of legal representation and (2) proficiency in the procedural and substantive law and in relevant subject areas, including, but not limited to, family violence, child development, behavioral health, educational disabilities and cultural competence.

For information on applying to serve as the Chief Child Protection Attorney, review the job notice at *www.ocpd.state.ct.us*, the home page for the Division of Public Defender Services. Resumes and letters of interest must be submitted to Anthony L. Lazzaro Jr., Chairman, Commission on Child Protection, c/o Office of Chief Public Defender, 30 Trinity Street, 4th Floor, Hartford, CT 06106. Applications should not be sent by fax or email.

– Christina D. Ghio, Esq., Director, Child Abuse Project, Center for Children's Advocacy

(Footnotes)

[1] For full text of the act creating the Commission, see Section 44 of Public Act 05-3of HB 7502, *available at* http://www.cga.ct.gov/2005/tob/h/2005HB-07502-R00-HB.htm.

[2] The eleven members of the Commission were appointed as follows: three members appointed by the Governor; two judges of the Superior Court (one may be a retired judge of the Superior Court) appointed by the Chief Justice of the Supreme Court; and one member appointed by each of the following: the speaker of the House of Representatives, the president pro tempore of the Senate, the majority leader of the Senate and the majority leader of the House of Representatives, and the minority leader of the House of Representatives and the minority leader of the Senate.

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