

THE GUARDIAN

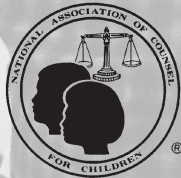
NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN



VOLUME 24 / NUMBER 4 / FALL 2002

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NACC 26th National Children's Law Conference
Sheraton New Orleans Hotel—New Orleans, LA
August 16–19, 2003

NACC

National Association of
Counsel for Children



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To achieve the
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by promoting
multidisciplinary excellence
in children's law, establishing
the legal interests of children
and enhancing children's
legal remedies

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The Guardian is published quarterly by
the National Association of Counsel for Children,
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Subscription Price:
The Guardian is sent to all members of
the National Association of Counsel for Children.
Membership in the organization is \$75 annually.
To join, send application on page 16 to
National Association of Counsel for Children.

The Guardian is printed on recycled paper.

THE GUARDIAN

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

Volume 24 • Number 4 • Fall 2002

DIRECTOR'S YEAR-END MESSAGE

*From Cause to Profession:
The NACC's First 25 Years*

This issue of *The Guardian* concludes the NACC's 25th anniversary year as an association of child advocates. I would like to take this opportunity to thank you, the NACC members, for sustaining the NACC for all these years. Many of you have been with us from the early years when a group of 16 Denver area advocates formed the NACC in 1977 and framed the cause of child advocacy. At the close of 2002, we will have over 2200 professional members representing every U.S. jurisdiction and several foreign countries. As we have grown in numbers, we have also grown in effectiveness, providing training and technical assistance to more and more advocates who in turn serve more and more children.

We spent some time this fall at our national conference in Orlando reflecting on the history of the NACC and the history of the practice of law for children. We have accomplished a great deal and we should be proud of the progress this association has



made toward making high quality legal representation of children in this country a reality. Perhaps the most striking evidence of our progress as a profession is the ABA's preliminary approval and the federal government's funding of the NACC Juvenile Law Attorney Certification Program which we began this fall. The program, which will ultimately certify lawyers across the country as specialists in juvenile law, is a validation of the value of legal representation of children as well as an acknowledgement that the practice of law for children has become a legitimate legal specialty.

So before we begin the hard work that lies ahead in the next 25 years, let's celebrate our accomplishment. We have grown from a cause to a profession. Congratulations and happy 25th anniversary!

Marvin Ventrell
NACC Executive Director



Faculty members Don Duquette and Don Bross collaborate on their presentation.

**NACC
25th
National
Conference
Photos**



Massachusetts members Kathleen McCaffrey and Susan Dillard at the International Treaties Lunch.



John Ciccolella (Stephen Cahn Juvenile Law Award Recipient) and Suzin Bartley (Outstanding Child Advocacy Award Recipient).

Lisa Kurbiel and Henry Plum prepare for their presentation.



Hon. Nina Hickson receives the NACC Outstanding Child Advocacy Award.





Election of NACC Officers and Directors

The NACC is governed by a 21-member Board of Directors, each member serving a six-year term. The Board Officers (President, Vice President, Secretary, and Treasurer), each serving a two-year term, are chosen from the existing Board of Directors. NACC Directors and Officers are elected by the NACC membership following approval of a slate of candidates by the existing Board. A slate of candidates is first recommended to the Board of Directors by the Development / Nominations Committee, which has the duty to select the best available candidates using criteria

OFFICER CANDIDATES:

Candace Barr, JD — President 2003–2005

Candace Barr is a partner in the Minneapolis, MN law firm Niemi, Barr & Jerabek. Her practice is limited to juvenile and family law with an emphasis on guardian *ad litem* work. She is actively involved with children, acting as their counsel in juvenile court and as a court-appointed guardian *ad litem* in family court. Ms. Barr has served as Juvenile Law Committee Co-Chair for the Hennepin County Bar Association and the ABA. She has served as faculty for numerous local and national GAL training programs. Ms. Barr is running for election as Board President and is completing her term as Board Vice President. She is also Chair of the NACC Development Committee.

Christopher Wu, JD — Vice President 2003–2005

Christopher Wu is a supervising attorney with the California Administrative Office of the Courts, Center for Families, Children & the Courts. Before joining that office, Mr. Wu was the Managing Attorney at Legal Services for Children in San Francisco, a non-profit law office for kids providing direct services using teams of attorneys and social workers. He is a member of the Board of Directors for the National Center for Youth Law and Legal Services for Children. Mr. Wu is a graduate of the University of Michigan Law School where his interest in children's law began in the school's Child Advocacy Law Clinic. He is running for Board Vice President and is completing his term as Board Treasurer. He is also Chair of the NACC Program Committee, and President of the NACC's northern California affiliate.

including the following: expertise in children's law and advocacy, commitment to the NACC, association development skill (membership, visibility, fundraising), and diversity (racial, gender, disciplinary, and geographic).

The following individuals have been approved by the Board of Directors to serve as NACC Directors and Officers. **NACC members are asked to indicate their votes by checking the "for" or "against" box next to each candidate's name and returning the ballot to the NACC.**

John Stuemky, MD — Treasurer 2003–2005

John Stuemky is Associate Professor of Pediatrics and Chief of the Section of General Pediatrics within the Department of Pediatrics of the University of Oklahoma College of Medicine. He also serves as Medical Director of Ambulatory Care and Emergency Services for Children's Hospital of Oklahoma (CHO), the only children's hospital in the state. He is Chairman of the Child Protection Team at CHO, Co-chair of the Juvenile Justice Task Force on Child Abuse and Neglect, a member of the Oklahoma State Medical Association's Child Abuse and Neglect Task Force, the Oklahoma Child Death Review Board, and APSAC. Dr. Stuemky serves on the NACC Board of Directors and is completing his term as NACC Board Secretary.

Donald Duquette, JD — Secretary 2003–2005

Don Duquette is Clinical Professor of Law and Director of the Child Advocacy Law Clinic at the University of Michigan Law School where he has taught since 1976. In 1997–98, Professor Duquette spent a sabbatical year in Washington, DC, at the U.S. Children's Bureau where he drafted Permanency for Children: Guidelines for Public Policy and State Legislation, as part of President Clinton's Adoption 2002 Initiative on Adoption and Foster Care. He has written and taught extensively on interdisciplinary approaches to child welfare law and has published over 40 articles and book chapters on the subjects of child protection, foster care and child advocacy. Professor Duquette has received many awards, including the NACC Outstanding Legal Advocacy Award, the North American Council on Adoptable Children Adoption Activist Award, and the Gerald G. Hicks Child Welfare Leadership Award from the Michigan Federation of Private Child and Family Agencies.

BOARD MEMBERS AT LARGE CANDIDATES:

Gerard Glynn, JD / LLM — Board of Directors 2003–2009

Gerard Glynn is an Associate Professor of Law and Director of Clinical Programs at Barry University School of Law in Orlando, FL. Professor Glynn supervises the Attorney *ad litem* project which is the first state funded project for dependent children in Florida. Before joining the faculty at Barry University, he was the Director of Clinical Programs at the University of Arkansas at Little Rock School of Law, and a clinical instructor at Florida State University School of Law. His areas of expertise include domestic relations and juvenile law.

David Katner, JD — Board of Directors 2003–2009

David Katner is Professor of Clinical Law at Tulane Law School and is the Supervising Attorney of the Juvenile Clinic. He has had an active law practice in criminal, civil and juvenile matters. Before joining the faculty at Tulane, Mr. Katner was a partner in a New Orleans law firm. He has also served as a Judge ad hoc in the Orleans Parish Juvenile Court. His areas of expertise include juvenile law ethics and liability. He is an accomplished lecturer and has served as faculty at the Rocky Mountain Child Advocacy Training Institute and the NACC National Children’s Law Conference. He is seeking reelection to the NACC Board.

Kathleen McCaffrey, JD — Board of Directors 2003–2009

Kathleen McCaffrey has been Managing Attorney for the Massachusetts Committee for Public Counsel Services Children and Family Law Program, in Salem, MA since 1998. She served as Staff Attorney in that program from 1995–1998. Having provided full time legal representation for children and parents in dependency cases, she is now responsible for all office operations, training, supervision, and a reduced caseload. Ms. McCaffrey is an active NACC member who has served as faculty trainer at the Rocky Mountain Child Advocacy Training Institute.

Henry Plum, JD — Board of Directors 2003–2009

Henry Plum is a nationally recognized speaker and educator in the field of child abuse and neglect. As a former Assistant District Attorney in Milwaukee, WI, he has extensive experience as a prosecutor in child abuse and neglect, termination of parental rights, and child-related litigation. He currently is in private practice and serves as a special prosecutor and legal consultant in child-related litigation. Mr. Plum is also an instructor for the University of Wisconsin — Milwaukee, School of Social Welfare, Criminal Justice Department, and has developed numerous training programs for juvenile justice and human service personnel. His interests include child abuse investigation, case building, courtroom testimony for the expert and lay witness, and other related areas. Mr. Plum is the author of several books and publications and is a regular NACC lecturer. He is past President of the NACC Board and is seeking reelection to the Board.

Jennifer Rodriguez —

Board of Directors Youth Representative 2003–2009

Jennifer Rodriguez is a second-year law student at University of California Davis School of Law. She is a former foster youth who also serves as Legislative and Policy Coordinator for California Youth Connection, an advocacy/youth leadership organization for current and former foster youth who work to improve foster care, educate the public and policy makers about their unique needs, and to change the negative stereotypes many people have of them. She has served on the NACC Program Committee and as faculty at the NACC National Children’s Law Conference. Ms. Rodriguez would join the NACC Board as a Youth Representative.

Janet Sherwood, JD — Board of Directors 2003–2009

Janet Sherwood has a private law practice where she represents children, foster parents, and de facto parents in juvenile dependency, adoption, and related child custody matters. She also handles appellate court matters on juvenile dependency issues. Previously, she was Deputy Attorney General for the Sacramento and San Francisco offices of the State’s Attorney General, and was staff counsel for the State Department of Social Services. She is also President of Advokids, a Resource for Children and their Advocates, and Vice President of the Board of Directors for the Family Law Center in San Rafael, CA. Ms. Sherwood is a long-standing NACC member and has spoken and written extensively on issues in child dependency. She serves as Treasurer of the NACC’s northern California affiliate

BALLOT
 Please copy or cut out, complete and return via fax (303-864-5351) or mail to NACC Elections, 1825 Marion St., Denver, CO 80218. Ballot must be received by 5:00 p.m. MST, January 15, 2003.

FOR	AGAINST	
<input type="checkbox"/>	<input type="checkbox"/>	CANDACE BARR, JD PRESIDENT 2003-2005
<input type="checkbox"/>	<input type="checkbox"/>	CHRISTOPHER WU, JD VICE PRESIDENT 2003-2005
<input type="checkbox"/>	<input type="checkbox"/>	JOHN STUEMKY, MD TREASURER 2003-2005
<input type="checkbox"/>	<input type="checkbox"/>	DONALD DUQUETTE, JD SECRETARY 2003-2005
<input type="checkbox"/>	<input type="checkbox"/>	GERARD GLYNN, JD / LLM BOARD OF DIRECTORS 2003-2009
<input type="checkbox"/>	<input type="checkbox"/>	DAVID KATNER, JD BOARD OF DIRECTORS 2003-2009
<input type="checkbox"/>	<input type="checkbox"/>	KATHLEEN MCCAFFREY, JD BOARD OF DIRECTORS 2003-2009
<input type="checkbox"/>	<input type="checkbox"/>	HENRY PLUM, JD BOARD OF DIRECTORS 2003-2009
<input type="checkbox"/>	<input type="checkbox"/>	JENNIFER RODRIGUEZ BOARD OF DIRECTORS YOUTH REPRESENTATIVE 2003-2009
<input type="checkbox"/>	<input type="checkbox"/>	JANET SHERWOOD, JD BOARD OF DIRECTORS 2003-2009



Cases

TPRS AND DEPENDENCY CASES PRIORITIZED IN COURT RULES

Florida's Supreme Court Adopted Four New Rules Of Judicial Administration Which Prioritize Terminations Of Parental Rights, And Other Time Sensitive Cases Involving Children. Amendment to Florida Rules of Judicial Administration, 2.050, 2.052, & 2.085., No. SC 01-2343.

In 1998, NACC member Frank Kiedler filed a petition to amend the court rule regarding calendar conflicts to expedite termination of parental rights (TPR) trials and dependency cases. Keidler's petition was first referred to the Florida Bar Rules of Judicial Administration Committee, which rejected it. Keidler went further with the case, and the Board of Governors unanimously endorsed the proposed changes. Before the Florida supreme court, the Rules of Judicial Administration Committee continued to oppose the changes, arguing that amending the court rule was not the best way to prioritize TPR trials on the trial courts' calendars. After further study, the Rules Committee came to support the amendment, and proposed others as well. In the August 2002 judicial administration rule amendment, the Florida supreme court instructed all state trial judges to allow attorneys scheduled to try cases simultaneously in different courts, to proceed with TPR/dependency trials first. The supreme court went beyond changing the attorney conflict rule, creating a new rule, requiring trial judges to expedite cases assigned priority status under Florida law. The court designated cases of juvenile dependency, TPRs, and cases involving families and children in need of services, as priority cases requiring "particular attention". Another new rule allows any party to file a "notice of priority status, explaining the nature of the priority and the effect that priority status

may have on the case." Going even further, parties who do not believe the case has been advanced on the docket appropriately may seek review by the chief judge or his or her designee. Such redress arms attorneys with options for expediting their dependency and terminations trials.

PATERNITY

Supreme Court Of New Hampshire Finds Father Not Entitled To Notice Of Adoption Even When Mother Named Father, He Responded To Adoption Proceedings, And Did Not Consent To Adoption. In re Baby Girl P., 802 A.2d 1192, 2002 N. H. LEXIS 82 (2002).

Baby Girl P. was born in November, 2000 in Phoenix, Arizona. Her unmarried mother failed to name a father on her birth certificate. When Baby Girl P. was 10 days old, her mother signed a consent to adoption and pursuant to Arizona law signed an affidavit naming Jamal L. as the baby's father. Her affidavit indicated she conceived the child as a result of a one-night relationship and she did not have any identifying information about the father. The child was placed with Jeffrey and Melinda S. in New Hampshire on November 20, 2000. They filed a petition for adoption in New Hampshire on December 4, 2000.

In January, 2001, no one had registered with the Arizona putative father registry. In April, the New Hampshire probate court published notice of the adoption in an Arizona newspaper, and Colton L. responded. Colton, also known as Jamal L., contradicted the natural mother's version of their relationship. He claimed that he and the mother had a several month relationship, that he knew she was pregnant, and had preliminary plans for adoption. He was incarcerated, however, throughout much of the pregnancy and at the time of the child's birth. After a paternity test in

May 2001 confirmed his paternity, Colton refused to consent to the adoption.

The probate court applied New Hampshire law in analyzing the adoption petition. According to New Hampshire law if a putative father, after having been given notice, establishes his paternity, he must either consent to the adoption or have his parental rights terminated. Since Colton would not consent to the adoption and no termination had been filed, the probate court dismissed the adoption petition and awarded custody to Colton. The adoptive parents appealed.

The supreme court, also applying New Hampshire law, began by analyzing Colton's status as either a legal or natural father; a step the trial court did not consider. The court found that Colton did not qualify as a legal father because he was not on the child's birth certificate, not married to the mother, and had not adjudicated his paternity. The court then analyzed whether Colton qualified as a natural father, entitled to notice. For Colton to qualify as a natural father, prior to the natural mother consenting to the adoption, one of the following must happen: someone must file in court an affidavit naming the father; the court, the adoptive parents or their attorney must become aware of the father's identity; the father must file notice of intent to claim paternity with the office of child support enforcement; or he must have been living with the child or the child's mother and holding himself out as the father.

The court considered the timing of the father's actions to be critical. Seeking to protect the adoptive child from unnecessary delays in reaching a permanent home, the court concluded the legislature intended a very strict timeline for the putative father to assert his rights or become known to the court. A putative father has many opportunities to come forward even before the child is born by filing for paternity or

by living with the child's mother. Given that the statute allows a woman to consent to adoption 72 hours after giving birth, the legislature did not contemplate providing unlimited time for fathers to come forward. Because the statute does not require the mother to name a father, the fact that she knew who he was is irrelevant. In this case, none of the statutory conditions were met prior to the mother signing the consent for adoption. Accordingly, the supreme court held that Colton was not a natural father entitled to notice and, therefore, his consent to the adoption was not required.

PATERNITY

Supreme Court Of California Affirms Paternity of Non-biological, Presumptive Father. In Re Nicholas H., 28 Cal.4th 56 (2002).

Thomas G. began living with Kimberly H. when she was three months pregnant with Nicholas. At that time, both wanted Thomas to be the child's father. Thomas was thus named as the father on Nicholas' birth certificate. Thomas and Kimberly lived together with Nicholas for approximately four years, but had problems that resulted in domestic violence, separation, and ultimately dependency proceedings.

Following the detention hearing, the juvenile court granted the agency discretion to release Nicholas to Thomas. Thomas had filed an action to establish a parent-child relationship with Nicholas and was recognized as the child's de facto father. Thomas testified at the disposition hearing that he cannot have children but that he loved "Nick" as if he were his biological child and wanted to raise the boy. He also testified that Nicholas believed Thomas was his biological father and never knew anyone else to be his father. Kimberly identified Jason S. as Nicholas's biological father but Jason S. never took steps to create a parent-child relationship with the boy. Nicholas made it clear to the trial judge that he felt safest and happiest with Thomas and he readily volunteered his confidence that Thomas loved him the most. The court removed custody from Kimberly (who suffered homelessness and drug issues after her separation from Thomas, and lost custody of her second son). It found that Thomas was Nicholas's presumed father, in that he had received the boy in his home and held him out as his natural child under Family Code § 7611(d). The court placed Nicholas in

Thomas's home and adjudged the boy a dependent child.

Kimberly appealed. Her principal claim was that Thomas's admission that he was not Nicholas's biological father rebutted the presumption of paternity. Under Family Code § 7612(a) the presumption of paternity under § 7611 "may be rebutted in an appropriate action only by clear and convincing evidence."

The court of appeals agreed with Kimberly, finding Thomas's admission clear and convincing evidence; however, the California supreme court granted review and affirmed the trial court order: "The juvenile court acted well within its discretion in concluding that this case, in which no one else was a candidate for the privilege and responsibility of fathering this little boy, was not an appropriate action in which to find that the section 7611(d) presumption of fatherhood had been rebutted.... To review, section 7612 (a) provides that 'a presumption under 7611 [that a man is the natural father of a child] is a rebuttable presumption affecting the burden of proof and *may be rebutted in an appropriate action* only by clear and convincing evidence.' (Italics added). When it used the limiting phrase *an appropriate action*, the Legislature is unlikely to have had in mind an action like this—an action in which no other man claims parental rights to the child, an action in which rebuttal of the 7611(d) presumption will render the child fatherless. Rather, we believe the Legislature had in mind an action in which another candidate is vying for parental rights and seeks to rebut a section 7611(d) presumption in order to perfect his claim, or in which a court decides that the legal rights and obligations of parenthood should devolve upon an unwilling candidate."

The court did not determine whether biological paternity by a competing presumptive father necessarily defeats a non-biological father's presumption of paternity, although it cited with apparent approval a court of appeals decision holding that it does *not*. See *In re Kiana A.*, 9 Cal.App.4th 1109 (2002) ("[A]lthough the results of genetic testing constitute clear and convincing evidence, it does not follow that such evidence will rebut the presumption in every case.")

Thanks to NACC Board member Donna Wickham Furth from San Francisco for drafting this case brief.

SIBLING VISITATION TO BE DECIDED BY COURT

Appeals Court of Massachusetts Holds That The Trial Court Must Decide How Sibling Visitation Should Be Implemented And Cannot Delegate Such Decisions To The Department of Social Services. Adoption of Galvin, 77 N.E.2d 1007, 2002 Mass. App. LEXIS 1103 (2002).

Tim, a child in need of care and protection and in the permanent custody of the Department of Social Services (Department), sought visitation with his two younger siblings. Tim's siblings, Galvin and Alice, had been freed for adoption. The trial court ordered that visitation be "at such frequency and under such conditions as the Department determines to be in the best interests of all the children." Tim filed for reconsideration, asking the judge to make that determination and not the Department. The trial court denied Tim's motion, claiming it was not the trial court's role to micro-manage such decisions. All three children appealed, arguing the trial court impermissibly delegated a judicial function to the Department.

The appellate court found that the plain language of the statute requires the judge to make the determination of whether sibling visitation should be ordered, and how it should be implemented. Though the Department may determine how the visitation is arranged and monitored, it cannot make the initial determination of whether it should occur or how frequently. Additionally, the court retains responsibility over monitoring the effectiveness and appropriateness of visitation through its mandated periodic reviews of the service plans. While such reviews are time consuming for a trial court, the legislature preferred that the court make such sensitive decisions instead of the Department, which has competing interests at stake in scheduling visitation.

TERMINATION OF PARENTAL RIGHTS OF FOREIGN NATIONALS

Supreme Court of Massachusetts Finds That Trial Court May Terminate The Parental Rights Of Indian Citizen. Adoption of Peggy, 767 N.E.2d 29, 2002 Mass. LEXIS 280 (2002).

In April 1999, father, S.T., a foreign national living in the United States on a nonimmigrant visa, and his wife, M.H., brought then

3½ year old Peggy to the University of Massachusetts Medical Center with numerous injuries. The following facts about the child's care were learned.

S.T. and his previous wife, Peggy's mother, A.T., lived in Proddatur, India, when Peggy was born on October 27, 1995. A.T. subsequently died in April 1997 after a fall from the family's third floor balcony. Peggy's paternal grandmother cared for her after her mother's death. In September 1997, S.T. married M.H. He then came to the United States in April 1998 on a temporary work visa to work as a computer specialist. Soon thereafter, M.H. and the child joined him in Colorado. The father and M.H. provided the sole care of Peggy.

In November 1998, Peggy fractured her elbow. Approximately two days later, her father and M.H. brought her to the emergency room in Colorado Springs, claiming they had no idea how her arm was broken. Though the child needed immediate corrective surgery, her parents initially decided to wait until they returned to India. After persuasion by her doctors, the couple allowed the surgery. Peggy needed post-operative orthopedic care following surgery to ensure the proper growth of her arm. Peggy's doctors referred the family to specialists in Colorado and Boston, where the couple said they were moving. The child never received follow-up care.

The family arrived in Massachusetts on December 27, 1998. On April 6, 1999, M.H. told the father she had discovered a soft spot on the back of Peggy's head. He told her to make an appointment with the pediatrician the next day. That night, Peggy reportedly woke her father because she needed to use the bathroom. The child's right eye was swollen shut, although the father claimed it had been fine when they went to bed. He had no explanation for the injury to the child's eye. At the pediatrician's office the next day, the doctor discovered that in addition to the swelling of the eye and head, Peggy also had bruises on her body and an infected abrasion to her left ear. The doctor told Peggy's father to take her to the hospital immediately.

Upon Peggy's admission to the hospital the next day, the doctors discovered that the child had many physical injuries to her vaginal area, consistent with the practice of female circumcision. The pediatric surgeon who examined the 3½ year old stated the injuries could have only been

caused by a deliberate cutting or cauterization. The child was severely anemic, as a result of blood loss accompanying the amputation of her genitalia. She had a subdural hematoma, typically caused by a blow or trauma to the head. Peggy also had other multiple injuries, including facial swelling, injuries to the fingers of both hands, a chronic injury to her left ear, known as "cauliflower ear", and bruising on her back and shoulder.

The social services agency took custody of the child and filed a care and protection petition against S.T. and M.H. All parties were appointed counsel. After trial, the court found the father's defense that the child's injuries were self-inflicted incredible and sustained the petition. S.T. and his wife refused to cooperate with any service plan or the department, as criminal prosecution resulting from the child's injuries was pending. The social services agency placed Peggy with a suitable foster family.

On January 25, 2000, the social services agency filed a notice of intent to terminate parental rights pursuant to state statute. After a permanency hearing, the court approved the agency's goal of adoption, and found that the father's consent to the adoption was unnecessary. By the time of the hearing, Peggy had significantly bonded to her foster family, and her physical and emotional recovery was well underway.

The father appealed, claiming the court lacked jurisdiction because both he and Peggy were Indian nationals. Moreover, the father attempted to argue that the decree dispensing of the need for his consent violated federal and international law. Initially, the supreme court found that the family's residence in Massachusetts, combined with the child's obvious need for care and protection, afforded the court statutory jurisdiction regardless of the family's immigration status. The court found that the father's arguments amounted to a question of the choice of law not one of jurisdiction. The court found that the father's argument of choice of law had been waived because he failed to raise it timely. Nonetheless, the court found the arguments to be without merit.

Examining federal immigration law, the court noted that 8 U.S.C. section 1101 (a) (27) (j), the special immigrant juvenile status statute, expressly recognizes state court jurisdiction over abused and neglected children, regardless of their immigration status. The court found no

federal law which would supersede or divest the state court of jurisdiction in care and protection proceedings.

Turning to international law, the court concluded that although the unratified Convention on the Rights of the Child (Convention) is not binding on U.S. courts, the trial court's actions were completely consistent with the principles expressed therein. For example, the Convention requires that the best interests of the child be a primary consideration in all actions concerning children, and that all parties to the Convention must take appropriate steps to protect children from physical injury or abuse from their parents. The juvenile court did just that in this case.

The supreme court found that the father's other claims attacking the merits of the evidence at trial were unsupported and affirmed the decree dispensing with his consent to the adoption.

Thank you to NACC member Rita Swan of Sioux City, Iowa for identifying this case.

JUVENILE DETENTION CENTER HAS SOVEREIGN IMMUNITY IN NEGLIGENCE ACTION

Supreme Court Of South Dakota Holds That "Open Courts" Provision In State Constitution Does Not Abolish Statutory Provision Of Sovereign Immunity. Hancock v. Western South Dakota Juvenile Services Center, 647 N.W.2d 722, 2002 S.D. LEXIS 79 (2002).

On March 22, 2000, 17 year old Nicholas Hancock was detained at the Western South Dakota Juvenile Services Center (Center), for stealing music CDs from a car. Nicholas was in good health when he arrived at the Center, but he began vomiting a day later. The Center contracts health services to an outside agency and does not employ its own health staff. A contract nurse observed Hancock vomiting at 11:30 a.m. on March 23, but did not check his vital signs. On March 24, another contract nurse looked in on Hancock and saw that he was still vomiting, but again, did not check his vital signs or examine him. The Center denied Hancock's request to go to the hospital, and failed to have a nurse check on him during the day of March 25. A Center employee finally took Hancock's vital signs at approximately 10:30 p.m. and discovered he was in dire

need of medical care. Hancock was taken to the emergency room where doctors discovered his appendix had ruptured prior to his arrival. He immediately underwent surgery and was hospitalized for seven days. He later had to return to the hospital and undergo a second surgery for complications caused by the delay in his receiving prompt treatment for his ruptured appendix.

Hancock sued the Center, the administrator, the nursing agency and the individual nurses for negligence. Two doctors testified at deposition that Hancock failed to receive reasonable or adequate medical attention. The administrator testified that the nurses did not follow the Center's established medical protocol. The trial court granted the Center's motion for summary judgment based on sovereign immunity, and Hancock appealed. Six weeks after filing briefs, the parties agreed that the nursing contractor and individual nurses would be released from the appeal. Hancock's appeal proceeded only against the Center and the administrator.

On appeal, Hancock argued that the immunity statute unconstitutionally deprived him of access to the courts and equal protection under the United States and South Dakota constitutions. To overcome the presumption of constitutionality, the plaintiff has the burden of proving beyond a reasonable doubt that SDCL §§ 3-21-8 and 3-21-9 violate a state or federal constitutional provision. The South Dakota "open courts" provision provides those with valid causes of action unconstrained access to the courthouse. The court held that access means all legally cognizable causes of action are entitled to a day in court. Access, however, does not in itself create actions where they are prevented by statute, as a negligence action against prison officials is pursuant to SDCL § 3-21-8. The court found the immunity statute itself to be constitutional, acknowledging the legislature's legitimate public policy interest in protecting prison administrators from tort liability for discretionary services provided by the facility. While recognizing that SDCL §§ 3-21-8 and 3-21-9 do not appear to prevent all recovery, particularly under 42 U.S.C. § 1983, the court noted that Hancock failed to allege a § 1983 claim.

Claiming that the nurses were private actors not protected by the state's immunity, Hancock argued that the statute

impermissibly creates a class of persons not entitled to reasonable and ordinary medical care. By prohibiting lawsuits against private medical providers for negligence or malpractice, the statute deprives detainees of equal protection. The court found these claims to be moot, as the nursing agency and the nurses were no longer parties to the action. Accordingly, the supreme court affirmed the trial court.

JUVENILE DEATH PENALTY

In A 5-4 Decision, United States Supreme Court Declines Certiorari In Juvenile Death Penalty Case, And Strong Dissent Follows. In re Kevin Stanford, 537 U.S. ____ (2002).

Justice Stevens, joined by Justices Souter, Ginsburg, and Breyer, wrote a powerful dissent to the denial of Kevin Stanford's request for a writ of habeas corpus because his execution for a crime committed while he was under 18 would be unconstitutional. The dissent believes that the arguments behind the recent Supreme Court decision that executing the mentally retarded violates the United States Constitution apply with equal or greater force to the execution of juvenile offenders. Noting that an ever-increasing majority of states — 28 — prohibit the execution of juvenile offenders, and public opinion consistently opposes it, the juvenile death penalty "is a relic of the past and is inconsistent with evolving standards of decency in a civilized society."

Stevens relies, in part, on the reasoning of the 1989 Brennan dissent in *Stanford v. Kentucky*, which is even more applicable today as new science has shown the limitations of the adolescent brain. Weighing the defendant's culpability and the harshness of the penalty, the dissent concluded that juveniles lack the mental and emotional maturity necessary for the imposition of the death penalty. The fact that statutes consistently apply age-based classifications, such as setting a minimum age for voting, jury duty, and consenting to medical treatment, reflects societal perceptions that juveniles need care and protection. Juveniles' immaturity precludes them from enjoying adult privileges, but should also explain "why their irresponsible conduct is not as reprehensible as that of an adult." Many of the problematic, impulsive and erratic behaviors of juveniles occur as a result of their incomplete brain develop-

ment, which coupled with inexperience erodes culpability. Advocating an end to the "shameful practice" of executing juveniles, these considerations led the dissent to conclude Kevin Stanford's writ for habeas corpus should have been granted.

EDUCATIONAL PRIVACY RIGHTS

The United States Supreme Court Holds That The Family Educational Rights and Privacy Act of 1974 (FERPA) Non-Disclosure Provisions Do Not Create Personal Rights Enforceable Under §1983. Gonzaga University v. John Doe, 2002 U.S. LEXIS 4649 (2002).

John Doe (Doe), a student at Gonzaga University (Gonzaga) planned to become an elementary school teacher in the state of Washington. Washington state required all new teachers to provide "an affidavit of good moral character" from their university. The Gonzaga employee responsible for teacher certification overheard students discussing allegations involving Doe engaging in sexual misconduct. The teacher contacted the state agency responsible for teacher certification and reported these allegations, identifying Doe by name. She then informed Doe that he would not receive the necessary affidavit of good moral character.

Doe sued Gonzaga under § 1983 alleging a violation of FERPA's non-disclosure requirements which prohibit releasing personal information to an "unauthorized person." FERPA requires, in part, that "No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein...) of students without the written consent of their parents to any individual, agency or organization." A Washington jury awarded Doe compensatory and punitive damages of \$1,155,000. The Washington Court of Appeals reversed that decision concluding that FERPA does not create enforceable individual rights. The Washington Supreme Court agreed that FERPA does not give rise to a private cause of action, but it concluded that FERPA's non-disclosure requirement creates a federal right enforceable under §1983. The case was appealed to the United States Supreme Court.

The U.S. Supreme Court reversed the Washington Supreme Court, reasoning

that FERPA does not create any personal rights to enforce under §1983. In so doing, the Supreme Court comes to a different conclusion on this question than every federal court of appeals since FERPA was enacted in 1974. In this case, the Supreme Court interpreted the non-disclosure requirement of FERPA as merely mandating educational institutions to have non-disclosure policies or be denied federal funding. Congress enacted FERPA under its spending powers, and created a review board within the Department of Education for “investigating, processing, reviewing, and adjudicating violations of the Act.” Several factors led the Court to conclude that individual actions under § 1983 are foreclosed, including: Congress’s explicit

creation of a review board to consider violations; FERPA’s purpose of applying to educational institution’s policies; and the absence of clear, unambiguous language detailing specific individually enforceable rights. If Congress intends to create individual rights under § 1983, it must state so in the same clear manner as it would for an implied private right of action.

Justice Steven’s dissent points out that FERPA does focus on individual rights, as opposed to merely having an aggregate focus. The purpose of FERPA is to protect individual rights to privacy, and allow parents to determine when and to whom information shall be released. This emphasis is contrary to the majority’s perception

that FERPA is intended to focus on policies and practices of educational institutions, without regard for the impact on individuals. The dissent also disagrees with the majority’s demand that Congress must include “rights-creating” language before a § 1983 action is sustainable. Such an interpretation is contrary to previous §1983 decisions, where the Court questioned “whether Congress intended to create individual rights binding on States — as opposed to mere precatory terms that do not unambiguously create state obligations, or generalized, systemwide duties on States.” This decision improperly seems to require a heightened showing from § 1983 litigants, one similar to proving an intent to create a private remedy.

GUARDIAN CASES — NOTICE TO READERS

Decisions reported in *The Guardian* may not be final. Case history should always be checked before relying on a case. Cases and other material reported are intended for educational purposes and should not be considered legal advice.

Cases reported in *The Guardian* are identified by NACC staff and our members. We encourage all readers to submit cases.

If you are unable to obtain the full text of a case, please contact the NACC and we will be happy to furnish NACC members with a copy at no charge.



Federal Policy Update by Miriam A. Rollin, JD

IN MEMORY OF SENATOR PAUL WELLSTONE

There are few Members of Congress whose passion and dedication to the improvement of the lives of children, youth and families can equal that of the late Sen. Paul Wellstone. He was an outspoken and courageous advocate for what he believed was right — and the children, youth and families of this nation are better off because of his advocacy. He will be missed.

FY 2003 APPROPRIATIONS: STALLED

Congress has remained deadlocked since July on FY 2003 appropriations for programs affecting children, youth and families. The full Senate has not considered either S.

2766, the FY 03 Labor, Health and Human Services, Education appropriations bill (which funds child abuse/neglect and family services programs) or S. 2778, the FY 03 Commerce, Justice, State appropriations bill (which funds juvenile justice and delinquency prevention programs) — both of which had been reported out of the Senate Appropriations Committee in July. The House has not taken any action on either of these FY 03 appropriations bills.

In the absence of final FY 03 appropriations bills for almost all of the federal government agencies, Congress has passed a series of “Continuing Resolutions” (enabling funds to continue flowing at last year’s levels) to keep these agencies open. The latest Continuing Resolution funds these agencies through November 22. Prospects for final FY 03 appropriations action by Congress in the post-election “lame-duck” session are unclear at this time.

WELFARE REFORM, CHILD CARE, SOCIAL SERVICES BLOCK GRANT: STALLED

Congress has remained deadlocked on welfare reform (“TANF”) and mandatory child care reauthorization legislation since July (when the Senate Finance Committee reported out H.R. 4737). That legislation — a different version of which had passed the House in the Spring — is awaiting Senate floor action. S. 2758, the bill to reauthorize discretionary child care funding was marked-up in the Senate Health, Education, Labor and Pensions Committee in early September, but has also failed to see Senate floor action. Similarly, other bills that were serving as vehicles for the restoration/expansion of the Social Services Block Grant — H.R. 7 (as reported by the Senate Finance

Committee), the Senate CARE Act (faith-based initiative), and S. 812, the Senate prescription drug bill — have not made any progress since July.

CAPTA: PROGRESS, BUT NO ENACTMENT YET

The House of Representatives had passed H.R. 3839, a bill to reauthorize the programs under the Child Abuse Prevention and Treatment Act, in the spring. The Senate Health, Education, Labor and Pensions Committee reported out its version of the bill (S. 2998) in late September; but the full Senate has not yet considered this bill. Meanwhile, on October 10, the House (after some behind-the-scenes negotiations with Senate staff) passed a revised bill that addressed most (but not all) of the differences between the House and Senate bills: H.R. 5601. All three versions of the legislation include only relatively modest changes from current CAPTA programs, and all three versions maintain the CAPTA requirement for a guardian *ad litem* for abused and neglected children. S. 2998 and H.R. 5601 add to the GAL requirement that a GAL “has received training appropriate to the role.”

The Senate, during the post-election lame-duck session, could pass either S. 2998 (and then a House/Senate Conference Committee would have to be appointed to work out the differences), or pass H.R. 5601 — and send it on to the President for his signature. We remain hopeful that legislation to reauthorize the Child Abuse Prevention and Treatment Act, together with the Adoption Opportunities Act and the

Abandoned Infants Assistance Act, can be enacted before Congress adjourns later this year.

JUVENILE JUSTICE LEGISLATION REACHES ENACTMENT (FINALLY)!

On November 2, 2002, the President signed into law, as P.L. 107-273, a bill (H.R. 2215, the Department of Justice authorization bill) that includes provisions to reauthorize the federal Juvenile Justice and Delinquency Prevention Act (JJDP) and to authorize the Juvenile Accountability Block Grant (JABG). The JJDP reauthorization was in the works for the past six years, and the JABG has never been fully authorized (other than through annual appropriations bills). Previous versions of the reauthorization legislation had eliminated or weakened key protections for children and a key prevention program (Title V). They also included punitive provisions (such as trying more children as adults) that research had shown to be contrary to juvenile crime reduction goals. The final bill:

- maintains all of the core protections for children (removing children from adult jails except for brief periods of time under limited circumstances; separating children from adults when they are held briefly in adult facilities; removing status offenders such as runaways, curfew violators and truants from locked facilities; and addressing racial disparities in the juvenile justice system),
- maintains the Title V prevention program, and

- does not include the punitive provisions that were in earlier versions.

In fact, the bill includes some positive new provisions to enhance the treatment and care of juveniles. This legislation has been in the works for a long time, and the very significant improvements over time in this bill are a credit to juvenile justice advocates on the Hill (including key Members of Congress and staff) and around the nation. For all who have contributed to this advocacy success: THANK YOU!

CHILD PROTECTION THROUGH VOLUNTEER / PROVIDER SCREENING

Just before Congress left town in mid-October for the election recess, the Senate passed S. 1868, a bill to improve the availability of timely and affordable criminal background checks for volunteers and providers who work with children. A similar bill — H.R. 5556 — was introduced in the House on October 7, by a bi-partisan group of members, but has not yet been considered.

FAMILY OPPORTUNITY ACT

In early September, the Senate Finance Committee reported out S. 321, the Family Opportunity Act, which would provide families of children with disabilities the opportunity to purchase health coverage under the Medicaid program for their children. The full Senate has not yet considered the bill, and there has been no action yet on H.R. 600, the House companion bill.

NACC – Federal Policy Network

Become a part of the NACC Federal Policy Network (FPN). You will receive periodic updates and information with which to contact your representatives / senators when action is needed to protect children.

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PROTECTIONS FOR UNACCOMPANIED ALIEN CHILDREN

While there has been no further action on freestanding bills to provide protections for unaccompanied alien children (H.R. 720, H.R. 1904, S. 121), related legislation is moving forward as part of the homeland security bill, about which debates have been raging on Capitol Hill. Good provisions to protect unaccompanied alien children—including requiring “timely” appointment of “qualified and independent legal counsel” to “represent the interests of each such child”—are included in the homeland security bill (H.R. 5005) that passed the House in July. The Senate floor debate on its homeland security bill (S. 2452) took up much of the Senate floor time between Labor Day and the election recess, without any final resolution. The Senate may try to complete action on the bill during the post-election lame duck session.

CHILD ABDUCTION-RELATED POLICY DEVELOPMENTS

In addition to a White House Conference on child abduction (October 2), there have been several legislative developments

in that area in recent months. On September 10, the Senate passed S. 2896, a bill to provide for a nationwide “Amber Alert” communications system to utilize when a child is abducted. On October 8, the House passed H.R. 5422, the Child Abduction Prevention Act, which, inter alia, increases penalties for various federal offenses against children, including child abduction, and also provides for a nationwide “Amber Alert” system. Other relevant legislation introduced recently in the Senate include: S. 3140, the Prevention and Recovery of Missing Children Act of 2002, introduced on October 17 by Senators Dodd and Collins; and S. 2917, the Comprehensive Child Protection Act of 2002, introduced on September 10 by Senators Hatch and Feinstein among others. There has been no further action on these two bills.

MISCELLANEOUS LEGISLATION NOT MAKING PROGRESS

There has been no action since the last *Guardian* “Policy Update” in August (and action in the post-election lame-duck session is not expected) on any of the following bills:

- A bill to promote partnerships between child welfare agencies and

drug and alcohol abuse prevention and treatment agencies (S. 484, Senators Snowe and Rockefeller; also, H.R. 1909).

- A bill to establish a program to assist family caregivers in accessing affordable and high-quality respite care (S. 2489, Sen. Clinton; H.R. 5241, Rep. Langevin)—this bill had been reported out of the Senate Health, Education, Labor and Pensions Committee in July, but there has been no action in the House.
- Legislation to strengthen the child welfare workforce (H.R. 1371, Rep. Stark).
- Legislation to provide equitable access to foster care and adoption services for Indian children in tribal areas (H.R. 2335; S. 550).
- The Indian Child Welfare Act amendments bill (H.R. 2644, H.R. 4733).
- Younger Americans Act (H.R. 17; S. 1005).

Don't Forget: You can access all bills (including the text of legislation and public laws), committee reports, and budget/appropriations funding charts via the Internet at thomas.loc.gov.

* **Miriam Rollin is the NACC Policy Representative in Washington D.C.**



Children's Law News

CONFERENCES & TRAINING

February 3–7, 2003

The Center for Child Protection at Children's Hospital—San Diego
17th Annual San Diego Conference on Child and Family Maltreatment, Town and Country Resort, San Diego, CA.

For more information, call 858-966-4940 or e-mail sdconference@chsd.org.

May 20–24, 2003

NACC 8th Annual Rocky Mountain

Child Advocacy Training Institute,
Presenting Evidence in Children's Cases.

A hands-on trial skills training for juvenile law attorneys produced in conjunction with NITA, University of Denver College of Law, and the Rocky Mountain Children's Law Center. Brochures will be mailed to all NACC members in 2003.

August 16–19, 2003

NACC 26th National Children's Law Conference, Sheraton New Orleans Hotel, New Orleans, LA. NACC members

receive a 25% registration discount. Brochures will be mailed in April, 2003. For more information, or to obtain a presentation abstract form, contact the NACC at 888-828-NACC or visit our web site at www.NACCchildlaw.org.

PUBLICATIONS

NEW by NACC Board Member Robert Fellmeth—*Child Rights and Remedies: How the U.S. Legal System Affects Children*, Clarity Press, Inc. 2002. Provides a

comprehensive rights-based analysis of how the U.S. legal system, in both its legal and political dimensions, is affecting American children. 800-729-6423. Also available at amazon.com.

Legal Representation of Children: Recommendations and Standards of Practice for the Legal Representation of Children in Abuse and Neglect Cases, by NACC. This document provides comprehensive guidance to children's attorneys including descriptions of the attorney's role and duties. The NACC encourages jurisdictions and courts to use this publication to create local guidelines that will improve the quality of legal representation in your jurisdiction. To obtain a copy, contact the NACC. The two documents contained in this publication are also available online at: www.naccchildlaw.org/training/standards.html.

NEW — 25 Years of Child Advocacy — the 2002 Edition of the NACC Children's Law Manual Series. The manual is 307 pages and includes 24 articles covering a wide range of children's legal issues including reflections on the practice of law for children, same sex adoption, social worker witness preparation, appellate advocacy, UCCJEA, children of incarcerated parents, the impact of domestic violence on children, and principles of collaborative law. Copies may be ordered from the NACC by calling toll free 888-828-NACC or using the Publications Order Form on the back page of this issue.

The Children's Legal Rights Journal (CLRJ) is a quarterly professional practice journal for child welfare, juvenile justice, and family law



professionals. Now in its 22nd year, CLRJ is published by William S. Hein & Co., Inc., under the editorial direction of the ABA Center on Children and the Law, Loyola University of Chicago School of Law, and the National Association of Counsel for Children. CLRJ is indexed in the *Current Law Index* and *Index to Legal Periodicals* and runs approximately 60 pages per issue. The annual subscription rate is \$67 but is available to NACC members at a 30% discount (\$47 annually). To subscribe, contact Hein toll free at 800-828-7571, ISSN 0278-7210, or contact the NACC for more information.

NACC's Better Public Policy for Children, Youth and Families—An Advocacy Guide, by NACC Policy Representative Miriam

Rollin. A comprehensive guide to policy advocacy for children and families. Available on line at www.NACCchildlaw.org/policy/policy_guide.html, or call the NACC at 888-828-NACC.

Court Appointed Special Advocates (CASAs): A Review of Their Effectiveness, by Pat Litzelfelner, Ph.D. *Children's Legal Rights Journal*, Vol. 22 No. 2, Summer 2002. William S. Hein & Co. Inc. 800-828-7571 or see publications form in this *Guardian*.

Whittier Journal of Child and Family Advocacy, Volume 1, Number 1, 2002. For more information, or to subscribe, contact Whittier Law School, 714-444-4141 or e-mail whittierchildrensjournal@hotmail.com.

Making it Permanent: Reasonable Efforts to Finalize Permanency Plans for Foster Children, by Cecilia Fiermonte and Jennifer Renne. Contact ABA Service Center at 800-285-2221, Product code 549-0326. \$14.95.

A Law Enforcement Guide on International Parental Kidnapping, produced by the U.S. Department of Justice, Office of Juvenile Justice Delinquency Prevention. 800-638-8736 or go to puborder.ncjrs.org.

Reporting Laws: Clergy as Mandated Reporters, produced by NCCANI. 800-FYI-3366 or go to www.calib.com/nccanch.

How to Start Your Own School-Based Legal Clinic, produced by the ABA Steering Committee on the Unmet Legal Needs of Children. \$12. 800-285-2221 (Product code 5490333).

NEWS

Thanks to NACC Outgoing Board Members. The NACC is grateful to the following outgoing members of the Board of Directors for their years of dedicated service to the NACC: **Ann Haralambie—Tucson, AZ; Ellen Jones—Portland, OR; Andrew Manns, Jr.—New Brunswick, NJ; Jacqueline Parker—Boston, MA; Miriam Rollin—Washington, DC** (Miriam Rollin will continue to serve as NACC Policy Representative).

NACC to Launch Juvenile Attorney Certification Program. The NACC is pleased to announce the creation of its program to certify attorneys as specialists in the field of Child Welfare Law. The program, co-produced by the University of Michigan Law School, is funded by a

3-year grant from the U.S. Department of Health and Human Services Children's Bureau. Under the grant, the NACC will conduct a pilot program concluding with the certification of attorneys in selected pilot jurisdictions as *Certified Child Welfare Law Specialists*. While specialty certification has existed for a number of years in other areas of law, this is the first such program to certify children's lawyers, and the first such program supported by the federal government. It is modeled after the medical profession's board certification practice, which has become a standard for practicing specialized medicine. Approximately 3 million children are reported abused and neglected nationally each year and many of these cases go into the court system. Thousands of lawyers throughout the country represent parents, foster parents, state agencies, and the children themselves. These proceedings determine children's safety, custody, and family relationships. Child welfare law has become increasingly complex, requiring highly skilled advocates. The NACC Certification Program will award specialty certification status to those lawyers who qualify by demonstrating a high level of skill and expertise in the area. Certification criteria will include minimum years in the practice, peer review, minimum hours of continuing education, and the passage of a written exam. The objective of the program is to improve court outcomes for children and families by improving the level of the practice of law. Pilot sites have not yet been selected and attorneys are not yet being enrolled for certification. Watch *The Guardian* and our web site for updates.

NACC Children's Law Office Project.

The NACC is developing a new project to address the ongoing, institutional needs of children's law offices. The objective is to form a national umbrella group capable of addressing the operational and representation needs of these offices. Surveys are currently being developed to assess project parameters. Contact NACC Staff Attorney Colene Flynn Robinson for more information at 303-864-5323 / robinson.colene@tchden.org

NACC Presents Inaugural Stephen M. Cahn Juvenile Law Award. **John Ciccolella** of Colorado Springs, CO has been named the first recipient of the Stephen M. Cahn Juvenile Law Award. The award will be given periodically to exceptional attorneys who have devoted their

careers to the practice and improvement of children's law and to young attorneys who have shown great promise for a career in children's law. It is given in the name of Stephen Cahn, NACC member, Board Member, and dear friend, who devoted his legal career to representing children and promoting the practice of law for children.

2002 NACC Outstanding Child Advocates Selected. The NACC is pleased to announce that **Hon. Nina R. Hickson**, Fulton County Georgia Juvenile Court Chief Presiding Judge, and **Suzin M. Bartley**, Executive Director of the Children's Trust Fund—Boston, MA, have been named the recipients of the NACC's 2002 Outstanding Child Advocacy Award. The awards were presented at the NACC's 25th National Children's Law Conference. **Judge Hickson** presides over the largest juvenile court in the Southeast and has established the juvenile court as a proactive positive force for the rehabilitation of children. **Suzin Bartley**, a licensed clinical social worker and Director of Massachusetts Children's Trust Fund, has positioned the Trust Fund as a highly successful tool for the prevention of child abuse and neglect. The NACC presents its Outstanding Child Advocacy Award to individuals and agencies making important contributions to the well being of children through advocacy efforts.

New NACC Administrator. The NACC is pleased to welcome **Lisa Hintze** as the new NACC Administrator. Lisa comes to us from Gamma Phi Beta International Headquarters where she served as Director of Member Relations and Programming. Lisa can be reached at 303/864-5324 or hintze.lisa@tchden.org.

NACC 2002 Law Student Essay Competition Winner Announced.

The NACC is pleased to announce that the winner of the 2002 competition is **Christopher Curtain** from the University of Akron School of Law for his essay ***Megan's Laws Must Succeed Ex Post Facto and Apply Retroactively***. Essays were evaluated on the importance of the topic to advancing the legal interests of children, persuasiveness, and the quality of research and writing. Winning essays are published in the NACC Annual Children's Law Manual and the award is presented at the NACC National Children's Law Conference. The student writing competition serves to enhance law student interest in the practice of law for children and families as well as to reward students for their scholarly accomplishments.

Join the NACC Children's Law Listserv Information Exchange. All NACC members are encouraged to become part of the NACC Listserv which provides a question, answer and discussion format for a variety of children's law issues. It is an excellent way to improve your advocacy skills and share your expertise with your NACC colleagues. To join, simply send an e-mail to advocate@NACCchildlaw.org and say "Please add me to the NACC Listserv."

NACC Web Site. Visit the NACC's member services web site at www.NACCchildlaw.org. The site is comprised of four sections: About the NACC; Technical Assistance and Training; Children and the Law; and Policy Advocacy. The site includes members-only sections that allow you special access to resources including the online membership directory. Passwords are mailed to all NACC members with their welcome packets. Contact the NACC if you don't know your password.

The NACC National Child Advocacy Resource Center is available for member use. The Resource Center provides referrals, resource information, and consultation. NACC members may access the resource center online at www.NACCchildlaw.org, by phone at toll-free 888-828-NACC, fax 303-864-5351, and e-mail advocate@NACCchildlaw.org

NACC Members Get Members Program. Earn "NACC Bucks" by nominating your colleagues for membership. Participate in the NACC "Members Get Members" program and earn valuable NACC Bucks redeemable on your NACC member dues, publications, and conferences. For every prospect who becomes an NACC member, you will receive 20 NACC Bucks. Save 100 NACC Bucks and receive a complimentary registration to the NACC Annual National Children's Law Conference (a \$300 value). Complete and return the form at the bottom of this page and start earning now.

AMICUS CURIAE ACTIVITY

Arnold v. Arnold, Georgia Supreme Court. UPDATE. When we last reported on this case, the court's decision was still pending. Since then, the Georgia Supreme Court has ruled in favor of the appellant and the amici. The supreme court found that the restriction that the mother's custody rights not be exercised in the presence of the mother's friend, who is a lesbian, was improper, and reversed the appellate court.

In re Nicholas H., (2001) 91 Cal.App.4th 86, 110 Cal.Rptr.2d 126. The NACC filed a letter in the California Supreme Court urging the Court to grant the petition for

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review filed by presumed father Thomas G. Thomas had raised Nicholas since birth and had been Nicholas's primary caretaker for several years prior to the case. Thomas's petition argued that the Appeals Court erred in determining that Thomas met the criteria to be Nicholas's presumed father but that Thomas's admission that he was sterile, and thus not Nicholas's biological father, constituted clear and convincing evidence that rebutted the presumption, therefore severing Thomas's status as Nicholas's parent. The California Supreme Court agreed with amici and reversed. See details of the case in the Cases update.

In re Terrell R., 2002 Cal.App.Lexis 4719, 125 Cal. Rptr.2d 637. The NACC and the Children's Advocacy Institute filed a letter in the California Supreme Court seeking review of the plaintiff child's appeal. The Second District Court of Appeal in California held that the county is not liable for damages when a foster child is raped in a foster home setting. In the Terrell R. court's opinion, *DeShaney v. Winnebago County Dep't of Social Services*, (1989) 489 U.S. 189, "lack of duty" reasoning should be extended to include children in the state's custody. *Deshaney* limited government accountability where the child was harmed after being returned home, reasoning that there is no affirmative duty of protection for children not within the state's custody. Shielding the government from accountability for gross negligence for children in

its care prevents children from receiving the care and protection that the county is legislated to provide. The NACC's brief urges the Supreme Court to reverse the disavowal of duty to protect children under the jurisdiction of the court.

To request NACC Amicus Curiae participation, contact the NACC or go to www.NACCchildlaw.org/training/amicus.html.

JOBS

The Youth Law Center, a national public interest law firm with offices in San Francisco and Washington DC is seeking an attorney to work on a wide range of advocacy activities in its Washington DC office. Advocacy activities will include legislative and administrative advocacy, public education and media advocacy, training and technical assistance, and possible litigation. Looking for applicants with significant experience over several years and demonstrated ability as an advocate in juvenile justice, child welfare, education, or similar activities. Please send cover letter and resume to: Youth Law Center, Attention: Search Committee, 1010 Vermont Ave. NW, Suite 310, Washington DC 20005 www.youthlawcenter.com.

Special Assistant Attorney General, Cheyenne, WY. Seeking an attorney to represent the Department of Family Services in litigation and contested matters pertaining to ASFA, termination of parental rights, adoptions, guardianships, and advise the Department on legal matters on a

day-to-day basis. Minimum five years experience and must be able to obtain Wyoming Bar membership. For more information contact: Dan Wilde 307-777-7838.

Kansas Children's Service League, a private, non-profit agency with offices and affiliates throughout Kansas serving children and families, invites applications for the position of President/CEO. Key job functions include administrative and program leadership, financial management, fund development, policy and board development, and public relations. For more information contact: EFL Associates, 7101 College Blvd., Suite 550, Overland Park, KS 66219, 913-451-8866, www.kcsl.org.

Lifelong AIDS Alliance, Seattle, WA is seeking a Director of Client Services. Looking for candidates with experience in case management and development to handle Lifelong AIDS client service programs. For more information contact: Lara Cunningham (206) 441-4144.

Visit the NACC Child Law and Advocacy National Job Web Site. You can access the information online at www.NACCchildlaw.org/childrenlaw/jobs.html. If you wish to post a job on the web site, follow the online directions or call the NACC at 888-828-NACC.

Please Send (mail/email/fax) Children's Law and Advocacy Job Openings to the NACC.

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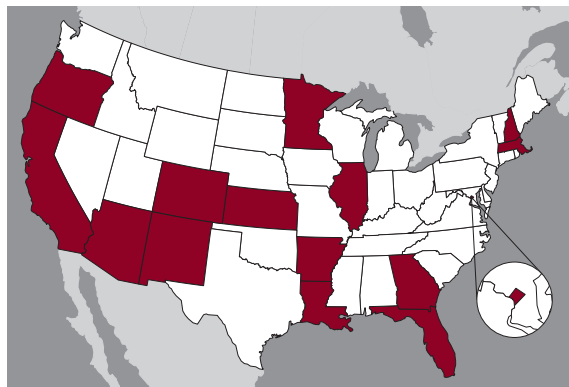
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Affiliate News

USING A TRAINING PROGRAM TO BUILD A LOCAL NACC AFFILIATE

By **Christopher Wu**, President—
Northern California Association of
Counsel for Children

At the NACC's National Children's Law Conference in San Diego last year, I was privileged to accept the NACC's first Outstanding Local Affiliate award (along with co-winner, the Los Angeles affiliate) as President of the San Francisco Bay Area NACC affiliate, the Northern California Association of Counsel for Children (NCACC). A major part of the NCACC's efforts and success has been the regular training programs sponsored by the affiliate.

The NCACC became a "chartered affiliate" (the charter, or constitution, of the local organization is submitted to the NACC for approval by the NACC board of directors) of the NACC in 1993. In a needs assessment survey the new affiliate conducted, local children's attorneys identified training as the most pressing need the NCACC could fill.

First, a word about NACC local affiliates in general. Most NACC members are attorneys and other professionals with a local practice in the trial courts and child-serving agencies. I believe that there is major potential to develop more and stronger local affiliates in many more areas of the country. That development would bring in new, loyal members of the NACC and enhance the status of children's law as a profession, a central part of the NACC's mission. Starting a new affiliate is beyond the scope of this article, but a

call to the NACC will quickly get you all you need to know about local affiliates. Ultimately, real change in the profession takes place on the local level.

Following are key attributes of the NCACC's training program that we believe has made it a success. We offer them so that others can adapt them to meet local needs and build their own strong affiliate programs.

Frequency— We now have a predictable, quarterly schedule for trainings. Since we normally take the summer months off, and of course, avoid major holiday times, we usually have trainings around February, April, September, and November. We've found that this number of events per year is sufficient to keep a core of "regulars" coming but is not so frequent to be a major burden on the organizers. Like most, if not all, affiliates, we have no paid staff and rely on the volunteer talent and resources of involved members. One of the suggestions from attendees we have tried to implement is to choose tentative training dates at the beginning of the year so that people can save them in their calendars early. We then make every effort to meet that schedule.

Timing— After some early experimentation, we found that evening training events worked best for us. The majority of our attendees are in private practice and generally have court appearances and other business to conduct during the workday. The usual schedule is for registration to begin at 5:30 p.m. (dinner is provided, as described below) with the training lasting from 6:30 to 9:00 p.m. with a short break. A lot of networking and socializing goes on during the registration/dinner hour. This schedule also allows us to hold a

membership meeting before most trainings. Any interested members are invited to join the NCACC Executive Committee (which essentially acts as a board of directors) to hear and discuss recent activities of the amicus and policy committees, plan future trainings, and conduct other business.

Location— In the San Francisco area, a convenient location with parking is a must. After some experimentation early on with times and locations, we were surprised to find that the location with the most consistent attendance was a Best Western motel in Marin County, about 20 miles north of San Francisco, where a plurality, if not a majority, of attendees practiced. The motel had an adequate meeting room, was near a highway and easy to find, and had ample parking. It was also convenient for people coming from out of town who would rather avoid the hassle of driving into the city. It is indicative of the lack of training in this field that we always have a few people who drive from over 100 miles away just to attend a 2½ hour seminar. The NCACC trainings have since outgrown the capacity of the Best Western. We are fortunate to be able to hold most events in the training facilities of the Administrative Office of the Courts (AOC) in San Francisco. The location is central and, while the parking isn't free, it is secure and convenient.

Food— Our operative slogan is, "If you feed them, they will come." The Best Western had a terrific deli from which we used to get huge sandwich platters at a very reasonable cost. The AOC puts on so many meetings (but with government limitations on cost), it has a favorable agreement with a local caterer. The cost is built in to the price of the training. As I

mentioned before, the “dinner hour” before the training provides a nice time for professional networking and socializing. Providing good food may not be essential to our training program’s success, but it certainly doesn’t hurt.

Speakers and Topics— Providing good, relevant presentations, however, is essential to building a successful program. In planning the first few training events, it is especially important to emphasize presentations in which you are confident in the “drawing power” of both the topic and the presenters. In other words, you want to hit some “home runs” early on and, hopefully, begin to build a good word-of-mouth reputation.

You will want to analyze your primary audience. Is it likely to be mostly lawyers? What are their practice specialties? Child welfare cases? Delinquency? Custody and visitation? If you have the ability to do a formal or informal survey of local practitioners, ask them what they would like to see as training topics. We found that attorneys really want presentations on substantive legal topics. At the same time, part of what makes children’s law interesting is that it is by nature a multidisciplinary practice. There are many relevant subjects from the fields of medicine, mental health, social work, domestic violence and other areas that are highly relevant to legal practice for children. Just as the NACC does for its national conference, part of our planning involves finding the right balance of legal and non-legal topics and finding creative ways to mix the two.

One topic that always draws a big crowd of lawyers is an annual review of changes in state juvenile statutes, court rules, and case law. The training is always in January or February and is conducted by NCACC Treasurer and newsletter editor, Jan Sherwood. She has an encyclopedic knowledge of the law and also has an irreverent, entertaining style that has proven popular year after year. Thus, we only have to come up with new topics and presenters for three of our quarterly trainings every year.

Don’t ignore the local judiciary as a source of presenters or panelists. Judges are often honored to be asked to present

(although they may not always show it). Not only do they have an important perspective to relate, it can be very beneficial to the local legal culture to get judges discussing policies and practices with practitioners outside the courtroom and the context of an individual case.

Another source of presenters and topic ideas is the NACC Speakers Bureau. The NACC web site lists notable speakers affiliated with the NACC and their biographies. You may be surprised to find that the perfect speaker for your event is listed and not far away. Or, if you’re lucky, you may have grant funds or other resources that will allow you to pay travel expenses and a stipend for one of the national experts on the NACC’s Speakers Bureau.

Here is a sampling of some recent training topics we’ve presented:

- *Representing Children When Sexual Abuse is Alleged* (with NACC Speakers Bureau member, Ann Haralambie)
- *Presenting Complex Medical-Legal Issues in Court* (with NACC Speakers Bureau members Henry Plum and John Stuemky)
- *Psychopharmacology and Kids: Too Much or Too Little?*
- *Dependency and Delinquency: When Juvenile Court Cases Cross Over*
- *Attachment, Bonding & Reciprocal Connectedness: The Limitations of Attachment Theory in Juvenile and Family Courts*

Partners, Fees and Membership— Cost can be a big concern for attorneys and other professionals working in children’s and family law. The NCACC was fortunate to have some “seed” money in its first years through a local United Way grant that allowed us to experiment a little with different formats and locations and, frankly, make a few mistakes.

We have also been fortunate to have some steady “partner” organizations that greatly facilitate the program. Most of our trainings now take place in space provided free of charge by the Administrative Office of the Courts. The National Center for Youth Law in Oakland

has long provided administrative support to the NCACC, including processing registrations and payments. The Youth Law Center in San Francisco is an approved provider of continuing legal education credit and provides the accreditation for the trainings. Are there potential partners in your area that could co-sponsor training events? The local bar association? The state bar? The Court Improvement Program?

The NCACC training program has developed into a source of new members for the NACC and the affiliate. We currently charge \$25 for NACC members to attend evening training sessions. Non-members pay \$40. Even the non-member fee is a bargain for a CLE credit program. Nevertheless, the basic NACC dues of \$75 is only \$15 more than the \$60 savings an attendee would realize if he/she attends all four training programs during the year.

Recently, we took the simple step of adding a copy of the NACC membership application to the flyers we send to announce the trainings. We now receive at least a handful of new membership applications at every training, which we forward to headquarters in Denver. Of course, we also encourage all new and renewing members to check the box on the application form that allocates \$10 of their dues to the local affiliate.

Conclusion— The training program has given the NCACC visibility and provided a strong incentive for regular attendees to join the NACC and the affiliate. We have gradually developed other programs that earned us the outstanding affiliate award, such as a strong amicus curiae committee, an active policy and legislation committee (both modeled on the NACC’s own committee procedures), and even a quarterly newsletter focused on dependency law and containing summaries of recent cases. Whether or not training is a major priority in your area, I hope that you will consider starting or renewing efforts to build a local NACC affiliate. A strong NACC and a strong children’s law profession require strong local activity and involvement.

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