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IN THIS ISSUE

- 1 GUEST ARTICLE
Health and Interactive Risks of
Psychotropic Medications and Children
- 4 CASE LAW AND AMICUS
CURIAE FILINGS
NACC Submits Amicus Brief in
U.S. Supreme Court Hammon Case
Regarding "Crawford" Evidence
- 10 FEDERAL POLICY UPDATE
Mandatory Spending Cuts and Tax Cuts
- 13 NACC YOUTH EMPOWERMENT
Foster Youth Access to Higher
Education Funds
- 14 CHILDREN'S LAW NEWS
New NACC Lifetime Membership



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Table of Contents

GUEST ARTICLE ----- **1**

Health and Interactive Risks of Psychotropic Medications and Children

by Norton A. Roitman

CASES ----- **4**

Dependency / ICWA Existing Indian Family Exception (New York) ----- 4

Criminal Prosecution of Child Abuse (Colorado) ----- 5

Custody / Child's Right to Privacy (New Hampshire) ----- 6

Custody / Custodial Parent's Right to Relocate (California) ----- 6

Custody / De Facto Parent Standing (Washington) ----- 7

Juvenile Justice / Procedural Due Process (Pennsylvania) ----- 8

Dependency / Counsel for Civil Litigation (California) ----- 8

NACC Amicus Curiae Filings ----- 9

FEDERAL POLICY UPDATE ----- **10**

Mandatory Spending Cuts and Tax Cuts

by Miriam Rollin

NACC YOUTH EMPOWERMENT ----- **13**

Foster Youth Access to Higher Education Funds

by Anita Lacy

CHILDREN'S LAW NEWS ----- **14**

News, Training, Publications, and Jobs

NACC PUBLICATIONS ORDER FORM ----- **15**

NACC CONTRIBUTORS ----- **17**

NACC MEMBERSHIP APPLICATION ----- **BACK PAGE**

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Guest Article

HEALTH AND INTERACTIVE RISKS OF PSYCHOTROPIC MEDICATIONS AND CHILDREN

by Norton A. Roitman, MD, FAPA
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Although the field of child and adolescent psychopharmacology seems increasingly complicated, from this practitioner's perspective there are in fact few substantial developments. The older antipsychotics have been replaced by a new generation (atypical) with essentially similar warnings and indications. The stimulants (amphetamine-type drugs) are still the main stream of AD(H)D treatment with new additions of Strattera and as of this writing, Sparlon (Provigil). Comprehensive information on the following agents is readily available from a number of books and web sites. The purpose of this brief article is to highlight some of the major concerns regarding health and interactive risks.

Prozac came into the United States market almost 20 years ago, and its relatives, Paxil, Lexapro, Celexa, Zoloft, and Luvox, followed by additional unique antidepressants (Wellbutrin, Effexor, Remeron, and Cymbalta). There is now a range of chemical options in this class, but most have basically the same warnings. These antidepressants are generally used for anxiety (except for Wellbutrin).

Mood regulators have not changed very much from the three classics (lithium, Depakote, and Tegretol) aside from delayed release preparations. Trileptal is basically a simplified Tegretol. Lamictal, a new agent, has received quite a bit of attention because it can treat depression without stimulating mania in bipolar patients.

Accurate diagnosis is the foundation of all effective treatment. In the age of managed care, the diagnostic workup is often abbreviated. Hospital treatments are often over inclusive as psychiatric staff rarely has time to test the single diagnosis and treatment. Instead, it is common practice to layer multiple medications in the hope of covering the wide range of symptoms that present and to prevent them in the future. Blanket treatment can be difficult to sort out in the outpatient setting and case workers can be quite anxious about change to any treatment plan that has been correlated with stabilization. The psychiatric community has covered these practices by re-conceptualizing primary and secondary diagnosis with the term "co-occurring" disorders. They may not, however, always reflect the status of your clients or their long-term best interests.

The value of placement stability and preservation should not be understated. Asking questions of caregivers can help clarify the treatment plan. Once psychosocial circumstances settle down, it seems reasonable advocacy to ask caregivers and outpatient providers to review the foundation of the previous diagnosis and treatments, especially since new providers share the risk of the decision made by the prior practitioners. Questions can always be asked about the presence or absence of previous symptoms and whether or not structure, growth and development, or increasing insight can start to take the place of medications.

Each doctor is obligated to review the history of the child's condition for him or herself, rather than adopting prior opinions. Fortunately for the advocate, the Psychiatric Diagnostic Manual (DSM IV) is one of the most straightforward and concise diagnostic systems in medicine, and most of the language is easily understandable. The criteria for diagnosis is clearly spelled out and although the doctors can formulate their own opinions, the further they deviate from the DSM IV, the more vulnerable they are to peer criticism. In the case of "co-occurring" diagnosis, DSM IV usually counsels to look for the single underlying condition that parsimoniously explains all the symptoms. It does allow for more than one diagnosis, and the standard of care seems to be evolving towards multiple diagnoses.

Nevertheless, the use of multiple agents from multiple classes of chemicals is rarely supported by research. Ongoing anecdotal support and case studies, as well as pharmaceutical company presentations, do not always constitute evidence-based medicine. The general question can be raised about whether particular treatment plans are best-practice, evidence based or conform to treatment guidelines of the American Academy of Child and Adolescent Psychiatry or the American Psychiatric Association. These questions can lead to a discussion that helps the doctor clarify and justify his or her approach.

I would advise a large dose of understanding for the role of the child psychiatrist who has to make many difficult decisions with powerful medications to address the needs and demands of many different parties. Almost none of the medications have been researched by the pharmaceutical industry or approved by the Federal Drug Administration. We have all become accustomed to doing our best with very little qualified information. So while questioning the doctor, it is a good idea to maintain respect and if nothing else, model for the kind of sharing and problem solving relationships you want them to conduct with their patients, their families and other vested parties.

I cannot over-emphasize the importance of developing rapport and alliance with the treatment team. It is much more likely that a well reasoned assessment of medication and treatment plan will take place within the context of a helping, consulting environment that does not threaten the team. I have come to learn that psychiatry is such an abstract and uncertain field, that many of us develop defenses and belief systems that help us regulate our tasks. In addition, this is the age of rapid diagnosis and aggressive treatment. Over the course of time, an allied approach to problem solving rather than adversarial argumentation can be greatly appreciated by the rushed and highly pressured psychiatric practitioner.

Many of the psychotropic medications need diligence. The following list, though not exhaustive, is an example of the kinds of health concerns medications raise.

Antipsychotics

- These are often used for behavioral control. In the past, there has been much more caution to use these, except in more extreme intractable conditions where less toxic medications or behavioral methods have failed.
- All can lead to permanent movement disorders correlated with total amount over a lifetime.
- Many have weight gain and diabetes associated with their use.

Stimulants

- These are related to methamphetamines and therefore, it is logical to look for paranoia, psychosis, depression, hallucinations, diminished appetite, insomnia, aggression or rigidity and inflexibility in personality. These possibilities are listed on package inserts, but are rarely discussed by pharmaceutical representatives who detail these medications in doctors' offices.
- It is common practice to increase stimulants in the face of aggression; however, this may increase the problem.

Antidepressants

- The sudden onset of depression and suicidal thoughts can occur, but proper monitoring by parents and/or parent surrogates, can help mitigate this risk. The incidence of this reaction are very low.
- Rash is a serious medical warning and needs cessation of medication and medical consultation (urgent).
- Some of these interact with other medications to change blood levels. The following symptoms are associated with these particular agents: Remeron – weight gain; Effexor at higher doses – increased blood level, withdrawal; Paxil – birth defects and withdrawals.

Mood Stabilizers

- Lithium products can affect kidneys and thyroid glands. Lithium needs frequent blood tests at first and later, quarterly blood level monitoring, along with assessment of renal and thyroid function.
- Lamictal must be increased very slowly, especially if it is given with Depakote. A rash is a sign of danger.
- Depakote can cause birth defects, pancreatitis and polycystic ovary disease. Birth control is essential.
- Tegretol (Equitol) can lower the effectiveness of oral contraceptive. It is also associated with dangerous skin reactions representing life threatening organ disease.

The following is a list of terms of art and my definitions.

Decompensate – Usually means the psychiatric problem is coming back. The compensatory coping mechanisms are failing or the medication has stopped.

Symptoms – Problems reported.

Signs – Problems observed.

Mental Status Examination – Systematic recording of observations made during the interview combined with specific questions to assess mental function such as thinking, reasoning and judgment.

Medical Model – From my perspective, this means a systematic way of collecting information including the chief complaint, history of the current condition, past history of treatment, developmental history, social history, family history including that of psychiatric and substance use disorders, medical history and current medical status and medications, a review of symptoms including what is there and what is NOT, and then, the examination. Then, decisions can be made to order tests and labs, including medical and psychological. The choice of tests depends completely on the information gleaned from the first two sections (histories and examination) and should be designed with a list of diagnostic possibilities in mind, not routine or random batteries (psychologists' approach may vary from this model). A five part (Axis) diagnostic profile should be listed based on the above, or prior to the results of the tests, and then, based on the entire foundation, a treatment plan addressing all parts of the diagnosis should be put forth.

Psychological Tests – Many are structured interview questions or surveys. Some, such as the MMPI, are indirect assessments that are much more difficult to predictively influence the results, and have built in "truth and lie" scales.

Psychoeducational Assessment – Although this is changing, psychoeducational assessments had been the foundation for finding learning disabilities based on a system of detecting differences between academic potential and academic performance. Although this is in flux, IQ, achievements, and more detailed tests are useful to determine learning styles, strengths and weaknesses. Exploring learning inhibitions are essential in the structure of the treatment plan. For example, a child with a receptive language disability may not benefit from language based intervention. This important point is frequently missed.

Psychosis – A serious and usually progressive deterioration of personal and interpersonal functioning marked by problems estimating consensual reality (reality testing).

Bipolar Disorder (manic depression) – Bipolar disorder used to be almost always a psychotic reaction. The definition of this, in practice, has been greatly modified, and not all psychiatrists agree with this "downward departure" from DSM standards. In my opinion, even in children, bipolar needs to be a cyclical disorder rather than a general persistent characteristic of daily functioning. Unless the diagnosis is accurate, the treatments may not work well. There is also a trend to co-diagnose ADHD with bipolar, which may lead to treatment with amphetamines or their chemical relatives. This can potentially make bipolar symptoms worse. It makes sense to treat the mood disorder first and observe the results before very carefully instituting the stimulant. My preferred approach is avoiding stimulants all together if possible, rather than giving a stimulant to someone who might become manic.

Medical Necessity – A variable set of rules composed by health care regulators to judge whether or not a condition or a treatment will be paid for.

Guidelines and Algorithms – Non-mandatory "if-then" rules for using different treatment while refining the particular symptoms and responses to intervention. These rules are developed by academic groups under the authority of professional associations or educational institutions.

Titrating - Non-systematic estimation of the amount of medication needed, usually based on clinical response. Sometimes body weight is the guide, but this is usually just a starting point and rarely holds significance (others might disagree). Most psychotropic medications take three-to-six weeks in order to determine appropriate levels based on actual patient response, which means treatments initiated in a hospital need to be assessed for efficacy in the outpatient setting. Psychiatric hospitalizations rarely last this long. In addition, titration seems to be context specific. What is appropriate in an inpatient or residential setting may not be relevant to outpatient status. Very few medications are titrated based on blood tests. These include Lithium, Depakote, and Tegretol.

Syndrome - Symptoms that generally run together which does not imply a distinct cause. In my opinion, ADHD is a syndrome, not a disease.

Disorder - A condition or illness.

Vegetative - Depressive symptoms pertaining to the automatic daily functioning of people, thought to be more or less functions of the nervous system, rather than the psychology of an individual. Symptoms include features of the appetite, sleep, mood, suicidality and involve persistence over time (two weeks minimum).

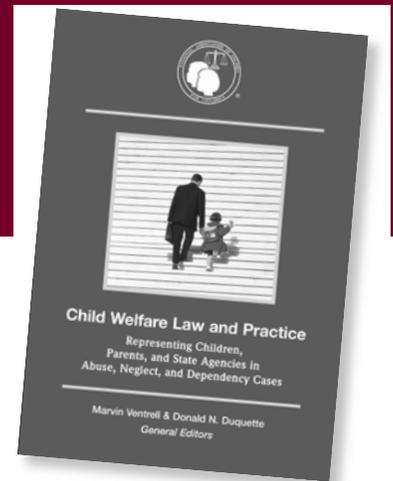
Chemical Imbalance - A metaphor for the current understanding of chemical messengers (neurotransmitters) that are either deficient or excessive in comparison to the receptors meant to sense and respond to them. Chemical imbalances, except in rare occasions cannot be measured. They are presumed.

Neurological - In psychiatry, referring to brain factors that may interfere with the expected response to treatment. These are thought to be either inborn, traumatically induced, related to seizures, toxins, or other disruptions of the central nervous system. This term used to be referred to as "organic".

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Cases

Dependency

Supreme Court of New York Appellate Division Rejects Existing Indian Family Exception To Indian Child Welfare Act. In re Baby Boy C., 805 N.Y.S.2d 313, 2005 N.Y. App. Div. LEXIS 13717 (Dec. 2005).

This case came before the Supreme Court of New York Appellate Division on appeal from the Tohono O'odham Nation, a federally recognized Indian tribe, challenging the family court's refusal to permit the Tribe to participate as interveners, and its decision to adopt the existing Indian family exception to the Indian Child Welfare Act (ICWA). On appeal, the court reversed the family court decision and concluded that the existing Indian family (EIF) exception conflicts with the language and purpose of ICWA and the rationale of the U.S. Supreme Court's decision *Mississippi Band of Choctaw Indians v. Holyfield*. The court reversed the family court decision and rejected the EIF exception to ICWA.

This case involved Baby Boy C. born to an Indian mother and non-Indian father in Arizona. Shortly after the child's birth, his parents signed consents to relinquish their parental rights and permit the petitioners, who lived in New York, to adopt the child. The child's mother acknowledged that the child was an Indian-child, and the Tribe was notified of the proceedings. The Tribe did not intervene at that time. The Arizona court issued an order terminating the parental rights and the petitioners returned to New York with the child and commenced the adoption proceedings. At this time the Tribe moved to intervene as a matter of right under ICWA. The family court adopted the EIF exception, and held a hearing to determine whether the Tribe had the authority to intervene. It concluded that the Tribe had the burden to prove that

the child was part of an existing Indian family; if the Tribe met this burden it would be permitted to intervene.

At the EIF hearing the family court heard testimony from the child's mother that she had not lived on the reservation since a very young age, and that she had severed nearly all of her ties with the Tribe. The court concluded that ICWA did not apply because the child was not part of an existing Indian family, and that it was in the best interest of the child to be adopted by the petitioners. The appellate court granted the Tribe's motion to appeal the family court's order and stayed the adoption.

On appeal, the Tribe argued that the statutory criteria for ICWA were met and therefore the family court was required to apply ICWA placement preferences and permit the Tribe to intervene. Additionally, it argued that the family court erred by adopting the judicially created EIF exception, and that the court's constitutional analysis of ICWA misapplied the strict scrutiny test. The court noted that consideration of the EIF exception was a matter of first impression in New York. It first looked at the purpose and statutory language of ICWA, and concluded that the statute clearly applied to the adoption proceeding at issue. Next it considered the EIF exception.

The EIF exception came out of a Kansas Supreme Court decision, *Baby Boy L.*, involving facts similar to this case. In *Baby Boy L.* the Kansas court concluded that the legislative history behind ICWA demonstrated that Congress's primary concern was supporting and maintaining existing Indian families; therefore, if a child were not part of an existing Indian home or culture, ICWA did not apply. The appellate court noted that seven jurisdictions have adopted the EIF

exception, and fourteen states have rejected it. After reviewing the statutory language of ICWA, the appellate court concluded that ICWA provided two threshold requirements for application of the statute: a child custody proceeding, and an Indian child. The court noted that nowhere in the legislative history or statute does the definition of Indian child rely on the child's ties to tribal culture. The court rejected the EIF exception.

The court next considered the constitutionality of ICWA without an EIF exception. It turned to the case *Bridget R.*, in which the California court determined that applying ICWA to a child who was not part of an existing Indian family violated the child's fundamental right to placement in a stable and permanent home and required strict scrutiny analysis. The appellate court found that although a child's stability and permanence are critical in making custody and placement determinations, the child's interest is not entitled to constitutional protection in adoption proceedings.

Consequently, the court concluded that ICWA is rationally related to the protection and preservation of Indian tribes and families and that strict scrutiny analysis is not necessary. Furthermore, the court noted that the Bureau of Indian Affairs provides "good cause" exceptions to ICWA, which permit states to deviate from the ICWA requirements when a child or parent's interest outweigh that of the tribe. The court noted that the family court could have reached the same decision if it had considered the "good cause" exceptions without adopting the EIF exception.

Last, in addition to rejecting the EIF exception, the court concluded that since ICWA applied to the adoption at issue, the Tribe should have been permitted to intervene. The court

reversed the family court decision and remanded the case noting that the petitioner will bear the burden to prove that “good cause” exists to deviate from ICWA placement preferences.

Criminal Prosecution Of Child Abuse

Colorado Supreme Court Holds That Admitting Child Victim’s Excited Utterances And Statements For Medical Diagnosis Did Not Violate Defendant’s Constitutional Right To Confrontation. People v. Vigil, 2006 Colo. LEXIS 65 (Colo., 2006).

The Colorado Supreme Court considered the application of *Crawford v. Washington* to a child’s statements in a criminal prosecution of child sexual abuse. In this case, the defendant, Vigil, was convicted of child sexual assault. Over the defense’s objections, the trial court admitted statements the child made to his father, his father’s friend, and the doctor who performed the sexual assault examination. On appeal the defendant argued that admitting the child’s statements violated his constitutional right to confrontation. The Colorado Court of Appeals agreed and overruled the trial court’s decision. The Colorado Supreme Court granted certiorari to determine whether admitting the child’s statements for the purpose of medical diagnosis and excited utterances infringed on the defendant’s confrontation rights under the United States and Colorado Constitutions. The Colorado Supreme Court concluded that admitting the child’s statements did not deprive the defendant of his federal and state constitutional rights to confront the witnesses against him.

In *Crawford v. Washington*, the U.S. Supreme Court held that testimonial hearsay cannot be admitted at trial, unless the declarant is unavailable and the defendant had a prior opportunity for cross-examination. *Crawford* discussed three types of statements that might qualify as testimony: (i) ex parte in-court testimony or its functional equivalent, for example, affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants

would reasonably expect to be used for prosecution; (ii) extrajudicial statements contained in formalized testimonial materials, such as affidavits, depositions, prior testimony or confessions; and (iii) statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.

The first issue is whether the child’s statements to the doctor about his sexual assault were testimonial. The defendant contended that the child made his statement in the course of a police interrogation. The court held that the doctor’s questioning of the child during the course of a medical examination did not constitute the functional equivalent of police interrogation. The doctor questioned the child for the purpose of providing a diagnosis and treatment. The doctor was not a government official, and the statements were not produced with a purpose of developing testimony for trial.

The defendant also argued that the phrase “objective witness” from *Crawford* must be defined as an objectively reasonable adult observer educated in the law. The court disagreed and held that “objective witness” refers to an objectively reasonable person in the declarant’s position. The court stated that an objectively reasonable person in the declarant’s position would not have believed that his statements to the doctor would be available for use at a later trial. An objective seven-year-old would reasonably be more interested in feeling better and would intend his statements to describe the source of his pain and symptoms. Therefore, the child’s statements made to the doctor were not testimonial evidence.

The defendant next asserted that his federal constitutional right to confront the witnesses against him was violated. To prove the defendant’s federal confrontation rights have not been violated, the child’s statements must bear sufficient indicia of reliability and fall within a firmly rooted hearsay exception or bear particularized guarantees of trustworthiness. The defendant argued that the pros-

ecution had a burden to demonstrate trustworthiness to support the child’s statements to the doctor. The court disagreed and stated that under the Colorado Rules of Evidence once it is established that the statements were made to a physician for purposes of diagnosis or treatment, that the statements were reasonably pertinent to the diagnosis or treatment, and that the physician relied on the statements in reaching an expert opinion, then the statements are admissible without regard to an independent demonstration of trustworthiness.

The court next considered whether the child’s excited utterances to his father and father’s friend about the assault were testimonial statements. Under *Crawford*, these statements do not constitute testimonial evidence because the child did not make the statements at a preliminary hearing, before a grand jury, at a former trial, or during a police interrogation. The court declared that the statements do not fall within the first two formulations of *Crawford*. The court then analyzed the statements to determine whether an objectively reasonable witness in the child’s position would believe that his statement would be used at a later trial. When the child made these statements, he was at home, speaking informally to his father and his father’s friend. An objectively reasonable seven-year-old boy would make statements expressing pain and explaining what happened with an interest in seeking comfort and help. The facts do not suggest the child was making these statements in an effort to develop testimony for trial. Therefore, the child’s statements were not testimonial under *Crawford*. Additionally, the statements the child made to his father and his father’s friend constituted excited utterances. Thus, the court held that the defendant’s right to confront the witness was not violated.

The Colorado Supreme Court concluded that the statements admitted by the trial court were not testimonial, and therefore the defendant was not deprived of his right to confront the witnesses against him. The court reversed the court of appeals decision and reinstated the defendant’s conviction.

Custody

New Hampshire Supreme Court Holds Children Have A Right To Privacy For Medical Records And Communications. *In re Berg*, 866 A.2d 980, 2005 N.H. LEXIS 152 (2005).

This case came before the New Hampshire Supreme Court in an interlocutory appeal from a superior court order denying the guardian *ad litem's* (GAL) motion to seal her clients' therapy records. The New Hampshire Supreme Court reversed the lower courts decision and concluded that children have a right to privacy for medical records and communications.

Pursuant to the parties' divorce decree, the parents shared joint legal custody and the mother had primary physical custody of their four children. The children did not always visit their father as scheduled. They alleged issues of inappropriate conduct and sometimes refused to attend visits. The mother arranged for individual counseling for each child to address the visitation issues and his or her relationship with the father.

The father filed a contempt motion alleging that the mother had alienated him from their children. The mother filed a cross-motion to modify the visitation schedule. The court appointed a GAL to represent the children's interest. The father also requested that the children's therapy records be released, because he believed they would provide evidence that the mother alienated the children from him. The children's therapists refused to release the records, and the GAL moved to seal the record. The court denied the motion and ruled that a custodial parent's legal right to access his or her children's medical records outweighs the children's privacy rights.

The New Hampshire Supreme Court considered the following issues on appeal: 1) Do children have a right to privacy for their medical records and communications? 2) Does the court have the authority to seal a minor's therapy records when one parent demands access for litigation purposes? 3) Should the court have the authority to seal a minor's therapy records when the parents are in

conflict about the release and access of the records?

The court first considered the rights of parents and children. It noted that although parents have the right to raise and care for their children, the state has authority to intervene in the family when a child's welfare is at issue. The court concluded that this is especially true in custody disputes where a parent's interest may not be aligned with the child's interest. Therefore, the court rejected the father's argument that his parental rights override his children's privacy rights. It concluded that in a custody dispute the superior court has the authority to determine whether it is in the best interest of a child to have his or her confidential and privileged therapy records revealed to a parent.

The father next argued that children are not covered by the state codified therapist-client privilege. The therapist-client statute states in part that "communications between any licensed mental health practitioner and such licensee's client are placed on the same basis as those provided by law between attorney and client." RSA 330-A:32. From the plain language of the statute the court concluded that the word "client" includes child clients, and that the therapist-client privilege can be claimed by a client, the client's guardian, or the client's therapist.

Next, the court considered the public policy concerns behind the therapist-client privilege. The court noted the importance of a therapist having his or her client's confidence, and the potentially chilling effect on this relationship if parents are given unfettered access to their child's therapy records. The court turned to other jurisdictions and found that the weight of authority supports protecting children's therapy records when the family is involved in a custody dispute or the child's interests may be in conflict with those of the parent or guardian. The court concluded that the parent does not have the absolute authority to assert or waive the therapist-client privilege, but that the trial court has the authority and discretion to determine whether waiver or assertion of the privilege is in the best interest of the child. The

court also determined that the trial court may find that the child is mature enough to waive or assert the privilege, and that the trial court has the authority to appoint a GAL to represent the child's best interest regarding the therapist-client privilege. The court reversed the superior court's decision to deny the guardian *ad litem's* motion to seal the children's therapy records and remanded the case.

Custody / Custodial Parent's Right To Relocate

California Supreme Court Holds That Non-Custodial Parent Is Not Entitled To An Evidentiary Hearing When Custodial Parent Proposes To Move Away With Child. *Brown v. Yana*, 2006 WL 240533 (Cal.); 2006 Cal. LEXIS 1895 (Cal., 2006).

The California Supreme Court considered a custodial parent's right to relocate. The court considered whether a non-custodial parent was entitled to an evidentiary hearing when the custodial parent planned to relocate with the child. The court held that while the non-custodial parent is not barred from seeking a modification of custody, he is not entitled to an evidentiary hearing on the issue. In this case, the court concluded that the trial court had discretion to deny the modification request without holding an evidentiary hearing because the non-custodial parent failed to make a legally sufficient showing of detriment.

The parents filed for dissolution of marriage in 1994. In 1999, the mother was awarded sole legal and physical custody of their son. The parents continued to reside in the same county. In 2003 the mother wanted to move to Nevada with her new husband and children. She filed an order to modify the father's visitation schedule. The father opposed the move and asked the court for an evidentiary hearing on the issue. The trial court temporarily restrained the mother from moving, set a hearing date, and appointed an attorney for the child to conduct an inquiry into his preferences regarding custodial placement. During the hearing, the father produced evidence to establish that the

move would be detrimental to his relationship with his son. The trial court denied the father's request to modify custody without holding an evidentiary hearing. The Court of Appeals reversed the trial court's decision and held that in a relocation situation the non-custodial parent is entitled to an evidentiary hearing.

The California Supreme Court first addressed whether a parent without legal and physical custody may seek and obtain a custody change based on the custodial parent's decision to relocate with their child. It recognized the need for stability and finality in custody arrangements. However, under the change of circumstance rule, modifying a custody order is appropriate when the non-custodial parent demonstrates a significant change and establishes that a different custody arrangement would be in the child's best interest. The court stated that even where a permanent custody order is in place, the custodial parent's right to relocate with a child should be analyzed under the changed circumstance rule. An order for custody may be modified if relocation with the custodial parent will cause detriment to the child. Thus, a non-custodial parent may seek to modify custody in response to a proposed relocation, and the trial court must apply the changed circumstance rule.

The court next considered what right, if any, a non-custodial parent has to an evidentiary hearing to modify custody because of a proposed relocation. The court held that the non-custodial parent bears the initial burden of showing that the relocation will cause detriment to the child, and that reevaluation of the existing custody order is necessary. Furthermore, the changed circumstance rule requires a *substantial* showing that the relocation would be detrimental to the child. If the non-custodial parent makes the required initial showing of detriment, there will be an evidentiary hearing and the court is then obligated to determine whether a change in custody is in the best interest of the child. However, an evidentiary hearing serves no legitimate purpose or function where the

non-custodial parent is unable to make a prima facie case showing detriment.

The trial court record illustrated that the father did not identify any detriment to the child from the proposed move. During the hearing the father offered evidence about aspects of the community of Las Vegas, Nevada. The information related to the standard of living and schooling in Las Vegas, but the father made no effort to offer facts or evidence showing that the relocation would detrimentally affect the child's rights or his well-being. The court held that the information was insufficient to justify an evidentiary hearing.

The court concluded that the non-custodial parent can request modification of a custody order when the custodial parent plans to relocate with the child, but the non-custodial parent is not entitled to an evidentiary hearing if he or she does not make a legally sufficient showing of detriment. In this case, the court overruled the appellate court order and upheld the trial courts decision to deny the father's request for an evidentiary hearing.

Custody / De Facto Parent Standing

Washington Supreme Court Holds De Facto Parents Have Standing To Assert Rights To Visitation. In the Matter of the Parentage of L.B., 155 Wn.2d 679, 122 P.3d 161 (Wa., 2005).

The Washington Supreme Court considered whether Carvin, who was neither a biological nor adoptive parent, had standing under Washington law to petition for a determination of coparentage. The court determined that Washington's common law recognizes the status of de facto parents and grants them standing to petition for a determination of legal parentage.

Carvin and Britain were involved in a same-sex relationship from 1989 until 2001. In 1994 the couple decided to conceive and raise a child. Britain was artificially inseminated, and both women participated in raising the child, L.B. For the first six years of L.B.'s life, the three lived together as a family unit and publicly presented themselves as a family. When the couple's relationships ended, Carvin and Britain initially

shared custody and parenting responsibilities. Then, Britain began limiting Carvin's contact with L.B., and in the spring of 2002, unilaterally terminated all contact between Carvin and L.B. Carvin filed a petition to establish parentage.

Carvin first asserted that because she lacked an adequate remedy at law, equity and common law should grant her standing as a de facto parent; conversely, Britain argued that the issue should be decided by the legislature. The court stated that Washington courts assert their common law responsibility to respond to the needs of children and families due to evolving notions of what comprises a family unit, or when the legislature incompletely addressed an area of law. Additionally, the Washington legislature has not indicated it intended to provide the only guidelines for obtaining child custody.

Two Washington Court of Appeals cases (*In re Marriage of Allen and In re Custody of Stell*) support the notion that Washington common law recognizes the status of de facto parents. These cases acknowledge the significance of parent-child relationships that may otherwise lack statutory recognition. Similarly, both cases make clear that a legally cognizable family may exist in ways other than biological or adoptive. According to common law, to establish standing as a de facto parent, the following criteria must be met: (1) the natural or legal parent consented to and fostered the parent-like relationship; (2) the petitioner and the child lived together in the same household; (3) the petitioner assumed obligations of parenthood without the expectation of financial compensation; (4) the petitioner was in a parental role for a length of time sufficient to establish a parental relationship with the child.

The Washington legislature has been silent when it comes to the rights of children who are born in non-traditional families. In assessing whether Washington common law may recognize de facto parents, the court considered the relevant legislative enactments concerning parentage to understand legislative statements of the state's public policy; and to determine whether the legislation intended

to preempt common law rights in this context. The court found that recognizing a de facto parent was supported by the legislature's policy on the subject. It noted that historically, Washington courts have exercised their common law powers to award custody of children. Additionally, the court held that there is no indication that the legislature intended to provide the sole means of determining child custody, and Washington's jurisprudence suggests the continued assertion of common law custody determinations.

In Washington, a de facto parent stands in legal equality with an otherwise legal parent, whether biological, adoptive, or otherwise. Thus, the common law granted Carvin standing to prove she was a de facto parent and to petition for the corresponding rights and obligations of parenthood.

Juvenile Justice / Procedural Due Process

Commonwealth Court Of Pennsylvania Holds That Juveniles Adjudicated Delinquent Have Due Process Right To A Hearing To Determine School Placement. D.C., K.C., and K.J. v. School District of Philadelphia, 879 A.2d 408, 2005 Pa. Commw. LEXIS 399 (Pa., 2005).

The Commonwealth Court of Pennsylvania invalidated § 2134 of the Pennsylvania Public School Code as unconstitutional. Section 2134 (Code) provided that any student returning from placement, on probation as a result of being adjudicated a delinquent, or convicted of a crime in an adult criminal court proceeding, should not be returned directly to the regular classroom. A group of students brought a class action challenging the constitutionality of the Code, arguing that it violated procedural due process and equal protection.

Pursuant to the Code, after a student was adjudicated a delinquent, the School District was required to place the student in a transition center for up to four weeks to develop a transition plan. If the underlying offense did not involve a weapon, an act of violence, or controlled substances, the District could provide a transition plan that permitted the student to return to the

regular classroom. However, if the offense involved any of those categories then the district was required to place the student in one of four alternative education settings: an alternative education program; a private alternative education institution; a GED program; or a twilight program.

The students first argued that the Code was impermissible special legislation. They alleged that it created a subclass, Philadelphia youth adjudicated delinquent returning from juvenile placement, without a substantial relationship between the objectives of the legislation and the narrow application to Philadelphia students. The court stated that each year the Philadelphia School District received between 1200 and 1500 students returning from juvenile placement. The significant number of students justified the legislature's conclusion that a transition program was reasonable to establish transition plans to enhance the students' chances of success upon return to school.

The students also claimed that they had a right to a hearing to challenge a transfer to a location other than a regular classroom. The students argued that the trial court erroneously held that all required procedural protections were provided in the delinquency hearings. The students asserted, however, that the delinquency hearings merely addressed the juvenile's delinquent behavior and there was no jurisdiction for determining whether a student was eligible to return to the regular classroom. The Code mandated that all students returning from juvenile placement must be assigned to a transition center, and that some of these students must be referred to an alternative education setting based on the delinquent offense committed. The students contend that the Code created an irrebuttable presumption that all returning students would be disruptive and dangerous in a traditional classroom.

The U.S. Supreme Court in *Goss v. Lopez* held that a student may not be suspended from school, even temporarily, without some form of procedural due process. The Supreme Court explained that the fundamental requirement of due process is the opportunity to be heard in a hearing that is appropriate for the particular situation.

Although it may be difficult for school officials to maintain order, the Court required that effective notice and some informal hearing be afforded to the disciplined student. Thus, this court held that the absence of any opportunity for returning students to challenge their transfer to an alternative education setting violated due process.

The court found § 2134 of the Public School Code unconstitutional in two respects. First, the court held that there was a protected due process interest in the decision of whether a student may return to a regular classroom. Although a hearing is not required in all cases before a student may be assigned to alternative education, in those cases where a student seeks to challenge the assignment, there must be an opportunity made available to do so. Second, the court concluded that strictly prohibiting students who were adjudicated delinquent or convicted of a specific offense to return to the regular classroom denoted an unconstitutional irrebuttable presumption and violates due process.

Dependency / Counsel For Civil Litigation

California Court of Appeals Hold That Juvenile Court Must Appoint Guardian ad Litem To Represent Dependent Child When It Appears That Civil Litigation May Be Necessary. In re Miguel S., 36 Cal.Rptr.3d 294 (Cal., 2005).

In this case the California Court of Appeals considered whether the juvenile court can authorize funding from County funds for independent counsel to investigate filing a civil suit against the County on behalf of a dependent child. The court held that the juvenile court made a prohibited gift of public funds. The court also concluded that the juvenile court must appoint a guardian *ad litem* for the dependent child, who then may seek counsel on a pro bono or contingency basis.

The twelve-year-old child, Miguel, was detained in a county group home as a dependent child. He reported to his counsel that he was molested at the group home. The juvenile court retained independent counsel to meet and talk with the child and then to

investigate the potential for a civil law suit. The juvenile court capped the attorney fees at \$800 and explained that County treasury funds would be used to pay the fees.

The court first considered whether the juvenile court made a prohibited gift of public funds when it ordered the use of County funds to pay for independent counsel for a dependent child. The court held that it did make a prohibited gift of public funds and reversed the order.

A juvenile court has the statutory authority to take necessary action to fully protect a child. This authority allows the juvenile court to seek the assistance of independent counsel to investigate the potential civil claims of a dependent minor. The statute does not address the issue of how independent counsel is to be compensated. The juvenile court, therefore, has the authority to seek the assistance of independent counsel, but could not compel the County to compensate counsel out of its treasury funds. The court held that Miguel's interests could have been protected by having independent counsel investigate the matter on a pro bono or contingency basis.

The second issue is whether the juvenile court should have appointed a guardian *ad litem* for Miguel and whether this individual should attempt to obtain independent counsel. The court held that where the possibility of adversarial litigation exists, it is appropriate and necessary for the juvenile court to appoint a separate guardian *ad litem* to make decisions on behalf of the dependent child.

The court held that the juvenile court must appoint a guardian *ad litem* when it appears litigation in another forum may be necessary. The court held that the guardian *ad litem* was the appropriate individual to seek independent counsel, on a pro bono or contingency basis, to investigate and prosecute any tort claims on behalf of the dependent child.

Thus, the California Court of Appeals vacated the juvenile court order retaining independent counsel for Miguel.

NACC Amicus Curiae Filings

In re Christina M., Connecticut Supreme Court. The NACC joined the Center for Children's Advocacy at the University of Connecticut School of Law in filing an *amicus curiae* brief to the Connecticut Supreme Court in support of the child's right to counsel in a termination proceeding. Connecticut statute provides that a child is appointed an attorney who represents the child's wishes and best interests in accordance with the Rules of Professional Conduct (1.14 Client Under a Disability). If the child's wishes are different than his or her best interests the child's attorney is required to request appointment of a guardian *ad litem* to represent the child's best interests.

In this case, despite the expressed wishes of the child to return to her parents, the attorney for the children advocated for termination of parental rights. At no time did the attorney request appointment of a separate guardian *ad litem* for Christina M. nor did he raise any concerns about a conflict of interest between Christina's desires and best interests or about the potential for a conflict of interest among the siblings. The court granted the petition for termination of parental rights. The Supreme Court of Connecticut accepted appeal. The *amicus curiae* brief argued that children have a federal and state constitutional right to due process of law in proceedings to terminate parental rights which require the appointment of counsel.

Davis v. Washington and Hammon v. Indiana, United States Supreme Court. The NACC filed an *amicus curiae* brief urging the court to affirm the state courts' decisions in both cases. The U.S. Supreme Court granted certiorari on two cases dealing with testimonial hearsay (the court will

hear the cases in tandem). The cases address the application of *Crawford* to family violence situations. The first case, *Davis v. Washington* presents the issue of whether 911 calls are testimonial. In this case, a woman called 911 during an incident of domestic violence. The Washington Supreme Court concluded that emergency 911 calls should be assessed on a case-by-case basis, and although some of the statements in the call may be testimonial, admitting the call was harmless.

In the second case, *Hammon v. Indiana*, the Indiana Supreme Court considered whether statements to police are testimonial. In this case, the police reported to a domestic violence call. When they arrived at the scene an officer questioned a woman who appeared to be the victim. The court concluded that statements to investigating officers in response to general initial inquiries are nontestimonial, but statements made for purposes of preserving the accounts of potential witnesses are testimonial.

In *Crawford*, the U.S. Supreme Court held that introducing testimonial hearsay statements violated the defendant's Sixth Amendment right to confrontation. The Court did not, however, define testimonial hearsay. Since *Crawford* courts nationally have been split on what constitutes testimonial hearsay. These cases are of particular interest to the NACC because of the impact testimonial hearsay has on prosecuting child abuse cases.

Thank you to Professor Thomas D. Lyon, J.D., Ph.D., University of Southern California and Anthony Franze, J.D. and Jacob Smiles, J.D. at Arnold & Porter LLP for their work in the preparation of this brief on behalf of the NACC. The NACC amicus curiae brief in this case is available on-line at <http://www.naccchildlaw.org/training/amicus.html/>. ■

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, Esq.
NACC Policy Representative, Washington, DC

Budget Reconciliation

Congress has moved forward two “budget reconciliation” bills.

I. Mandatory spending cuts

On December 21, 2005, the Senate passed the House/Senate Conference report on S. 1932, the “budget reconciliation” bill, by a vote of 51-50 (with the Vice President breaking the tie); on February 1, 2006, the House took final action on the S. 1932 Conference Report by a vote of 216-214. The President signed the bill February 8.

This legislation includes net cuts of approximately \$40 billion from 2006–2010 mandatory spending. This bill would slash deeply into several critical supports for vulnerable families,

potentially causing severe harm to court-involved children and their families:

- The bill would allow states to limit Medicaid for millions of children who are current beneficiaries, through elimination of the current guarantee of full Early and Periodic Screening, Diagnosis and Treatment (EPSDT) benefits for those children, as well as—for the first time—allowing cost sharing for these children, such as copays, etc.
- The bill would cut nearly \$600 million from federal foster care assistance over the next five years, the majority of that “savings” coming from the elimination of foster care payments for certain relative caregivers provided through the *Rosales* (9th Circuit) decision.
- The bill would cut more than \$1 billion from child support enforcement, which would mean an even greater loss of funds collected to support vulnerable children.
- The bill would impose more stringent work requirements on TANF recipients, while providing child care funding levels (a \$200 million increase for each of the next 5 years) that are inadequate to even compensate for inflation erosion, no less to compensate for additional work participation requirements, to improve child care quality or to meet the vast unmet child care need.
- The bill would cut more than \$12 billion from federal college student loans.

Give to the NACC



NACC member dues cover only a fraction of operating expenses and we must continually seek support to bring you the high quality programs and services you currently enjoy. Your generous contributions support not only our publications and infrastructure, but also provide training scholarships to new children’s law attorneys, and staff our resource center to respond to crisis calls from children and families.

Enclosed is my 100% tax-deductible charitable contribution

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of Counsel for Children**
1825 Marion St, Suite 242
Denver, CO 80218

Telephone:

Office: 303-864-5320
Fax: 303-864-5351

Federal Tax ID#: 84-0743810

- The “silver lining” to this very dark bill is that it includes Family Opportunity Act language (allowing states to offer middle-income families with a disabled child the option to buy into Medicaid) and a modest increase in Promoting Safe and Stable Families funding (including \$20 million for strengthening abuse/neglect courts).

After the President signed the bill (February 8), it became known that some official on Capitol Hill had changed one provision in the bill, so that the version signed by the President appears to be different from the one the House had passed—a fairly obvious violation of the Constitution of the United States. Next steps on this are not yet clear, though a legal challenge to the constitutionality of this reconciliation “law” appears likely.

II. Tax Cuts

A separate bill (H.R. 4297) providing for tax cuts that total up to \$70 billion over five years will be undergoing House/Senate conference in the coming weeks.

Federal Appropriations for FY 2006 and Budget for FY 2007

On November 9, 2005, the House approved the House/Senate Conference Report on H.R. 2862, making FY06 appropriations for the Department of Justice, including the Office of Juvenile Justice and Delinquency Prevention, and Senate approval followed on November 16. The President signed the bill into law on November 22, 2005.

Meanwhile, on November 17, the House voted 209-224 to defeat the House/

Senate Conference Report for H.R. 3010, the FY 2006 appropriations bill that funds the Departments of Labor, Health and Human Services and Education, with several members voicing concerns about inadequate funding levels in the bill. However, the House then voted 215-213 to pass a nearly identical bill on December 14, and the Senate passed the bill by unanimous consent on December 21. The President signed it into law on December 30, 2005.

Relevant provisions of the bills include the following:

- For most programs affecting court-involved children in the Ed/HHS funding bill (such as after-school, child care and Head Start), there is generally a nominal funding freeze (not even increased funding to account for inflation) along with a 1%



2006 Outstanding Legal Advocacy Award NOMINATION APPLICATION

PURPOSE: The NACC is looking for people who have tipped the scales in favor of children. Many children cannot rise above their circumstances without the help of real-life heroes. Our nation’s courts, clinics, schools, homes, law enforcement agencies and social service organizations are filled with people who have made a difference. The NACC created the Outstanding Legal Advocacy Award to honor excellence in the field of children’s law, advocacy, and protection. The NACC presents its Outstanding Legal Advocacy Award annually to individuals and organizations making significant contributions to the well being of children through legal representation and other advocacy efforts. Nominees’ accomplishments may include work in child welfare, juvenile justice, private custody and adoption and policy advocacy. All child advocates are eligible.

The Nomination Letter should highlight:

- The nominee’s activities on behalf of children that have significantly promoted the protection and welfare of children.
- The history of the nominee’s involvement in child advocacy work.
- The nominee’s affiliation with children and youth service organizations.
- Any other relevant personal background information.

Nominations Must Include:

- The nomination letter
- A completed application form
- Nominee’s Curriculum Vitae / Resume
- A list of nominee’s affiliations with other children and youth service organizations

Nominations May Also Include:

- Supporting materials such as: Letters of Support, Photographs, Newspaper clippings, narratives, or other items describing the candidate’s efforts.

NOMINEE:

NAME _____
 DEGREE _____
 TITLE / POSITION _____
 FIRM / ORGANIZATION _____
 ADDRESS _____
 CITY / STATE / ZIP _____
 PHONE _____ FAX _____
 E-MAIL _____
 NUMBER OF YEARS INVOLVED IN CHILD ADVOCACY _____

NOMINATOR:

NAME _____
 TITLE / POSITION _____
 FIRM / ORGANIZATION _____
 ADDRESS _____
 CITY / STATE / ZIP _____
 PHONE _____ FAX _____
 E-MAIL _____

Nominations Must Be Received By August 1, 2006.

Send Nominations to: Awards Committee
 National Association of Counsel for Children
 1825 Marion Street, Suite 242, Denver, Colorado 80218

“across-the-board” cut, with further decreases in the Child Abuse Prevention and Treatment Act programs.

- The DOJ funding bill, which includes juvenile justice and delinquency prevention funding, rejects the President’s FY06 proposed levels (which had included about a 50% cut in federal JJDP funding, with elimination of the Juvenile Accountability Block Grant). Instead, funding levels are closer to current nominal levels, with some modest reductions, and the 1% “across-the-board” cut (e.g., the level for the Juvenile Accountability Block Grant is reduced from \$55 million to \$50 million).

On February 6, 2006, President Bush submitted his proposed FY 2007 Budget to Congress. It includes another proposal for a foster care funding cap (similar to prior years’ budget proposals), and includes stagnant or slightly declining funding for most programs relevant to court-involved children and families, with a deep cut in the Social Services Block Grant (cutting \$500 million, to take the program from \$1.7 billion to \$1.2 billion). Once again, the largest percentage cuts are in the area of juvenile justice and delinquency prevention (a 43% cut from last year’s juvenile justice funding levels).

Gangs Legislation

On May 11, 2005, the House adopted H.R. 1279, the “gangs bill”. This bill includes mandatory minimums and other enhanced penalties, increased federalization of gang crime, and (in Section 115) an expanded provision regarding prosecuting juveniles as adults in federal court - despite the evidence indicating higher recidivism rates for juveniles tried as adults. Similar legislation in the Senate (S. 155, introduced by Senators Feinstein, Hatch, et al.) has not yet been considered by the Senate Judiciary Committee in this session of Congress, and no markup is scheduled at this time. There is talk, in the House, regarding combining several crime-related bills (including Gangs legislation, a sex offender registry bill, etc.) into one larger crime-bill for further action on the House floor; no timeframe for further action is known.

Juvenile Accountability Block Grant Reauthorization

On December 16, 2005, the Senate approved the final version of H.R. 3402, the Department of Justice authorization bill, which includes a four-year reauthorization of the Juvenile Accountability Block Grant program, including some modest language improvements to the JABG program (e.g., giving a priority to evidence-based approaches). The bill also reauthorizes the Violence Against Women Act. The final H.R. 3402 passed in the House on December 17, and was signed into law by the President on January 5, 2006.

Unaccompanied Alien Children Protection Legislation

On December 22, 2005, the Senate adopted S. 119, Senator Feinstein’s Unaccompanied Alien Child Protection Act. The bill specifies a number of procedural protections for unaccompanied alien children, including court-appointed guardians ad litem. The House bill (H.R. 1172) has not yet moved forward in the House Judiciary Committee.

Head Start Reauthorization

In May 2005, the House Education and Workforce Committee marked up H.R. 2123, and a week later, the Senate Committee on Health, Education, Labor and Pensions marked up S. 1107, both of which are bills to reauthorize the Head Start early education program for disadvantaged kids. The legislation includes some language to improve Head Start access for foster children. Thankfully, neither bill includes state block grants that had been in the House-passed bill in the last Congress (that bill never got enacted). On September 22, the House passed H.R. 2123; however, S. 1107 is still awaiting Senate floor action.

Other Relevant Bills Introduced, But No Further Action Yet

- H.R. 1704, introduced by Rep. Portman et al. on April 19, 2005, would provide modest funding for

efforts to successfully reintegrate adult and juvenile offenders into their communities, and to reduce their recidivism rates through reentry planning and services including educational, mental health, substance abuse, family reunification, etc. Rep. Portman has since left Congress (to be U.S. Trade Representative), so Rep. Cannon has taken over as the lead House sponsor. A Senate companion bill, S. 1934, was introduced on October 27 by Senators Brownback, Biden, Specter, DeWine, et al. Actions in the Senate and House Judiciary Committees are expected soon, including a House Judiciary Subcommittee markup expected in mid-February.

- On February 15, 2005, H.R. 823 (Rep. Ramstad) and S. 380 (Sen. Collins) were introduced as the Keeping Families Together Act—legislation to provide modest funding to support efforts to end the practice of parents giving legal custody of their seriously emotionally disturbed children to state agencies (child welfare or juvenile justice), for the purposes of obtaining mental health services for those children. No further action has been scheduled.
- On May 10, 2005, Sen. Clinton and Sen. Snowe introduced the Kinship Caregiver Support Act (S. 985), which provides funding for kinship navigator programs, provides a IV-E support option for kinship care, and provides notice to relatives of children entering foster care. No Finance Committee action has yet been scheduled.
- On July 20, 2005, Sen. DeWine introduced S. 1429 (with Sen. Murray), as well as S. 1430, S. 1431 and S. 1432; these bills provide for improved post-secondary education opportunities for homeless and foster youth, as well as post-secondary education loan forgiveness for: child protection social workers; attorneys who represent low-income clients in family/domestic relations courts; and child care providers and preschool teachers. No action on this legislation has been scheduled in the Senate Health, Education, Labor and Pensions Committee.
- On July 29, 2005, Rep. Platts, Rep. Davis (IL) and Rep. Osborne introduced H.R. 3628, the Education

Begins at Home Act, which would authorize \$500 million in new federal funding for early childhood home visiting (some models of such parent coaching have demonstrated significant impact on the prevention of child abuse and neglect, and later delinquency). This legislation is the House companion to Sen. Bond's S. 503, a bill of the same name introduced in early March 2005. No action on this legislation has yet been scheduled.

- S. 1679, introduced on September 12,

2005 by Senators DeWine and Rockefeller, is the "Working to Enhance Courts for At-Risk and Endangered Kids Act". The bill would provide for, inter alia, collaboration between child welfare agencies and courts, practice standards for child welfare state agency attorneys, loan forgiveness for child welfare attorneys and social workers, permission for states to allow public access to child welfare court proceedings (as long as state policies ensure the safety

and well-being of the child, parents, and family), and improvements in the safe and timely interstate placement of foster children. No action has yet been scheduled in the Senate Finance Committee, though provisions similar to some of those in this bill were included in budget reconciliation legislation (see above).

For further information on any federal legislation (including copies of bills, copies of committee reports, floor votes, etc.), visit Thomas.loc.gov. ■

NACC YOUTH EMPOWERMENT COLUMN

Foster Youth Access to Higher Education Funds

In April 2004, former foster youth, Anita Lacy, founded the Michigan Foster Education Resource Network (MI-FERN). The mission of MI-FERN is to enhance the opportunities of youth who are current and past foster care recipients in the state of Michigan, to improve community awareness of the unique needs of foster care youth in their pursuit of post-secondary education, and to increase the quality of life for former foster youth by helping them reach their educational goals. The NACC is pleased to report this important work.



MI-FERN Michigan Foster Education Resource Network

by Anita Lacy

Education, then, beyond all other devises of human origin, is the great equalizer of the conditions of man, the balance wheel of the social machinery. HORACE MANN

In 2004, with the help of a grant from mtvU and Youth Venture, I began the Michigan Foster Education Resource Network (MI-FERN), devoted to assisting foster youth with accessing and paying for higher education. The truly unique experience of growing up in over twenty foster homes gave me the opportunity to gain insight into many different sub-cultures, and taught me to view a problem from many different perspectives. However, the experience that has had the most impact in shaping my life came after foster care. Attending college has been the most positive experience of my life, and I know that

given the opportunity, other foster youth will feel the same way. College is a place where everyone is struggling to make it on his or her own without the daily guidance of parents or family. For the first time in my life I was just like everyone else and in order for foster youth to become productive members of society it is important for us to feel normal and part of the bigger picture. It was because of my experience in college that I founded MI-FERN.

The idea of beginning MI-FERN came to me after meeting with a Youth in Transition caseworker about getting money to pay my rent. The worker explained to me that although it was only weeks before my twenty-first birthday, he would help me because he fully expected me to help other foster kids who wanted to go to college. I began wondering what he meant by that and what I could possibly do to help other foster kids when I could barely pay my own rent. But there was something else that he said during our brief meeting that made me realize that I could help. He told me that he was impressed with all of the scholarship opportunities that I had found, and that he had

never even heard of most of them before. It was the combination of these two things that inspired me to write what would become the first Annual Student Guide, which provides students information such as which high school classes to take, which standardized tests to take, how to apply for financial aid, and a listing of Michigan Colleges and Universities.

I knew so much more about tests, classes, working and financial aid than when I began college and it wouldn't be that difficult to write it all down. It turned out that writing the guide was the easy part. Once it was finished I realized that I had no way of getting it printed and distributed. It just so happened that less than a month after meeting with the caseworker, I saw an ad on MTV about a community service grant that was available to students who wanted to start a new community organization. The award was \$1,500, which would be more than enough to print and mail the student guide, so I decided to apply. Although the application was long and somewhat detailed and the telephone interview with a panel of judges and other finalist was nerve-wracking to say the

least, I managed to make it through the process and in June 2004 I was awarded a grant.

MI-FERN has made great strides over the past year and a half. We have expanded our services to include not only the Annual Student Guide, our original program, but also a website www.foster-education.org, a quar-

terly magazine, and a small annual scholarship program. I truly believe that every young person will be able to realize his or her dreams given the opportunity and help that so many of us take for granted, and when it comes to college, foster youth are no exception. It did not take a lot of time to develop the student guide, and it

takes even less time to update it each year. However, for someone who has no idea where to start or who to ask for advice about college, it can make the process a little easier to navigate. For me MI-FERN has been a way to say thank you to all of the people who contributed to my success in college. ■

All current and former Michigan foster youth are eligible for MI-FERN services completely free of charge. Child welfare professionals are also encouraged to contact MI-FERN with any questions that they may have about the educational opportunities available to foster youth.

www.foster-education.org



Children's Law News

News

NACC Launches New Lifetime Membership. The NACC Board approved a new category of NACC membership at the 2005 Annual Meeting. NACC members may now become Lifetime Members for a one-time fee of \$2,500. Please contact the NACC if you are interested. A special Lifetime Member listing will appear in *The Guardian*.

NACC 2006 Outstanding Legal Advocacy Award. Nominations for the 2006 Outstanding Legal Advocacy Award are now being accepted. The award is given annually to individuals and organizations making significant contributions to the well-being of children through legal representation and other advocacy efforts. Send nomination letter and supporting documentation to NACC Awards, 1825 Marion Street, Suite 242, Denver, CO 80218. Contact the NACC for more information. The deadline is August 1, 2006.

NACC 2006 Law Student Essay Competition. The NACC is accepting essays for the 2006 Law Student Essay Competition. The winning essay will be published in the 2006 Children's Law Manual, and the winner will be given \$1,000, a one-year NACC membership, and a scholarship to the 2006

conference in Louisville, KY. Essays will be evaluated on the importance of the topic to advancing the legal interests of children, persuasiveness, and quality of research and writing. Essays should be submitted electronically to advocate@NACCchildlaw.org by August 1, 2006.

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."

Conferences & Training

May 17th–20th, 2006

The U.N. Convention on the Rights of the Child: Mobilizing Communities for Ratification.

The Summit will be held on the campus of American University, Washington D.C. For more information visit: <http://childrightscampaign.org>.

May 22–26, 2006

NACC 11th Annual Rocky Mountain

Child Advocacy Training Institute, Presenting Evidence in Children's Cases, Denver, CO. 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. For more information, go to NACCchildlaw.org/training/RMCATI.html.

May 31–June 3, 2006

AFCC 43rd Annual Conference: Juggling Conflicts, Crises and Clients in Family Court, Westin Innisbrook Resort, Tampa Bay, Florida. On-line registration at www.afcc.org.

June 20–22, 2006

USDHHS Children's Bureau 2006 Meeting of States and Tribes: Many Paths, One Direction — Strategies for Achieving Lasting Reform in Child Welfare, Marriott Crystal Gateway Hotel, Arlington, VA www.statetribemeeting.com

October 12–15, 2006

NACC 29th National Children's Law Conference, Louisville, KY.

For more information, contact the NACC or visit NACCchildlaw.org/training/conference.html. Conference brochures will be available in Spring 2006.

Publications

On Your Own Without a Net: The Transition to Adulthood for Vulnerable Populations, Osgood, University of Chicago Press (2005)
www.press.uchicago.edu

Guide to Future Care and Custody Planning for Children, National Abandoned Infants Assistance Resource Center. Available on-line at:

http://aia.berkeley.edu/media/pdf/fccp_monograph.pdf, or order by calling 510-643-8390.

Child Abuse and Culture: Working with Diverse Families, by Lisa Aronson Fontes. Guilford Publications
www.guilford.com.

Child Welfare Law and Practice: Representing Children, Parents,

and State Agencies in Abuse, Neglect and Dependency Cases. This new NACC publication is a comprehensive practice guide for all attorneys working in abuse, neglect, and dependency cases. Please see the ad in this issue or contact Bradford Publishing at 800-446-2831; www.bradfordpublishing.com. NACC members receive a 20% discount.

NACC – Publications

Children's Law Manuals

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<input type="checkbox"/> Law Manual Package (2004, 2003, & 2002)	\$ 50 ⁰⁰	x _____ = \$ _____	

Books

<input type="checkbox"/> The Child's Attorney <i>Ann Haralambie Pub ABA (1993)</i>	\$ 49 ⁰⁰	x _____ = \$ _____
<input type="checkbox"/> Child Sexual Abuse in Civil Cases: A Guide to Custody & Tort Actions <i>Ann Haralambie Pub ABA (1999)</i>	\$ 75 ⁰⁰	x _____ = \$ _____

Other Publications

<input type="checkbox"/> NACC Recommendations for Representation of Children in Abuse & Neglect Cases	\$ 10 ⁰⁰	x _____ = \$ _____
<input type="checkbox"/> NACC's Better Public Policy for Children, Youth & Families: An Advocacy Guide	\$ 10 ⁰⁰	x _____ = \$ _____

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State of the Art Advocacy for Children, Youth, and Families, the 2005 Edition of the NACC Children's Law Manual Series. Copies may be ordered from the NACC by calling toll free 1-888-828-NACC, using the Publications Order Form in this issue, or online at www.naccchildlaw.org/trainings/manuals.html.

Jobs

Program Director, Lawyers for Children America (LFCA), Washington, D.C., LFCA is looking for an attorney with experience in child welfare law to fill the position of Program Director in its Washington, D.C. office. Applicants

should fax or e-mail a resume, cover letter, and writing sample to:

Fax: 202-298-5558, kmagyar@lawyersforchildrenamerica.org

Staff Attorney, Legal Advocates for Children and Youth (LACY), Law Foundation of Silicon Valley, San Jose, CA. An attorney is sought to provide representation in a variety of areas including the Safe Families Project, the Educational Empowerment Project and the Guardianship Project. Send cover letter, resume, and a brief writing sample as soon as possible to: jenniferk@lawfoundation.org

ABA Center on Children and the Law – Permanency Barriers Project,

Washington, D.C. The ABA Center on Children and the Law is currently looking for bids from consultant attorneys experienced in data collection to assist in data collection in several states. Please submit proposal with resume, cover letter and daily rate to: lancoura@staff.abanet.org

Legal Director, Voices for Children, St. Louis, MO. Voices for Children in St. Louis is looking for a Legal Director to supervise and manage all aspects of the organization's legal services and program activities. For more information please go to www.voicesforchildrenstl.org and see employment. ■

Please send children's law news and advocacy job openings to: *The Guardian*, 1825 Marion Street, Suite 242, Denver, CO 80218
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