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Keeping Kids Out of the System: Creative Legal Practice as a Community Child Protection Strategy

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*Keeping Kids
Out of the
System:*

**Creative Legal Practice
As A Community Child
Protection Strategy**



Leigh Goodmark, Esq.



American Bar Association
Center on Children and the Law

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**Keeping Kids Out of the System: Creative Legal Practice
As A Community Child Protection Strategy**

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For Juliet Harris Nierle, who barely beat the book.

This book would not exist but for the passion, hard work, dedication and commitment to serving low-income children and families of legal services attorneys throughout the country, and their willingness to share their time and experiences with me. I thank all of them and continue to be awed by the amazing work that they do.

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This Book in Brief

Special educational needs. HIV/AIDS. Incarceration. Mental illness. Substance abuse. Homelessness. These conditions could trigger child protective interventions. But in many cases, connecting clients with appropriate legal services can mean the difference between creating or maintaining intact and stable families and forcing families into the child protective system.

Providing timely, effective legal services prevents unnecessary interventions by the child protective system. We have seen programs that fulfill this promise over and over again:

- **Chicago:** Lawyers and child welfare agency social workers with the Family Options project help families affected by HIV develop permanency plans for children who otherwise could become "AIDS orphans." Social workers provide counseling and support allowing parents to make these difficult decisions; lawyers work with families to make their arrangements legally binding. By crafting such arrangements, parents ensure their children do not enter the child protective system because of their death or incapacity.
- **St. Paul:** Southern Minnesota Regional Legal Services has teamed with Ain Dah Yung (Our Home) Center to serve American Indian girls who are survivors of abuse. Ain Dah Yung gives the girls shelter, counseling and case management; lawyers help girls seeking protection from abusive parents and partners with restraining orders, custody, visitation, child support, housing and public benefits. For Survivor's Project members, intervention by child protective services is possible both on the teen's behalf, and on behalf of the teen's child. The Project helps teens to examine their options, working with them on placement possibilities as

well as helping them secure the supports necessary to live independently. Attorneys also defend teen mothers trying to keep custody of their own children in third party custody, power of attorney and Indian Child Welfare Act cases.

- **Massachusetts:** Mentally ill parents can seek support and training through Clubhouses, community-based psychosocial service provision models for people with mental illnesses. One service that the Clubhouses lacked, however, was legal assistance for parents who lost custody or contact with their children. Several Clubhouses have teamed with the Mental Health Legal Advisors Committee to create the Clubhouse Families Legal Support Project. Attorneys represent individual parents seeking to retain or regain custody of their children. The lawyers also work on a systemic level educating child welfare workers, courts, and others about the harmful and inaccurate stereotypes associated with mentally ill parents. Often, pregnant, mentally ill mothers call the project to ask, “How do I avoid losing my child?” The project helps them to access the supports and services needed to parent their children successfully—without child protective intervention.

These programs face challenges: lack of funding, distrust of lawyers, eliminating intractable problems families face. Nevertheless, they make a difference to clients by giving them legal tools to stabilize their lives and avoid unnecessary child protective actions.

Why should this matter to child welfare professionals? Keeping these families out of the child protective system saves caseworkers time and money. Weeding out families who don't need child protective services means more attention can be paid to abused and neglected children—the kids the system was designed to protect. No one system should be responsible for keeping every child safe; that responsibility must be shared among communities.

Why should lawyers join forces with community child protection efforts? To get clients the range of services and supports that they need. And community child protection agencies' clients are the same clients walking into legal services

offices. Civil legal services providers have a responsibility to their neighborhoods and communities to help protect children from situations that can become abusive or neglectful.

Neither legal services lawyers nor child protection workers have enough resources to meet their clients' needs. Pooling resources is one way to better serve their shared clients. And when those clients are better served, children and families are safer and more stable—the reason most professionals in both fields started doing this work.

Checklist for Change

Throughout this book, we'll suggest opportunities to bring the two systems together. Here are some examples:

- Host a brown bag lunch for child protective services workers and local legal services providers.
- Attend open discussions about child protection or legal services reform to pitch the idea of working together.
- Contact community programs working to prevent entry into the system and start a conversation about teaming with legal services providers.
- Identify one section in this book that matches a need in your community and find the legal services providers addressing that area.
- Get a list of the legal services fellowships being funded in your area to see whether the fellows are targeting a problem you want to address.
- Introduce yourself to professionals in other systems at court to develop relationships that you can draw on later.

The American Bar Association Center on Children and the Law is available to help you with these efforts. Please call (202) 662-1758 or e-mail GoodmarL@sraff.abanet.org for assistance.

Introduction

When children are abused or neglected by parents or caregivers, the child protective system must intervene to keep kids safe. But some families with children need help without needing protective services interventions. For example, if a family loses its apartment, it needs immediate help—someone to act as a shortstop, catching that problem before it soars into the outfield of certain CPS intervention. The shortstop organization finds the family a place to stay, guides the family through the paperwork, navigates bureaucracies of temporary shelter and waiting lists for community housing, and protects the family's rights in the process. This family does not need the heavy hand of CPS intervention—it needs a place to stay. Shortstop organizations work with the family to solve that problem.

By catching problems early, children have a better chance of staying safely with their families. There will always be cases of abused or neglected children that fly directly to the outfield—the child protective system must act to protect those children. This book speaks to the other cases: where early intervention by legal services providers and allied agencies—the shortstops—can keep kids out of the child protection system.

Throughout the country, child welfare professionals, families, community organizations, courts, legislators and service providers are coming together to reinvent child protection. Their intent is to link families with the services that will prevent interventions in many cases. One effort bases coordinated services for families within their own communities. That strategy is known as community child protection. When advocates for children and families form community child protection

programs, however, one set of services is frequently forgotten—civil legal services. This publication shows community child protection programs why civil legal services lawyers need to be part of community child protection initiatives. It encourages civil legal services lawyers to partner with these fledgling (and in some areas, well-established) programs.

WHY COMMUNITY CHILD PROTECTION?

Traditional child protective services programs are flooded with calls about families falling apart—children being abused and neglected and abandoned. Many families, however, need help for days, weeks, even months before the system becomes involved in their lives. The help required ranges from serious psychological or psychiatric assistance to rent money. While some cases do require the state to safeguard children, other families only need shortstop help to keep their problems from snowballing. In these cases, engaging the child protective system is not as useful as referring families for welfare benefits, affordable housing, or domestic violence counseling or providing a sophisticated advocate to navigate these programs with the family.

The community child protection movement reaches those families whose needs are not so serious or threatening to their children as to really require the intervention of the child protective system. Child protection agencies are partnering with parents, community members, private social service agencies and schools, for example, to create community spaces where families can seek assistance before their problems become acute. In these spaces, parents get what they need—not a “one size fits all” intervention. And parents, relatives and friends are engaged in designing solutions that will strengthen families and keep children safe.

Community child protection involves more than placing services in a community location. It requires everyone to think beyond traditional roles and responsibilities and to work together to safeguard children. Community child protection

allows for quicker, more effective responses for abused or neglected children—and children at risk of being abused or neglected.

WHY INCLUDE LEGAL SERVICES?

Civil legal services providers and child protection workers see a lot of the same families. Given the number of poor kids showing up in the child protection system, and the problems that drive many families into the child protective system, it is somewhat surprising that the two communities don't interact more frequently. Nonetheless, civil legal services providers rarely become involved with child protective services until dependency cases are filed against their clients. Child protective workers rarely, if ever, seek the assistance of civil legal services providers for the families in their caseloads. And no mechanism exists to bring the two together to prevent a family's entry into the child protective system.

This failure to work together is short-sighted. The success of the programs profiled here shows that using civil legal services can keep many families from ever becoming involved in the child protective system. Keeping these families out of the system, in turn, frees that system to address the serious cases of abuse and neglect that may be missed when caseworkers are forced to focus on families with less pressing problems.

Civil legal services providers tackle all kinds of problems that might trigger child protective actions:

- Helping a kinship care provider to secure legal custody may prevent the need to place children in the system with unknown caregivers.
- Assisting a battered woman in obtaining a civil restraining order could keep the child protective system from removing children based on a belief that the mother is unwilling to separate herself and her children from an abusive partner.
- Winning a judgment requiring a recalcitrant landlord to provide heat or to repair damage to a parent's apartment eliminates the kind of unsafe housing conditions that might prompt child protective interventions.

In Broward County, Florida, officials estimate that 35 percent of the county's 5000 abused and neglected children in its care could have stayed with their families if their parents had received help early enough to avert trouble.

Sun-Sentinel Editorial Board. "Children and Families Should Refocus on Family Preservation." Sun-Sentinel, June 18, 2000 (<http://www.sun-sentinel.com/news/daily/detail/0,1136,320000000000115781,00.html>)

“I’m worried that in some situations we have kids in the foster system who are there because of poverty,” said Chuck Harris, children’s services chief for the N.C. Division of Social Services.”

Ann Doss Helms. “Many Parents Cross Ill-Defined Line into Neglect.” *The Charlotte Observer*, August 27, 2000 <<http://www.charlotte.com/0A27neglect.htm>>.

The work that civil legal services providers do on a daily basis is the **shortstop** strategy that community child protection programs provide. These programs should be linked to give families access to the services and support **s** necessary to prevent child abuse and neglect.

A NOTE ABOUT LEGAL SERVICES PROGRAMS

The term “civil legal services provider” covers a range of programs. Although all of them serve primarily low-income clients, these programs operate in huge cities and small rural towns. The projects described in this publication are housed in law school clinics, private legal services agencies, neighborhood offices funded by the federal Legal Services Corporation, in hybrids of these programs, and even in community-based institutions, such as hospitals. Moreover, staff lawyers, *pro bono* attorneys, law students and lay advocates all work on behalf of families and children in these programs.

Legal Work Is More Than Appearing in Court

The scope of work that comes under the heading “legal” is also worth noting. Legal work involves far more than direct representation of clients. These programs give advice, information, and referrals to other providers, both legal and nonlegal. They educate clients and the community on legal and policy issues affecting their clients. They advocate on the local, state and national levels for policies that benefit their clients. And they write letters, make phone calls, informally negotiate, provide moral support for clients, and, frankly, do things that many would call social work. Most civil legal services providers accept that these tasks are “legal work,” although a number of programs expand their services by partnering with individuals or organizations better trained in some of these skills (most notably, social workers).

WHY COLLABORATE?

Both civil legal services lawyers and community child protection programs could do their good work better if they *worked together*. For many clients, the legal problem that spurs them to seek a lawyer's assistance is only one of several interrelated legal, social service and health problems. Civil legal services lawyers would benefit if their clients had access to the supports and services available through the community child protection sites. And as this book details, providing civil legal services can help stop unneeded child protection interventions. Programs trying to prevent child abuse and neglect and to avert unnecessary interventions are ignoring a potent ally in their efforts by failing to team with legal services providers. This book brings the two communities together to combat a common enemy: child abuse and neglect.

This book also spurs lawyers working with child protection clients to think more creatively about addressing the problems underlying the cases brought against their clients. Providing legal services in venues other than the dependency court could keep their clients from ultimately being adjudicated abusive or neglectful.

ABOUT THIS PUBLICATION

This book describes the specific work of legal services providers: for example, with families affected by HIV, parents with mental health or substance abuse issues, families needing assistance with income maintenance or public benefits. Each section describes:

- a program and its services
- how the programs help *shortstop* child protection actions
- how the program is funded and staffed

Many sections include:

- an example of the program's effectiveness or profile of an "average" client

- information about partnerships with other organizations or professions
- challenges that the program faces

Names and identifying information have been changed to safeguard client confidentiality (except when that information is already public). Each description is based on an interview with the person chiefly responsible for the program's daily operation, and contact information is provided for that person. At the end of some of the sections is contact information for other programs doing similar work.

Some programs provide services in several of the areas outlined. Programs have been grouped by what the staff of the program would categorize as its main thrust, although all of the services provided by the program are included in its description.

This book is not exhaustive. It does not detail the efforts of every legal services provider working on the issues described here. It does give readers a sense of the scope of the shortstop work going on throughout the country. We hope to spur communities to import some of those ideas into their child protection efforts.

Families Affected by HIV/AIDS



Source: Matt Duckett, "The American Way," reprinted with permission.

HIV has increasingly become a disease of low-income women,¹ with devastating results for children. Researchers estimated that by the end of 2000, between 72,000 and 125,000 children and teenagers in the United States lost their mothers to HIV/AIDS.² Mothers were the primary caregivers for most of these children. Without advance planning, the mothers' deaths will plunge these families into uncertainty and, very possibly, mean action by the child protective system. But civil legal services providers, using new legal tools, are working with HIV-infected parents to ensure that permanent plans for their children are made before death and before the parent is too frail to participate. Children who might have fallen into the system are instead moving into secure and stable homes with the caregivers of their parents' choice.

"It is now a predictable part of our culture and of our collective human experience in the late 20th century that, wherever there are women with AIDS, there will be motherless youth."

Leah Kedar, AIDS Orphans and Life Planning in the District of Columbia: Voices of the Community, Washington, D.C.: Consortium for Child Welfare, 1996, 7.



Contact Information

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FAMILY OPTIONS

What This Program Does

Family Options works with HIV-infected parents and caregivers whose children risk entering the child protective system if no permanency plan is developed before the parent's death. "The Family Options Project is designed to demonstrate that families with HIV, who face a multitude of demands and decisions, can make and carry out their own permanency plans with the assistance of an interdisciplinary collaboration of social work and legal services."³ The project was born after "AIDS orphans" without permanency plans began appearing in the dependency system.

How This Program Helps

Family Options offers families the services of social workers and lawyers. Together, lawyers and social workers provide education and reach out to HIV-affected families at area clinics and residential facilities, stressing the need for permanency planning. Social workers explain the value and process of planning, while legal staff provide insight on the legal rights and responsibilities that go with permanency options.

After a family agrees to work with the program, legal and social work staff help the family develop a permanency plan, assess the family's needs and readiness for planning and provide services supporting family stability. The plans most frequently call for standby guardianship (an arrangement that allows the parent to designate an adult who will assume responsibility for the child upon the parent's death or incapacity), but could also call for traditional legal guardianship, short-term guardianship, or adoption.

Once the family identifies a caregiver and the caregiver accepts responsibility, the staff helps the family think about whether the caregiver will be acceptable to all interested parties as well as the court. Proposed plans are examined using the "best interest of the child" standard. Finally, lawyers help the family formalize the plan in court and provide legal services to support the permanency plan. Social workers and lawyers also provide

aftercare services to promote stability within the family (headed by either the new caregiver or the birth parent) for six months after a permanency plan is finalized.

Family Options is also active in policy efforts to create permanency planning mechanisms for HIV-affected families. The project played a major role in convincing the Illinois legislature to enact standby guardianship and standby adoption laws. These laws let terminally ill caregivers make permanency decisions while still able and share caregiving responsibilities until the parent's poor health forces the standby caregiver to take over.

How Do Legal Services Prevent Unnecessary Interventions?

"Family Options diverts cases of children who might otherwise be at risk of child welfare involvement by helping their families make and carry out their own permanency plans."⁴ By establishing voluntary plans that go into effect upon the incapacity or death of a parent, families avoid the chaos that these events usually trigger. Before the project, this chaos caused children to slip into the child welfare system despite supportive adults known to the family who might be willing to assume care. Moreover, the range of legal and social services available to both birth and new families increases their stability and helps ensure that children will not enter the system during the planning process.

Here's An Example...

One Family Options client knew that she needed a permanency plan for her 10-year-old son. She was reluctant to make arrangements for her parents to take her child after her death, because she believed that God would think she wanted to die. The child became increasingly depressed about his mother's sickness and began to act out. Family Options counselors helped the mother and son discuss their feelings about her illness and his anxieties. They worked with the grandparents, who were unsure whether they could care for the child.

"The HIV epidemic in the United States—in particular its impact on tens of thousands of parents...has focused heightened attention on the availability of "private," voluntary permanency planning mechanisms. The dramatic rise in the number of families with terminally ill parents, along with the increasing number of households headed by single parents and grandparents, has created demand for planning tools that are more responsive to the needs of families in crisis."

Jeffrey Selbin & Carolyn McAfee.
"Issues in Family Law for People With HIV." In *AIDS and the Law* by David W. Webber. New York: Panel Publishers, 2000, 322.

"I asked my children what they wanted if something happened to me.... They said, first of all, they don't want me to die. If it has to happen, they want to stay together. They don't want to be separated.... They said they want someone who will come in and take charge of them.... Basically, they don't want to lose contact with anyone that they know now. They want to have continuity.... They want permanency. They want togetherness."

Leah Kedei. AIDS Orphans and Life Planning in the District of Columbia: Voices of the Community. Washington, D.C.: Consortium for Child Welfare, 1996, 20-21.

While no permanency plan was put into place while the mother was alive, on her deathbed the grandparents accepted responsibility for her child. The Family Options attorney then represented the grandparents in their petition for guardianship and helped them access public benefits. Social workers continued to work with the child as he grieved and adjusted to living with his grandparents. Without the social and legal work provided by Family Options, this permanency plan would likely have failed, leading to the child's placement in the child welfare system.⁵

Partners: Programs Working Together

Family Options is a partnership between social workers from the Illinois child welfare agency, the AIDS Legal Counsel, and the private law firm of Linda Coon, who worked for the child welfare agency before entering law school. The agency was especially interested in partnering on this project because of the numbers of "AIDS orphans" coming into Chicago's dependency system.

Funding & Staffing

The project is funded by the federal Abandoned Infants Assistance Act. Part-time staff include a legal director, staff attorneys, social workers, a project evaluator, an administrative assistant and a project coordinator (a social worker who coordinates intake and directs the social work services). Much of the project's work is done in clients' homes.

☆ CHALLENGES ☆

Grandmothers and aunts and uncles, who tend to be older, make up a huge proportion of new caregivers chosen by parents working with Family Options. This demographic raises the possibility that another future caregiver will be needed. In fact, the child welfare agency recently noted that as many as one older adoptive parent per week is dying, again creating a need for permanency for children in these families. In response, the project is working with the agency to do "successor permanency planning" with caregivers so that, if necessary, a successor caregiver can assume responsibility for the child upon the caregiver's death or incapacity.

MINNESOTA FAMILY LEGACY PROJECT

What This Program Does

HIV-infected parents working with the Minnesota AIDS Project (MAP) were unsure about who would get their children if they died, but had definite opinions about who shouldn't have custody of their children. As the demographics of the AIDS epidemic changed and more women became infected, MAP saw the need to address the family law issues that were being raised by these parents. Through permanency planning, the Family Legacy Project hopes to decrease parents' stress about their children's futures and allow them to focus on health maintenance.

How This Program Helps

MAP's case managers counsel clients about permanency planning needs and make referrals to the Family Legacy Project. Case managers, who are familiar with each family's unique needs and have developed relationships with their clients, are especially well suited to provide this counseling. Once a client is referred to the Family Legacy Project, direct legal services centering around estate planning and family law (custody, adoption, child support, and standby custody) become available. The Project also provides legal support services enabling the parent to engage in permanency planning—for example, helping the caregiver confront legal problems involving a former partner. These services help clients focus on issues that must be resolved before planning for the child's future.

The Family Legacy Project conducts community outreach and education programs and did a great deal of advocacy work on behalf of the state's standby custody law, enacted in April 2000.

Contact Information

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“There’s a lot of people out there who have children and don’t know what to do. The foster care system is not the answer. I want my children to be with somebody who loves them like I do. And that is a very difficult situation. Sometimes your own family is not the one.”

Leah Keder, AIDS Orphans and Life Planning in the District of Columbia: Voices of the Community, Washington, D.C.: Consortium for Child Welfare, 1996, 20.

How Do Legal Services Prevent Unnecessary Interventions?

By using available legal tools (wills, standby custody, and the like), the project helps parents establish permanent placements for children after the parents’ deaths—so children don’t have to go into the child protective system.

Here’s An Example...

One client, who is HIV-positive, had her new husband (who was not the children’s father) adopt her twin boys. By establishing a permanency plan for her children, she did not worry over who would have custody of her children if she became incapacitated or whether the children would enter the dependency system.

Another client’s story illustrates the need for permanency planning, and the pain that process can cause. This client, who has been in and out of the hospital and requires considerable care, was somewhat reluctant to engage in permanency planning. Each time the professionals working with her (case manager, child protection worker, doctor, social worker at hospital) helped her to develop a permanency plan, she withdrew. Her doctors and social workers knew that she could not care for her children, and child protective services has located a foster parent for the children who knows the family. The client cannot effectively plan for her children’s future without working with the potential foster parent, but is unable to face the loss of her children. If no alternate permanency plan is in place when she is no longer able to care for them, the children will enter the dependency system and their mother will have no input about where her children will be.

Funding & Staffing

The Family Legacy Project is funded by the National Association of Public Interest Law in conjunction with the private law firm of Robins, Kaplan, Miller & Ceresi. Together they provide funding for a NAPIEL fellow, who serves as the project coordinator/attorney. The staff also includes a full-time clerk and volunteer attorneys and interns.

☆ CHALLENGES ☆

Discussing impending death with parents is incredibly difficult. Moreover, establishing alternate arrangements is complicated by the parents' desire to keep their children with them, even when they can't care for them. The programs described in this section all face these challenges.

HIV-AIDS LEGAL CLINIC

What This Program Does

The HIV-AIDS Legal Clinic serves children, youth and families affected by HIV in the District of Columbia metro area. The Clinic's founders recognized that HIV-positive caregivers needed to make long-term plans for their children. Without permanency plans, the streets or the dependency system claimed these children when their HIV-positive caregivers died. The Clinic focuses on increasing stability for families while the HIV-positive caregiver is still part of the family, while simultaneously working with families to plan for the future. In many programs, funding follows the HIV-positive person—services for the family end when the HIV-positive person is gone. The Clinic is unique in that it continues to work with new caregivers once the HIV-positive caregiver has died.

How This Program Helps

The Clinic provides comprehensive civil legal services to families affected by HIV and AIDS. The Clinic handles family law (joint custody, kinship custody, divorces, domestic violence), public benefits and estate planning issues. The Clinic has also spearheaded the development of standby guardianship legislation for the District of Columbia.

How Do Legal Services Prevent Unnecessary Interventions?

When parents can plan for responsible, stable caregivers to take their children, there is no need for intervention by the child protective system. "After a parent's death, children whose families

Contact Information

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 (202) 274-7333

ADDITIONAL RESOURCES:

For more information about working with HIV-affected families to avoid unnecessary child protective interventions, contact:

*Law Project of Southern
New Jersey
AIDS Coalition of Southern
New Jersey
100 Essex Avenue,
Suite 300
Bellmawr, New Jersey
08031
(856) 933-9500*

*Contact:
Charlotte Hollander,
Staff Attorney*

The following publications from the ABA Center on Children and the Law's Standby Guardianship Training and Technical Assistance Project offer a wealth of information on using standby guardianship laws to promote stability for children of terminally ill parents:

- *Judith Larsen. Standby Guardian Laws: A Guide for Legislators, Lawyers, and Child Welfare Professionals. Washington, D.C.: American Bar Association, 2000.*
- *Judith Larsen. Planning for Your Children's Future: A*

have not made adequate plans for them may be placed in a shelter or emergency home and then moved into foster or group care. In many cases, brothers and sisters are separated; they move through a series of homes and are deprived of permanent relationships. Most suffer serious emotional problems.⁶ When parents plan ahead, they can factor the needs and attachments of their children into their permanency decisions, decreasing the chances that the child will reject the new caregiver and create the kind of stress within the new family that increases the risk of abuse or neglect.

Mental health counseling is also available to families through the Family Ties Project (see Partners, next page). Such counseling is crucial for children of HIV-positive parents, who may act out more because of increased stress within the family. These children may also be seeking attention because so much focus is on their parents' medical needs. In counseling, the children can talk about their parents' HIV status and their own concerns. As a result, the children act out less, making them less likely to be abused, neglected or abandoned and more likely to find a permanent caregiver. Counseling reinforces preparations that parents make with the legal staff.

Since the Family Ties project began, eight parents/caregivers have died. Because each of the 13 affected children had permanency plans at the time of the parent/caregiver's death, none of those children entered the dependency system.⁷

Here's An Example...

Most families seeking legal assistance from the Clinic come with multiple issues. A parent may be referred for legal services because she has been denied disability benefits. Upon further investigation, the Clinic might learn that one child's father is deceased and that the child may be eligible for survivor's benefits. Another child, who is HIV-positive, might be eligible for SSI benefits. The Clinic works on the benefits issues, providing stability for the family in the present. The Clinic also concurrently plans for the future by crafting a joint custody arrangement between the parent and her mother or sister. Upon the parent's death, full custody of the children will revert to the new caregiver, allowing for a smooth transition at a difficult time.

Partners: Programs Working Together

The Clinic is a member of the Family Ties Project, a multiagency, multidisciplinary project established to help HIV-infected parents and caregivers plan for their children's futures. In addition to legal services, families are eligible for mental health and case management services through Family Ties. The providers meet every six months to discuss the family's plans, and collaborators informally discuss clients and issues facing the family. Case management is key for families in which the child is HIV-positive and/or has other health issues, because parents must think very carefully about whether the person they've chosen can really care for a special needs child.

Eighty-four percent of the families enrolled in the Family Ties Project have received legal services; 72 percent of the legal issues were related to permanency planning.

Funding & Staffing

The Clinic is funded in part through federal grants (Abandoned Infants Assistance Act, Ryan White) and by the University of the District of Columbia David A. Clarke School of Law. Three professors serve as full-time staff, and new law students work with the clinic each semester.

☆ CHALLENGES ☆

The District of Columbia currently does not have a standby guardianship law. Therefore, the Clinic has had to think creatively about how to use existing law to forge partnerships between HIV-positive parents and future caregivers that will provide permanency for children upon the parents' incapacity or death.

Endnotes

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These publications were developed in conjunction with Circle Solutions pursuant to a grant from the United States Department of Health and Human Services, Administration for Children and Families, Children's Bureau. Download them free from the Center's website at http://www.abanet.org/child/standby_guardianship.html.

2. Leah Kedar. *AIDS Orphans and Life Planning in the District of Columbia: Voices of the Community*. Washington, D.C.: Consortium for Child Welfare, 1996, 7 (citing study by Carol Levine and Gary Segin of New York's Orphan Project).
3. *Family Options Program Overview*, at 1.
4. Bobby Hall, Elizabeth Monk, Kama Brockmann, Linda Coon & Sally Mason. *Family Options: Permanency Planning for Families with HIV: Abandoned Infants Assistance Act: New Start Demonstration Grant: Executive Summary: September 1996—April 2000*, at 1.
5. *Family Options Project Overview*, at 10.
6. Kedar, 1996, 10.
7. Consortium for Child Welfare. Family Ties Project 2000 grant renewal application, at 16.

Domestic Violence



Source: Thomas Fan, "Restful Streets," reprinted with permission.

For children exposed to violence perpetrated against a parent, home can be a scary place. Professionals working with children have come to understand the impact that domestic violence can have on children. As a result, child protective services is more actively attempting to shield children from being battered by an abusive parent and/or from witnessing violence in the home. In a number of communities, domestic violence advocates and child protective services are collaborating to address these issues. While these efforts should benefit battered parents in the long run, some battered parents are still terrified of being involved with child protective services. Others have been threatened by their batterers that they will be reported to child protective services should they attempt to leave the relationship. For many battered parents, avoiding action by child protective services is a huge concern. Legal services providers who work with battered parents, therefore, focus on preventing child protective services interventions.

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DEPENDENCY COURT INTERVENTION PROGRAM FOR FAMILY VIOLENCE

What This Program Does

The Dependency Court Intervention Program for Family Violence brings together court advocates, psychologists and lay advocates to work with women experiencing domestic violence who are at risk of becoming involved with the dependency system. Mothers in the court program are paired with lay advocates who work with victims to understand the dynamics of domestic violence and the danger the violence presents to the mothers and their children. Advocates help mothers consider their options and support their choices, providing assistance with securing shelter, restraining orders, educational opportunities, employment, and child support.

While lay advocates can aid victims with a number of issues, they cannot provide the legal assistance that many women need. Therefore, Legal Services of Greater Miami (LSGM) subcontracts with the program to pick up where the lay advocacy services end. Lay advocates refer cases to LSGM, and LSGM conducts intake at the court monthly. LSGM has been involved with the program since the summer of 1999, and began working with the program to extend its involvement in domestic violence and family law issues. Ray Hartz, the senior attorney of the Family, Juvenile and Education Division of LSGM, sees working with battered mothers as "what we do—or should be doing."

How This Program Helps

Lay advocates screen all incoming cases for domestic violence and offer services to victims. Advocates will do almost anything for a client, but frequent services include helping the victim recognize the cycle of violence in her relationship and the danger to herself and her children and develop safety plans. They brainstorm with clients about their options and support them in pursuing shelter, domestic violence injunctions, education, employment, and child support.

LSGM provides victims with legal assistance in a staggering array of areas: domestic violence injunctions, child support, contempt, child custody, divorce, insurance, employment, wrongful repossession, landlord/tenant (private and public), and consumer issues. In fact, legal services are available for every civil legal problem except personal injury cases. These legal services are designed to enhance family stability. For example, representing a battered woman in a consumer action to keep her car means that she will have transportation to work to support her family (and lessens her economic dependence upon the batterer). Preventing an eviction or correcting poor housing conditions increases safety and stability for the entire family.

How Do Legal Services Prevent Unnecessary Interventions?

The staff of the Dependency Court Intervention Program use a number of strategies to help avoid unnecessary child protective services interventions. First, they help families create stable economic situations by securing alimony, child support, and public benefits and by ensuring safe and livable housing. In addition, attorneys work with victims to keep abusive parents out of the family home. Often, getting an order of protection will keep the dependency system from intervening, especially where the parent would otherwise be alleged to have "failed to protect" the child from abuse by the battering parent or from witnessing domestic violence.

The lawyers also informally advocate with child protective investigators at the beginning of an inquiry, informing the investigator that the client and lawyer are prepared to address the violence that spurred the report. In fact, investigators can become part of the civil legal process, testifying at order of protection hearings that children will be removed because of violence unless the client gets a restraining order. Investigators can also provide information that could prompt a judge to restrict an abusive parent to supervised visitation or no visitation.

Funding & Staffing

The Dependency Court Intervention Program for Family Violence receives federal Violence Against Women Act funds;

"There is the immigrant woman whose enraged husband slit her throat one day in the midst of a furious argument. The woman survived, but [child protective services] took her baby away. Even though the infant slept through the entire incident in a separate room and the mother had no intention of ever returning to her husband (and even testified against him before a grand jury), the city used the failure-to-protect law to put her baby in foster care."

Karen Houppert, "Victimizing the Victims," The Village Voice, June 9-15, 1999 <<http://www.villagevoice.com/issues/9923/houppert.shtml>>



LSGM, as a subcontractor, is also a recipient. LSGM is primarily funded by the federal Legal Services Corporation. Court staff includes two court advocates, two psychologists, eight other advocates and administrative staff. One full-time attorney from LSGM works with the project, while two others are available to take cases should conflicts arise.

☆ CHALLENGES ☆

This program works with battered women to resolve domestic violence issues before an intervention is necessary. However, there is a danger that by admitting to domestic violence in the home, child protective services will intervene despite the action the battered parent is taking. Clients working with the program still face the possible removal of their children and allegations that they have failed to protect them.

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PHILADELPHIA LEGAL ASSISTANCE SKADDEN ARPS FELLOWSHIP

What This Program Does

Teen mothers in abusive relationships are especially vulnerable to child protective services actions. Susan Pearlstein, a Skadden Arps Fellow with Philadelphia Legal Assistance, is working with mothers aged 15 to 22 to help them move out of abusive relationships and towards self-sufficiency while avoiding state involvement.

Pearlstein comes to this work after years as a social worker in a child protective services unit. Her experience with the child protective system convinced her that the system was flawed; intervention should be avoided whenever possible. Rather than helping struggling young mothers, the system either removed their children or encouraged other family members to take the children from these mothers. In some cases, these mothers were pushed entirely out of their children's lives. Pearlstein's goal is to ensure that teen mothers have support as they struggle to escape abusive relationships and raise their children. Reaching these mothers now, while they still have the potential for hope and



optimism and can learn that a healthy relationship should not involve a struggle for power and control, is crucial.

How This Program Helps

The project involves community education, outreach, direct representation in domestic relations court, and systemic advocacy. Pearlstein works with Elect, a program for parenting teens, on the community education and outreach components of her program. She provides direct representation to teen mothers seeking restraining orders, custody, child support, and on other matters related to the violence experienced by her clients. Systemically, Pearlstein is working to give teen mothers the right to file on their own behalf for custody, child support and protection (currently, a guardian must file on the minor's behalf). She is also trying to ensure that a minor can be granted custody of her own child, which is currently unclear under Pennsylvania law.

How Do Legal Services Prevent Unnecessary Interventions?

The project focuses on avoiding unnecessary interventions on two fronts: on behalf of teen parents as children, and on behalf of the children of these teenagers. Pearlstein helps teen parents escape abusive environments and secure the supports that the teen parent will need to become self-sufficient. By enabling them to leave abusive relationships and to establish economic security, Pearlstein helps teen mothers increase family stability and avoid child protective interventions.

One subset of teen mothers with whom the project works is teens in foster care who are struggling to keep their children from being declared dependent based on the teen mother's status. The project helps these teens remove themselves from situations that make placement of their children more likely. Moreover, case law supports the principle that the children of teen mothers need not be declared dependent solely because their mothers are in the system. Using this law, Pearlstein advocates with caseworkers to prevent interventions.

"There is an increased awareness of the impact of domestic violence on children.... Advocates like us have worked toward that for years, but when that awareness meets an underfunded and poorly run bureaucracy, the result is disaster."

Karen Heppner, "Visiting the Victim," *The Village Voice*, June 8-15, 1999. <http://www.villagevoice.com/1999/02/21/heppner.shtml>



The project also helps teen mothers secure legal custody of their children to ensure that they are able to develop the skills and attachments to competently parent their children. Without legal rights and parenting skills, a third party caregiver may take over those duties, excluding the parent. Teen parents who relinquish caretaking responsibilities may have difficulty learning to parent, which increases the risk of abuse and neglect, and may be unable to regain custody of their children later in life.

The project works closely with child protective services caseworkers who are investigating teen mothers because domestic violence has been alleged. Pearlstein helps clients to put appropriate services into place. She advocates with caseworkers, helping them understand who the actual abuser is and see that the teen mother is taking steps (like obtaining a restraining order) to keep herself and the child safe from the abuser. If the caseworker feels confident the teen is working to keep herself and her child safe, the system will not intervene. Pearlstein also works with these mothers to secure custody of their children, preventing their partners from using the children to exercise control and to pressure them to remain in abusive relationships.

While legal services are an important part of her project, Pearlstein is also focused on long-term elimination of the beliefs that make many of these mothers vulnerable to state intervention. She believes that many girls develop skewed perspectives about relationships at a young age, and come to believe that all relationships involve a degree of violence or the power and control that characterize domestic violence. By helping girls understand how healthy relationships operate and giving them the tools to seek out such relationships, she also helps them to avoid future interventions based on children's exposure to domestic violence.

Here's An Example...

Most commonly, the project encounters teen mothers seeking assistance because someone (a parent, relative, or caseworker) wants custody of their children. Many of these mothers are in high school, although some are out of the school system. Some want advice, but others need more intensive legal and social services. Frequently, the project represents young



mothers who are victims of domestic violence and need orders of protection, custody and child support to keep their families intact.

Funding & Staffing

Pearlstein is funded by the Shadden Arps Fellowship Foundation, which provides Philadelphia Legal Assistance with two years' worth of her salary and benefits. Pearlstein is the sole attorney on the project, and has occasional help from law students and paralegals.

☆ CHALLENGES ☆

As with all projects funded by fellowships, Pearlstein must find continuing funding when her fellowship ends.

The clients' youth can make avoiding child protective interventions more difficult. In some cases, child protective services investigations based solely on the mother's age, regardless of the care she is giving her child.

AWAKE

What This Program Does

AWAKE is a hospital-based lay advocacy program for adolescent and adult victims of domestic violence. The program operates from Children's Hospital in Boston and the Martha Eliot Health Center in Jamaica Plain, Massachusetts.

AWAKE grew out of Children's Hospital's commitment to preventing child abuse. Fellows in the Hospital's Family Development Clinic often recommended that children from homes where the mother was victimized be removed by child protective services. But the fellows grew uncomfortable with the Clinic's failure to address the battered mothers' needs, knowing they returned to unsafe homes. They began to think about how the clinic could offer remedies that addressed the safety needs of both mother and child while preserving the relationship between

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them. AWAKE, the first domestic violence intervention program housed in a pediatric care facility, grew out of those discussions.

AWAKE works to protect women and children, to keep them safe and together through advocacy and intensive community work, and to empower both women and children.

How This Program Helps

The program provides services to battered mothers—anything she needs for as long as she needs—letting her take the reins when ready. AWAKE conducts five group counseling sessions weekly: a walk-in group, a Latina group, a group for substance-abusing battered women, a group for women receiving prenatal care, and an adolescent intervention group. AWAKE staff help battered women to relocate and safety plan and are available for immediate response and referrals in crisis situations. The project also advocates around issues relevant to battered women, including immigration and public housing policy.

AWAKE advocates frequently assist women seeking help from Massachusetts' district and probate court systems. Advocates provide support and information during district court hearings on temporary and permanent restraining orders and criminal actions against batterers. In probate court, advocates help battered women with paperwork to start divorce, custody, visitation and probate restraining order proceedings.

When lay advocacy can't fully address the client's needs, especially in probate court matters, AWAKE advocates help clients to find lawyers. AWAKE often partners with Greater Boston Legal Services when a client needs a lawyer's assistance. Greater Boston Legal Services represents clients in post-restraining order family law matters including custody, paternity and child support, divorce, and modifications of existing orders. The bulk of Greater Boston Legal Services' work with AWAKE's clients, however, involves providing advice. Because so many of the women are in crisis and not yet ready to engage the legal process, often the most valuable service lawyers provide is giving women information and a sense of their options.

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Even when lawyers are involved, AWAKE staff continue to work with clients on legal issues. Advocates provide emotional support and strategize with clients about how to react to the batterer's assertions and actions in court. Advocates often serve as a bridge between attorneys and battered women, helping the client understand what the lawyer is doing and why and helping the attorney to understand the client's emotional needs and response to the process based on the violence she has suffered. Attorneys at Greater Boston Legal Services have found that partnering with the advocates enhances their work because it allows them to focus solely on the client's legal issues, knowing that her other needs are being met.

How Do Legal Services Prevent Unnecessary Interventions?

By collaborating with hospital staff and child protection workers, AWAKE's advocates are often able to prevent unneeded interventions by the child protective system. Advocates work closely with the hospital's child protection team and are involved in deliberations on child protection issues involving domestic violence. Moreover, AWAKE staff advocate informally with caseworkers and investigators. Their credibility with the child welfare agency is enhanced by AWAKE's years of experience with child abuse and domestic violence cases. Moreover, by working with women to access safe shelter, restraining orders, and counseling services, AWAKE's advocates help clients take the steps that can address a caseworker's concerns about children's exposure to violence.

Greater Boston Legal Services helps clients use the legal system to address safety issues before the child welfare agency intervenes. Lawyers meet with child protective investigators to clarify the family situation and to explain the client's actions. Greater Boston Legal Services can also be helpful when an abusive parent attempts to use the child protective process to gain advantage in a custody battle. Lawyers share information about the status of the custody case, the history of abuse, and steps the victim has taken to keep the children and herself safe. Attorneys alert the child welfare agency when a vindictive abuser

"[T]he primary focus of AWAKE is advocacy, not therapy....[W]e believe women need information and access to resources as they define what it is that they have experienced and then make informed decisions about their relationships, children and future... Giving a phone number to a battered woman in crisis may not always be the most helpful response. Women sometimes need someone to explain what will happen if/when they call that number: someone to be with them when they make the first call, go to court or the welfare office or immigration the first time, someone to help them figure out how to be their own best advocate, what to say and how to say it, in order to get what they need for themselves and their children to be safe."

Jennifer Robertson & Debra Drumm. The Awake Project: "Integration of Health Care, Child Protection and Domestic Violence Advocacy Services." Boston, Massachusetts: Children's Hospital, IS.



is misusing the system. They encourage the agency to screen out multiple reports from batterers who fail to make credible allegations.

Here's An Example...

An AWAKE advocate is called because a mother or child has disclosed information about domestic violence during a pediatric visit. First, the advocate warns the mother about her duty to report suspected child abuse. The advocate then listens to the mother's story and begins to assess the risk to the mother and child. The advocate helps the mother develop a safety plan, provides the mother with a list of services available through AWAKE, and tries to determine how the mother wants to proceed. The advocate will also discuss the case with the hospital's child protection team to determine whether a suspected child abuse report should be filed.

The mother might ask for services immediately, or might call back at a later time. Once she makes contact, the advocate and the mother assess her needs and determine how they will proceed. The next step might involve obtaining a restraining order; the advocate explains the process and accompanies the mother to court. The advocate might help the mother find shelter or encourage the mother to join one of AWAKE's support groups. Whenever or wherever the mother needs the advocate, the advocate will try to be available.

Funding & Staffing

AWAKE receives the majority of its funding through the Massachusetts Office for Victim Assistance. Greater Boston Legal Services' work with AWAKE is part of a federal Violence Against Women Act Civil Legal Assistance grant under which the office works with six area hospitals to provide holistic legal and social services to domestic violence victims. AWAKE is staffed by a director, a clinical coordinator and three full-time advocates (including a social worker and an advocate with a master's degree in education). Two half-time attorneys from Greater Boston Legal Services serve the six hospitals in the hospital outreach program.



☆ CHALLENGES ☆

In an era of decreased funding for legal services, programs need to be creative about maximizing their resources to serve the greatest number of people possible. Lay advocacy programs connected to legal services support are one potential solution to this problem.

SURVIVOR'S PROJECT/ SIBLEY COUNTY PROJECT

What This Program Does

Domestic violence in Native American and rural communities is the focus of these two Southern Minnesota Regional Legal Services projects. The Survivor's Project, which builds on Southern Minnesota Regional Legal Services' 20 years of work in the American Indian community, targets American Indian girls aged 16 to 21 who are survivors of domestic violence. The Project works to enable American Indian teenagers to live independently and safely, and helps prevent their children from entering the dependency system.

The Sibley County Project provides "outreach, advice, education and legal representation for battered women and their children in Sibley County,"⁸ a rural county in south central Minnesota. The Project's goals include better protecting battered women and children, improving the community response to family violence and removing legal obstacles to family health and stability. The Project is also reducing out-of-home placements and other adversarial child protective interventions for children exposed to domestic violence or victimized by a battering parent.

How This Program Helps

The Survivor's Project advocates on behalf of teenagers seeking legal protection from abusive parents and partners. Because many teenagers must establish their own households, the Project helps keep these girls safe by addressing housing and public benefits issues, as well as helping them obtain phone and

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ADDITIONAL RESOURCES:

A number of other programs are doing innovative work to prevent unnecessary interventions in families experiencing domestic violence. These include:

*Family Law Project
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Chicago, Illinois
(312) 347-8327*

*Contact:
Kendia Reinshagen,
Director*

*Break the Cycle
P.O. Box 64996
Los Angeles, California
90064
(310) 286-3366*

*Contact:
Jessica Aronoff,
Program Director*

*Brooklyn Legal Services A
105 Court Street, Third
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(718) 246-3263*

*Contact:
Linda Holmes,
NAPIL Fellow*

other basic services. The Project assists in family law cases, such as custody work and cases brought on behalf of teens or the teens' children under the Indian Child Welfare Act (ICWA). Attorneys also coordinate with criminal prosecutors in cases involving their clients.

Because Sibley is a rural county with no cities, victims of domestic violence often have difficulty getting services. To address this need, the courts, child protective services, human services workers, battered women's programs and Southern Minnesota Regional Legal Services are collaborating on cases involving domestic violence in Sibley County. Project activities include family group conferencing, education for children who witness abuse, an advocacy project for local battered women, and legal representation and advocacy for individuals. Lawyers also participate in child protection team meetings to identify situations where their services would eliminate the need for intervention in the family.

How Do Legal Services Prevent Unnecessary Interventions?

For the teenagers involved in the Survivor's Project, action by child protective services is possible both on the teen's behalf and on behalf of the teen's child. The Project helps teens consider safe and available options other than the child welfare system, working with them to find placements and helping them secure the supports necessary to live independently. Legal services attorneys also defend teen mothers trying to maintain custody of their own children in third party custody, power of attorney and ICWA cases.

In Sibley County, legal services attorneys work closely with child protective workers to eliminate the need for intervention, both by representing individual battered women and by identifying and fixing systemic problems that lead to unnecessary interventions. Legal services attorneys are creating a climate where intervention is a last resort, rather than a first reaction, by:

- Helping battered women distance themselves from their batterers through protection orders, income, and safe and stable housing



- Developing protocols governing intervention in these cases
- Working in partnership to improve services
- Increasing community awareness of family violence issues.

Here's An Example...

The Survivor's Project's clients are usually teens who are known to the system and are not living at home. Instead, these children are on the streets or in a shelter for American Indian children run by the Ain Dah Yung (Our Home) Center (see Partners, below). Living with parents is not an option, since these children frequently leave home because of abuse. The teen may be the subject of an ICWA case, and if she is pregnant, be facing an ICWA proceeding about her child. She may also be seeking a paternity and child support order and an order of protection from abuse by her parent or her partner. Frequently, the teen has housing problems (especially if she has children) and needs economic support. The Project may litigate several family law cases on her behalf, including paternity/child support, domestic violence, custody, and child welfare matters. Working with the teen on these issues helps ensure her safety and increase her stability, decreasing the chance of an intervention.

Partners: Programs Working Together

The Survivor's Project is a collaboration with Ain Dah Yung, which provides case management, group counseling and cultural activities for American Indian youth. Ain Dah Yung also has a street outreach worker looking for battered American Indian girls, provides transitional housing for teenagers without children, and runs a shelter for American Indian children, which allows them to stay for a maximum of 60 days. The majority of the teens seeking legal services are in Ain Dah Yung's shelter.

The Sibley County Project brings together courts, child protective services, human services workers, battered women's programs and Southern Minnesota Regional Legal Services to improve service delivery in this rural area.



Checklist for Change

Introduce yourself to professionals in other systems at court to develop relationships that you can draw on later.

Funding & Staffing

The Survivor's Project is funded by the Violence Against Women Act. Two part-time attorneys work on the Project.

The Sibley County Project is funded by the McKnight Foundation, which has funded previous Southern Minnesota Regional Legal Services domestic violence-related projects.

☆ CHALLENGES ☆

Both of the populations targeted by these Projects—American Indian teenagers and rural women—can be difficult to reach and resist help from outsiders. The Projects have developed partnerships with local providers and used grassroots community work to increase their credibility, and therefore their effectiveness, with these client groups.

Endnote

8. Jan Weruss. *McKnight Foundation Grant Proposal*, December 22, 1999. at 1.

Kinship Care



Source: Leigh Goodmark, reprinted with permission.

As of 1998, the federal government estimated that 2.1 million children were living in households with relatives—but without either of their parents. Kinship caregivers represent these children’s last opportunity to maintain links to their homes and families and to avoid placement in the child welfare system. But when kinship caregivers are unable to access the services and benefits to which these children are entitled, relinquishing responsibility for these children may be the caregiver’s only viable alternative. Legal services attorneys are working with kinship caregivers to formalize caregiving arrangements through court proceedings and to ensure that the caregivers who open their homes to these children are not forced to give them up for lack of economic and other supports.

“Our society has become much more regulatory, hierarchical, bureaucratized; you used to be able to take your grandchild down the street to an elementary school...or to the doctor...no one asked.”

Leah Kedar, AIDS Orphans and Life Planning in the District of Columbia: Voices of the Community. Washington, D.C.: Consortium for Child Welfare, 1986, 13.



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VANDERBILT LEGAL CLINIC

What This Program Does

The Vanderbilt Legal Clinic works with kinship caregivers in Davidson County, Tennessee, to secure legal custody of the children in their care and to provide kinship caregivers with the services and supports needed to prevent later relinquishments. The clinic also represents children and families in the dependency system.

Professor Susan Brooks developed the Davidson County project after seeing the large number of children the child welfare agency placed with relatives without offering any state support. In fact, many relatives had to agree not to seek assistance from the state to have children placed with them; others were asked to file for legal custody rather than seeking foster parent status, with its attendant financial supports and services. This lack of state support meant that many of these children came back into the system six months or a year later, when caregivers found that they could no longer support the children.

The conflict faced by kinship caregivers intensified in 1997, when Tennessee enacted a Kinship Foster Care Program, which permitted relatives caring for children in state custody to become foster parents and, based on their status, to receive services and financial assistance. Kinship caregivers were forced to choose between the increased financial assistance and services (like respite care and mental health counseling) available if they gave legal custody of their children to the state and autonomy from state and court oversight (and lower payments available through Temporary Assistance to Needy Families) if they declined to enter the foster care system. Many relatives reluctantly gave custody of their children to the state to qualify for financial assistance and services. Relatives who already had legal custody of children were excluded from the program, and had no access to state services.

The clinic works in partnership with other organizations (see Partners, page 35) to keep children from entering foster care unnecessarily and to maximize the support available to kinship

caregivers who already have legal custody or who choose to keep the children out of the dependency system.

How This Program Helps

The partnership provides holistic services, including individual and family counseling, support groups, case management services, emergency financial assistance, help accessing public benefits and private resources, and legal services to kinship caregivers. Legal services consist of limited legal representation, consultations, and referrals to other service providers. Brooks and her students counsel relatives on the advantages of legal custody versus foster parenting or adoption and describe the services and supports that are available with each option. The clinic also helps caregivers secure legal custody of relative children. Because families need to understand how to best serve the children in their care, providing legal information is a key part of the clinic's work.

The clinic also advocates for policies that equalize treatment for caregivers within and outside of the dependency system. "The overwhelming majority of families have chosen to try to provide for the children in their homes using our limited resources and support, rather than relinquishing custody or pursuing Kinship Foster Care. The high level of interest in our program has led us to believe that if substantial services are made available to relative caregivers on a statewide basis, we could prevent a significant number of children from ever entering state custody."⁹ The clinic's advocacy helped spur the Tennessee legislature to create a pilot Relative Caregiver Program, which uses Temporary Assistance to Needy Families (TANF) monies to fund a range of services, including financial assistance, for kinship caregivers without requiring that the children enter state custody. The two-year pilot project will serve the state's two largest urban centers, Memphis and Nashville, which account for almost half of the children in state custody, as well as one rural community. The clinic is also studying the feasibility of a subsidized guardianship program separate from the dependency system.

2.9 percent of U.S. children lived with relatives other than their parents in 1998. Child welfare agencies had no role in placing or supporting 77% of these children.

Casey National Center for Resource Family Support. "Facts About Kinship Care." Washington, D.C.: The Casey Family Program, 2000. http://www.casey.org/kinship_facts.html.



About 60 percent of grandparents raising children alone are poor.

Cindy Chandler. "Grandparents Are Raising Their Grandchildren." Family Advocate, Fall 1999 (quoting Department of Commerce News, July 2, 1999).

How Do Legal Services Prevent Unnecessary Interventions?

By helping relatives secure legal custody of the children in their care and providing them with sufficient supports, the partnership hopes to prevent relatives from feeling as though they must enter the dependency system and from relinquishing custody of children. Moreover, the project helps caregivers access income and services sufficient to adequately support their relative children, avoiding interventions by the child protective system.

Here's An Example...

The grandparents of four children whose mother had serious mental health issues and a substance abuse problem, and whose father was incarcerated, took the children in just before they entered state custody. The grandparents were willing to provide the children with a home, but had very limited income and accrued serious debt as a result of the added financial burden of the children. They were about to be evicted and would have been forced to relinquish custody of the children when they connected with the Davidson County project. The project helped the couple secure a Section 8 certificate for federally subsidized housing. The housing subsidy was sufficient to allow the family to care for the children without state intervention.

Another grandmother was raising five children on her own. At one point, she felt such extreme stress and isolation that she literally brought the children to the child welfare agency and suggested she might leave them there. She was referred to the Davidson County program, which welcomed her into its support group, offered her case management services, and provided legal assistance with a custody petition and with pursuing child support. Because the grandmother accessed the support network offered by the project, she was able to manage her stress more effectively, and all five children are doing well in her care.

Partners: Programs Working Together

The clinic collaborates with the Court Appointed Special Advocate (CASA) program and Family and Children's Services (a nonprofit organization) in Davidson County, Tennessee.

Funding & Staffing

The Davidson County project receives private grant funding. Professor Brooks and a varying number of students provide legal services; the partnership also includes mental health case managers.

☆ CHALLENGES ☆

Making the decision to forego the significant resources available through the dependency system is difficult for kinship caregivers, although the majority would prefer to retain custody of their relative children. Legal counseling about the ramifications of the options open to kinship caregivers is essential.

PROJECT HEALTHY GRANDPARENTS

What This Program Does

The University of Georgia School of Law's Public Interest Practicum gives 20 students each semester the opportunity to work on legal projects in the community. Project Healthy Grandparents, which serves grandparents caring for their grandchildren, is one of those projects.

The University of Georgia's School of Social Work started Project Healthy Grandparents, which is one of a number of state-funded pilot projects helping grandparent caregivers. Through the program, social workers provide assistance and support for grandparent caregivers to promote permanency for the children in their care. The School of Social Work asked the law school's clinical program to collaborate on the project to ensure that the grandparents' legal needs were met.

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“My biggest worry is that they find us ineligible [for shelter] and we have to leave....And that they’re going to take us from our grandma because we don’t have a place to live.”

Nina Bernstein. “Family Is Stranded at Gates of New York Shelter System.” *New York Times*, March 25, 2001 <<http://www.nytimes.com/2001/03/25/nyregion/25HOM E.html?searchpvt=st1e03a>>

How This Program Helps

The law students provide grandparents with a range of legal services short of direct representation. While issues involving the relative children are the Project’s primary focus, students can provide caregiving grandparents with legal information and support on any issue. They engage in investigations and client counseling. Students can also informally negotiate and advocate (for example, with administrative agencies on public benefits issues) on behalf of the grandparents. If there is a need for the services of a lawyer (i.e., to draft a will or formalize a caregiving arrangement), the student recommends that the client seek legal counsel. The School of Social Work pays for attorneys to take these cases. Caregiving relationships can be formalized by obtaining legal custody or temporary or permanent guardianship of the relative child.

Students in the clinic also provide grandparents with general legal information through flyers produced by the Project.

How Do Legal Services Prevent Unnecessary Interventions?

The students only work with cases in which the child welfare agency is not already involved. Students avoid future involvement by helping caregivers formalize their legal status in relation to their grandchildren and by helping grandparents secure the financial and social supports that will create a more stable environment for the family.

Here’s An Example...

The project’s clients are typically women over the age of 65. Generally, these grandmothers have some degree of disability but are nonetheless the primary active managers of their homes. Often, they are caring for older husbands as well as their grandchildren. Most of the clients live in rural areas. Some receive disability benefits (either cash or in-kind services). One or both of the child’s natural parents may have relinquished caregiving responsibilities as a result of some problem—substance abuse or immaturity, for example—but the parent shows some good judgment by leaving the child with the

grandparent. The child sees the parent from time to time, but the parent is not a stable presence in the child's life.

The grandparent generally has no resources to care for the child, which raises public benefits issues for the family. The grandparent may or may not feel strongly about seeking formal custody of the child. Nonetheless, the grandparent may be motivated to pursue custody for any number of reasons: to obtain financial assistance, guarantee shelter or medical care, ensure security in the relationship with the child, or secure services for the grandparent's own child.

Students meet with the grandparent and conduct a full-scale interview to assess all of the grandparent's legal needs. They then provide general information and a range of services: legal information about specific matters, referrals to attorneys, advice about handling a legal matter *pro se*, informal advocacy or negotiation. Primarily, the students try to help the grandparents understand the complicated choices that they face and how those choices might affect their relationships with their children and grandchildren.

Partners: Programs Working Together

As noted above, the law students work with case managers from the University of Georgia's School of Social Work.

Funding & Staffing

The University of Georgia School of Law supports the work of the Public Interest Practicum. Professor Alex Scherr and his law students provide grandparents with limited legal services; attorney representation is funded and accessed through the School of Social Work. The School of Social Work also provides case managers for families.

★ CHALLENGES ★

Not all students are comfortable with the idea of grandparents assuming care of their grandchildren. Some students believe that the grandparents are interfering with the rights of natural parents, especially in those cases where the

"Ms. M...petitioned the juvenile court for legal custody of her six grandchildren" because the children's parents "were struggling with drug addictions. Ms. M had a solid fifteen-year work history with the same organization, and it made sense for her to maintain this job and her hard-earned salary. To keep her job, she needed childcare for her youngest two grandchildren, so Ms. M applied for subsidized childcare. She was placed 600th on the waiting list. Unfortunately, after months of waiting and struggling, Ms. M was forced to relinquish custody of these two young children."

Elizabeth S. Black and Susan L. Struble. "A Tale of Two Grandmothers: Child Welfare, TANF and the Need for More Support for Kinship Care in Tennessee." The Public Policy and Aging Report 11, 2000, 7.



grandparents have taken responsibility for their grandchildren against their own children's wishes.

Tensions also exist between the social workers and law students. Social workers sometimes see the grandparents' legal issues as basic or uncomplicated. But law students are trained to counsel clients about the dynamics of the cases and the implications of the client's decision, making an "easy" case more time-consuming than the social worker expected. Moreover, the limited nature of the representation provided by the law students can create misunderstandings. Case workers sometimes expect law students to provide more intensive services than the limitations posed by the rules governing practice by law students permit. Finally, maintaining communication between law students and case managers can be difficult.

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3997
(312) 554-2000

CHICAGO BAR FOUNDATION GUARDIANSHIP OF MINORS PROJECT

What This Program Does

For the last five years, the Chicago Bar Foundation has been helping kinship caregivers understand and start the process of obtaining legal guardianship of relative children. Together with the Circuit Court of Cook County, the Foundation, using the services of volunteer attorneys, staffs a desk in the probate division, where relatives come to file for guardianship. Each year, the Project has helped provide stability through guardianships for approximately 3000 children.

The Foundation sees its role as developing and piloting innovative projects. Since this project has proven successful, the Foundation now plans to transition day-to-day management of the Project to a local legal services provider.

How This Program Helps

Four days each week, court clerks staffing the Guardianship Desk help kinship caregivers seeking guardianships. After



potential guardians make appointments for assistance, clerks screen the cases for potential abuse or neglect of children. Cases having issues of abuse or neglect are referred to the child welfare agency. Clerks then help eligible relatives complete self-help forms, including the petition for guardianship, created by the Project. The clerks also explain the court process to potential guardians. Volunteer attorneys are available to explain court procedures, legal concepts, including service of process, and to give advice on issues including who must receive notice of a guardianship petition. Clients then serve appropriate parties with notice and appear in court *pro se* to obtain the guardianships.

The Project is about to start offering computer tutorials on guardianships in the courthouse. Applicants will be able to access instructions and complete forms for a guardianship on-line rather than waiting for an appointment at the Guardianship Desk. For the last six months, the Foundation has also been operating a project in the juvenile division of the court that helps petitioners modify existing guardianships.

How Do Legal Services Prevent Unnecessary Interventions?

Relatives seeking guardianships are often the only stable family children have. The children's parents may be abusing substances or may have simply disappeared, leaving the children with their relatives. These relatives find themselves unable to obtain medical care for children or enroll the children in school, making child protection interventions more likely. If kinship caregivers establish legal guardianships, they can not only continue to provide their relative children with stable homes, but can also access all of the services needed to ensure that children stay out of the child protective system.

Here's An Example...

The majority of the Project's clients are grandmothers seeking custody of their grandchildren because the child's parent is using drugs or has disappeared. The grandmothers are generally motivated to seek guardianships because of an inability to access medical care or enroll their grandchildren in school. Because the grandmothers are able to provide stable homes for

ADDITIONAL RESOURCES:

Other programs working with kinship caregivers to prevent unnecessary interventions by child protective services include:

*Children's Law Center
1050 Connecticut Avenue,
NW
Suite 1200, Washington
Square
Washington, D.C. 20036
(202) 467-4900*

*Contact:
LaShanda Taylor,
Staff Attorney*

*Children's Law Program
Legal Assistance
Foundation of Chicago
111 West Jackson Street,
Suite 300
Chicago, Illinois
(312) 347-8356*

*Contact:
Richard Cozzola,
Supervisory Attorney*



Checklist for Change

Contact community programs working to prevent entry into the system and start a conversation about teaming with legal services providers.

the children, the children are not labeled neglected or abused, but without legal status, the grandmothers are often unable to secure the services that will keep them out of the system.

Partners: Programs Working Together

The Project relies on strong partnerships with the Circuit Court of Cook County and with *pro bono* attorneys.

Funding & Staffing

The Project is staffed by four clerks paid by Cook County and volunteer attorneys recruited by the Chicago Bar Foundation.

☆ CHALLENGES ☆

In some ways, the program has been too successful. Some caseworkers from the child welfare agency have pressured relatives to seek guardianships rather than having children enter the system. As a result, cases that truly belong in the juvenile court are finding their way instead to probate court judges, who are reluctant to address abuse and neglect issues and often refer these families to the juvenile court. Moreover, caregivers whose relative children could benefit from child protective services are being diverted out by caseworkers.

Endnote

9. Elizabeth S. Black & Susan L. Brooks, "A Tale of Two Grandmothers: Child Welfare, TANF, and the Need for More Support for Kinship Care in Tennessee." *Public Policy & Aging* 11, 2000, 7, 9.

Mental Health/ Substance Abuse



Source: Darly Pierre-Toussaint, "Ms. America," reprinted with permission.

Parenting is an incredibly difficult task; parenting when coping with substance abuse or mental health issues is even more daunting. Mental illness and substance abuse can render some people unable to parent, but not all parents with these disabilities are unfit. The stereotypes and assumptions surrounding these parents can predispose child welfare agencies and child serving professionals to believe that removing the child is necessary even before the parent has had the opportunity to care for the child. Legal services providers are working with substance abusing and mentally ill parents to ensure that they receive the services and supports they need to be effective parents. Their goal is to prevent systems from intervening in families where parents can provide stable and loving homes for their children, and to make alternate arrangements for children who cannot be safely cared for by their parents.



Contact Information

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CLUBHOUSE FAMILIES LEGAL SUPPORT PROJECT

What This Program Does

The Clubhouse Families Legal Support Project offers legal services to mentally ill low-income parents at risk of losing custody of or contact with their children.

The Clubhouse is an international model for providing community-based psycho-social services to mentally ill people, called members. Staff and members work together as equal partners to create an environment where members can get the skills and supports needed to manage jobs, families and their recovery process.

The Clubhouse Families Legal Support Project grew from members' identifying parenting issues, especially losing contact with children, "as the primary barrier to their successful rehabilitation as well as a significant source of distress for the entire family."¹⁰ In response, Employment Options, Inc., a Clubhouse located in Marlboro, Massachusetts, created the Family Project, which provides members with services including respite care, special events, visitation support, parenting education, home visits, service coordination, and a parent support group. The Family Project sought legal assistance when parents with mental illness began calling with questions about custody and visitation. Calls from parents also revealed situations where children had been removed as babies, without the parents ever having had the opportunity to care for the children. Other parents explained that under pressure from the child welfare agency or from relatives, they relinquished rights to their children without the benefit of counsel and without understanding what they were giving up. The Family Project found, however, that existing legal services providers would not accept referrals from the Project and that no one in the legal services community was representing parents with mental illness in family law matters.

Ultimately, Employment Options, Inc., teamed with Gina Yarborough of the Mental Health Legal Advisors Committee (and a member of the Family Project's Advisory Council) to



established the sobriety of her clients to have these cases dismissed.

Here's An Example...

Smith worked with a substance-abusing, 27 year old mother of two. The mother had been in foster care for her entire childhood, had no family, and had her first child at 17. The child's paternal grandmother, also a substance abuser, took the mother in, exposed her to crack cocaine, and prostituted her.

Eventually, the mother went into rehab and the paternal grandmother, a high functioning addict, was granted guardianship of the child (despite her treatment of the mother). While in the rehab program, the mother met another recovering addict and started a relationship with him, which ultimately produced her second child.

When Smith first met this client, she had been in rehab for two months. Smith and the rehab program were able to secure services for her, including job training and housing. Although the child welfare agency briefly investigated the second child, it ultimately closed that case because of the services that the mother had in place. The mother then petitioned the court to regain custody of the child with the paternal grandmother.

Knowing that relapse is very common, Smith and the mother created a relapse plan, which stated that if the mother relapsed, she would take the second child to its father, with whom she had a good relationship, and re-enter the rehab program. When the mother did relapse, the plan went into effect. Because of this plan, the mother was able to put services into place quickly enough that she did not lose her second child, which would have adversely affected her ability to regain custody of her oldest child.

Partners: Programs Working Together

Smith worked closely with the Moms Project, a comprehensive community services agency working with pregnant, addicted women. During the first year of Smith's fellowship, the Moms Project advocates were recovering addicts

from the community who did an amazing amount of community outreach. Advocates were on the streets at 2 a.m., going to crack houses, bringing pregnant women into the program. The program had astonishing results—around 90 percent of the women who entered the program gave birth to babies who were drug-free.

Smith provided on-site intake and training two to three days weekly, and worked closely with the advocates (sometimes traveling with the advocates to clients' homes to check on them). She trained the staff about these mothers' rights in the dependency system, what the child welfare agency could and could not do, the process for obtaining a protection from abuse order, and a number of other topics. Having this information allowed the advocates to fight for their clients in emergencies, laying the groundwork for Smith's later work, and also eliminated the need for an attorney's assistance in some situations. Advocates also accompanied Smith to court, providing a wealth of information about the clients (especially helpful in cases where Smith was called a day before a hearing).

Unfortunately, when the program switched to a fee-for-service model in the second year of Smith's fellowship, it changed radically. Advocates no longer went to clients' homes, provided street outreach, or accompanied clients to court. Smith was told, "We don't get paid to go to court." People with little experience with substance abuse became counselors. Smith was not able to collaborate with the program as effectively after this switch took place.

Funding & Staffing

The National Association of Public Interest Law funded Smith, who was the only attorney working on the project.

★ CHALLENGES ★

Smith cautions that it can be difficult to separate one's own feelings about and experiences with substance abuse from work with substance abusing clients. It can also be difficult to accept and understand that clients have the right to make choices that



advocates believe are wrong—and to respect these clients despite such choices. Advocates must remember that the clients are the only ones who must live their lives, and that all choices, even bad ones, belong to the client. Similarly, lawyers must understand and accept the limitations of their role. Lawyers can counsel clients on options but cannot make the client accept the option that the lawyer likes best. Clients need to know that the lawyer will be available whether the lawyer agrees with the client or not, and that the lawyer will be there in the future if the client wants to change her course.

Endnote

10. Gina Yarborough. *Clubhouse Parents Legal Support Project NAPIL Application*, at 2.

...ing the grassroots for Smith's late work, and also
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...experience with substance abuse became homeless. Smith was
...not able to collaborate with the program as effectively as he had
...which took place.

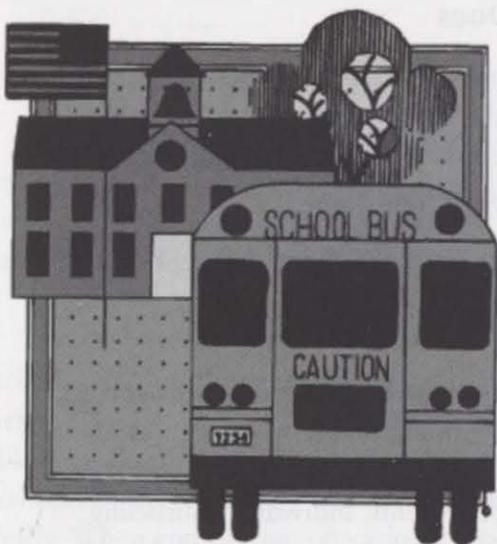
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CHALLENGES

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...feelings about and experiences with substance abuse from work
...with substance abusing clients. It can also be difficult to accept
...and understand that clients have the right to make choices that

Special Education



For many children, one benefit of entering the child welfare system is the array of health, mental health and counseling services that becomes available. Some of those same services are accessible without the intervention of the child protective system and can be obtained with a lawyer's assistance. Special educational services are a perfect example. Under federal law, all children are entitled to a free, appropriate public education—one that meets the special educational needs that the child has. And that definition is not confined to classroom instruction; rather, it can include services ranging from counseling to recreational therapy. Without assistance, children with learning disabilities often become frustrated at their inability to understand what occurs in the classroom. They may act out both at school and at home, making their parents more likely to abuse or neglect them and potentially endangering others in the household. They might even stop attending school altogether. These situations can lead to intervention by child protective



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Since 1997, the Juvenile Law Clinic has served approximately 30 to 40 children a year. At the end of 1999, all but three of the 37 children (92 percent) the clinic worked with that year were living safely with parents or relatives and receiving educational services.

services. For children with disabilities that impair their ability to learn, then, receiving special educational services can mean the difference between involvement in the child welfare system and remaining safely at home.

JUVENILE LAW CLINIC**What This Program Does**

The Juvenile Law Clinic serves children with disabilities who are in danger of entering the child welfare system. The clinic works to prevent the unnecessary removal of children from their caregivers by providing special educational services to children at risk of abuse and neglect.

How This Program Helps

The clinic provides a range of legal services to the parents and caregivers of children with disabilities to ensure that those children receive appropriate special educational services. The clinic has secured school placements, individual counseling, group and family counseling, and speech, recreational and occupational therapy for its clients. Moreover, the clinic advocates with child protective caseworkers to prevent interventions into families for whom the clinic is attempting to get services. The clinic has trained hundreds of attorneys, law students, judges, social workers, mental health professionals and parents, spreading the message that appropriate special educational placements can help keep children out of the child protective system.

How Do Legal Services Prevent Unnecessary Interventions?

School is incredibly important to children. Children who do poorly in school may be frustrated, depressed, or angry, especially when their poor performance is a function of their disability. When the disabled child's needs are not being met, the family is often disrupted. When the parent or caregiver cannot solve the problems causing the disruption, the child is at greater risk for abuse or neglect.



When children are in structured, therapeutic settings that address their disabilities, their home functioning improves. Using legal interventions to access services to meet these children's needs diminishes family stress and the risk of abuse or neglect. Moreover, parents play an active role in designing service plans in the special education system. Parents who plan their children's educational services learn to assume more responsibility for the well-being of their children, making them less likely to abuse or neglect them.

Here's An Example...

Appropriate educational placements have repercussions far beyond the school environment, especially for emotionally disturbed children, for whom the risk of child protective interventions is great.

One emotionally disturbed child who was not receiving appropriate educational services was living with his mother in a shelter. But the family was evicted from the shelter because the child was disruptive. When the family became homeless, the chances of intervention by child protective services increased greatly. When appropriate educational services were put into place for the child, the child's behavior rapidly improved, allowing the mother to find stable housing and decreasing the risk of intervention.

Another mother was afraid because her eight-year-old continually set fires, endangering a younger sister. The mother wanted to voluntarily place the eight-year-old in the dependency system out of fear for the younger child. Instead, the clinic helped the mother secure an appropriate educational placement for her child, which included counseling and other services. Since that placement, there have been no further fires, and therefore, no reason to relinquish the child.

The problems of parents and children often combine to create high-risk situations for children. A crack-addicted mother, for example, may have several children born drug-exposed or -addicted. This prenatal exposure, coupled with the lack of nurture, structure and stimulation common in the homes of crack-addicted parents, creates a situation where the children are

“One of the most significant problems faced by families at risk of abuse and neglect...is the failure...to timely identify, and provide appropriate special education services to children at risk of abuse and neglect. Without such services, these children are in danger of being removed from their homes and placed in foster care. With appropriate services, the risk of abuse and neglect in the home is reduced or eliminated, enabling the family to remain together.”

Professor Mary Hynes.

**ADDITIONAL RESOURCES:**

Other organizations working to address children's educational needs in order to prevent unnecessary interventions include:

*Center for Children's
Advocacy*

*University of Connecticut
School of Law*

*65 Elizabeth Street
Hartford, Connecticut
06105*

(860) 570-5327

Contact:

*Martha Stone,
Executive Director*

likely to be learning disabled. The children are scholastically behind their peers from the start as a result of organic problems, failure to thrive, and environmental factors. The children predictably have problems and act out as a result. An appropriate educational placement, however, eases these problems, reducing pressure on the family and giving the mother the opportunity to confront her own problems. Working with a social worker, the mother's ability to focus on her issues can further stabilize the family.

Partners: Programs Working Together

The clinic partners with a community-based child and family services program, Ferebee Hope Community Services, which refers cases to the clinic. The partnership is successful, in part, because of the negative experiences that social workers have had with the school system. Social workers often find the school system hostile. When they partner with the clinic, the clinic can do battle with the school system, leaving the social worker to focus on other issues with the family.

Funding & Staffing

The clinic is funded by the University of the District of Columbia David A. Clarke School of Law, the D.C. Bar Foundation and the Meyer Foundation. One full-time professor and a number of law students staff the clinic.

create the Clubhouse Families Legal Support Project. The Project later expanded to include clients at Atlantic House, a Clubhouse in Quincy, Massachusetts.

The Project believes that for children to grow and develop, they need connections with their parents; similarly, having meaningful relationships with their children aids the recovery of mentally ill parents. The project works to keep families from being fractured and to ensure that parents and children maintain their connections.

How This Program Helps

The Project provides information and legal advice to Clubhouse members and trains members on divorce, visitation, child support, and how a child protective investigation works. Project staff represent individual members in administrative hearings and litigation in probate and family court, in guardianship proceedings, and in child welfare matters before a lawyer is appointed by the court. While these cases involve standard family law issues, they are especially challenging because of the adverse impact court proceedings can have on the client's mental health.

The Project also educates and trains the Department of Mental Health, the courts, and legal services providers. These efforts address misconceptions about parents with mental illness, often focusing on the mistaken belief that all mentally ill people are bad parents. For example, a parent cannot be found to have neglected a child based solely on mental illness. Similarly, there is no requirement that the child welfare agency be notified when a client enters a hospital for treatment. Nonetheless, parents with mental illness often experience such assumptions, which leads to unnecessary interventions.

How Do Legal Services Prevent Unnecessary Interventions?

For parents with mental illnesses, an attorney is often needed as soon as the child is born—if not sooner. Many pregnant, mentally ill mothers call to ask, “How do I avoid losing my child?” By helping parents before problems arise, the project

“(S)ome mentally ill parents are not capable of caring for their children, while others are. It is likely those mentally ill mothers who are successfully raising their children do so with support from relatives (including the children’s fathers) and community services.”

Sharon G. Elstein, “Maternal Mental Illness in the Child Welfare System,” *Child Law Practice*, May 2002, 34.



“Being a parent requires 100% focus and energy. Being a parent with mental illness requires even more. When mental illness zaps your strength, your focus and your energy, you need a support system and you need the skills to move forward—past the difficult episodes.... The Family Project offers parents the opportunity, support and nurturing environment they need to become effective, capable and independent parents.”

*Employment Options, Inc. Family project
—Supported Parenting Order*

helps prevent unnecessary child protective interventions. The project advises parents of their legal rights and helps parents enforce those rights, ensuring parents get the supports and services they need—as early as during pregnancy—to prevent interventions.

By educating state agencies and courts about rehabilitation, recovery, and mental illness, the Project corrects the mistaken assumptions about parents that drive unnecessary interventions. The Project’s work on the disjointed systems that serve families also helps to ensure that the needs of families affected by mental illness are met before interventions occur.

Here’s An Example...

The Project recognizes that for some families, intervention by the child protective system is an absolute necessity. For other parents, however, stereotypes lead to inappropriate interventions, which may cause the parent’s mental health to deteriorate.

A stay-at-home mother has a history of mental illness, but her symptoms are largely under control. As a result of some event, however—domestic violence, a death in the family, issues with the children—she seeks treatment at a hospital. The hospital automatically notifies the child welfare agency that a parent is being seen for mental health issues. The estranged husband, the state, or both, try to take the children, regardless of arrangements she has made for their care or length of her hospital stay. The agency may place the children with the father; the father may go to court to get custody of the children. Sometimes based on the existence of mental health issues alone, without any showing of danger, the father is advised to get a protection from abuse order, which prohibits the mother from having contact with her children.

If the agency has placed the children with the father, it may forbid the father to return the children to the mother even after she leaves the hospital. As a result of her separation from the children, the mother’s mental health worsens.

The mother is referred to the Clubhouse; the Clubhouse refers her to the Clubhouse Families Legal Support Project. In a

case involving the child welfare agency, the Project contacts the social worker to determine what services and supports are being provided to the mother. The Project will challenge the service plan in a fair hearing if it is inadequate. If the agency is not involved, the project works with the father to try to modify or vacate the protection from abuse order and to establish a pattern of successful contact that will lead to the mother reassuming custody of her children.

Partners: Programs Working Together

The partnership between Employment Options, Inc., and Atlantic House and the Mental Health Legal Advisors Committee is crucial to the Project's success. Project staff frequently travel to the Clubhouses to do intake and orientation sessions. Clubhouse staff refer members to the Project, and attorneys work with outside clients who are in hospitals or being discharged to have a Clubhouse included in their treatment plans.

The Project also partners with Dr. Joanne Nicholson of the University of Massachusetts School of Psychiatry. Dr. Nicholson provides the Project with research materials to support training and education.

Funding & Staffing

The Project is funded by the Massachusetts Bar Foundation, the National Association of Public Interest Law, and through the general operating funds of the Mental Health Legal Advisors Committee. Two attorneys (one full- and one part-time) and intake staff work on the project.

☆ CHALLENGES ☆

Misconceptions about parenting and mental illness often make working to prevent unnecessary interventions a struggle. Moreover, the struggle itself can have repercussions for the parent's health; the more difficulty a parent with mental illness has in maintaining custody or contact, the more tenuous her mental health may become, fueling the argument that she should lose custody of her children.



Checklist for Change

Host a brown bag lunch for child protective services workers and local services providers.



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LOS PASOS PROGRAM/STARTING EARLY TO LINK ENHANCED COMPREHENSIVE TREATMENT TEAMS (SELECTT) PROGRAM

What This Program Does

The University of New Mexico's Department of Pediatrics and School of Law have teamed to serve families at risk of child protective interventions. The Los Pasos Program focused on mothers using drugs in the prenatal period; SELECTT was designed to reach families with drug and mental health issues as well as families experiencing domestic violence and teen parents. These two projects and a third, the Grandparents and Relatives Outreach (GRO) Program, are all scheduled to merge into one program called Milagro, which will serve women from the prenatal period through birth and work with relative caregivers as well.

The partnership began with a meeting between Dr. Andrew Hsi, director of the Los Pasos and SELECTT programs, and Professor J. Michael Norwood, a clinical professor at the University of New Mexico School of Law. That meeting led to the creation of a legal services component for the Los Pasos program, staffed by law students and supervised by Professor Norwood. Professor Norwood and the students in his child advocacy clinic, which he developed to work with Los Pasos and SELECTT programs, have since collaborated with doctors, caseworkers and case managers on both projects.

Los Pasos and SELECTT are both designed to improve outcomes for children living in high-risk situations using a multidisciplinary service delivery model. The child advocacy clinic uses legal services to provide families with stability—for example, by making caretaking relationships permanent or by addressing housing and public benefits issues.

How This Program Helps

Through Los Pasos and SELECTT, parents and caregivers were able to secure legal information, advice and referrals, counseling, and litigation services. About 11 percent of Los Pasos' and 20 percent of SELECTT's clients have been referred to the clinic for assistance with legal issues including adoption, custody, guardianship, divorce, child support and paternity and immigration. Students in the clinic conduct education sessions for client and staff groups on domestic violence, child abuse and neglect, child custody, and wills, estates, and advanced planning. Clinic participants are also available to answer questions from project staff about legal issues arising in their work; confidentiality is a frequent topic.

How Do Legal Services Prevent Unnecessary Interventions?

The children in these programs are born into high-risk situations as a result of a parent's drug abuse or mental health issues. The programs work with parents to create safe and stable family environments that will promote optimal development for children. The programs also help parents learn to make good decisions on behalf of their children.

Using legal services as part of their multidisciplinary approach, the programs seek to reduce the risk that these children will be abused or neglected. For children remaining with their biological parents, legal services help provide income, stable housing and legal status. Relative caregivers often need assistance formalizing their caregiving relationships and accessing children's benefits.

Here's An Example...

About half the clinic's work is with natural parents who, after giving birth, curtail their substance abuse and focus on raising their children. These parents often have multiple legal needs (for example, access to public benefits, child support, etc.).

Most referrals, however, are on behalf of a grandparent raising a child. The child's parent, usually the caretaker's

"In one study, 52% of state child welfare agencies reported that placements into out-of-home care are partly due to parental substance abuse."

B. Zuckerman, in *When Drug Addicts Have Children* (D.J. Bearman, ed. 1994).



daughter, is absent, has alcohol or substance abuse problems, and is living on the street. The parent may be in and out of the grandparent's home, disrupting the family. The grandparent may have difficulty getting the medical or educational resources the child needs because the grandparent and child have no legal custodial relationship. The clinic helps the grandparent establish that relationship, secure the services to which the child is entitled, and stabilize the situation so the child does not enter the dependency system.

Partners: Programs Working Together

The Los Pasos and SELECTT programs are defined by their partnerships between doctors, caseworkers, case managers and lawyers. Program participants believe that the multidisciplinary nature is crucial to improve outcomes for at-risk children. Because the doctors, social workers and lawyers communicate well and trust each other, they support and reinforce the messages clients receive from all professionals working with the family.

Funding & Staffing

Los Pasos was funded by the federal Abandoned Infants Assistance Act. SELECTT is a Starting Early, Starting Smart site, a joint program funded by the federal Substance Abuse and Mental Health Services Administration and the Casey Family Program. SELECTT is the only Starting Early, Starting Smart program with a legal services component. Professor Norwood and about eight law students each semester work with the programs.

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GREATER BOSTON LEGAL SERVICES NAPIL FELLOWSHIP

What This Program Does

From September 1998 through September 2000, the National Association of Public Interest Law funded Caryn Mitchell Smith to provide legal services to low-income substance abusing mothers. Smith's motivation to work with this



community came from her personal experiences with substance abuse in her family as well as her desire to give something back to her community. She advocates for substance abusing mothers with a greater degree of understanding because of her background.

Smith describes substance-abusing mothers as a “demonized” community, stereotyped as purposefully hurting their children. Even court-appointed advocates for these mothers often do not provide zealous representation because they don’t understand addiction. Smith’s goals for her project were to end the myths and stereotypes about this population and to present the real face of addiction. Helping lawyers and judges understand addiction as a disease, she believed, would start to dispel the bias against substance abusing mothers. Smith also wanted to fill a gap she saw in service provision to substance abusing mothers. When in recovery, substance abusing mothers often have a team working with them on welfare, counseling, and housing issues, among others, but seldom have legal advice, despite the family law and other legal issues confronting them.

Smith quickly realized she would also have to educate her own office. Lawyers at Greater Boston Legal Services were often reluctant to take the cases of substance abusing mothers, assuming that they could not have their children’s best interests at heart. Smith encouraged them to assess these cases individually, to see that some of the mothers parented very effectively despite their substance abuse and that recovery had fundamentally changed the lives of others. Since the project began, Greater Boston Legal Services has greatly increased its representation of substance abusing mothers. The staff relies on Smith and her mother, a recovering addict and substance abuse counselor, to educate them on judging the strength of recovery, methadone maintenance programs, explaining sobriety, and related topics. Despite the fellowship’s end, Smith continues to work with these mothers to protect their relationships with their children.

How This Program Helps

During her fellowship, Smith represented substance abusing mothers in a variety of family law matters, including custody,

Studies suggest that parental drug and alcohol abuse affects 50-80% of children and families involved in the child welfare system.

United States Department of Health and Human Services. Blending Perspectives and Building Common Ground: A Report to Congress on Substance Abuse and Child Protection. Washington, D.C.: United States Government Printing Office, 1999; United States General Accounting Office. Foster Care: Agencies Face Challenges Securing Stable Homes for Children of Substance Abusers. Washington, D.C.: United States General Accounting Office, 1998.

child support, divorce, visitation, guardianships, orders for protection from abuse, and dependency. She was also able to refer cases involving housing, welfare, and unemployment to other units within Greater Boston Legal Services.

How Do Legal Services Prevent Unnecessary Interventions?

Working with the other units, Smith was able to help substance abusing mothers who could care for their children achieve the basic security—housing, food, income—they needed.

Smith stresses that the goal in these cases is not always to keep the mother and child together; instead, the hope may be to maintain the mother's connection with the child and allow the child to remain with the extended family. The shortened timelines of the Adoption and Safe Families Act are particularly problematic for substance abusers; 12 months is not very long in "recovery time." When children of substance abusing parents enter the system, the potential for terminating parental rights is significant. In those cases, Smith worked with kinship caregivers to establish guardianships so children could remain with their extended families and still see their mothers.

Smith also notes that because relapse is fairly common, many parents stay drug-free for a significant period of time, only to relapse later. When parents relapsed, Smith worked to place children with their extended families and establish guardianships or co-guardianships between the mother and (usually) grandmother. When the mother entered treatment and was again capable of caring for the children, the co-guardianship could be dissolved.

Smith advocated with the child welfare agency on behalf of substance abusing mothers as well. In Massachusetts, case law states that a neglect case cannot be brought solely because a parent lacks housing. In some cases, the agency would investigate and file a petition because of a lack of housing but add "former substance abuser" to the petition to establish a neglect case. Smith confronted the child welfare agency with this case law and the pretextual use of the client's former substance abuse and

Incarcerated Mothers



Source: Kristen A. Hays, "Untitled," reprinted with permission.

When a single mother is arrested or imprisoned, her children's world can literally fall apart. Unless the mother has arranged for the care of her children during her detention, these children will almost certainly enter the dependency system. One 1994 study found that three percent of the children in foster care were there because of a parent's incarceration.¹¹ But these mothers can take steps to ensure that their children remain out of the child welfare system, assuring the children continuity and stability at a time when everything else in their lives seems uncertain. Through direct representation, education, policy advocacy and program development, legal services providers are working with these mothers to ensure that their children's needs are met, even when the mothers are not there to meet them.

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CHICAGO LEGAL AID TO INCARCERATED MOTHERS (CLAIM)

What This Program Does

For about 15 years, CLAIM has served former and current women prisoners and their children and caregivers. CLAIM attempts to preserve the families of women prisoners whenever possible and to influence policies affecting women prisoners and their families.

Executive director Gail Smith founded CLAIM after hearing formerly incarcerated and furloughed women speak at the National Conference on Women and the Law. The women described the impact their incarceration had on their children, their children's reaction to their release from prison, and the difficulty of re-creating their lives with their children upon release. CLAIM, at its start, was the only project in the Midwest serving this population at a time when the number of women in prison was skyrocketing.

How This Program Helps

CLAIM provides direct representation to current and former prisoners in family law cases, including custody, child support, divorce, guardianship, order of protection and child protection matters. Services are provided both by CLAIM staff and by *pro bono* attorneys.

CLAIM helps families establish guardianships between incarcerated mothers and potential caregivers. Short-term guardianships, which last for sixty days, are especially appropriate for women awaiting trial. Short-term guardianships do not involve the court; by designating a guardian, the parent vests the guardian with the same authority over the child as is conveyed by court order. Short-term guardianships can be renewed at the end of the sixty-day period.

For women facing longer prison stays, CLAIM works with caregivers to secure guardianships through the court's probate division. Guardians need not be related to the child or have a

foster care license. Generally, however, the guardian is a relative, and may be the child's father when, because paternity has not been established, the father has no legal right to custody.

CLAIM represents incarcerated mothers in guardianship proceedings, and, with the consent of the mothers, often recruits volunteer attorneys to represent caregivers. CLAIM works diligently to ensure that the adults in the child's life work together to minimize conflict during the guardianship. CLAIM attorneys arrange, to the greatest extent possible, for joint parenting during the term of the guardianship. They discuss allowing the mother to continue to make significant decisions. They stress the importance of ensuring that children call and visit their mothers, as maintaining contact can make resuming the parent/child relationship much easier upon the mother's release. Mothers are counseled about choosing their battles with caregivers wisely and warned not to treat caregivers as hired babysitters. CLAIM dispels mothers' fantasies about the ease of reunification and cautions them to expect problems, including children acting out, upon their release.

In guardianship cases, litigation is a very small part of CLAIM's work. Attorneys spend a great deal of time on intensive legal counseling to avoid later problems. One strategy CLAIM uses is to draft co-parenting agreements between mothers and caregivers. The agreements address visitation, reunification plans and treatment requirements for the mother, essentially spelling out the conditions that have to be met before the guardianship is discharged.

For CLAIM, client education is as important as litigation. CLAIM staff teach classes on domestic relations, probate courts, and child welfare to inmates in a number of institutions. The program offers classes in child custody and legal research to women in pretrial detention in Cook County, which enables them to work in a meaningful way with their attorneys. Moreover, because the majority of CLAIM's clients are incarcerated as a result of drug-related crimes, the program tries to educate clients about recovery and persuade them to confront their drug problems.

"What is particularly shocking is the number of mothers in prison, ... pointing to the estimated 53,000 with at least one minor child jailed in 1999—almost double the number since 1991."

James Gordon Meek. "Two Percent of America's Children Have Parents Behind Bars." APBNews.com, September 11, 2000 <http://www.apbnews.com/news/centerbreaking/news/2000/09_11.htm>

According to the Child Welfare League of America, estimates suggest that nearly 200,000 children under 18 have imprisoned mothers.

Jamaal Abdul-Alim. "Easing Visits to Mom in Prison: Program Aims to Boost Children's Ties to Parents." *Milwaukee Journal Sentinel*, October 28, 2000
<http://www.jsonline.com/news/1st/10/oct00/mama30102900a.asp>

How Do Legal Services Prevent Unnecessary Interventions?

About half of CLAIM's clients have not yet lost their children to the dependency system. CLAIM works to keep these children out of the system by arranging both short-term and longer-term guardianships. If a clear plan to meet the child's needs during the mother's incarceration can be developed, intervention by the child protective system is not necessary. For the caregiver, one disadvantage of choosing a guardianship over foster parenting is the less generous benefits available to guardians. Nonetheless, because relative caregivers receive no guarantee that children who are voluntarily relinquished to the child welfare system will be placed with them, many relatives choose guardianships. Moreover, given the shortened timelines for reunification under the Adoption and Safe Families Act (ASFA), incarcerated mothers usually prefer that children remain out of the system.

CLAIM believes that "forewarned is forearmed," and that the best way to prevent unnecessary child protective interventions is to teach mothers about their rights and responsibilities. Education focuses on issues of special interest to incarcerated mothers, including Illinois's provisions regarding parental unfitness based on incarceration. CLAIM strives to correct the mothers' misperceptions about judicial proceedings and motivate mothers to seek treatment by creating a sense of urgency about their recovery given the ASFA timelines.

Partners: Programs Working Together

CLAIM is a tiny organization and its partnership network helps it to have a much larger impact. CLAIM works with a wide variety of agencies and organizations; one program, for example, provides transportation so children can visit their incarcerated mothers. The Chicago Bar and the Women's Bar help CLAIM recruit volunteer attorneys, and CLAIM works with a number of organizations on policy and legislative issues.

Funding & Staffing

CLAIM is funded through foundation grants, private donations, and local bar and IOLTA¹² contributions. The staff includes an executive director/staff attorney, an Advocacy Project Director, a coordinator, and a paralegal/Jail Project coordinator.

☆ CHALLENGES ☆

The ASFA timelines have made the potential for permanently losing children to the child welfare system much greater for incarcerated mothers. Without an understanding of the law's requirements and their responsibilities, many mothers are unaware of the very real danger of having their parental rights terminated.

CLAIM sees numerous drug-addicted mothers who are incarcerated for petty offenses when treatment is what they need. Families are often destroyed by drug problems that could be addressed if greater resources were allocated to treatment.

WOMEN'S RE-ENTRY RESOURCE NETWORK

What This Program Does

The Women's Re-Entry Resource Network offers social, mental health and legal services to incarcerated and formerly incarcerated women.

Attorney Molly Wieser provides legal services to clients of the Network. Wieser was attracted to the multidisciplinary organization because she believes that lawyers in the traditional legal model do not provide all the services required to meet their clients' needs (for example, helping clients to find housing). She therefore sought (and found) a group working with incarcerated women in a more holistic way that needed a legal services component.

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Of the more than 149,000 female inmates currently in local jails and state and federal penitentiaries, 70% have at least one child under 18.

Television Groundwork: "Mothers in Prison: Record numbers of mothers and pregnant women are filling our prisons. Should their children be punished along with them?" Time Magazine, November 8, 2000 <<http://www.time.com/time/magazine/article/0,9266,5899500.html>>.

How This Program Helps

Wieser provides legal education regarding abuse and neglect and dependency matters to incarcerated and formerly incarcerated women. Many of her clients are uninformed about child welfare proceedings, despite having counsel in those matters. The Network has developed a video in conjunction with the Prison Media Literacy Project that discusses dependency system issues and provides mothers with options for establishing caregivers for their children. After the video is shown, the program distributes flyers about powers of attorney and guardianships and provides participants with blank power of attorney and guardianship forms. The group then discusses the qualities a mother should look for in a guardian.

The Network also gives legal advice and provides limited representation and referrals. If, for example, relatives call for assistance with the forms that mothers have given them after a presentation, the Network refers the caregivers to the Legal Aid Society or to *pro bono* attorneys.

Policy advocacy and public and legislative education are among the other services provided by the Network. The Network is advocating for a short-term guardianship statute similar to Illinois law, which would permit mothers to designate guardians for thirty days and would be renewable without court review. Finally, the program provides peer mentoring for incarcerated and formerly incarcerated women through a support group and newsletter.

How Do Legal Services Prevent Unnecessary Interventions?

Through education and policy advocacy, the Network helps incarcerated mothers avoid unnecessary interventions by the child protective system. Mothers who learn about the legal tools available to create stability for their children and use those tools are less likely to see their children enter the system. Moreover, if the Network can create a new model for short-term guardianships, mothers anticipating limited periods of incarceration can plan for their children's care without using the court system.

Partners: Programs Working Together

The Network consists of partners including legal staff, social workers, GED counselors and individual counseling providers. The partners are working together to create a residential program for incarcerated women and their children. They also collaborate on policy advocacy. Referrals between the legal and social work programs are common, and legal and social work staff meet to discuss individual cases.

Funding & Staffing

The Network is funded with private grants and donations. Wieser is the only attorney; she recruits law students during the summer.

☆ CHALLENGES ☆

Many women who are incarcerated and involved with the dependency system are not getting accurate information about the system and their rights and responsibilities, even when they are represented by counsel. Legal education is crucial for women seeking to retain their rights to their children.

Incarcerated women find that it is easy to lose touch with their children in the dependency system. Many are unable to learn where their children have been placed, have difficulty contacting caseworkers, and are not able to visit their children. Reunification is very difficult in these cases.

LEGAL SERVICES FOR PRISONERS WITH CHILDREN

What This Program Does

For the past 22 years, Legal Services for Prisoners with Children has been advocating on behalf of parents (primarily mothers) incarcerated in federal, state, and local facilities and their children. The program also educates the public about the needs of these families. Ellen Barry, who founded the project,

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“When we tell the mothers we’re going to connect them to a lawyer, their faces light up. I can still see the tears in their eyes. Their experience with lawyers usually has not been like this. It gives them a sense of someone believing in them. They are always grateful, even if it’s bad news. Someone tried to rectify their problem.”

William J. Dean. “Pro Bono Digest: The Incarcerated Mothers Legal Project.” *New York Law Journal*, June 30, 2000.

discovered during her law school clinical work that despite the serious problems facing incarcerated women, most prisoners were focused on what happened to their children. At the time she founded the agency, very few projects were looking at the needs of women in prisons, and even fewer assisted prisoners with family law issues.

How This Program Helps

When the program first began, Legal Services for Prisoners with Children provided direct legal services in family law matters. Over time, however, the program has largely curtailed its direct legal services work and has evolved into a support center. The program provides advice and information to individual prisoners and technical assistance to other organizations working with prisoners with children. The program nonetheless maintains a great deal of contact with parents and children by, for example, running workshops in jails on dependency issues. The program advocates for policies and programs at the federal, state, and local level that encourage continuing the relationship between the child, incarcerated parent, and extended family.

Legal Services for Prisoners with Children has brought class action litigation challenging the conditions of confinement for incarcerated mothers, including the adequacy of planning for and placement of newborns and for postpartum care in jails. In *Rios v. Rowland*, Legal Services for Prisoners with Children fought to expand the Community Prisoner Mother/Infant Care Program, which provides residential treatment for incarcerated mothers and children under six years of age. Originally, the program did not admit women who had committed violent crimes. Legal Services for Prisoners with Children sued to expand the program and to allow battered women who killed their abusers to enter the program. Since the suit settled in 1990, over 100 spaces for mothers and 100 spaces for children have been made available.

How Do Legal Services Prevent Unnecessary Interventions?

By advocating and litigating for programs such as the Community Prisoner Mother/Infant Care Program, Legal Services for Prisoners with Children creates alternatives to children entering the child protective system because of the mother's incarceration. Legal Services for Prisoners with Children is again pushing to expand this program, which will prevent the unnecessary entry of more children into the dependency system.

Here's An Example...

For one family, the Community Prisoner Mother/Infant Care Program was the key to keeping the children out of the dependency system. After six years of abuse, a mother of two children killed her abuser. The children were aged 3 and 1½ when she went to prison. Over time, the children's conditions deteriorated—the son stopped talking and was feared to be autistic and the daughter gained a great deal of weight—and their entry into the dependency system was imminent. For two years, Legal Services for Prisoners with Children worked to get this mother into the Program; within six months of the family's acceptance, the boy was talking again, and the staff found that he was gifted, not autistic. His sister, too, was much happier after the family entered the program, and both children were significantly healthier. The family was in the program for two years and eight months, and the mother was able to serve the remainder of her sentence with her children. Because of this program, dozens of women have been reunited with their children, which has prompted them to make significant changes in their lives. The program both prevents unnecessary interventions in the short-term and helps mothers to develop the skills needed to make interventions far less likely in the future.

Partners: Programs Working Together

While Legal Services for Prisoners with Children does have formal partnerships, over its 22 year existence it has developed close informal connections with numerous social and human services agencies. It partners with legal services providers to put



Checklist for Change

Identify one section of this book that addresses a need in your community and find the legal services providers addressing that area.

ADDITIONAL RESOURCES:

For additional perspectives on working with incarcerated mothers, contact:

Incarcerated Mothers Law Project
 Volunteers of Legal Service
 54 Greene Street
 New York, New York
 10013
 (212) 966-4400

Contact:
 Sarah Effron,
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*Public Interest Practicum—
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Contact:
 Professor Alex Scherr,
 Director, Civil Clinics

on trainings and author *amicus curiae* briefs on a number of topics. The program was also part of a six-year collaboration with community agencies to address relative caregivers' concerns about the dependency system and public benefits issues.

Funding & Staffing

Foundations provide between 1/3 and 1/2 of Legal Services for Prisoners with Children's funding, while attorney fees and grants from individual and major donors make up the rest of the organization's monies. The staff of eight includes three attorneys.

☆ CHALLENGES ☆

Before the Community Prisoner Mother/Infant Care Program was expanded to allow battered women who killed their abusers to enroll, Legal Services for Prisoners with Children litigated for 10 years. Many organizations have neither the stamina nor the resources to engage in an extended fight for such programs.

A huge number of incarcerated mothers are in prison either directly or indirectly because of drugs. The majority of the women in jail are serving time for nonviolent crimes; many of these women have been convicted of drug offenses. Moreover, a substantial number of "paper crimes" (welfare fraud, bad checks, petty theft) are committed to sustain a drug habit. These mothers need programs that treat their drug and alcohol addictions effectively.

Endnotes

11. Barbara E. Smith, Sharon Goresky Elstein, Ann T. Lazlo, Miki C. Akimoro, Marilyn B. Ayres & Judith B. Smith. *Children on Hold: Improving the Response to Children Whose Parents Are Arrested and Incarcerated*. Washington, D.C.: American Bar Association Center on Children and the Law, 1994, 88.
12. Interest on Lawyer Trust Accounts (IOLTA) consist of funds that accrue when lawyers put monies in trust into communal, bar-administered accounts rather than opening separate accounts to hold each client's funds. While the interest on individual accounts would be negligible, when



combined the funds can generate a substantial amount of interest. The interest from these accounts is used in many states to fund public interest law projects.

Income Maintenance/ Public Benefits/ Child Care/Housing



Source: Mike Vandegriff, "To Liberty & Justice for All Who Can Afford It," reprinted with permission.

It is perhaps most difficult to see the link between legal services and preventing unnecessary interventions in cases involving income maintenance and public benefits. Nonetheless, the tie between poverty and neglect is well-documented. Lack of appropriate, safe and affordable housing is one of the biggest issues confronting parents trying to keep their children out of care. Legal services lawyers are working with low-income parents to ensure that their welfare benefits aren't cut, that they have adequate housing, that they have access to safe and affordable child care. All of these services enhance family stability, lower parents' stress levels, and therefore decrease the risk of intervention by the child protective system.



Checklist for Change

Get a list of the legal services fellowships being funded in your area to see whether the fellows are targeting a problem you want to address.



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“When parents on welfare lose their benefits, the first in a long set of dominoes topples over. They may lose their housing, healthcare, peace of mind. Any of these, in turn, can trigger the most devastating loss of all—the loss of their children.”

Eve Stotland.

FAMILY SERVICES PROJECT

What This Program Does

The Family Services Project identifies and assists families at risk of child protective services intervention due to lack of income and related issues and strives to foster dialogue between the public benefits and child protection communities. The Project focuses specifically on families receiving CalWORKs, California’s TANF program.

Eve Stotland, the Shadden Arps fellow who proposed the Project, was motivated by a case she handled during law school. Her client was charged with neglecting her child because she was homeless; the neglect case was dismissed when the mother found housing. Stotland believes that such interventions are unnecessary and occur not because the parent is neglectful, but because the parent is poor.

How This Program Helps

Stotland frequently advocates for clients’ welfare rights through administrative hearings and outreach to individual workers on issues including eligibility, overpayments, welfare to work programs, transitional Medicaid, child support, and child care. Stotland also works with kinship caregivers seeking benefits for the children in their care.

The Family Services Project’s connections in the community bring clients in for assistance. Clients learn of the project by word of mouth, and the Project receives referrals from social service agencies and grassroots organizations. Clients usually approach the Project after they receive notices of adverse actions related to their welfare benefits.

How Do Legal Services Prevent Unnecessary Interventions?

If a parent loses welfare benefits, which are her sole source of income, she is likely to lose her housing and be unable to provide food for her children. When someone notices the family’s situation and reports the mother to child protective



services, interventions are likely. Stotland explains, “When [the state TANF agency] sanctions a family for any reason—e.g., failure to attend work activities because of inadequate child care, lateness because of transportation or child care problems, attendance problems because of caring for a child with special needs—the family is at immediate risk of CPS intervention.” In fact, the Project has had cases where child protective services threatened to intervene if the parent did not find housing or income. The Family Services Project “fills the cupboard” and helps clients maintain housing (whether permanent or in shelter), staving off child protective interventions.

Here’s An Example...

A single mother with two children is receiving CalWORKs. She comes to the Project because she is notified that she has received an overpayment on her welfare grant. She is told that the overpayment will be deducted from subsequent grants (which may endanger her ability to provide food or shelter for her children). The Project works to ensure that the calculation of the overpayment is correct and to protect the client from losing income as a result of the TANF agency’s mistake. If the calculation is correct, the Project advocates to ensure that the client keeps the largest amount of her income possible. The Project might also help the client secure emergency food and clothing during the period that the grant is decreased.

Partners: Programs Working Together

The Project works closely with a social worker/case manager on staff at Bay Area Legal Aid. Clients can make contact with either Stotland or the social worker and are more likely to find someone available when they drop in (especially important for clients without telephones). The social worker can make referrals to social services agencies, including shelters. Moreover, the social worker’s therapeutic relationship with the client helps when addressing difficult issues like confronting the client’s fears about the mental health system or educating the client about her responsibilities in the welfare system.



Funding & Staffing

The Skadden Arps Fellowship Foundation funds Stotland's position. She is the only attorney working on the Project, in conjunction with a social worker/case manager.

☆ CHALLENGES ☆

While income maintenance can help families avoid unnecessary interventions, factors other than poverty cause children to enter care in many cases. Some clients have multiple issues, including substance abuse and mental health problems. In those cases, the assistance of the social worker/case manager is invaluable.

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FAMILY VIOLENCE PROJECT

What This Program Does

The Child Care Law Center is sponsoring a project focusing on child care for families that have special barriers in moving from welfare to work. One target population is families experiencing domestic violence. The Family Violence Project:

- Increases awareness of families' and providers' rights in the child care system
- Advocates for families experiencing family violence in accessing and maintaining quality, appropriate child care
- Maximizes funding for child care services for children who have experienced family violence
- Trains and supports child care providers working with and serving as a resource for these families
- Trains and assists domestic violence and children's advocates to access quality, appropriate child care
- Fosters collaboration between the domestic violence, child care and child welfare communities.

How This Program Helps

Because the Child Care Law Center is a legal services support center, the Project does not represent individual clients. Instead, the Project provides technical assistance and training for lawyers, advocates and child care professionals on child care for families experiencing family violence, focusing on the impact of CalWORKs on these families. The Project also has an information and referral line that consumers can call for legal information and referrals to lawyers. Because the training, technical assistance and information being provided rely on analyses of the CalWORKs and domestic violence laws, having a lawyer do this work is crucial. Similarly, determining whether these programs are being properly administered requires legal analysis.

One of the major problems that the Project addresses is the confusion that child care providers feel when confronted with families experiencing domestic violence. Providers are mandated reporters of child abuse and neglect and are often unsure of when a situation must be reported to child protective services. The Project, which embraces the philosophy that children can frequently be kept safe by protecting their mothers, gives child care providers guidance about when reports are required.

The information provided goes beyond responding to questions about reporting. Because providers are often the first or only people who know what is happening in a family, they are in an ideal position to encourage parents to address the violence in their families. The Project, therefore, encourages child care providers to support mothers who are taking steps to escape violent situations (i.e., seeking restraining orders).

How Do Legal Services Prevent Unnecessary Interventions?

Having access to quality child care can help to prevent child abuse and neglect.¹³ Child care aids the development of at-risk children, reduces the strain of parenting, and helps parents learn safe and appropriate child-rearing practices. Moreover, without appropriate child care, low-income parents on welfare face the dilemma of choosing to work and leaving their children in

A parent has four children ages 9 and under. Her welfare benefits have been cut off, and her caseworker is requiring her to do community service work at the local welfare office in order to restore them. The caseworker tells the client that finding child care is her "problem." The client patches child care together through a network of friends, relatives and neighbors. But this network often breaks down, and the mother is left with the unenviable choice of either doing her community service (leaving her children alone but being able to feed them) or staying home with her children (but not having any income).



“In Utah many women are losing their children within the first two months after they hit Utah’s 36-month lifetime TANF limit.”

Almost 9% of the respondents in one survey had their children placed in foster care after losing their benefits, “where, incidentally, foster parents were paid more for caring for these children than the respondents had received in TANF payments.”

Rebecca Gordon. *Cruel and Usual: How Welfare “Reforms” Punishes Poor People.* Applied Research Center, 2001, 26.

dangerous situations or foregoing work and, as a result, losing their income. Both situations increase the danger of child protective interventions.

Accessing child care is hard for many victims of domestic violence. Child care enables victims to work, which in turn allows them to escape financial dependence on their batterers. Batterers attempt to thwart these efforts by disrupting child care arrangements or creating problems at the child care facility. By working with both providers and families to understand their rights and responsibilities, the Family Violence Project hopes to ease problems with child care facilities, make child care more accessible to these families, and create a climate where providers and families work together to address violence within the family.

Here’s An Example...

Providers frequently call the Project when a parent presents them with a restraining order. They often do not understand the order or what the order requires of them. Many times, their first instinct is to expel the child from the day care center. Child care providers are unwilling to serve as mediators between the parents and fear that abusive parents will create problems for providers. This fear could lead them to push the victimized parent away, depriving the family of a source of support and jeopardizing the parent’s ability to continue working. The Project educates providers about restraining orders and parents’ rights and helps providers to think about ways to assist the battered parent.

Battered CalWORKs recipients with children call the Project seeking information on how to obtain child care. The Project helps the parent understand her right to child care and works with her to determine how to share information about her situation with the child care facility.

Funding & Staffing

The Family Violence Project is funded by the Skadden Arps Fellowship Foundation and the Stewart Foundation. Cynthia Godsoe, a Skadden Arps Fellow, runs the Family Violence Project.



☆ CHALLENGES ☆

Resources. Neither the child welfare nor child care system has the resources it needs to provide services to all children who need them. The Family Violence Project is helping the systems explore ways of pooling their resources to better serve at-risk families.

FAMILIES IN TRANSITION PROGRAM

What This Program Does

Responding to the growing needs of the homeless population in Palm Beach County, Florida, the Legal Aid Society of Palm Beach County joined a number of other organizations to form the Families in Transition Program. The project makes services available to homeless families and families at risk of homelessness to help the families become self-sufficient and empowered. The ultimate goal of the program is to end homelessness in the county.

How This Program Helps

The Program provides a full range of legal services, primarily in the area of family law (paternity, custody, divorce, and child support enforcement, for example), to homeless families. The project also provides assistance with landlord/tenant issues. For problems that fall outside of the project's practice areas (i.e., consumer law), clients are referred to attorneys through the Legal Aid Society's *Pro Bono* Project.

Most clients are referred by partners in the Families in Transition Program. The project also reaches out to clients in transitional housing facilities and shelters.

How Do Legal Services Prevent Unnecessary Interventions?

The Families in Transition Program helps ensure families are economically and otherwise stable and have safe housing. If housing is the problem creating the need for intervention by

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ADDITIONAL RESOURCES:

Other programs using access to public benefits to prevent unnecessary child protective interventions include:

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Philadelphia
1424 Chestnut Street
Philadelphia, Pennsylvania
19102-2505
(215) 981-3772*

Contact:

*Katherine Gomez,
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child protective services, as it often is, the project works to eliminate that need. Moreover, the project helps homeless victims of domestic violence move out of abusive situations and into safe and stable housing, allowing parents and children to stay together.

Here's An Example...

Many of the project's clients are women with children (generally two or three), who are not working or have never worked. Usually, the women have not completed high school. The women find themselves in transitional housing as a result of a relationship ending, whether as a result of domestic violence or simply because the relationship has run its course. About half of the women are married. They often need assistance with paternity and child support issues to begin establishing economic security. Through other Program partners, they access housing, counseling, and education (vocational, general equivalency diploma, and college level courses). Clients work with the Legal Aid Society to resolve their legal issues.

Partners: Programs Working Together

The Program is a collaboration between a number of agencies providing social, housing and domestic violence services, including Adopt A Family, Program REACH, The Lord's Place, and the YWCA Harmony House (a domestic violence shelter).

Funding & Staffing

The Children's Services Council of Palm Beach County and the United Way jointly fund the Program. The Legal Aid Society devotes the services of a staff attorney, with oversight from a supervising attorney, to the program.

Endnote

- 13 Bruce Hershfield. *The Role of Child Day Care in Strengthening and Supporting Vulnerable and At-Risk Families and Children*. Washington, D.C.: Child Welfare League of America, August 25, 2000
<<http://www.cwla.org/cwla/daycare/atrisk.html>>.



Children and Youth Seeking Services



Source: Leigh Goodmark, reprinted with permission.

In the years since the Supreme Court first recognized a child's right to counsel, lawyers have represented children in many venues. Children can now get a lawyer's assistance, for example, with creating guardianships, securing public benefits, obtaining housing, seeking protection from violence, or receiving appropriate educational services. For some children, the services that these lawyers provide are the difference between entering the child protective system and creating alternative arrangements to ensure their safety and stability. Moreover, lawyers working with children are often the only people dedicated to ensuring that children's voices are heard in a frequently impersonal system.



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YOUTH LAW PROJECT

What This Program Does

The Youth Law Project serves children aged 12 to 17 who are abused, neglected, abandoned, or at risk of any of these conditions. The Project provides legal representation for these children whenever and wherever they need it. The Project works to ensure that the children's basic needs are met, that they have places to live, and that they know about and have access to the benefits for which they are eligible.

How This Program Helps

The Project provides assistance with any legal problem a child encounters. Major program areas include public benefits, including Supplemental Security Income, Minnesota Family Investment Program (Minnesota's TANF program), and General Assistance; orders for protection from abuse; special education; mental health; labor and employment; housing; child custody; and child in need of protection cases. In addition, the Project provides counseling and advice to children statewide who call for assistance.

The Project also engages in community education and legislative and lobbying work, and systemic change litigation. Minnesota law, for example, does not provide for the emancipation of minors; the Project is looking for an appropriate case in which to raise this issue. The Project produces easy-to-understand fact sheets providing information on legal issues confronted by teenagers such as housing, public benefits, the rights of teen parents, and the rights of parents and guardians.

How Do Legal Services Prevent Unnecessary Interventions?

The majority of the Project's clients are not yet involved with the child protective system or have already had their child protective cases closed. By helping children to formalize relationships with adult caregivers and/or to obtain the benefits necessary to sustain themselves (independently or while in the



care of a supportive adult), the Project helps children to avoid interventions by the child protective system. It is worth noting, however, that the bigger challenge for the Project is getting the system to intervene on behalf of teen clients when needed (see Challenges, next page).

Here's An Example...

A teen comes to the Project asking about becoming emancipated. Often, however, the Project has found that such children are more interested in finding an adult other than a parent with whom they can live without creating problems for that adult. The Project does a comprehensive intake with the child to determine what the child's real goal is, then helps the child find the legal means to reach that goal. The Project enables the child to create a legal relationship with an adult other than the child's parent by securing a delegation of parental authority from a cooperative parent or by seeking an order of protection against an abusive parent which grants custody to the new caregiver. If, by bringing the child into her home, the new caregiver has difficulty with housing or public benefits, the Project works to obtain or maintain those benefits and to facilitate the development of a safe, stable situation for the new family.

Partners: Programs Working Together

The Youth Law Project partners with a variety of agencies, both within and outside of the Legal Aid Society of Minneapolis. The Project collaborates with the Disability Law Center on special education issues. It works with the Legal Aid Society's Senior Law Project on inter-generational cases—for example, cases involving grandparents serving as kinship caregivers for children fleeing abusive parents. The Project is also working with the Senior Law Project to develop a mediation program. Mediators will work with parents and children, for example, to develop placement plans and visitation arrangements for families where, as a result of parent/child conflict, the child refuses to return to the parent's home.

The Project provides training for and receives referrals from Project Off Streets, a drop-in center for teens, and The Bridge



Checklist for Change

Contact community programs working to prevent entry into the system and start a conversation about teaming with legal services providers.



for Runaway Youth. The Project also plans to establish a legal clinic at a local high school.

Funding & Staffing

The 20 year-old program is funded by the United Way, Minnesota's IOLTA program, the Minnesota Legislature, and various other grants. The Project includes one half-time and two full-time attorneys, one half-time paralegal, and various law, social work and paralegal interns.

☆ CHALLENGES ☆

As noted above, the biggest challenge for lawyers working with teenagers isn't keeping them out of the child protective system—it's getting them into the system when needed. In Hennepin County, where the Project is located, child protective services is unlikely to intervene unless the child has suffered severe physical abuse. As a result, children don't get the services they need, which in turn means that they often surface in other branches of the legal system. In many cases involving abused and neglected teenagers where child protective services does not intervene, the children end up in the delinquency system. In those cases, attorneys from the Project work with special education and mental health advocates to help children get the services they need to address the issues that may have caused the "delinquent" behavior.

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VICTIMS OF CRIME ACT GRANT— GEORGIA LEGAL SERVICES PROGRAM

What This Program Does

From 1999 until October 2000, the Georgia Legal Services Program targeted services to child victims of crime (including child abuse and neglect) and their caregivers. The project's goal was to improve the lives of child victims of crime by assisting as many of these children as possible in any productive way.



How This Program Helps

Project attorneys did intake at victim assistance sites throughout the area, assessing the client's legal and other needs, making referrals for counseling, providing legal services when necessary, and following up with the families after legal issues had been addressed. Children and caregivers received assistance with divorces, adoptions, guardianships, custody, and protective orders (for children against third parties or strangers, and for the children's mothers if there was also harm to the child).

Many of the project's cases resulted from parents simply giving their children to relatives or unrelated caregivers. A great deal of the project's work involved establishing legal status for these caregivers either through guardianship actions (when the child was unrelated to the caregiver) or through custody cases (when the child and caregiver were family). Unlike other kinship care projects, however, these families were eligible for services as a result of the child's status as a victim of crime.

How Do Legal Services Prevent Unnecessary Interventions?

The lack of a legally sanctioned relationship with the child can prevent kinship caregivers from accessing public benefits, getting medical care for the child, or enrolling the child in school. When the caregiver's income is inadequate to support the child, or the child is not receiving medical attention or attending school, the likelihood of intervention by the child protective system increases despite the availability of a safe, stable placement for the child. Formalizing the relationship with the child can end these problems.

In other situations, protecting the child from further violence is the key to avoiding child protective interventions. When caregivers who are not responsible for the violence fail to take steps to protect their children, the child protective system may intervene. Working with caregivers and children to legally safeguard the child from further trauma can prevent these interventions.



Here's An Example...

A mother gives her child to the child's grandmother, or to the child's father's girlfriend, and promptly disappears. Although the mother has abandoned the child, the child welfare agency is not notified because the child is being well cared for. Nonetheless, the new caregiver needs assistance--if not cash benefits, then Medicaid or help with school enrollment. The project works with the caregiver to obtain legal status and to secure the other benefits and services that the child needs.

A teenaged girl is living with her parents and siblings. The child discloses to her mother that her father has been raping her for the past several years. The mother, very distressed, contacts the project. Her main concern is her daughter, despite the pain of ending a 20-year marriage to a man who had become a stranger overnight. After discussing the legal options, the mother pursues a temporary protection order keeping the father away from the children and a divorce. Because she makes these steps, the daughter is not removed from her care.

Funding & Staffing

Until October 2000, the federal Victims of Crime Act funded the project. The Georgia Legal Services Program then decided not to reapply for the grant, although primary staff attorney Atiya Mosley is committed to finding funding to continue to work with child victims of crime. Ms. Mosley, one half-time attorney and a full-time law assistant staffed the project.

☆ CHALLENGES ☆

The lifespan of projects depending on grant funding is never certain. Even a program like this one, which met an acknowledged need and did a tremendous amount of work (at least 200 families and children received services) cannot be sure of its ability to continue once the funding cycle ends. The continued existence of programs depends on the ability to find funding.



STREET YOUTH LEGAL ADVOCATES OF WASHINGTON (SYLAW)

What This Program Does

Street Youth Legal Advocates of Washington provides civil legal services and legal education to help homeless youth and youth at risk of homelessness achieve educational, housing, family and employment stability.

Students and faculty at the University of Washington School of Law started the program, which later became an independent nonprofit organization. In addition to providing representation, SYLAW now features projects including educational outreach through:

- presentations;
- visits to youth centers, schools, shelters and drop-in centers;
- the Internet; and
- a van that rides through Seattle neighborhoods connecting with at-risk youth.

How This Program Helps

Legal services are available in cases involving child abuse and neglect, family law (custody, domestic violence, child support), employment law, public benefits (TANF, food stamps, SSI), child in need of supervision proceedings, emancipation, education (truancy, special education, discipline), and housing (refusals to rent to teens, evictions). SYLAW has also brought impact litigation, including a suit against the United States Postal Service for denying mail services to homeless youth and adults. SYLAW conducts education programs on laws affecting youth, and provides referrals to social services agencies targeting homeless and at-risk youth.

How Do Legal Services Prevent Unnecessary Interventions?

For many homeless youth, education about legal alternatives is the key to determining how to escape a difficult situation

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“Street youth face a variety of legal problems, including family issues, educational problems, mental health issues, and difficulty accessing state and federal entitlements such as housing and financial assistance. If these particular needs are not met, youth are often prevented from reaching other goals necessary for leaving life on the streets for stable housing, jobs and educational opportunities.”

*Street Youth Legal Advocates of
Washington flyer.*



without entering the system. Others, especially those who have been abused, need access to a range of choices other than the child protective system (which is generally unwilling to intervene on behalf of older teens).

SYLAW uses a variety of legal strategies to help these teens achieve stability. For teens who can no longer stay with abusive parents, SYLAW helps them establish their own households through emancipation, housing actions, public benefits work, and any other type of proceeding that will allow the teen to live independently. Moreover, even teens who have not been emancipated are able to contract for necessary items; SYLAW works with teens to enforce these contractual rights, giving teens access to food and shelter.

For teens with an alternative to living with parents, SYLAW provides advice about and representation in guardianship actions. The teen can also file a Child in Need of Services petition on his or her own behalf to win the right to be temporarily placed in a home other than the parents' to access services. The danger in this strategy, however, is the likelihood that the teen will later be held in contempt for failure to comply with court orders and placed in a detention facility.

SYLAW also works with pregnant and parenting teens to keep their own children out of the child protective system. Many teen parents are afraid to leave situations where they or their children are being abused because they are uncertain about whether they have custodial rights. The child may be the teen parent's only link to stability, both because the child gives the parent access to services like teen parent homes and financial support and because of the emotional stability the teen derives from parenting. By providing education and family law services, SYLAW informs teens of their rights to their children and offers them a way to keep their children and escape abusive situations.

Here's An Example...

A 17 year-old boy who sought assistance from SYLAW had been physically abused by both parents. The boy was a good student, had a job, and had found a place to live away from his parents. Child protective services investigated the case and



decided not to intervene. The parents filed a complaint alleging that the child was a runaway; the teen answered by asking to be emancipated. SYLAW represented the teen in a contested emancipation proceeding, and ultimately the boy was emancipated. He now lives safely, is college-bound and, after family counseling, was able to reconcile with his parents.

A 16 year-old mother was sued by her own mother for custody of her child. With SYLAW's assistance, the case was dismissed. SYLAW helped the teen mother establish her child's paternity and collect child support from the child's father. Moreover, SYLAW connected the teen with services that helped her support herself and her child without turning to drugs and criminal activity. By the time the case was closed, the teen mother had a job, was receiving child support, and had developed a parenting plan for her child.

Partners: Programs Working Together

SYLAW maintains informal relationships with all of the legal and social services providers working with homeless and at-risk youth, including drop-in centers, shelters, and health clinics. Providing partners with education about the issues facing their clients encourages these organizations to stay in touch with SYLAW.

Funding & Staffing

SYLAW consists of one full-time attorney funded through a public interest law fellowship and a part-time attorney funded by Columbia Legal Services, as well as interns from the University of Washington and Seattle University Schools of Law. A part-time support staff person also works with the program.

☆ CHALLENGES ☆

As with other programs serving teens, SYLAW has found that it is difficult to interest child protective services in the cases of older children. Moreover, SYLAW finds that judges are reluctant to become involved in cases that they believe should be handled by the child protective system, making legal remedies elusive for some teens.



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[F]amilies and children are able to develop their own solutions with the assistance of Legal Services for Children. Children are more likely to be satisfied with the outcome of proceedings in which they've had representation, and therefore a voice. When children agree to permanency plans rather than running away or acting out, no outside intervention is necessary.

Solutions to the problems of these teens are rarely ideal. Declaring a 16 or 17-year-old independent is not an appropriately stable plan for most children. Nonetheless, for many of these children, the homes that they come from are far less functional and stable than the homes they create for themselves. Programs like SYLAW give teens the ability to develop and implement plans for themselves when the systems charged with protecting them are unwilling or inadequate.

HOPE PROJECT/ GUARDIANSHIP PROJECT

What This Program Does

For 25 years, Legal Services for Children has been providing free legal and social services to children under 18 in the San Francisco Bay area. Although the program provides legal services in a variety of areas, two of Legal Services for Children's projects are specifically designed to avoid unnecessary interventions by the child protective system: the Hope Project and the Guardianship Project.

The Hope Project creates permanency plans for children before a caregiver's death. Through planning, the Project helps families avoid unnecessary placements in the child welfare system and ensures that caregivers and children can jointly determine who will care for the child.

The Guardianship Project helps children to establish stable, legally sanctioned homes by advocating for an adult of the child's choice to assume guardianship of the child.

How This Program Helps

The Hope Project provides legal and social work services to HIV/AIDS infected and affected families with children. Hope Project attorneys specialize in establishing conventional and joint guardianships. The joint guardianship allows a terminally ill parent to designate an adult with whom he or she will share equal custody rights and responsibilities. Children can move



freely back and forth between the guardians. When the parent dies, the joint guardian automatically becomes the child's sole legal guardian without petitioning the court. Project attorneys also advise clients of other permanency planning options, including adoption, powers of attorney, and emancipation.

Hope Project attorneys work closely with social workers, teaming on cases whenever possible. Social workers provide case management services and psychosocial assessments. The social workers also run a support group for HIV-affected children and their parents and caregivers and a Family Activities Program, which provides respite and community building through approximately six yearly recreational outings. The support group is crucial, as it helps the family confront the caregiver's impending death and plan for the death, ideally before the family's situation becomes chaotic and while the caregiver can still be part of the planning process.

The Hope Project is receiving a number of calls from families affected by cancer and is expanding to include any family with a terminally ill parent.

The Guardianship Project is one of Legal Services for Children's core programs. In California, children aged 12 or older can request that a guardian be appointed to care for them. To institute a guardianship, the court must find that the guardianship is necessary and convenient and in the best interests of the minor; no finding of parental unfitness is necessary.

A child or potential guardian initiates a guardianship case by calling Legal Services for Children for information. Alternatively, a professional working with the children and/or caregiver might refer them for assistance. In addition, many requests from children for information about emancipation evolve into guardianship cases after the problem and available options are thoroughly discussed.

Legal Services for Children has a panel of over one hundred *pro bono* attorneys representing children in guardianship actions.



How Do Legal Services Prevent Unnecessary Interventions?

Establishing a guardianship remedies a number of situations that could lead to interventions by the child protective system. The guardianships created by the Hope Project keep children from falling into the system when parents or caregivers are no longer able, because of death or incapacity, to care for their children. Guardianships are also appropriate in cases where children are treated badly at home, don't live with their parents, and have found another suitable adult to care for them. Having a court approve the arrangement addresses children's fears that parents will force them to return home by reporting them as runaways. Guardianships are also helpful in situations where children are being neglected due to parental drug use or incarceration.

In a more general sense, the work of these Projects helps to keep children out of the system by addressing problems before they reach a crisis level that would trigger a child protective intervention. Moreover, families and children are able to develop their own solutions with the assistance of Legal Services for Children. Children are more likely to be satisfied with the outcome of proceedings in which they've had representation, and therefore a voice. When children agree to permanency plans rather than running away or acting out, no outside intervention is necessary. Finally, by simply talking to children, letting them know what their rights are and how to navigate the various systems they encounter when trying to stabilize their own lives, Legal Services for Children gives its clients the tools to create the kind of situations that will prevent unnecessary placements.

Here's An Example...

After the death of her mother, one 14-year-old girl went to live with her father and his new family (her parents had divorced before the mother's death). Because the girl had problems with the father's stepchildren, she left his home and went to live with her paternal grandparents, who provided a much more stable home for her. While with her grandparents, she was able to get counseling to address the issues raised by her mother's death, and her grandparents were very supportive. The teen insisted that she



would run away if forced to return to her father's home. The grandparents filed for guardianship and asked Legal Services for Children to represent the teen.

Partners: Programs Working Together

Attorneys work closely with Legal Services for Children's social workers whenever possible. Social workers provide case management and crisis intervention services, conduct psychosocial assessments, make referrals to outside agencies, and run support groups and other programs. They attempt to resolve conflicts between children and their parents or caregivers and conduct visits with potential guardians to ensure that the arrangement will benefit both child and guardian.

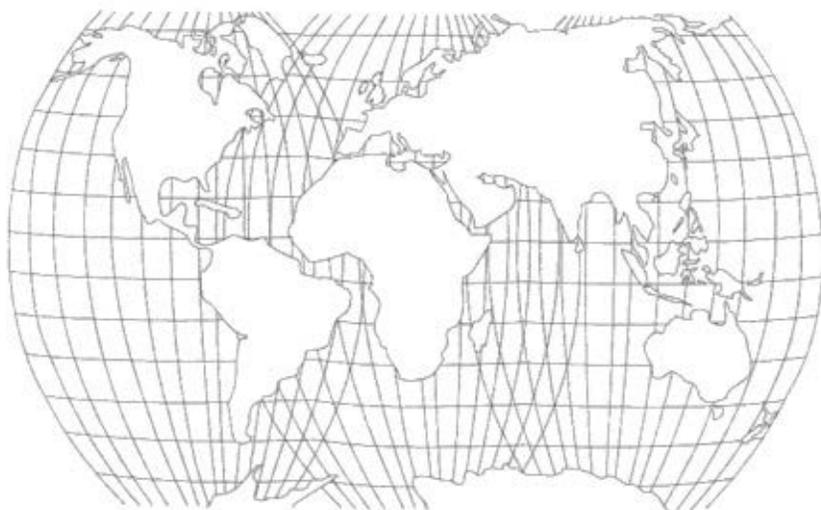
Funding & Staffing

Legal Services for Children funds its programs through government grants, private foundations, fellowship programs, and individual donors. The staff of 12 includes six attorneys and four social workers.

☆ CHALLENGES ☆

In some cases, emancipation is the best option for a child seeking stability. The legal requirements for emancipation are somewhat rigorous, however (the child must be 14 years old, have a legal source of income as an individual, be living on her own with her parent's acquiescence or permission, and the emancipation must be in her best interest). Because the standards are stringent, emancipation is not an option for all children; often guardianship is a compromise solution.

Systemic Change



In addition to representing individual clients, legal services lawyers work on behalf of entire classes of people to ensure that the child protective system is not intervening unnecessarily (and sometimes illegally) in their families. Class action lawsuits enable advocates to seek the kind of sweeping change that is difficult to achieve in individual cases. Individual representation and class action litigation, used separately or together, are both powerful tools for protecting the rights of children and families and addressing flaws in the systems that serve them.



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CHILDREN WHO WITNESS DOMESTIC VIOLENCE— *NICHOLSON V. WILLIAMS*

What This Program Does

Carolyn Kubitschek and David Lansner, with the assistance of Sanctuary for Families, an organization representing victims of domestic violence in family law matters, are suing the city of New York to prevent its child welfare agency from routinely removing children from battered mothers. The decision to bring a class action suit came after Sanctuary for Families referred Kubitschek a case involving the removal of the children of a client who was severely beaten by her estranged boyfriend during a random encounter (see *Here's an Example*, next page). Sanctuary for Families informed Kubitschek and Lansner that this woman was not unique; upon inquiring, Sanctuary was flooded with complaints about "failure to protect" allegations being lodged against battered mothers.

The suit questions whether the child welfare agency removes children solely because their mothers are victims of domestic violence, without investigating whether the children will be endangered if they remain with their mothers and without providing services to prevent or eliminate the need for the children's removal. Moreover, the suit alleges that the agency requires that victims of domestic violence enter counseling or psychotherapy and leave their homes, regardless of whether such counseling is warranted or the homes are safe, as conditions of remaining custody. The suit asks the court to declare that the policy of removing children solely or primarily because of the presence of domestic violence is unconstitutional. The suit further asks the court to require that the agency set standards for the removal of children in these cases.

How This Program Helps

Lansner & Kubitschek is representing the named plaintiffs in the suit. The firm is seeking relief on behalf of all victims of domestic violence who have been or will be investigated by the child welfare agency regarding allegations that their children



have been exposed to domestic violence. The class also covers all victims of domestic violence who have been afraid to seek protection from New York City police, courts, or other agencies because they fear that the child welfare agency will remove their children if they seek assistance. Finally, the class includes the children of these mothers.

Sanctuary for Families is partnering with Lansner & Kubitschek in this litigation. Sanctuary for Families' staff interviews class members, reviews discovery, drafts pleadings, attends discovery conferences, and generally strategizes with the other attorneys about the handling of the case. Sanctuary for Families is also representing a number of the individual plaintiffs in their Family Court cases.

How Do Legal Services Prevent Unnecessary Interventions?

If successful, the lawsuit will prevent unnecessary interventions by requiring child protective services to follow standards that remedy the problems described above when investigating the cases of battered mothers. Moreover, the publicity surrounding the suit has already prompted the agency to begin discussions with advocates and others about the content of such standards and made the agency more aware of the need to make individual determinations about services and removals in these cases.

Ironically, New York City has already shown that there is a better way of handling these cases. In a pilot project involving the child welfare agency's Manhattan field office, domestic violence specialists and agency workers paired on all cases involving domestic violence, giving workers access to services including shelters, orders of protection, and specialized training. In the six months that the pilot project operated, only four children from the 178 families in the project were removed from their mothers.

Here's An Example...

Almost a year after their break-up, Sharwline Nicholson's ex-boyfriend appeared at her home and assaulted her, causing severe

***"WHEREFORE, plaintiffs respectfully request that judgment be entered:
1. Declaring that defendant's policy and/or practice of removing and detaining children from their mothers, based upon the fact that the mothers are victims of domestic violence, is unconstitutional...."***

Nicholson v. Williams (United States District Court Eastern District of New York, Case # 00 CV 2229) Complaint at 21.



injuries. Her children were not present during the attack; the older child was at school, the younger sleeping in another room. Bleeding badly, Nicholson called the police. When the police and paramedics arrived, Nicholson asked a neighbor to take the children until her cousin could pick them up later that day. She was taken to the hospital by ambulance.

Sometime that evening, police officers entered the neighbor's apartment with guns drawn and removed the children. The children were taken first to the precinct house, then to the offices of the child welfare agency, despite the presence of the cousin, who was willing to take the children, at the precinct house. The children were later placed in a foster home. Nicholson was reported to the child abuse hotline for having engaged in domestic violence in the presence of her children and, while still in the hospital, was told that the child welfare agency had custody of her children.

After three weeks, Nicholson's children were returned to her, but the child welfare agency refused to withdraw the case against her for an additional six months. Nicholson is now one of the named plaintiffs in the lawsuit against New York City.

Another woman who was beaten by her husband repeatedly sought the assistance of the courts, the police and the child welfare agency over a four-year period. The agency refused to intervene because the woman had no visible bruises. After the husband hit their child and the woman reported the incident, however, the child welfare agency did intervene, requiring the husband to leave the home. In order for his wife to keep custody of the children, the husband complied. Nonetheless, the agency removed the children because of the past presence of domestic violence in the home. The children were not returned to the mother for almost a month, and the agency pressed the suit for almost a year before it was dismissed.

Partners: Programs Working Together

The collaboration on this case "represents a great partnership between a legal services provider and a private firm," according to Jill Zuccardy of Sanctuary for Families. Sanctuary for Families did not have the resources or litigation experience needed to



handle a large class action litigation; Lansner & Kubitschek added those assets to the groundwork Sanctuary had already done on the issue of “failure to protect.” David Lansner has also been working on individual clients’ Family Court cases *pro bono*.

The class action suit is being supported by a number of community-based agencies working with victims of domestic violence.

Funding & Staffing

Kubitschek and Lansner are working on this case with the assistance of two law students. Their office is funded privately. Sanctuary for Families has a staff of 15 lawyers as well as a social work staff that counsels women and children experiencing family violence. The organization is funded through private donations and grants.

☆ CHALLENGES ☆

Class litigation is complex, timely, and expensive, and can therefore be difficult for public interest organizations to initiate without partnering with a firm that has resources and expertise. Sanctuary for Families would not have been able to pursue this case alone. For legal services attorneys funded through the Legal Services Corporation, class litigation is forbidden by federal law.

ALABAMA DISABILITIES ADVOCACY PROJECT—R.C. V. HORNSBY

What This Program Does

The Alabama Disabilities Advocacy Project represents individual children within a class of 5000-10,000 who constitute the majority of the children in or at risk of entering foster care in Alabama.

During the 1980s, many children in Alabama were entering foster care unnecessarily, others were not entering when they needed to, and almost no child was being served well by the

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“The group undertook to gain a first-hand understanding of the operations of Alabama’s child welfare system. They interviewed children, parents, foster parents and workers. They visited residential placements. They reviewed case records. [The advocates] increasingly became convinced that only major reform litigation could address the massive systemic problems the team was uncovering.”

Bazelon Center for Mental Health Law. Making Child Welfare Work: How the F.C. Lawsuit Forged New Partnerships to Protect Children and Sustain Families. Washington, D.C.: Judge David A. Bazelon Center for Mental Health Law, 1998, 10.

system. A committee looking at child welfare issues recommended that the state increase funding for child welfare services by nine million dollars to address these shortcomings. When the legislature refused, a coalition of groups including the Alabama Civil Liberties Union, the Southern Poverty Law Center, and the Bazelon Center for Mental Health Law filed a class action lawsuit seeking improvements in the child welfare system.

The lawyers involved with the class action lawsuit found that they needed to work with individual clients to understand the issues in the class litigation. James Tucker, now the Associate Director of the Alabama Disabilities Advocacy Program, took the lead in handling those cases. That work continued even after the class action litigation was settled in 1991. Handling individual cases allowed the lawyers to see whether changes were actually being made and to continually press for the level of practice mandated by the settlement agreement. Individual cases helped attorneys to show county social workers the positive results of the changes required by the lawsuit and to learn about specific barriers and problems in implementation of the agreement.

How This Program Helps

ADAP lawyers served as guardians *ad litem* for individual children and provided support for other guardians throughout the state. Lawyers attended planning meetings on behalf of their child clients, developing plans with the agency to meet the children’s needs through informal services rather than bringing children into the child welfare system. Plans were reached in about 90 percent of cases. In cases where ADAP was not appointed to represent the child before the child’s entry into the system, lawyers worked to move children from more to less restrictive placements and to reunite children and parents when removal was inappropriate.

Tucker also conducted trainings and workshops throughout the state and helped create a parent’s network committed to the lawsuit’s principles.



How Do Legal Services Prevent Unnecessary Interventions?

The *R.C.* lawsuit was intended to minimize unnecessary interventions by the child protective system in cases where children could remain safely at home. By crafting a settlement agreement that embraced this philosophy and reinforcing the tenets of that agreement through work on individual cases, ADAP's lawyers continue to prevent unnecessary interventions. Moreover, the systemic change initiated by the lawsuit forced social workers to be more careful about intervening in families. Social workers now ask whether the child really needs to come into the system to be protected from abuse or neglect or whether some other service plan would meet the child's needs as effectively.

Unnecessary interventions are less likely as a result of a number of systemic changes. In some counties, supervisors and quality assurance reviewers staff cases before the child's removal, creating a front-end check on the system. Flexible funds totaling approximately \$30 million can be used to provide families with the services they need (rather than services that happen to be available), allowing social workers to alleviate the conditions that might send the child into the system.

Here's An Example...

The case of the named plaintiff in the lawsuit, *R.C.*, best illustrates why systemic changes were necessary. Before *R.C.*'s removal from his father's care, the child welfare agency invested no time or money in his case. After the agency received a report that the utilities had been turned off in his father's home, *R.C.* was removed. Although he had not been diagnosed with serious emotional problems, *R.C.* was placed in several different private psychiatric institutions, locked in isolation rooms, and dosed with psychoactive drugs, at a cost of \$150,000 to the state over the 18 months he was in the system. When he was finally returned to his father (after a lawsuit was filed on his behalf), the system offered neither the child nor the father any assistance.

Under the terms of the *R.C.* lawsuit, this case could have been handled in a number of different ways. Flexible funds



ADDITIONAL RESOURCES:

Further information about the R.C. lawsuit and Alabama's child welfare reform is available in Making Child Welfare Work: How the R.C. Lawsuit Forged New Partnerships to Protect Children and Sustain Families, a publication of the Bazelon Center for Mental Health Law.

could have been used to help the father pay his utility bills. Social workers could have engaged in planning with the family to determine what strengths the family had to draw on and what needs the child and family had that had to be met. Agency workers would have looked for solutions other than intervening in this family solely because the father could not pay the utility bills.

Partners: Programs Working Together

Working with partners is crucial for maintaining systemic change. Without the support of everyone involved in the system, the settlement reached by the parties would have been meaningless. Lawyers working for both the class and for individual clients partnered with the child welfare agency, social workers, parents, foster parents, child-serving agencies, service providers, judges and guardians *ad litem* to improve outcomes for children.

Funding & Staffing

ADAP is both an independent agency and a clinical program of the University of Alabama School of Law. The organization receives in-kind support from the University, as well as federal grants (ADAP is the federal Protection and Advocacy office for the state of Alabama), IOLTA funds, and attorney's fees. Tucker and two other attorneys regularly staff the office. Part-time social work advocates and clinical law students from the University of Alabama also assist clients.

☆ CHALLENGES ☆

Change is hard. State and county child welfare staff compared the process of asking the agency to accept and implement a new practice model to "fixing a bike while riding it."¹⁴ Moreover, sustaining improvements in the face of changing state administrations and political climates can be very difficult. In the R.C. lawsuit, a change in the governor's office led to the dismantling of the program created as a result of the lawsuit. Ultimately, further litigation was required to ensure that the court's order was followed. Constant monitoring of compliance



with the requirements of a settlement long after the settlement has been reached and renewed litigation to ensure that agreements are followed are common in class action lawsuits.

Endnote

14. Bazelon Center for Mental Health Law. *Making Child Welfare Work: How the R.C. Lawsuit Forged New Partnerships to Protect Children and Sustain Families*. Washington, D.C.: Judge David A. Bazelon Center for Mental Health Law, 1998, 6.



New Approaches to Service Delivery



Source: Leigh Goodmark, reprinted with permission.

Throughout the country, advocates for children and families are using creative legal strategies to prevent unnecessary interventions by the child protective system. Some advocates, however, are moving beyond substantive legal strategies to think about how they deliver services and how innovations in service delivery can enhance their ability to keep children and families out of the system. Lawyers are seeking assistance from community-based child protection projects and are setting up shop in schools, community centers and hospitals. Lawyers and social workers are teaming to improve outcomes for children and families. This section describes these innovations and discusses how getting out of the office and into nontraditional settings and partnerships has enhanced legal services lawyers' ability to advocate on behalf of children and families.



COMMUNITY CHILD PROTECTION IN CHICAGO AND WASHINGTON, D.C.

Chicago

What This Program Does

Illinois' child welfare agency has created a series of local area networks, or LANs, throughout the state. The LANs, which include representatives from various government agencies, including the child welfare agency, schools, and private social services agencies, provide community-based services to families at risk of entering the child protective system. Caseworkers generally refer families to LANs. After the family presents its case, the LAN helps the family to form a child and family team, with members chosen by the individual seeking services. Ideally, the child and family team consists of nonprofessional people; the goal is to support the client using resources available in the community. The LAN facilitates meetings of the team in the community and, with the client's active involvement, helps the group to plan for the family's needs. If a specific service or support will help to keep the family together, the LAN helps the client to secure that service or support. LANs are also available to make referrals to other community organizations.

LANs have flexible funds available to meet immediate client needs. Clients can apply for flexible funds, and funding decisions are made by the flexible funds committee. To qualify for flexible funds, the case must involve a child under the age of 18; the child welfare agency does not have to be involved with the family. LANs have also reached out to merchants in the community for donations of items needed by clients.

How This Program Helps

Ruth Giles Ott, a staff attorney with the Children's Law Project at the Legal Assistance Foundation of Metropolitan Chicago, first became aware of the LANs through her work with children and families in or at risk of entering the child protective system. She attended the LAN training to get a better idea of how the LANs operated, and placed herself on the LAN steering committee list, which enabled her to present cases before the

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LANs. She has had a great deal of success accessing services, items and assistance that clients needed from LANs.

Ott approaches her LAN cases as if she was preparing for court, providing the LAN with documents and exhibits chronicling the efforts her clients have made to seek assistance and the exhaustion of available resources.

How Do Legal Services Prevent Unnecessary Interventions?

The LANs have the ability to provide the client with many of the tools needed to stay out of the child welfare system: access to services, flexible funding, case management services. The LANs ensure that services are appropriate and available and build on family and community strengths. They enhance cross-agency collaboration and focus on allowing children to safely remain in their communities.

Here's An Example...

Ott presented a LAN with the story of a teenaged mother at risk of entering the child protective system. The teen had been a victim of violence and had no one with whom she could live. She had not been able to adequately prepare for her baby's arrival. The LAN formed a team consisting of a social worker from a teen mother program, a social worker from a prenatal care (Healthy Mom/Healthy Child) program, the baby's father and a friend of the family. The LAN provided funds for her to buy baby supplies and is going to meet with her over the next year to ensure that she is able to care for her child, who was premature.

Ott also took the case of a grandmother caring for six of her grandchildren to a LAN. The grandmother lost her house because she could not pay the mortgage. The LAN provided the grandmother with two months rent to pay for housing, and ultimately, the grandmother found housing through a Chicago Department of Human Services' program for disabled adults at imminent risk of homelessness. The cushion provided by the LAN's funds gave the grandmother the time she needed to find new housing before losing her grandchildren to the child protective system.

"Local Area Networks (LANs) are community-based entities with the sole purpose of improving the welfare of children.... Local Area Networks are responsible for developing a community-based system of care for children and teens from that LAN community.... One key task of LANs has been to implement Wraparound Services in the local community of the child or family being served. Wraparound services, which are individually based, may include counseling, advocacy, mentoring, psychological or psychiatric services, therapeutic recreation, and other services. When the needs of children and their families cross agency boundaries, interagency cooperation becomes an integral part of the wraparound planning process."

Illinois Department of Children and Family Services. "Community Services." January 5, 2001 <http://www.state.il.us/dcf/cs_community.shtml>



Funding & Staffing

Ott is the only attorney taking cases before the LANs. She is a staff attorney with the Legal Assistance Foundation of Metropolitan Chicago, which is funded by the Legal Services Corporation and through private donations.

☆ CHALLENGES ☆

The LANs have been surprised to find Ott utilizing their services. The vast majority of cases are presented by social workers, and LAN members believe that caseworkers should be doing the kind of work that Ott does for her clients. Ott believes, however, that her job involves using any resource available to get the things that her clients need to keep their families out of the child protective system.

Despite their initial misgivings, Ott has found the LANs to be very responsive, compassionate, and focused on what is best for children. In fact, the LAN gave the teen mother described previously more money than she requested for supplies for her baby. The LANs have also expressed a desire to refer cases to Ott and her colleagues at the Legal Assistance Foundation of Metropolitan Chicago, which would increase access to legal remedies for at-risk families.

Washington, D.C.

What This Program Does

Washington, D.C.'s Healthy Families/Thriving Communities Collaboratives are dedicated to preventing child abuse and neglect in at-risk families. The eight Collaboratives, located throughout the city, bring together social service agencies, civic and resident associations, residents of the neighborhood, faith communities and others to help at-risk families avoid unnecessary child protective interventions. The Collaboratives are guided by the belief that "many of the family problems that cause public agencies to intervene in the lives of families can be prevented before children are harmed."¹⁵ The Collaboratives are at different stages of development: some have been operating for some time, while others are just beginning to take cases. Some of the Collaboratives provide "full-case" services, representing the



city's child welfare agency in the community and providing the same services as the agency. Others work only on preventive cases where no report of abuse or neglect has yet been made.

How This Program Helps

One category of service that the Collaboratives did not plan to include was legal services. Katherine Dix of the Legal Aid Society of the District of Columbia won a Skadden Fellowship to try to remedy that deficiency. The goal of Dix's fellowship was to prevent families from unnecessarily entering the child protective system when their problems could be safely addressed in other ways. Dix was available to provide families with legal services to support their efforts to retain their children.

Dix has received a number of referrals from the Collaboratives and has provided clients with legal advice and referrals to other agencies. The issues raised include custody, landlord/tenant problems, and public benefits questions. Dix has also teamed with social workers from the Collaboratives and attended weekly case presentations to the multidisciplinary teams working with families with which Dix was also involved. At times, the child welfare agency has been involved in these conversations as well.

How Do Legal Services Prevent Unnecessary Interventions?

By helping families stay in their housing and demand the repairs needed to make the housing safe for children, by helping kinship caregivers get legal custody of children, and by helping stabilize families by maximizing their resources, Dix's assistance keeps child protective services from having to intervene.

Funding & Staffing

Dix, the sole attorney working on this project, is funded by the Skadden Arps Fellowship Foundation.

☆ CHALLENGES ☆

Because of the different stages of development of the Collaboratives, Dix's interaction with them has varied greatly. Moreover, financial incentives favor families entering the child

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protective system, even when the child is safe without the system's intervention. Kinship caregivers often need foster care payments and the services available when children are in the agency's custody. Adoptions are financially more appealing than assuming legal custody of children. These incentives make children likely to enter the system unnecessarily despite the work of Dix and the Collaboratives.

HOSPITAL-BASED SERVICES IN BOSTON AND ROCHESTER

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Boston's Family Advocacy Program

What This Program Does

In 1993, Dr. Barry Zuckerman and several colleagues founded the Family Advocacy Program. The Program targets the pediatric patients of Boston Medical Center, which sees more poor families than any other hospital in the state, and its affiliated neighborhood health centers. "The pediatricians [who started the Program] found that while health services had the potential to disrupt the link between poverty and poor health, helping families meet their basic needs, such as securing safe housing, would lessen poverty's influence on children's health and prevent poor health outcomes."¹⁶ Program staff are located in the hospital and work closely with the pediatricians, social workers and other professionals serving children and families.

How This Program Helps

The Family Advocacy Program represents clients in a limited number of housing, educational rights, family law, health, welfare benefits, and immigration matters. A panel of *pro bono* attorneys handles more involved cases. The Program also provides legal information and advice and referrals to appropriate social service agencies.

The Program's staff train physicians, social workers and other hospital employees on legal issues affecting their patients. When staff can spot and respond to problems, the Program's attorneys need not become involved in the individual's case. For example,



“a social worker had a homeless teen client who had no food for herself or her baby. The welfare department told the teen it would take several weeks to process her [food stamps] application. The social worker knew the welfare department had to provide food stamps immediately if certain requirements were met because she attended a FAP training. The social worker called the welfare department and secured this benefit for the teen without needing to call FAP.”¹⁷

Since 1993, the Program has served over 1000 patients and has conducted over 100 trainings for health care and community service providers.

How Do Legal Services Prevent Unnecessary Interventions?

Helping families access the services and supports they need to stay healthy also helps families avoid unnecessary child protective interventions. The project recognizes that families living in poverty frequently face stressful situations (lack of food, possibility of eviction). These situations prevent parents from caring for their children as they could if they were not worried about meeting their children’s basic needs. By maximizing access to public benefits, providing links to stable housing, and helping families to be free from violence, caretakers can devote more attention to caring for their children, making their children less likely to enter the child protective system.

These services are especially necessary in the era of welfare reform, when poor families are struggling to meet work requirements and to meet the needs of their children. Many welfare recipients are unaware of their rights in this new regime. Parents who are sanctioned for failing to work may not know of the exemptions for those caring for disabled children or victims of domestic violence. If sanctioned, a family is likely to lose its benefits, food stamps, Medicaid—all of which makes maintaining stability significantly more difficult. When a family loses its income, whether that income is from benefits or work, it sets into motion a destructive chain of events. Inability to pay the rent leads to eviction, which leads to homelessness, which may prevent the children from attending school, which ultimately leads to the intervention of child protective services.

“[A] social worker had a homeless teen client who had no food for herself or her baby. The welfare department told the teen it would take several weeks to process her application. The social worker knew the welfare department had to provide food stamps immediately if certain requirements were met because she attended a FAP training. The social worker called the welfare department and secured this benefit for the teen without needing to call FAP.”



Here's An Example...

Clients are most commonly referred to the Program because of housing problems. Many patients live in substandard housing, which often exacerbates their health problems. In cases involving poor housing conditions, the Program's staff call inspectors to the home to document housing code violations. Using that information, attorneys negotiate with landlords to improve the property and adjust the rent until the housing conditions are fixed. If the family is in public housing, Program staff might advocate for a transfer to a healthier unit.

Partners: Programs Working Together

The Program's staff feel the hospital-based model is an especially effective way to serve children and families because of their ties to others within the hospital community. Pediatricians see families relatively often and usually hear about a family's problems before they reach a crisis; advocates linked with those pediatricians then get that information in time to act before a real emergency exists and before the crisis strains the family's relationship with its social workers or landlord. Moreover, collaborating with other professionals means that an entire multidisciplinary team is working with the family on a day-to-day basis; lawyers have a wealth of background information before tackling a client's legal problem. Medical professionals are also available to make presentations in legal cases, ensuring that court and agency decisions are based on accurate and complete medical information.

Funding & Staffing

The Program receives funding from the Boston Bar Foundation (IOLTA), the City of Boston, the Boston Women's Fund, and medical foundations, including the Jessie B. Cox Foundation. The Program also has a history of support from the Skadden Arps Fellowship Foundation. The Program, which started with one lawyer, now employs one part-time and two full-time attorneys as well as five law school interns.



Rochester's Family Advocacy Program

What This Program Does

Rochester General Hospital's Family Advocacy project operates through the hospital's pediatrics department and the obstetrical/gynecological clinic at an affiliated women's center. The program is modeled on Boston's Family Advocacy Program, but Rochester General's Program is a partnership between the hospital and the Monroe County Legal Assistance Corporation (MCLAC). Attorney Cindy Chandler works for MCLAC but is based at Rochester General, which gives her daily contact with the hospital's social workers and doctors and facilitates patient referrals. The project strives to improve the health conditions of the children seen at the hospital and clinic by:

- preventing homelessness
- improving housing conditions
- maximizing income supports
- providing access to preventive health care
- ensuring appropriate educational services for children with learning disabilities.

How This Program Helps

Chandler assists patients with family law issues, including cases involving child abuse and neglect, custody, child support, and orders of protection. She helps patients to apply for public benefits and challenge denials of benefits in administrative hearings. She represents clients in housing conditions and eviction cases, as well as a variety of other matters.

Chandler has also created a newsletter and several brochures on legal issues to educate patients and staff and conducts training sessions for hospital staff on legal issues.

How Do Legal Services Prevent Unnecessary Interventions?

Chandler works with parents and caregivers to ease the concerns of child protective services workers and the conditions that could lead to interventions. For example, in cases of suspected child abuse, the abuser is rarely the person bringing the child to the hospital for medical care. Instead, a grandparent or close family relative generally brings the child. If a doctor

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Checklist for Change

Attend open discussions about child protection or legal services reform to pitch the idea of working together.

“Did you know that...most of Cindy’s time is spent making telephone calls to...caseworkers, social workers, client, public defenders, law guardians, obtaining court records and reports? The majority of clients need me as an advocate to help problem solve and negotiate with landlords, [social services agencies], and other attorneys. Only a small percentage actually need court representation, since most problems can be resolved before a court date is even issued.”

*Cindy Chandler, “Did You Know That....”
Family Advocate, Spring 1999, 2.*

suspects child abuse, the doctor can talk with the caregiver before calling child protective services and arrange for the caregiver to be referred to Chandler. Chandler, in turn, can advocate for the child to be placed with the relative rather than entering the system and can work with the kinship caregiver to secure legal custody.

Representing clients in income maintenance and housing matters is a less direct but no less important way to avoid unnecessary child protective services interventions. Chandler believes that the work that she does to prevent evictions, for example, keeps child protective services from having to intervene with families that would otherwise be homeless.

Here’s An Example...

One mother was told by child protective services to find housing to keep her children. The agency did not, however, help the mother access any of the services that she needed to get safe and affordable housing. Chandler worked with the mother to get welfare benefits and to collect child support; that income allowed the mother to find housing for herself and her children. Chandler also helped the mother get the drug rehabilitation services that she needed.

Partners: Programs Working Together

Close connections with the hospital’s social workers are incredibly important. Chandler receives referrals from hospital social workers, and the social workers are available to provide needed resources to her clients. Referrals are generally made while patients are in the hospital talking to social workers. A caregiver, for example, might bring the children in for a check-up and in the course of chatting with the social worker mention that the landlord hasn’t fixed the heat, which is endangering the children’s health. The social worker informs the patient that an attorney is available to discuss the situation and, with the patient’s consent, calls Chandler into the examining room. Chandler discusses the legal options available to the patient and solicits the social worker’s input on resources for temporary housing.



Hospital physicians have also been supportive of the program, and often provide Chandler with letters documenting clients' medical claims for their legal cases. She participates in twice-weekly case reviews with hospital social workers, psychiatrists and residents or physicians. During those case reviews, the family history is discussed, the family's current issues are reviewed, and plans are made for future client care.

Funding & Staffing

The National Association of Public Interest Law funds Chandler's fellowship. She is the only attorney working on the Family Advocacy Program; she receives support from the Monroe County Legal Assistance Corporation administrative staff.

☆ CHALLENGES ☆

Because Chandler's salary and benefits are only guaranteed for two years through her fellowship, she is currently looking for funding to sustain the program.

A LAW/SOCIAL WORK PARTNERSHIP

New York University School of Law's Family Defense Clinic

What This Program Does

The Family Defense Clinic trains law and social work students to work together on behalf of families with children in or at risk of entering the foster care system. The Clinic works with parents, foster parents and kinship foster parents seeking assistance with child welfare issues (although the Clinic never represents non-parent caregivers in actions against parents). The Clinic helps these clients keep their children out of the child welfare system, reunify with children who are already in the system, and cut the amount of time that children spend in the system.

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How This Program Helps

The Clinic's services range from negotiation to traditional litigation to policy work to law reform initiatives. Clinic students represent parents in family court proceedings involving neglect, permanency planning, terminations of parental rights, interim motions on visitation and custody, and administrative hearings on removal. Students counsel clients on their options and choices and negotiate with service providers responsible for income maintenance, housing, HIV/AIDS services, education, and the criminal justice system. They advocate outside of court with other parties and potential parties, often coming into cases when the system can't figure out a way to resolve the family's problems. Most of their work, in fact, is done out of court, helping families deal with the child welfare agency, find services, set up visitation, and achieve their plans. This approach allows the students to provide more holistic services and probe issues that are ignored once a case reaches the court system.

How Do Legal Services Prevent Unnecessary Interventions?

The Clinic provides families with support, information, input into their cases, and guidance through the systems that allow them to keep their children out of care or speed their return home. The Clinic counsels parents to consider all of the available options, including, in some cases, the option of not planning for their children. The availability of caring and supportive counsel can help parents decide to surrender their children to relatives or other caregivers rather than fighting a losing battle through the child protective system. The Clinic offers families alternatives that others have not yet put on the table, clarifies the family's strengths for the rest of the system, and ensures that the parents' opinions are heard, valued, and made part of the plans for their children. Moreover, simply having legal services available whenever the family needs them (rather than when a court says the family is entitled to them) can help keep the family out of the system.

Here's An Example...

The Clinic was asked to help a very young mother whose child was being held by the hospital where she gave birth, despite the lack of any formal intervention by child protective



services. The Clinic helped the mother retrieve her child from the hospital and worked with her to access necessary services.

Another family was threatened with the removal of its many children because of housing and income issues. The family's problems stemmed in part from its immigration status; because of the immigration issues, the family could not receive benefits sufficient to care for all of the children (a frequent problem for immigrant families in New York City). The Clinic worked closely with the child welfare agency, various preventive services agencies and the family to prevent removal of the children and stabilize the family.

One incarcerated mother was very concerned with the care her children were receiving after they complained about their placement. The Clinic helped her get the placement switched, visit the children, and finally, find a group home program outside of the child welfare system for the children. In this case, no one disputed the need to change the placement; the Clinic was instrumental in helping other parties in the case think creatively about alternatives for the children and led the way in negotiating the system.

Partners: Programs Working Together

The social work component is crucial to the success of the Clinic. Social workers are involved in every case from the beginning. They provide perspective on the family's strengths, weaknesses and readiness to care for children. Lawyers and social workers conduct joint counseling sessions with families. Social workers assess and evaluate families, identify needed services, and connect clients with services. Social workers have a great deal of contact with the foster care agencies, advocating for clients and gathering and providing information the agency needs to satisfy its concerns. They sit in on case planning. They provide courts with very detailed reports, information that often would not be provided by any other source. Social workers counsel clients in crises and intervene with clients when necessary. They often spot issues that the lawyers don't (or don't want to) see, which can prevent disruptions in reunification. In short, social workers help clients—and help lawyers help clients—negotiate the family court and foster care systems. Social workers often remain



involved with the family after the children return home, helping the family re-adjust to the child's presence and working to prevent a new placement.

Funding and Staffing

The Clinic is funded through a combination of university and grant funds. Two law professors and one social work professor supervise 12 law students and two graduate level social work students. Two law students and one social work student team on each case. The Clinic has recently received funding to hire a fellow, which will allow it to take on additional client work and keep alive a parent education program that the students developed around the foster care system.

☆ CHALLENGES ☆

The Clinic's unusual structure—the law/social work partnership and the focus on collaborative out of court work—clashes with the adversarial mentality of the child welfare system. Agencies are resistant to having their social workers partner with lawyers for families. Clients (and their lawyers) are often viewed negatively. The litigation process sets the parties against each other, rather than encouraging them to work together toward solutions for the family. Although the Clinic does litigate in some cases, it prefers helping families by working through venues other than court, leading to happier families and more successful reunifications. The negative, adversarial litigation context makes that work more difficult.

The Clinic is successful because of the breadth of its out of court interactions with families. However, the majority of families in the child welfare system don't get this kind of attention. Madeleine Kurtz, co-director of the Clinic, believes that until an interdisciplinary office working with all families is funded, clients will continue to suffer in the destructive, litigation-focused system. Such an office would provide families with counsel outside of the court process, ensure that lawyers are accountable for their work, and allow for the kind of intensive out of court and post-discharge services that the Clinic is able to give its few clients.



Endnotes

15. Kathleen Sylvester & Heather C. McGhee. *The Healthy Families/Thriving Communities Collaboratives And The Children & Youth Investment Partnership: A Report to the Annie E. Casey Foundation and DC Agenda*. Washington, D.C.: The Social Policy Action Network, September 1999, 2.
16. Jean Zetter, Josh Greenberg & Barry Zuckerman, M.D. "Law as Preventative Medicine: A Unique Collaboration Between Lawyers and Clinicians." *Child Law Practice* 18, August 1999, 82.
17. *Id.*

The Conclusion, But Not the End

This book profiles a variety of programs providing timely, effective legal services that can shortstop unneeded child protective action. They are rural and urban, housed in legal services agencies, law school clinics, and social services agencies. They are funded by private foundations, government, fellowship programs, attorney's fees, bar associations. And while they focus on different issues, the effect of their work is the same. By shortstopping problems, they help clients to address the conditions that could send them into the child protective system.

Challenges exist for these programs. Funding is often an issue, especially for programs sustained by grants or fellowships. Working to overcome distrust of lawyers with child welfare agencies, social services providers and others is a huge problem. And these clients come to lawyers with some of the most intractable problems facing families: substance abuse, domestic violence, poverty. Despite lawyers' best efforts, some families can't be kept out of the system; they need the intervention and oversight of the child protective system. Nonetheless, shortstop programs are making a difference in the lives of clients by providing them with the legal tools they need to stabilize their lives and to avoid unneeded child protective actions.

Why should this matter to child welfare professionals? Keeping these families out of the child protective system saves caseworkers time and money. Weeding out families who don't need child protective services means more attention can be paid

Working to overcome distrust of lawyers with child welfare agencies, social services providers and others is a huge problem.

to abused and neglected children—the kids the system was designed to protect. No one system should be responsible for keeping every child safe; that responsibility must be shared among communities.

Why should lawyers join forces with community child protection efforts? To get clients the range of services and supports that they need. And community child protection agencies' clients are the same clients walking into legal services offices. Civil legal services providers have a responsibility to their neighborhoods and communities to help protect children from situations that can become abusive or neglectful.

Neither legal services lawyers nor child protection workers have enough resources to meet their clients' needs. Pooling resources is one way to better serve their shared clients. And when those clients are better served, children and families are safer and more stable—the reason most professionals in both fields started doing this work.

CHECKLIST FOR CHANGE

How can you bring legal services lawyers and child protective services together to work on behalf of children and families? You don't need to immediately hire a civil legal services attorney to begin a conversation about how the provision of civil legal services can prevent unnecessary child protective interventions. Throughout this book were ideas to help you start collaborating across systems:

- Host a brown bag lunch for child protective services workers and local legal services providers.
- Attend open discussions about child protection or legal services reform to pitch the idea of working together.
- Contact community programs working to prevent child abuse and neglect and start a conversation about teaming with legal services providers.
- Identify one section in this book that matches a need in your community and find the legal services providers addressing that area.

- Get a list of the legal services fellowships being funded in your area to see whether the fellows are targeting a problem you want to address.
- Introduce yourself to professionals in other systems at court to develop relationships that you can draw on later.
- Are you an education advocate who knows a few good people in CPS and legal services? Put them together.
- Hold a forum on the issues raised in this book, or others in your community, and invite child protective services and legal services to discuss them.

The American Bar Association Center on Children and the Law is available to help you with these efforts. Please call (202) 662-1758 or e-mail GoodmarL@staff.abanet.org for assistance.

Shortstop programs are making a difference in the lives of clients by providing them with the legal tools they need to stabilize their lives and avoid unneeded child protective actions.