Session 3: Children's Rights in the Context of Welfare, Dependency, and the Juvenile Court

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When the juvenile court was born in 1899, its creators eschewed formal legal procedure in favor of informality. Whether a case involved delinquency or child protection, lawyers were few and far between in juvenile court. The belief was that legal technicalities—and that included lawyers—interfered with the judge's ability to decide what was best. As time went on, however, critics argued that children accused in juvenile court of crime should have rights similar to the rights enjoyed by adult defendants. Adults have the right to remain silent, the right to notice of the charges against them, the right to appeal if they are convicted, and, most important, the right to an attorney. In 1967, the U.S. Supreme Court addressed children's rights in delinquency proceedings in the famous case of *In re Gault*.[1] The Supreme Court ruled that children accused of delinquency are entitled to most of the rights

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[1] 387 U.S. 1 (1967).

afforded adults, including the right to counsel. The effect of *Gault* was to formalize delinquency proceedings. Before long, delinquency trials in juvenile court looked a lot like criminal trials in adult court.

Although *Gault* was a delinquency case, the decision had spillover effects on juvenile court proceedings resulting in increased protections for abused and neglected children. Prior to *Gault*, lawyers were uncommon in abuse and neglect cases. The child protection agency was represented by a social worker, who presented the agency's position to the judge. Parents, most of whom were poor, seldom had legal representation. Rules of evidence and procedure were downplayed or ignored, and informality was the order of the day. Following *Gault*, however, lawyers became increasingly common in abuse and neglect cases. One byproduct of lawyers is greater formality and a more adversarial approach to cases. Although informality was not sacrificed entirely, *Gault,* along with a general trend toward greater due process protections, transformed the juvenile court's handling of abuse and neglect.

I believe that, on balance, *Gault* has done more harm than good in juvenile court proceedings to protect abused and neglected children. In the pages that follow, I examine two aspects of *Gault*'s impact on protective cases. First, as a result of *Gault,* judges increasingly appoint attorneys for children in protective proceedings. I have no quarrel with attorneys for children. Indeed, because protective proceedings have become adversarial, children require legal representation. My quibble is not with attorneys for kids, but with the position most academic writers, the American Bar Association, and the National Association of Counsel for Children take on the proper role for the child's attorney.

As I view it, a second consequence of *Gault* was the erosion of informality in protective proceedings. I believe the juvenile court of the early twenty-first century has lost much of the informality that is essential to respond to abuse and neglect. I conclude with a suggestion to reinvigorate the juvenile court by returning to the informality of an earlier day.

The Proper Role for the Child's Attorney in Juvenile Court Protective Proceedings

Following *Gault* in 1967, attorneys made their way to juvenile court for delinquency cases. As attorneys settled into their new home at juvenile court, it didn't take long for them to ask, "What about child protection cases? Shouldn't children in protective proceedings have counsel?" A few critics of counsel for children argued that the adversaries in protective cases are the child protection agency (CPS) and the parents. Both have attorneys to protect their interests. The child does not need a lawyer. The judge keeps a watchful eye over the child's interests. In addition, although the point is seldom discussed candidly, opponents of counsel for children worry about the cost of adding a third lawyer. On a national scale, taxpayers spend many millions of dollars on lawyers for parents and CPS agencies. Is it wise to spend many millions more on additional lawyers? Wouldn't it be wiser to spend the money on services to help families and children? We could buy a lot of homemaker services, therapy, parenting classes, and job training with the money we spend on attorneys.

Supporters of representation for children in protective proceedings argue that the child needs someone whose sole responsibility is looking out for the child. The lawyer for the parents can't guard the child's interests because the parents' lawyer is answerable to the parents. The lawyer for CPS is not in a position to represent the child. Although CPS usually seeks the outcome that is best for the child, this is not invariably so. Suppose, for example, that a psychologically traumatized child needs expensive therapy in a hospital. The cash-strapped child protection agency may instruct its attorney to ask the judge for less expensive outpatient therapy, and the attorney is obligated to go along. In some cases, then, the interests of the agency and the child diverge, and a lawyer cannot serve two masters. Finally, although the judge has the child's interests in mind, the judge is supposed to be impartial, not an advocate for the child. Moreover, the judge is unlikely to gain a full appreciation of the child's needs unless the child has independent representation to articulate the child's side of

the story. The only way to ensure that the child does not fall through the cracks is to give the child a voice in court.

Proponents of representation for children have the stronger argument. Yet, conceding that the child needs a voice in juvenile court is not to say that the voice has to be a lawyer. A trained volunteer with a caseload of one to four children might do a better job than an attorney responsible for a hundred kids. Indeed, an attorney with a caseload of a hundred can be one of the cracks kids fall through.

Many communities assign volunteers to children. The volunteers are typically known as court appointed special advocates, or CASAs. Increasingly, states have laws authorizing CASA programs, and there is a national CASA organization. CASA volunteers include retirees, college students, and ordinary folks. Responsible for only one to a few children at a time, CASAs make sure kids' needs are met, and that busy attorneys, social workers, judges, and others don't drop the ball. CASA volunteers typically know the child better than the professionals, and offer insights that would otherwise be missed.

Proponents of attorney representation for children don't dispute the value of CASA's. But proponents ask the following question: If the parents and the agency need attorneys to properly represent their views in court, why does the child, whose entire future is at stake, need something less? Only lawyers are equipped by training and experience to fully understand the complexities of litigation. Although CASA volunteers do a wonderful job, and should be used along with attorneys, CASA's are not lawyers. Children deserve the same level of representation as parents and agencies—*legal* representation.

The debate over attorney versus non-attorney representation appears to be resolving in favor of attorneys. Once this debate is put to rest, however, another issue arises: What is the proper role of the child's attorney in protective proceedings? In juvenile delinquency proceedings, the role of the youth's attorney is relatively well defined. In delinquency cases, the youth's attorney acts, for the most part, like a

defense attorney for an adult charged with crime. The youth's attorney counsels the youth on the nature of the charges, possible defenses, the likelihood of success if the case goes to trial, whether it would be wise for the youth to testify if there is a trial, whether to admit the charges, whether to accept a negotiated plea, and the range of possible punishments. As with criminal litigation against adults, the youth in delinquency proceedings is entitled to make the critical decisions, and the attorney's job is to advocate the youth's wishes. Thus, after counseling from the attorney, the youth decides whether to admit responsibility or insist on a trial. If there is a trial, the youth decides whether to take the witness stand and testify in his own behalf. The difference between adult and youth clients is that kids are immature and need more guidance from their attorneys. In the final analysis, however, in delinquency litigation the attorney's role is to be a zealous advocate for the youth's wishes.

Although it is true that in criminal and delinquency litigation, clients are entitled to make the critical decisions, candor requires three admissions. First, there are plenty of adult defendants who are adult in name only, and who require as much guidance as youth. Second, in most cases the client, whether young or old, goes along with the attorney's advice. Third, when criminal defense attorneys are candid, they admit they occasionally overrule their clients' wishes. Defense attorneys don't say to clients, "No, you can't do that. I won't permit it." Rather, attorneys lean on clients until they come around. Such "leaning on" occurs with adults, and it certainly occurs with youth. In delinquency cases, youthful indiscretion requires a degree of reigning in to protect the client's interests. Conceding that defense counsel in delinquency cases exert influence over critical decisions, the role of the defense attorney is nevertheless clear: The attorney's responsibility is to zealously defend the youth, and to carry out the youth's wishes on key issues such as admitting or denying the charges, going to trial, and testifying.

Unlike delinquency, where the role of the youth's attorney is relatively clear, the proper role for a child's attorney in protective proceedings is controversial. Indeed,

there is a major debate about the proper role of the child's attorney in protective proceedings. Although there are several strands to the debate, two predominate: Some favor a paternalistic, guardian ad litem approach to representation. Others favor an autonomy-based, child's wishes approach.

Proponents of the guardian ad litem approach argue that the child's lawyer should advocate in juvenile court for what the lawyer determines is in the child's best interest, even if the lawyer's determination differs from the child's wishes. The guardian ad litem approach is paternalistic because it rests on the belief that children are not sufficiently mature to decide their best interests. The guardian ad litem approach is the tradition in protective proceedings, and is the law in most states.

On the other side of the debate are those who argue that the child's lawyer should advocate for what the child wants, regardless of the lawyer's views. The "child's wishes" approach is the norm in delinquency litigation but is a relative newcomer in protective proceedings, and is based on two principles. First, respect for children's autonomy. Many children are capable of rational decision making, and lawyers should respect and advocate their client's wishes. Second, supporters of the child's wishes approach lack confidence in the ability of lawyers to decide what is best for children.

Few participants in the debate take an absolutist approach to the role of the attorney. I know no supporters of the child's wishes approach who believe lawyers should be bound by the wishes of three-year-olds. By the same token, adherents to the guardian ad litem approach agree that by age fourteen or so, teenagers should have a controlling voice in their representation. Moreover, devotees of the guardian ad litem approach acknowledge that when the attorney's views differ from the child's, the attorney is duty bound to inform the judge of the child's wishes.

The debate is really over the age at which children should be deemed competent to direct the attorney. Proponents of the child's wishes approach tend to draw the line early. Sarah Ramsey, for example, proposed that lawyers assume

seven-year-olds are capable of directing their attorney.[2] Those who favor the guardian ad litem approach tend to draw the competence line later, sometime during adolescence, typically fourteen. Proponents of both approaches justify their position by drawing on the child development literature. Advocates of the child's wishes approach point to literature indicating that children can think rationally by age seven. Guardian ad litem proponents counter that the ability to reason should not be confused with the ability to reason reasonably. Children tend to over-value short-term interests. Moreover, many abused and neglected children lag behind developmentally.

There appears to be no psychological research on when children are capable of directing their counsel in protective cases. There is, however, a fairly well developed research literature on children's decision making capacity in delinquency cases. Commenting on the delinquency research, psychologist Thomas Grisso wrote:

> [C]urrent evidence suggests that compared with adults, youth under age fifteen are at greater risk of having poor knowledge of matters related to their participation in trials. . . . For youths under fourteen years old, the balance of evidence . . .suggests that as a group they are at greater risk than most adults for deficits in abilities associated with adjudicative competence.[3]

I asked Dr. Grisso his thoughts on the age at which children would be able to direct their attorneys in protective cases. He opined that most children below fourteen or fifteen lack the capacity to meaningfully direct attorneys. Psychologists Rona Abramovitch and Michele Peterson-Badali reinforce Dr. Grisso's judgment that it is not until adolescence that children begin acquiring the knowledge and maturity needed to

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[2] *See generally* Sarah H. Ramsey, Representation of the Child in Protective Proceedings: The Determination of Decision-Making Capacity, 17 *Family Law Quarterly* 287 (1983).

[3] Thomas Grisso, *What We Know about Youth's Capacities as Trial Defendants, in* THOMAS GRISSO & ROBERT G. SCHWARTZ, YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 162-63 (2000).

meaningfully participate in legal decision making.[4] Psychologists Melinda Schmidt, Dickon Reppucci, and Jennifer Woorlard wrote that "in general, children under the age of 15 have significantly poorer understanding of legal matters relevant to their participation in trials than do adults."[5]

Thus, psychological research suggests that there are serious problems with the child's wishes model of legal representation for children under the age of fourteen or so. Nevertheless, most academics and, more importantly, the American Bar Association and the National Association of Counsel for Children favor the child's wishes approach for younger children. The preference for the child's wishes model can be traced to a conference held at Fordham University Law School in 1995.[6] More than seventy lawyers, judges, and mental health professionals attended. The conferees concluded that "lawyers serve children best when they serve in the role as an attorney, not as guardian ad litem. . . . If the child can direct the representation, the lawyer has the same ethical obligations as the lawyer would have when representing an adult."[7] To test the courage of their convictions, the conferees considered the case of a child who wants to leave foster care to return to a sexually abusive father. The conferees suggested that the attorney counsel the child, and urge her not to go home. If the child is adamant, however, the conferees concluded that "the attorney must either advocate the child's wishes or withdraw."[8]

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[4] Rona K. Abramovitch, Michele Peterson-Badali & M. Rohan, *Young People's Understanding and Assertion of Their Rights to Silence and Legal Counsel*, 37 CANADIAN J. CRIM. 1-18 (1995).

[5] Melinda G. Schmidt, N. Dickon Reppucci & Jennifer L. Woolard, *Effectiveness of Participation as a Defendant: The Attorney-Juvenile Client Relationship*, 21 BEHAVIORAL SCI. & L. 175-198 (2003).

[6] *Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 1279-2132 (1996).

[7] *Id*. at 1294-1295.

[8] Report of the Working Group on the Allocation of Decision Making, Proceedings of the Conference on Ethical Issues in the Legal Representation of Children, 64 Fordham L. Rev. 1325, 1331 (1996).

It is clear from the proceedings of the Fordham conference that the conferees doubted the ability of attorneys to competently and consistently determine what is best for children. The conferees wrote that "nothing about legal training or traditional legal roles qualifies lawyers to make decisions on behalf of their clients."[9] Martin Guggenheim, one of the conferees, and a leading authority on attorneys for children, wrote that "liberating lawyers for children to advocate results they believe are best for their clients will ensure the randomness and chaos that a rational legal system would avoid whenever possible."[10] Another conferee, Peter Margulies, wrote that "the potential for arrogance and ignorance is greatest when a lawyer appointed to represent a child" advocates for what the lawyer thinks is best for the child.[11] Thus, distrust in the ability of lawyers to perform the guardian ad litem role is at the core of the child's wishes approach.

As mentioned above, the American Bar Association (ABA) favors the child's wishes model. The ABA *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* were approved by the ABA in 1996. The Standards provide that "the child's attorney should represent the child's expressed preferences and follow the child's direction throughout the course of litigation." The Standards also provide:

> [I]f the child's attorney determines that the child's expressed preference would be seriously injurious to the child, the lawyer may request appointment of a separate guardian ad litem and continue to represent the child's expressed preference, unless the child's position is prohibited by law or without any factual foundation. The child's attorney shall not reveal [to the

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[9] Recommendations of the Conference on Ethical Issues in the Legal Representation of Children, 64 Fordham L. Rev. 1325, 1309 (1996).
[10] Martin Guggenheim, A Paradigm for Determining the Role of Counsel for Children, 64 *Fordham Law Review* 1399-1433, at p. 1431 (1966).
[11] Peter Margulies, The Lawyer as Caregiver: Child Clients Competence in Context, 64 *Fordham Law Review* 1473-1504 at p. 1497 (1996).

> judge] the basis of the request for appointment of a guardian ad litem which would compromise the child's position.

The Standards acknowledge that in rare cases a lawyer may need to reveal confidential information to protect a child from serious injury or death—a rather grudging concession, it seems to me, to the reality of child abuse.

The National Association of Counsel for Children (NACC) adopted the ABA Standards in 1997, but with sensible alternations. The NACC is the nation's only organization devoted entirely to improving the quality of legal representation for children.[12] Founded in 1977, the NACC has some 2,000 members. Most members are attorneys, but some are social workers, judges, pediatricians, or mental health professionals. The NACC Standards recognize that "there will be occasions when the client directed model cannot serve the client and exceptions must be made." On such occasions, the NACC recognizes that an attorney may serve as a guardian ad litem.

The ABA and NACC standards recognize that some children are too immature to direct the attorney. Unfortunately neither set of standards offers much help determining when a child is, in the words of the ABA Standards, "impaired." Thus, once again we are left to wonder, how old is old enough? The primary failing of the ABA Standards, the NACC Standards, and the literature on this subject is that no one offers particularly good advice on how to make the most important decision in the entire process: Is this child able to direct the attorney?

Dodging for a moment the ticklish issue of how old is old enough, and assuming we are dealing with a child who is *not* able to direct the attorney, what is the attorney's role? If the attorney is a guardian ad litem, the answer is clear: The attorney conducts an investigation, including consultation with the child if the child is old enough to be interviewed, and the attorney advocates what the attorney thinks is best for the

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[12] *See generally* http://www.NACCchildlaw.org.

child. The answer is not so clear for those who believe attorneys are incompetent to determine what is best for children, and who reject the attorney guardian ad litem role. Critics of the guardian ad litem model suggest four options, which I refer to as: (1) Martin Guggenheim's "legal interests" position, (2) Jean Peters' "rely on the child development literature" position, (3) Emily Buss' "take no position" position, and (4) the "appoint another adult" position.

The "legal interests" position is developed most thoroughly by Martin Guggenheim, and is incorporated into the ABA Standards. Guggenheim wrote that "the proper role of young children's lawyers should simply be to enforce their clients' rights. Those rights derive from substantive law. For this reason, we should be encouraging lawyers to study the substantive law that defines the rights of children and instructing lawyers to enforce those rights assiduously."[13] Guggenheim is skeptical of the ability of lawyers to determine what is best for children. He argues that by requiring lawyers to focus exclusively on enforcing children's legal rights, it will be possible to limit lawyer discretion within acceptable limits.

But what are children's legal rights in protective litigation? Guggenheim concedes that this can be difficult to determine. According to Guggenheim, the child's primary legal right is to live with her parents unless the parents have maltreated the child. If the child is removed from the parents, Guggenheim argues that the child has a legal right to visitation with the parents. Guggenheim asserts that the child's attorney should not form an opinion about what the *attorney* thinks is best for the client. Rather, the lawyer should confine herself to enforcing the child's legal rights.

Although Professor Guggenheim has years of experience representing children, and knows more than I do, I don't think his "legal interests" approach works. Try as he might to divest attorneys of discretion, he can't do it. Here's why. According to Guggenheim, the child has a legal right to remain with his parents unless removal is essential to protect

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[13] Martin Guggenheim, *Counseling Counsel for Children*, 97 MICH. L. REV. 1488-1511 (1999).

the child. If removal is needed, however, the child has a legal right to removal. No matter how you cut it, the lawyer has to decide: Should the child stay at home or not? To make that decision, the lawyer has to look beyond the law to the facts of the case, and once the lawyer gets into the facts, the lawyer is deciding what is best for the child. There's no escaping it. Guggenheim's "legal rights" model fails because it ignores the fact that before an attorney can enforce a child's legal rights, the attorney must decide between alternative legal rights, and the very act of choosing requires the attorney to exercise precisely the kind of professional judgment that Guggenheim deplores.

Like Martin Guggenheim, Jean Peters is a leading authority on attorney representation for children in protective proceedings.[14] With children too young to direct counsel, Peters argues that the attorney should consult the child development literature and pursue the course of action that the literature suggests is best for the child. Although I have great respect for Professor Peters' expertise, her model won't work. A look at the developmental literature reveals competing theories and many unanswered questions. How is the attorney to decide on the proper theory? How does the attorney deal with unanswered questions? Peters lacks confidence in the ability of lawyers to decide what is best for children. Given her lack of confidence, what makes her think lawyers will be able to find, examine, synthesize, understand, and select appropriately among the various theories of child development and behavior? My guess is the child's attorney will pick the developmental theory that supports what the attorney thinks is best for the child, and, once again, we are right back to lawyers exercising judgment about what is in the child's best interests. I don't believe Professor Peters is any more successful at stripping discretion from attorneys than Professor Guggenheim.

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[14] *See generally* JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS (1997).

Donald Duquette is an experienced attorney for children. Duquette analyzed the child's wishes models and wrote that:

> [T]he so-called client-directed models have not eliminated unreviewed, ad hoc, and potentially idiosyncratic lawyer discretion. The ABA/NACC Standards and Fordham Recommendations merely move that unfettered discretion to other parts of the process -- parts not as easily open to review as the ultimate best interests determination. The ABA/NACC and the Fordham approaches aspire to be pure attorney models, but pull their punches in various ways. They create so many points of discretion and so many loopholes that they provide little guidance to the practicing lawyer.[15]

Emily Buss may be the only contributor to the literature who gets close to eliminating attorney discretion.[16] Buss argues that when a child cannot direct the attorney, the attorney should take no position in court. Under Buss's "no position" position, the child's attorney essentially serves as a watchdog to ensure that the other lawyers are doing their jobs.

For those who don't trust attorneys to decide what's good for kids, Buss's position has the best shot at restricting attorney discretion. By depriving the lawyer of the opportunity to take *any* position, the lawyer cannot make the kinds of mistakes that the anti-guardian ad litem forces worry about. I might add, however, that if the child's lawyer can't take a position, why waste money on the lawyer? Let's spend the money on somebody who can help the judge figure out what to do. The "do nothing" position does nothing to further the interests of children.

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[15] Donald N. Duquette, *Legal Representation for Children in Protection Proceedings: Two Distinct Lawyer Roles are Required*, 34 FAM. L. Q. 441 (2000).

[16] Emily Buss, *Confronting Developmental Barriers to the Empowerment of Child Clients*, 84 CORNELL L. REV. 896-966 (1999).

The fourth option when a child is too young to direct the attorney is to appoint a guardian ad litem to decide what is best for the child. The child's attorney then advocates in court for the *guardian's* decisions. This is another well-intended bad idea. What makes us think a guardian ad litem will be any better than an attorney at deciding what is best for a child? Who will pay for the thousands of guardian ad litems required by this approach? Tax payers are already paying for attorneys for parents, attorneys for child protection agencies, and attorneys for children. And if that isn't enough, we are going to inject yet another adult into the equation and pay them too? Remember, none of the money we fork over for lawyers or guardians is available to provide services for children and families. All the money disappears into the legal system.

In response to the cost argument, proponents of the additional guardian ad litem approach assert that volunteer guardians can be recruited and trained to make decisions in children's best interests. Putting aside the fact that training isn't free, wouldn't it be smarter to skip the volunteers and send the attorneys to the training? There's no reason to think volunteers will make better post-training decisions than attorneys. The extra guardian ad litem idea is impractical, unnecessary, and unwise.

Where does all this lead? Children mature enough to direct their counsel have the right to do so, and for these children, the child's wishes model is proper. For mature children, the ABA and NACC standards are appropriate. Where I part company with most academics who address this issue is the age at which children should be allowed to direct their counsel. I'm an unabashed paternalist. For me, the clear message of the psychological literature is that fourteen is the minimum age. Below fourteen, children are simply too young to be responsible decision makers.

For children too immature to decide for themselves what to advocate in court—and for me this is the vast majority of children in protective proceedings—the proper role for the child's attorney is guardian ad litem. The attorney conducts a thorough and searching investigation and makes a judgment

about what is best for the child. I'm not saying this is easy, and I'm not suggesting that the training lawyers get in law school equips them for the task. I *am* saying that experience doing this difficult work, combined with ongoing training and consultation with professionals in other disciplines, gives children's lawyers the tools they need to make wise decisions most of the time. The guardian ad litem role for attorneys is much more likely than the alternatives to serve children well. Children deserve representation from an adult with their best interests at heart, and that is precisely what they get with a guardian ad litem.

Rejuvenating the Juvenile Court

With *Gault*, protective proceedings in juvenile court became more legalistic and adversarial. But does a more adversarial juvenile court produce a net benefit for maltreated children and their parents? Reasonable minds differ on this question. No one disputes that parents have important interests at stake in juvenile court. To offset the power differential between parents and the state, one can make a strong argument that parents need attorneys to defend their interests. Kids need attorneys too. On the other hand, it can be argued that the juvenile court's ability to protect children and help parents is undermined by the loss of flexibility that comes with multiple attorneys and rules of procedure and evidence. Even when courts function at their best, they are not very good at solving complex human problems. I believe transforming the juvenile court from an informal socio-legal institution into an adversary forum cripples the court's ability to respond to families in trouble. In this respect, I'm afraid *Gault* has done more harm than good to the juvenile courts' ability to respond effectively to abuse and neglect. Parents certainly deserve fair treatment. Moreover, lawyers have a role to play. I'm afraid, however, that the juvenile court of the early twenty-first century has lost much the flexibility and vitality required to respond to abuse and neglect. The juvenile court needs an overhaul, a return to the informality of an earlier day.

Part of the solution to what ails the juvenile court lies in alternative dispute resolution (ADR). ADR is a well

established field of expertise that seeks to resolve disputes without litigation. Two ADR techniques hold promise for recapturing a measure of the informality that typified the juvenile court of an earlier day: family group conferencing and mediation.

Family group conferencing (FGC) originated in New Zealand in the 1980's.[17] The idea is to remove cases from the adversary system and involve the child's extended family in finding amicable solutions to family problems. The FGC process typically involves four steps. First, a referral is made for a conference by a social worker, a judge, a parent, or another interested person.[18]

Second, a professional with special training—often called a coordinator—prepares the meeting. The coordinator invites the parents, extended family members, and relevant professionals to attend. A key aspect of preparation is taking the time—often quite a bit of time—to equip parents with the information and self-confidence they need to participate as equals in the conference. The parents are encouraged to invite persons they think can contribute. The coordinator gathers

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[17] *See generally* MARK HARDIN, FAMILY GROUP CONFERENCES IN CHILD ABUSE AND NEGLECT CASES: LEARNING FROM THE EXPERIENCE OF NEW ZEALAND, AMERICAN BAR ASSOCIATION (1996).

[18] *See* WASH. REV. CODE § 13.34.062(5). Washington law provides that when a child is placed in shelter care, parents must receive notice of the proceedings, including notice of their right to "request that a multidisciplinary team, family group conference, prognostic staffing, or case conference be convened …;" *see also* MONT. CODE ANN. § 41-3-422(12). Montana law states that "at any state of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute proceeding. An alternative dispute resolution proceeding under this chapter may include family group conference, mediation, or a settlement conference;" OR. REV. STATS. §§ 417.365 and 417.368. Section 417.368 provides: "(1) The Department of Human Services shall consider the use of a family decision-making meeting in each case in which a child is placed in substitute care for more than 30 days. (2) When the department determines that the use of a family decision-making meeting is appropriate, the meeting shall be held, whenever possible, before the child has been in substitute care for 60 days."

records and other information that will be needed at the conference. The states of Montana and South Carolina have laws specifically authorizing use of confidential records during family group conferences.[19]

Third, the conference is held at a time and place convenient for the family. Typically, a number of professionals attend the conference (e.g., social worker, family doctor, minister). In some places, attorneys attend family group conferences. In other communities, attorneys are not invited. There is no need for a hard and fast rule regarding attorneys so long as they behave themselves, keep their mouths shut most of the time, and resist the temptation to take over the meeting. When the child is old enough to participate meaningfully, the child attends. Following initial discussion, the family meets privately to formulate a plan to protect and care for the child. When the family is satisfied, the professionals rejoin the conference and the family's plan is discussed. In most cases, the family and the professionals agree. Communities vary on which professional or professionals can veto a family's plan. Assuming there is agreement, the coordinator writes it up, and, in some communities, the agreement is submitted to the juvenile court judge for approval.

Fourth, the agreement that emerges from the family group conference contains provisions for post-conference follow-up, services, and monitoring by child welfare. If all

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[19] MONT. CODE ANN. § 41-3-205(3)(k) provides that confidential records may be released to the members of "a family group conference for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan…" S. CAROLINA CODE § 20-7-690(M) provides that the child welfare department:

> [M]ay disclose to participants in a family group conference relevant information concerning the child or family or other relevant information to the extent that the department determines that the disclosure is necessary to accomplish the purpose of the family group conference. Participants in the family group conference must be instructed to maintain the confidentiality of information disclosed by the agency.

goes well, the agreement expires of its own terms, and the family goes on with life.

A small number of states have statutes authorizing family groups conferencing (e.g., Kansas, Montana, Oregon, South Carolina, and Washington[20]). Other states are experimenting with FGC sans statutory authorization (e.g., California).

An alternative to family group conferencing is mediation, which is a time-tested method of resolving disputes without litigation. An impartial mediator, who may or may not be an attorney, brings the sides together in an effort to find common ground and reach agreement. Mediation has been used successfully for years in a wide range of legal arenas, including custody disputes in family court. Mediation is a relative newcomer in juvenile court protective proceedings, but is finding increasing acceptance.

An evaluation of juvenile court mediation in Essex County New Jersey was conducted by the National Council of Juvenile and Family Court Judges.[21] The evaluation found that most participants in mediation -- parents and professionals -- were satisfied with the process. When parents are properly prepared, mediation instills a sense that they are listened to and respected.

Alternatives to litigation are important to rejuvenate the juvenile court. Yet, with mediation and family group conferencing, something is missing. What key ingredient do these techniques omit? The judge. It seems that the more we embrace nonadversarial solutions in juvenile court, the less we need the judge. Of course, the judge is still there to preside over trials of cases that don't settle, and to preside at proceedings to terminate parental rights. Perhaps we will have to content ourselves with juvenile court judges whose role is

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[20] *See* KAN. STATS. ANN. § 38-1559(a); MONT. CODE ANN. §§ 41-3-102, 41-3-205(3)(k); OR. REV. STATS. §§ 417.365, 417.368; S. CAROLINA CODE §§ 20-7-545, 20-7-690; WASH. CODE ANN. §§ 13.34.063(5), 13-34.094.

[21] National Council of Juvenile and Family Court Judges, *Essex County Child Welfare Mediation Program*, *available at* http:// www.ncjfcj.org (last visited Jun. 26, 2004).

limited to presiding over trials, much like judges in criminal cases. Yet, don't we lose something when juvenile court judges are limited to the residue of cases that can't be resolved without a fight? Yes. We lose the tradition of the wise juvenile court judge meeting informally with troubled parents and helping them solve their problems. The judge is the ultimate authority in the legal system. The judge carries an aura of authority that is unique to the judicial role. Given the prestige and power of the office, judges have unparalleled problem-solving capacity, capacity that is squandered when judges are limited to presiding over trials.

Today, we risk losing the century-old tradition of the juvenile court judge as informal, hands-on problem solver. The loss, if it occurs, will be the direct result of *In re Gault.* The *Gault* decision led to the introduction of lawyers in protective proceedings. As lawyers entered the front door, informality left by the rear exit, crowded out by the winner-take-all mentality at the heart of the adversary system of justice. I hope I'm not unfair to my colleagues in the legal profession. I have tremendous respect for the attorneys who devote themselves to the juvenile court. They sure don't do it for the money. They do it to help children and families, and they often succeed. Yet, they're lawyers: They just can't help themselves. From the first day of law school they are ingrained in the traditions of adversarial litigation. Many lawyers in juvenile court realize the drawbacks of an adversarial approach, and work hard to reach amicable solutions. In the end, however, lawyers behave like lawyers because they are lawyers. If the tradition of the judge as informal problem solver is worth saving, we'll need a little less lawyering in juvenile court.

I recommend a new-old role for the juvenile court judge, a return to the original model in which the judge meets in an office (not a courtroom) with the parents, the social worker, and, as appropriate, others. Lawyers do not attend. Rules of evidence and formal testimony are replaced with informal discussion. Everyone has an opportunity to talk to the judge and each other. Everything that is said is confidential so parents can feel comfortable being candid. The judge decides

what is needed to help the family and keep the child safe. The judge discusses her ideas with the others, and comes to a resolution.

Does what I propose differ from mediation? Yes. The difference is that with my new-old proposal, the judge is the heart of the process. The judge brings to the table the entire legal and moral authority of the judicial office. Yet, unlike litigation, the judge is not separated physically and psychologically from the parties by a bench and a robe. Sitting at the same table, the judge is first among equals. The skillful judge brings a chemistry to the meeting that lowers barriers and inspires the participants toward compromise and consensus. This model of judging was a major part of the genius of the juvenile court, and we can't afford to lose it. To survive as a vital component of society's response to abuse and neglect, the juvenile court must return to its roots in the early twentieth century, prior to the unintended but corrupting influence of *In re Gault*.

Under the proposal suggested here, parents would not be forced to forego a trial where they are represented by counsel. Parents desiring the type of informal meeting described here are volunteers. Moreover, parents who are dissatisfied with the judge's decision at an informal meeting can request a trial before a different judge.

Prior to going on the bench, relatively few judges have experience with child abuse, neglect, poverty, substance abuse, and the host of social issues that take center stage in juvenile court. In many states, judges rotate judicial assignments, and a stint in juvenile court may last only a year or two. Experienced judges know it takes a year to *begin* learning the ropes in juvenile court. To fulfill the Solomon-like judicial role described here, we need judges who are committed to the juvenile court for extended periods, preferably as a career. Juvenile court judges should be encouraged to earn masters or doctoral degrees in social work, sociology, or psychology.

Utah is at the head of the class when it comes to selecting judges who are committed to the juvenile court. In

Utah, the juvenile court is separate from the rest of the judiciary. When a Utah attorney applies to become a juvenile court judge, she knows from the outset she will always serve that court. Thus, the attorneys who apply are already committed to helping children and families. Utah's approach is worthy of emulation.

Conclusion

The juvenile court was a brilliant idea a century ago, and the court is as important today as it was at its inception. Every day, the dedicated women and men who devote themselves to the court turn young lives toward brighter futures. My purpose is not to criticize these professionals. I admire them too much for that. My goal is to argue that when it comes to abuse and neglect cases, the success of the juvenile court is hampered by the unintended consequences of the Supreme Court's decision in *In re Gault.* To reinvigorate the juvenile court, we need to return the court to the paternalistic, informal institution it was prior to *Gault*. As we do this, we must preserve fundamental fairness and due process. Regaining the informality of the original court won't be easy, but doing so will ensure the court's future as a vital component of society's response to child abuse and neglect.

Karen Grace-Kaho[**]:

As part of the overview of the child welfare system, I thought I'd just start off with a brief history in terms of this system and how it addresses the issues related to child abuse and neglect. First of all, I'm sure you're aware that child abuse and neglect is not a new issue. It's existed throughout history. But not until the 1870s were there any civil laws that

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provided protection for children. And one of the famous first cases of child abuse where the courts got involved is called the Mary Ellen case. In 1874, a neighbor became aware that a child, Mary Ellen, was being brutally beaten by her stepmother. Since there were no laws on the books to protect children, she reported the case to the Society for the Prevention of Cruelty to Animals. The case was brought into court on the argument that Mary Ellen was a member of the animal kingdom and was entitled to the same protection as abused animals. As a result, the stepmother was prosecuted and sentenced to the state penitentiary. This was the first time that anyone ever brought to the attention of the court any kind of cruelty to children.

The first juvenile court was established in Illinois in 1899 and most states had set juvenile courts by the 1920s. The Juvenile courts mainly focused on delinquents, children that had broken the law in some way. It wasn't until 67 years later in 1966 when several Supreme Court cases established that juveniles have the right to due process. Up until then juveniles were sentenced without lawyers, without any real sense of due process. Many times the juveniles were given longer sentences than what an adult would have received. In the 1960s the general public's attention began to focus on child abuse, thru the work of a doctor and his colleagues at the University of Colorado who documented cases of children with non-accidental broken bones and bruises. Their studies introduced the term "battered child syndrome", which caught the attention of the public and elected officials. By 1967 most all of the states had enacted some kind of mandatory child abuse reporting laws. Prior to 1966, physicians who would see children with broken bones, bruises, severe bleeding, would not report it because there was no law that required it.

Around the same time, child abuse and neglect issues were also being addressed in the federal political arena. In 1950 and 1970, White House conferences on Children were held. In 1974, after the media exposed the ineffectiveness of our societal response to child abuse, the first federal Child Abuse Prevention and Treatment Act was passed. In 1980, Congress passed the Adoption Assistance and Child Welfare

Act[22], which was intended to remedy the problems within the foster care system. This law was amended in 1983 to include "a reasonable efforts mandate," which required a judicial determination that reasonable efforts were extended by the social service agency to prevent a child's removal or to permit a child to remain or return home. This law put the judiciary as an oversight for the Department of Social Services. From that point on, the juvenile courts were put in a position of monitoring the practices of the state, local and social services agencies. This wasn't until 1980, which wasn't that long ago. In 1997, the Federal Adoption and Safe Families Act[23] was passed which strongly stressed permanency. In 1999 the Foster Care Independence Act was passed which provided funding for youth that were transitioning out of the foster care system.[24]

From this brief historical overview, it is clear that our society has not focused on child abuse and neglect, until fairly recently. Even though we have child abuse & neglect laws on the books, some of us know that these laws are not being implemented consistently across counties or even across states.

The various Federal and State laws provide guidance as to when state intervention is justifiable; they are attempting to balance the need to protect children with the need to prevent unwarranted state intrusion into family life. To that extent that we seek to understand that balance it would be helpful to examine the structure of the child welfare system. The child welfare system's involvement in child abuse and neglect usually begins with a report to the child protective service's (CPS) hotline. A CPS social worker decides whether this report needs to be investigated. If it's determined that an investigation is warranted, a CPS social worker will go to the home and interview all relevant parties. If they believe that the child abuse/neglect is serious enough that the children

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[22] 42 U.S.C. §§ 620 et seq, 670 et seq. (1976 supp. 1980).
[23] 42 U.S.C. § 601 et seq. (2000)
[24] *See* Diane F. Reed & Kate Karpilow, *Understanding the Child Welfare System in California*, California Center for Research on Women and Families 4 (Nov. 2002).

have to be removed, they have to file a dependency petition with the court within 48 hours. The court then determines whether the children need to be placed in foster care or whether they can return home.

Once the children are placed in foster care, the foster youth rights become operative, and specific court hearings are required to protect the rights of both the children and their parents.[25] Within 20 days after the detention hearing, there will be a jurisdictional hearing, which is when the court determines if abuse and neglect allegations are true and if intervention is warranted. Within 10 days of the jurisdictional hearing, if the child is in custody, the court determines the child's placement and establishes a service plan. A review hearing is held every 6 months for as long as the child is in foster care. At each of these hearings the court determines whether the parents have successfully completed their case plan in order for the child to be returned home or not.

This judicial process was established to both provide oversight of this system and to protect the rights of all parties involved. However, often the judicial process becomes too adversarial, which often detracts from possible solutions of the families difficulties. To address the problems with the judicial processes, some jurisdictions are utilizing alternative resolution programs and processes. Many places are using mediation where they can try to resolve some of these issues before they go into court. Family conferencing is an empowering approach that brings together the whole extended family to determine if some of the family relatives can care for the child while the parents are working on their issues. There are also programs called wraparound services where children are allowed to stay in their homes with their families but are provided with very intensive supportive and therapeutic services as well as crisis intervention in the home.[26]

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[25] *See id.* at 14.

[26] This is just a brief overview of the history and structure of the complex child welfare system; for more detailed and in depth information *see generally* N. BERNSTEIN, THE LOST CHILDREN OF WILDER, THE EPIC STRUGGLE TO CHANGE FOSTER CARE (2001); L. EDWARDS & I. SAGATUN,

I also want to give you some information about the Foster Care Ombudsman program. I am California State Ombudsman for Foster Care appointed through the Governor. Our office was established by legislation because of the advocacy of various child advocates and the California Youth Connection. The Foster Care Ombudsman (FCO) office is mandated to maintain a statewide toll-free help line to receive complaints and concerns regarding the care, treatment and services received by foster children. The FCO office is also mandated to educate foster youth regarding their rights. The Foster Youth Rights are listed in law and in the Foster Youth Rights brochure that is given to each foster child. (see listing of Foster Youth Rights). Our office gets calls from foster youth and other concerned people from all over the state. Most of the calls are from foster youth and the next largest number of calls are from relatives of foster children. Most of the complaints involve problems with their placements and violations of their rights. The FCO office also maintains a website[27] which was designed by a former foster youth and has information and resources to assist foster youth. I hope you all will consult this website to not only review the resources but also our Annual Reports will provide more detailed information regarding the complaints and issues impacting the Child Welfare System. Many of the problems in the Foster Care System are negatively impacting the real lives of children and youth all over our state. I'm just hopeful that some of you that are going into this field will take seriously the urgency to correct the problems that impact these foster children that are growing up in this system.

CHILD ABUSE AND THE LEGAL SYSTEM (1995); V. FAHLBERG, A CHILD'S JOURNEY THROUGH PLACEMENT (1991); F. HUBNER, & J. WOLFSON SOMEBODY ELSE'S CHILDREN, THE COURTS, THE KIDS, AND THE STRUGGLE TO SAVE AMERICA'S TROUBLED FAMILIES (1996); K. KARPILOW & D. REED, UNDERSTANDING THE CHILD WELFARE SYSTEM IN CALIFORNIA, A PRIMER FOR SERVICE PROVIDERS AND POLICYMAKERS, CALIFORNIA CENTER FOR RESEARCH ON WOMEN & FAMILIES, BERKELEY, CA (2002).

[27] http://www.fosteryouthhelp.ca.gov

Alice Bussiere***:**

A key question posed by this symposium is whether significant change is needed in child welfare system. From this morning's panel you heard about some of the changes underway and some that are planned, particularly in response to the federal Child and Family Service Review[28] and AB 636, the Child Welfare System Improvement and Accountability Act.[29] As you heard, a key concept is providing child welfare agencies with more flexibility. However, we also need to be sure that we are maintaining accountability in the process. My bottom line message this afternoon is - we need to make sure we are not throwing the baby out with the bath water. As we embark on reforming the child welfare system, once again, after major reform efforts that led to the Adoption Assistance and Child Welfare Act of 1980[30] and the Adoption and Safe Families Act of 1997,[31] we must remember that protecting the children who are in foster care is one of our most important goals.

In designing and implementing reforms, we also need to remember that children are living in foster care right now. For example, the Child Welfare Services Redesign

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[28] California is in a corrective action process in areas where the federal review identified that the state needs to improve. The federal report, CALIFORNIA'S PROGRAM IMPROVEMENT PLAN, and related documents are available on the California Department of Social Services (CDSS) website at http://www.dss.cahwnet.gov/cfsr

[29] AB 636 is codified at California Welfare and Institutions Code § 10601.2.

[30] P.L. 96-272 (1980).

[31] P.L. 105-89 (2000), codified at 42 U.S.C. 601 et seq. (2000).

Implementation Plan,[32] discussed this morning, took over three years with many meetings and much work by consultants to develop. It was finished last year, and implementation planning is starting in a few counties this year. It will be four or five years - more in some counties - from the time somebody thought that Child Welfare Redesign was a good idea to the time that anything is actually going to happen. Over that time a baby is going to be eligible for preschool, a ten year old is going to be in junior high school, and a high school freshman is going to be emancipated from foster care and living on her own. As we are doing all this thinking and planning, children in foster care are living their lives. They need our attention now. We have to be sure that we don't abandon these children in our eagerness to work on future reforms.

Let me provide three examples of areas of concern: 1) community care licensing requirements, 2) child welfare review standards, and 3) permanency for older foster youth as reflected in A.B. 408.[33]

First, community care licensing. Licensing may seem like a pretty dry and unimportant issue until you think about what licensing standards do. They set the basic health and safety requirements for facilities, including group homes and family foster homes, that provide care for foster children.[34] These standards include things like caregiver qualifications, including criminal and child abuse background checks, caregiver training requirements, staffing ratios, and facility capacity. It is licensing regulations that prohibit corporal punishment of children, restrict the use of physical restraints, and require facilities to have bed space for every child they admit. While these requirements are important to the health and safety of children, the youth themselves often report that the most significant licensing requirements from their

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[32] The CHILD WELFARE SERVICES REDESIGN IMPLEMENTATION PLAN *at* http://www.cwsredesign.ca.gov (last visited Jun. 26, 2004).

[33] A.B. 408, 2003 Leg., 2003-2004 Sess. (Cal. 2003), Chapter 813, Stats. 2003.

[34] Cal. Community Care Facilities Act, CAL. HEALTH & SAFETY CODE §§ 1500, et seq. and 22 CAL. CODE REGS. §§ 80000, et seq.

perspective are those governing personal rights.[35] Personal rights include things like access to the telephone, sending and receiving unopened mail, the opportunity to participate in community activities, and the right to wear your own clothes. If you think about when you were a teenager, these things are probably things that were most important to you too - whether you could call your friends, whether you could play in a band, go to a football game, or participate in Girl Scouts, whether you could wear your own clothes or would be forced to use clothes worn by other children.

Personal rights regulations create basic legal rights for all foster children,[36] but they are not always respected. Unfortunately, some facilities fall into an institutional mentality and fail to recognize that these children are in state care, not because they have done anything wrong, but because we want to protect them, and, as Kathy Dresslar said this morning, so that we could do a better job of caring for them. This is why the Community Care Licensing Division is so important. It is licensing staff who enforce the basic health and safety regulations and the personal rights requirements. However, the current budget crisis has cut funding for Community Care Licensing staff and has reduced licensing visits to inspect facilities. An important part of our reform efforts must be to maintain what we have and strengthen Community Care Licensing so that it can protect children.

The second area, which was mentioned this morning, is child welfare review. While it is important to measure outcomes, it is also important to evaluate some process indicators along the way. Outcomes will measure whether over time children are safer, better educated, or healthier, but in the meantime we have to make sure that basic protections are in place.

For example, current child welfare regulations mandate, with some exceptions, that a social worker have

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[35] 22 CAL. CODE REGS. §§ 80072, 84072, 89372 (2004).

[36] The Foster Youth Bill of Rights summarizes these basic rights. *See* CAL. WELF &INST. CODE § 16001.9. *See also*, http://www.fosteryouthhelp.ca.gov/ Rights2.html

face-to-face contact with each child in care at least once a month.[37] Although this requirement can be characterized as process, rather than outcome oriented, it is vital because contact with the child is essential to anything else the social worker can do for the child. The child welfare system cannot do all the wonderful things envisioned in child welfare reform if the social worker isn't seeing the child, talking to the child, and determining whether the child is safe.

Another example is emergency response time. Current regulations set out specific timelines for responding to reports of abuse or neglect.[38] Response time is a process issue, and you can certainly measure two years from now whether there is more or less child abuse and whether more or fewer children have died. But in the meantime it is important to mandate when an immediate response is required to protect a child and to measure whether that response time is met.

These process issues are especially important in times when budgets are tight and resources are scarce. It is all too easy to let the process issues slip when the child welfare system is understaffed and overworked, but finding out in a few years that we have failed to protect children from harm is too little too late.

The last issue I want to mention briefly is A.B. 408[39], which is designed to improve permanency for older foster youth. A.B. 408 has three basic goals: 1) to ensure that foster children are able to engage in activities enjoyed by other

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[37] CALIFORNIA MANUAL OF CHILD WELFARE POLICIES AND PROCEDURES 31-320 (2002) (hereafter MPP). The Youth Law Center has brought three lawsuits to enforce this requirement. *Timothy J. v. Chaffee*, No. CA 001128 (Los Angeles Cty. Sup. Ct., filed Aug. 10, 1988) was brought to require Los Angeles to comply with the face-to face contact requirement. *Donaldson v. Archuletta*, No. 835661-9 (Alameda Cty. Sup. Ct., filed Feb. 5, 2001) was brought to require Alameda County to comply with the face-to-face contact requirement among others. *Rene M. v. Anderson*, No. 982014 (San Francisco Cty. Sup. Ct., filed Oct. 23, 1996) was brought to require CDSS to monitor this requirement, among others. All three lawsuits have been settled.

[38] MPP, *supra* note 35, at 31-115, 120.

[39] A.B. 408, 2003 Leg., 2003-2004 Sess. (Cal. 2003), Chapter 813, Stats. 2003.

children of the same age, 2) to strengthen the right of a foster youth to attend court hearings, and 3) to support relationships that foster youth have with individuals who are important to them.

The first part of A.B. 408 is fairly non-controversial and is sometimes referred to as the "prudent parent" standard. The impetus for this section was the unintended consequence of requirements designed to protect children but which unnecessarily limited their ability to engage in age appropriate activities. That is, activities such as using knives to cook, spending the night at a friend's house, or participating in after school activities. A.B. 408 specifies that foster children have the right to engage in age-appropriate extracurricular, enrichment, and social activities. It prohibits policies that create barriers to that participation, and requires state and local child welfare agencies to ensure that private agencies have policies that promote and protect the ability of children to participate in age-appropriate activities. It also requires caregivers to use a prudent parent standard in determining whether to give permission for a child to participate in activities.[40] This is an example of a reform that looks small, but has a significant effect on the lives of foster youth and on youth development.

The second part of A.B. 408 is designed to strengthen enforcement of a right that youth already have - the right to attend court proceedings in their case. Prior to the passage of A.B. 408, the law specified that a minor had the right to be present in court[41] and that youth ten years old or older had the right to notice of hearings.[42] However, many foster youth report that they did not know about their court hearings or were told that they could not attend. A.B. 408 strengthens these rights by requiring the court to determine whether the minor was properly notified if a minor ten years old or older is not in court.[43]

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[40] CAL. WELF. & INST. CODE § 362.05 (2003).
[41] *Id. at* § 349.
[42] *Id. at* §§ 290.1(a)(4), 290.2(a)(4).
[43] *Id. at* § 349.

The third part of A.B. 408 is focused on improving permanency for older foster youth, and it was the most controversial. Regina Deihl spoke this morning about the importance of permanence for older foster youth. This part of AB 408 is designed to improve permanence for these youth.

On the whole A.B. 408 addresses two main issues.[44] First, some foster youth over the age of ten who cannot return home would like to become part of a family though adoption. All too often these children have heard they are too old to be adopted, or the child welfare agency can't find anyone to adopt them. Neither of these things is true. Several innovative programs have proved families are available for older foster youth, and adoptions of older youth are successful.[45] Second, youth who leave foster care through emancipation need a connection to a caring adult. Although these youth emancipate from foster care into what is called independent living, we all recognize that no one, particularly an eighteen year old, lives totally independently.

Unfortunately, the child welfare system, either deliberately or through neglect, too often severs the ties that foster youth have to individuals who are important to them, such as a distant relative, a former foster parent, a family friend, a neighbor, a teacher, or a coach. These are the individuals most likely to be interested in adopting an older child or in providing support after emancipation.

A.B. 408 recognizes that these ties are important and creates mechanisms to ensure that they are identified and nurtured. It establishes legislative intent that no child leave foster care without a life-long connection to a committed adult.[46] It requires social workers to ask youth in group care

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[44] Reunification with family is another important component for some foster youth who can return home.

[45] *See, e.g.,* MARDITH J. LOUISELL, MODEL PROGRAMS FOR YOUTH PERMANENCY, CAL. PERMANENCY FOR YOUTH PROJECT (2004.) For more information on the California Permanency for Youth Project, *see* http://www.cpyp.org (last visited Jun. 26, 2004).

[46] CAL. WELF. & INST. CODE § 16500.1(b)(11) (2003).

who are ten years old or older about important relationships.[47] It requires case plans for those children to identify individuals important to the child and the actions necessary to maintain relationships that are in the child's best interest,[48] and includes these elements in court reports and court reviews.[49] And it involves individuals important to the youth in transitional independent living plans,[50] and includes curricula on the importance of these relationships and ways to identify and support them in training for social workers.[51]

This part of A.B. 408 merely codifies good social work practice. No one disagrees that social workers should talk to foster youth to find out who is important to them and take steps to nurture important relationships. However, this part of A.B. 408 met with resistance because it imposed mandatory duties. The problem for foster youth and their advocates is that good social work practice is falling by the wayside, and the only way to ensure certain things are happening is to mandate them by law.

This is the dilemma in evaluating flexibility against prescriptive requirements and entitlements. On one hand, we want to foster creativity and the flexibility to provide individual attention for every child. On the other hand, flexibility sometimes leads to neglect of basic rights and principles, particularly when the child welfare system is overwhelmed. An earlier speaker suggested that child welfare law in California is very complex, and some have argued that it is too detailed. However, every provision in the Welfare and Institutions Code was added because someone experienced a problem that required resolution. While some of these provisions could stand to be simplified, each of them is there for a reason. As we think about system reform and increased flexibility, we need to be sure that we are not

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[47] *Id. at* § 16501.1(i). The social worker is required to ask children over the age of ten and is permitted to ask younger children.
[48] *Id. at* § 16501.1(i).
[49] *Id. at* §§ 366(a)(1)(B), 366.1(g), 366.21(c), 366.22(a), 366.26(c)(3), 366.3(e)(2) & (3), 391(b)(5).
[50] *Id. at* § 10609.4(b)(1)(G).
[51] *Id. at* § 16206(c)(12).

discarding basic protections for the children the system is designed to serve.

Jennifer Rodriguez[****]:

I would like to talk a little bit about some of the struggles that young people face as they transition out of the foster care system. I think that most people in the public assume that the foster parent system is there to address the needs of kids who can't live at home with their own families and that the end result for those children coming into the system will be that they either are reunified back with their own parents when the situation stabilizes, or that they find a new family and permanence in another family. The reality is that in California, like in most states, there are a large number of children who never reach either of these goals and end up growing up in the foster care system and then aging out or emancipating from the foster care system without ever being reunified with their own family or finding permanence in another family. And much of the focus, I think, on foster care usually is on looking at what happens at the front end, how do children enter the system, what type of services are provided to families and children at the beginning when that first initial contact is made, or what happens to children while they are in foster care?

So what protections are in place while they're in foster care, what type of issues do children face as they're trying to grow up and find stability in the foster care system. Something that's really important that's often ignored is what happens to those children who do not ever find permanence or are unified. What are their outcomes and what are some of the struggles that they face as they attempt to enter adulthood on their own. And so I think a lot of people assume it's a very

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[****] Jennifer Rodriguez is the Legislative and Policy Coodinator for the California Youth Connection. She is a 2004 graduate of the University of California, Davis, School of Law, and the recipient of the Martin Luther King, Jr. scholarship for public service. She also grew up in the California foster care system.

small number of children, and in actuality in California approximately each year there's approximately 3,000 children each year who end up emancipating from foster care and having really hard times-- those are some of the most vulnerable children. Overall, the rates for both finding permanence and reunifying are much lower for minority children, particularly African American children. So within that population of young people that are emancipated from foster care you have minority children that are disproportionately overrepresented. You also have children who have some of the greatest needs, and that's often times why they were not able to find permanence; because somebody determined that they had mental health needs or they had needs for a more intensive group congregate care setting that could not be met in a family type environment. So these are youth who are some of the neediest and who face the greatest challenges as they come to be self sufficient.

One of the greatest issues that has in the past couple years gotten more attention, has to do with how youth are prepared educationally to be self sufficient adults. And the statistics on this are really pretty dismal. The statistics show that 83% of children that are in foster care are held back by the third grade, that 75% of foster children are working below grade level, that 35%, that's over a third, of foster youth are in special education, and that the outcome of those statistics is that only 15% of foster youth ever enroll in college and of that 15%, only 2% ever end up graduating.[52] And whenever I hear those numbers I have to say a silent prayer to myself because I think how lucky I am that I'm part of that small percentage that did end up making it. So it's really not surprising that for many young people leaving the system they find that educationally they just haven't been prepared to do all the things that are expected of them when they are 18, like go out and read the classified ads in order to find a job, being able to pass a literacy test to get different types of jobs. They really don't have that educational foundation that I think most

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[52] Statistical data on file with the author.

everyone, both parents and children, know is so important to be able to be self sufficient.

In terms of preparation to enter the work force, if youth aren't prepared to go into higher education, then the other alternative is to find a job to support themselves somehow. And often times for youth that are leaving care, they've had very little preparation to be able to find a job. I don't think many people understand how challenging it is to find a job when you leave foster care when often times you don't have the same type of network of folks that can provide you with resources in terms of saying "I know somebody who has a job, or you can go work for my uncles." And then youth also often times have been denied the right to have and gain and acquire work experience as well. In many congregate care type placements youth are in a very, very structured environment where they're restricted from participating in a lot of activities outside of the home, so that's really an issue. To just share with you, when I left foster care myself, my one work experience had been digging ditches for summer for Conservation Corps. So that was the sole job skill that I entered adulthood with was the ability to dig lots of large ditches, which, not surprisingly, did not get me employed anywhere.

Another challenge is housing, which is a really, really basic need of everyone and it comes before actually being able to go out and find a job. You need to have a phone number and an address where people can contact you to tell you whether or not your application was accepted. And many youth are leaving foster care not only with a lack of preparation, but also a lack of connections. They have no connections to any adult who might be able to assist them in housing them. So typically people often ask what does emancipation mean? For many youth what it means is that you are notified on your 18th birthday that you need to vacate your placement regardless of whether or not you have a place to go that night. There are actually shelters and group homes in Sacramento that take the youth and drive them directly to an adult shelter on their 18th birthday. And so that really presents a challenge for these young people to get started and establish

themselves in their life when they struggle with finding housing. And for any of you who deal with housing issues, you can imagine how receptive landlords might be to renting to an 18 year old who has no references and has no credit history. Often times when youth leave care they have a negative credit history because biological parents and caregivers may have misused their personal information, they may not have a job, they may not have a way of guaranteeing that they have income coming in, and they certainly don't have anybody who can cosign for them. There are not many landlords who are willing to put themselves in that situation. So we've worked really hard to establish some programs that provide transitional housing to youth that are leaving the system, but there's a very small, limited number of those programs, certainly not enough to address the need in terms of numbers.

The last challenge that I've already mentioned is just a lack of having any permanent connections. That intensifies all of the struggles that youth have in all of those above areas, because they're really having to navigate by themselves. I know for many of you that are in the audience that you have children and you can probably imagine what it would have meant to your own child to be released out on their own at 18 years of age and to have no resources at all, nobody to call when you don't understand how to work the dishwasher in your home, to have that feeling that if you died on the way home from work that nobody would find out, maybe for weeks, maybe for months, probably when you didn't pay some bill that was overdue. It's really a feeling that adds to sort of the depression and the stress and anxiety that many youth feel as they transition out of the system.

So overall the end outcomes for youth that have left foster care are indicative of the failure of the foster care system to meet young people's needs. To me that's the ultimate measure is how do these young people fare once they're adults? Are they successful or not? That's what shows you whether or not our system is working successfully. And just to give you an idea, there have been lots of studies that have been done about you youth fare after adulthood.

About 46% of foster youth leaving care have not completed high school. In terms of joblessness, the percentage of foster youths who are unemployed 2 ½ to 4 years after leaving foster care, almost 50%. In terms of median earnings, former foster youth are earning below the poverty line or median earnings. Almost 50% have emotional or mental health problems after leaving foster care. Almost 60% experience homelessness at least once during 2 ½ to 4 years after having left foster care, and anywhere between 20 and 40% of young people are incarcerated at least once within 2 ½ to 4 years after leaving foster care. So the interesting thing is that despite these really, really horrible outcomes, the state of California does not track or in any way keep account of what happens to their young people once they leave foster care. These statistics come from people doing independent research studies. And so I personally believe that that's because the state does not want to see what's happening to young people because anybody who looks at those statistics knows that there needs to be some immediate action that's taken, and not action that is going to be taken in 3, 4, 5, 6 years, that's action that needs to be taken today, tonight, this minute.

So I think as parents, we can say that government is not doing a good job of raising healthy, self sufficient children and really it's both the responsibility of the foster care system and of the community and the public to get involved and to put some pressure to make things better. I read that foster children are everybody's children and so for that reason it means that they end up being nobody's children because everybody assumes that somebody is taking care of the responsibilities. And I think that's really true that everyone who pays taxes who's a concerned member of society has an investment in seeing that these young people who are the government's children have their needs met and need to be part of asking for change and asking for accountability within the system.

All of these outcomes led foster youth in California about 15 years ago to realize how important it was that they be involved in seeing some of the change and that they start organizing to advocate for their rights and to advocate for

things to get better in the system, because it did not seem like anybody was really paying attention to the things that were happening to them. And historically, there really has been a lack of foster youth involvement in child welfare policy development and child welfare policy implementation. Decisions about good policy were usually made by a bunch of guys in suits behind a closed door who may have never in their entire life met anybody who was in foster care, who may not have known anybody who was a caregiver, but have been educated through reading textbooks, through maybe watching a movie about what they thought the best fixes to changing things in the system were. And overall if you look back over the history of the child welfare system there was always a sense that there were folks who maybe were middle class, perhaps white, who could determine what was best for families of color, for poor people of color. When young people started organizing and saying, we really want a voice, we want to be a part of decision making, a lot of people were resistant to it. And now 15 years later we're getting to a point where people do realize the value of having young people who are in foster care or have been in foster care participate in.

And then that lack of involvement was not just at the system level. There has also been historically just a lack of youth involvement at the individual case level as well. It's made even more of a difference. When all of the federal reviews that have been referred to during the day were done, the one area that most impressed me that California as well as almost every other state failed was engaging children and family members. Which was very surprising to me that that wouldn't be an obvious part of case planning and case development. Because if you think about it and you think about the amount of time that a judge has to make a decision about a child's life, something like 3 minutes on average, that a judge has to make a decision that impacts a child and a family's entire life. Social workers may visit monthly, often times they don't. That visit can last from anywhere from 3 minutes to 15 minutes. You have an attorney who many times never meets the child that they're representing because their caseloads are so large. So you have all of these folks who

don't know the child, who don't know the family, who are charged with making the most important decisions about what will happen to that child and happen to that family. Who do not have the benefit of knowing the years of history in that family, who don't have the benefit of the youth knowing, no I really don't like the placement that I'm in but I would really like to live with my Auntie, that's an okay situation for me. That that's not in the resource that's drawn upon currently. And then in terms of the way that lack of involvement impacts youth who are in the system, what it results in is that youth often times feel like their entire life is out of their control, that they really don't have the ability to be an agent of change in any way. Which often times makes youth give up. They feel like no matter what they say or no matter what they do they are not going to be allowed to give input into where they live, where they go to school, what the next place that they'll stay is, and so many youth walk around with the feeling that they have no idea if they're going to living in the same place tonight, tomorrow, they have no input as to whether or not they're going to be put on psychotropic medications, that nobody cares what the side effects of those medications are, and they pretty much check out of their own life. And then at 18 they're suddenly expected to take on more responsibility and more control over their life than most people could ever imagine in their entire lifetime. And people wonder why youth fail.

I also really agree with Alice's [Bussiere] point that the focus on outcomes in child welfare has meant that people have ignored process items and haven't felt that process items are as important. And one of the most important process items to me is that process of youth empowerment. How involved is the child in their own decision making? Most people say it does not matter how you achieve that outcome as long as you can have stability in a placement, as long as you can find permanence for that youth it doesn't matter by what technique you do it. I feel that's absolutely wrong, because it makes all the difference in the world the technique. If that young person is involved in that decision and feels like they're a powerful agent in getting to choose what permanent placement they

want, what's acceptable to them, it means you have a much higher chance of not only getting a good outcome, but getting a good outcome that lasts long term, that ends up really being a lifelong lasting connection.

In California we're fortunate enough to have a really unique model for empowering foster youth and organizing foster youth to advocate for their rights, and that's the California Youth Connection, the organization that I work for, CYC for short. We were founded on the youth empowerment model, that youth really are our resources, and we take into account what policies will benefit them, what policies hurt them, and the way that policies actually impact their life at the real ground level. And so in CYC we actually help to actualize the rights of foster youth. We take them out of something that's just a page in the statutes and politically mobilize them and educate them so that they know what their rights are. And that way they're able to complain and know how to file a complaint when their rights are violated. And I think that's really important because a lot of people feel like passing the law or getting the good settlement in litigation is the end of the story, and usually that's just the beginning of the story.

And so we accomplish the empowerment of youth and organizing of youth for a variety of activities. Youth are involved each year in developing legislative proposals, identifying issues at the state level that youth across the state feel like are issues and then developing those issues into legislation. And that's resulted in some of the legislation that you heard about earlier. Over the last couple years we've been working on education issues, and I'm working on a couple of different education bills. We hold three conferences a year. Two of those conferences I coordinate. At one of them we teach youth over a three-day period the legislative process. We teach them about how a bill becomes a law and how to be effective advocates and lobbyists and how to meet with individual legislators. And then we train all of the youth to be able to go out on the final day of the conference and visit with each and every legislator. And it's really amazing because about 10 years ago when we had our first Day at the

Capitol conference, legislators, when they were visited by youth, were saying, it's a foster youth, really?. And this year they're eagerly awaiting us and asking us what bills do you want us to carry for you. So we've really seen, even despite the term limits and despite some of the political instability, we've really seen a change in people's awareness about the resources that foster youth can provide. And then the second conference I coordinate is a Policy Day conference where youth from across the state come together and develop policy proposals that then they share with an audience of people who then take and move and take action on those policy proposals. We also work with youth to develop their leadership skills. It's not nearly enough to just say we should have youth who are involved in policy making, we really need to prepare youth to be able to effectively participate and to be an equal player at the table, so training youth on public speaking skills, on decision making skills, on power dynamics and how they can be an equal player at the table. We develop and deliver training to social workers, to attorneys, to foster parents, to judicial staff, anyone who has an investment or an interest in the child welfare system we feel like has much to learn from young people who have been in the system. We publish educational material and we make sure that as much as possible we're included in state and local level policy making and advocacy activities.

The system improves when youth are involved in it because they're doing real work. They don't live in a dream world in policy meetings, they talk about improvements that need to be made in the lives of real people, and that actually can be made. And youth hold people accountable. Youth will say the things that nobody else will say because they're not politically correct. They'll call people when they're not doing their jobs. A great example of this is that many people believe all foster youth in California have attorneys so the problem is fixed, every youth is represented and has their views represented in court, when in reality we have youth who go out and say, "I may have an attorney, I've never met that attorney, I have no idea what that attorney is advocating in court and I wouldn't know how to contact that person if I had

an issue." So I think that it's really the reality check for the system and to me it seems like an incredibly helpful thing for the system because everybody who's in it, I'm assuming, is in it because they have the best interests of children in mind and probably want to know at the end of the day whether they are making positive changes in children's lives.

There are also personal and developmental benefits to youth being involved in foster care. Often times for young people that have been in foster care participating in CYC is the first time that anybody has really listened to them and taken what they had to say seriously. I still remember the first time that I did a presentation for CYC when I was much younger and it was a training for social workers and I'd had a horrible experience with the social workers in my life because nobody had ever listened to me. People had made all the decisions in my life, and I stood in front of this group of social workers and everybody picked up their pens and prepared to write notes on the paper, and they were actually taking notes on what I was saying. I just remember feeling like everything that had happened to me was worth it if I could have that type of impact on other young people's lives. So I think research has shown in terms of youth development principles that young people need to be involved with things that they believe in, that they need to feel respected and listened to, and participating in CYC gives young people all of these opportunities.

So I wanted to give you just a few examples of opportunities to engage young people on an individual case level. One of them is to have youth attend court hearings and participate in the court process, giving youth that opportunity. And this is a somewhat controversial issue because many people believe that what happens in court is actually quite disturbing for young people to hear and that there are things that are talked about in court that might be very, very sensitive issues that might disturb a youth emotionally. They may not want to hear that their mom has relapsed and is back on drugs or that their father hasn't been making any type of effort to reunify with them or to comply with the case plan. It's great that there are people who want to protect youths, but what

they are not recognizing is that youth have lived this life before they came into the system. They know the reality of their circumstances much better than anybody else does through reading a case file, and that really to be able to be equipped to deal with the situations in their live they need to have that knowledge. There are many young people who walk around with the fantasy that they want to return home to their parent and that once they do everything will be okay. And if social workers and judges would give youth the information about what's realistically going on they would be much better able to deal with the reality when they leave care and return home and their mom is still abusing substances and not taking care of their siblings. They would be able to prepare themselves. And I think we recognize most times that that's the fairest and most respectful thing to do for people is to give them the information they need to make good, sound decisions. And it is painful, but when you're in foster care usually most of your life has been painful and so at least in foster care you have the resources in terms of support through mental health services and other people being around you to deal with that. Once you emancipate, that support has often disappears.

Additionally, educating youth on their rights and how to deal with violations of their rights is important. Although many people think that simply handing youth a flyer with their rights listed on it is enough, in reality the way that young people learn is by walking through those rights and talking about each one. And more importantly, talking with them about what to do when their rights are violated. Because that doesn't come intuitively. We've met many young people who have very basic things like access to the phone restricted from them and they have no idea how to deal with that. They haven't been in a situation where they've seen other people practice self advocacy, so those skills don't come intuitively to them. That's another really important way that youth can be empowered to be able to be active agents in their own life, give youth the opportunity to take leadership in permanency planning, in case planning, in transition planning. And one really great tool for doing that is by using emancipation

conferences, which are a version of family group conferences that you do at the end. So bringing together everyone who's interested and involved in a young person's life and letting the youth say, this is what I want to do with my future, and letting other people offer their resources and their help.

In terms of education practices, this is one bill that the Youth Law Center has this year, is making sure that youth are invited and involved in their IEP, their Individualized Education Plan. Often times those meetings consist of a bunch of professionals sitting around talking about what education plan is best for the child without having the benefit of having the child there to say why they're maybe not striving enough in classroom or really where they want to be. We have many young people who are placed in segregated classrooms in non public schools who are college bound and who really aspire to go to college and want the opportunity to take college preparation courses but don't have access and that's really important feedback.

In terms of mental health practice as well, as I mentioned before, many youth in the system are given psychiatric drugs. They're not informed of what the side effects are, they're not informed of how to deal with issues that come up if they want a change in their medication. Their right to get a second opinion from another doctor. Those are all ways where we're taking young people's power away from them when we don't provide them with those options.

And then at the system level, obviously, organizations like the California Youth Connection and our sisters in other states are a great way to get youth involved at the system level in making changes. And two other projects that we've been associated with here in California, one is currently in place, it's called the Youth Evaluation Project, and that's a project that we have in Alameda County where young people have been trained by somebody in research techniques and will be going into group homes and working with the youth in those group homes to evaluate their own placement, to give them the opportunity to say what their customer satisfaction is in that home. And I think that's a really great model because

although we have licensing workers who go in and inspect whether regulations are being complied with, they don't often get at the things that are really important to the youth; is the staff respectful, are they trained, do the staff stay? Many of the group homes have higher staff turnover than they have a resident turnover.

I think that there are many, many opportunities to involve youth and what's really important is that many people talk about giving youth a voice and it's important to remember that youth always have a voice and they're just looking for an opportunity to have that voice be heard.

Jennifer Dworkin[*****]:

I'm largely going to take my time by taking questions after the movie is over. I just wanted to give a quick introduction to the film that you're about to see. Unlike everybody else you heard today, I have no professional training or involvement in the child welfare system. So I've really just been over the last 10 years an observer. My film follows a family struggling with, among other things, the dependency system, and involved about five years of filming. The story really is a three generational story. It's a family that's been involved with child welfare over several generations. I would like to give you a brief outline of what happens in the film and point out a couple of issues that I think are important. I know that all the kids in my film who were in foster care, most of them for six or seven years, would agree with almost everything that

[*****] Jennifer Dworkin is the Director of the Documentary film *Love and Diane* (2002). The film traces the lives of Diane Hazzard and her daughter, Love Hinson, who deal with the after-effects of drug abuse and poverty as well as struggle to navigate the complex bureaucracy of the welfare and dependency systems. The critically acclaimed film has been shown at several dozen film festivals including the New York Film Festival, Sundance Film Festival, and International Documentary Film Festival, and has received numerous honors including Best Documentary by the One World International Film Festival, the Golden Leopard Award at the Locarno International Film Festival, and a nomination for a PRISM Award.

Jennifer [Rodriguez] has said in terms of their feeling about their own autonomy being removed, and that's a subject they feel very, very strongly about. The story concerns a woman, Diane, who's in her 40s when the film begins. She has six children and all six of the children were removed because of her drug addiction. They were in foster care over six years. I pick up the story shortly after they've all returned home. At this point they're all teenagers and they barely know each other. They were separated, they saw their mother very occasionally, and suddenly they're all returned, basically without any preparation, and thrown in together into an apartment that is a small one-bedroom. One of Diane's daughters, Love, gives birth to a baby boy, Donyaeh. One thing that happens because [Love] has been a chronic runaway, she's been in I think six or seven foster care group home placements. One of her sisters was in 12 over the course of six years. Love's child is born HIV positive and suddenly there's a large grant made to the family so that they can move into a much better housing situation. And the family, because they barely know each other, and because of their separation during their years in the foster care system, there is a great deal of anger and unresolved pain. The grandmother Diane wants to get some help and she goes to see a psychiatrist and talks about how troubled things are, how much difficulty her daughter Love is having becoming a good parent. And she's told that Child Welfare will come over and see her and maybe set up counseling sessions. What happens, in essence, is that the Child Welfare Department does come, but comes with the police, and takes all of the kids away again, including this new very young baby. The bulk of the film consists of the story of how Love fights through the courts to secure the return of her son. And you know from the point of view of policy, I think what the film really illustrates is to some degree how it all kind of breaks down at the bottom level, where there is a sort of total inability to coordinate various public services. Quite often nobody seems to really know what exactly is going on, so a lot of it, regardless of policy, is chaos. We had to cut down quite a lot of the film because it was so overwhelming.

When this young boy is removed, even though he is no longer HIV positive, the system remains unaware of any change in his circumstances, so when he is removed the family ends up being evicted because they could only afford the housing while the baby was living with them, because the government grants were given for his support. And so there are a lot of very sort of strange things that nobody really is in control of, and the family feels increasingly that their own attempts to make sense of and control their lives are really being negated by this arbitrary working of the system. There was a sense that the child's removal was unjust, and there was no attempt to put in place any kind of preventative services, that would keep the family together. At base, there was no attempt to look at the individual strengths of the family. There were many resources that were largely ignored. The service plan for Love was very boilerplate. She was told that principally she had to move into her own housing away from her mother, which was really counter productive because her mother was in fact a great source of strength and cared for the child. It was also counter productive because there was no financial way that she really could move. But more interestingly I noticed that the family courts had delegated a great deal of their work to therapists. There was just a constant sense that you no one really knew what to do to help Love; the conclusion seemed to be "this young woman is very angry so send her to therapy". Everybody was sent to therapy. Nobody really got any better in therapy. It wasn't really that surprising because Love had some serious psychiatric issues. She had some issues dated back to her separation, at the age of 6, from her mother, and dated back to the 12 different group homes she lived in. On the psychiatric reports they indicated that she was angry, well she is angry. Everyone in the family had, understandably, a great deal of anger. The adequacy of the mental health services to deal with these issues appears dubious. Love was not sent to see a psychiatrist, she was sent to see a counselor. This counselor thought affirmations would be a really helpful for Love, so she suggested that Love buy an inspirational book and repeat affirmations to herself. She also had Love do a collage, cutting things out of magazines and sticking them on pieces of paper. Love has some very severe

psychiatric issues, in fact, she taking SSRIs for her psychiatric problems, and she was never offered any kind of suitable care. She saw eight or nine different therapist, and every time she was sent to a new therapist she was asked her to repeat the story of the most painful moments of her life. She was constantly retraumatized. She didn't want to go to therapy, she started skipping therapy appointments, and that became a huge issue.

The film will provide you with the story of one family, and, in the context of our discussion today, perhaps attach a human face to all of the abstract problems we have been discussing.