Brains are built over time, and a substantial proportion of the brain is constructed during the early years of life. The architecture of the developing brain is established through an ongoing process that begins before birth, continues into adolescence and adulthood, and establishes either a sturdy or weak foundation for all the health, learning, and behavior that follow.

Connections between neurons, the brain cells that are the basic unit of the nervous system, are the bricks, mortar, and wiring of brain architecture. During the first few years after birth, 700–1,000 new neural connections are formed every second. After a period of rapid proliferation, these connections are reduced through a normal process called pruning, which enables remaining brain circuits to become more efficient. Experiences affect the nature and quality of the brain’s developing architecture by influencing which circuits are reinforced and which are pruned due to lack of use.

The interaction of genes and experiences shapes the circuitry of the developing brain. The experiences children have early in life also affect how genes are turned on and off and even whether some are expressed at all. The old ideas that genes are “set in stone” or that they alone determine developmental outcomes have been fully disproven. It is more accurate to think about genes as packages of biological instructions that require an authorization, called an epigenetic signature, to be carried out.

Supportive environments and rich learning experiences can generate epigenetic signatures that activate positive genetic potential, such as the capacity for goal-directed behavior or a well-functioning immune system. On the other hand, highly stressful early experiences can trigger genetic instructions that disrupt the development of systems that manage responses to adversity later in life.

ABOUT THE AUTHORS: The Center on the Developing Child at Harvard University’s mission is to drive science-based innovation that achieves breakthrough outcomes for children facing adversity. We believe that the science of development provides a powerful source of new ideas focused on the early years of life. Founded in 2006, the Center catalyzes local, national, and inter-national innovation in policy and practice for children and families. We test and implement these ideas in collaboration with a broad network of research, practice, policy, community, and philanthropic leaders. Together, we seek transformational improvements in lifelong educational achievement, economic security, and physical and mental health.

Lead author Steven D. Cohen is a Senior Fellow at both the Center on the Developing Child and the Center for the Study of Social Policy. His child welfare background includes senior positions in New York City’s child welfare agency, in a large non-profit service provider, and at the Annie E. Casey Foundation.

The science in this report draws principally from the work of the National Scientific Council on the Developing Child. We are very grateful for the ongoing contributions of this distinguished, multi-disciplinary, multi-university panel.

PLEASE NOTE: This paper was originally published, in full, by the Center on the Developing Child at Harvard University. The full publication can be accessed online.
Children develop within an environment of relationships that begins in the family but also involves other adults who play important roles in their lives. This can include extended family members, substitute caregivers, providers of early care and education, teachers, nurses, social workers, coaches, and neighbors.

The developmental process is fueled by reciprocal, "serve-and-return" interaction between children and the adults who care for them. Infants and young children naturally reach out for interaction through babbling, facial expressions, gestures, and words while nurturing adults respond with similar vocalizing, gesturing, and emotional engagement. This serve-and-return behavior continues like a game of tennis or passing a ball back and forth. If the adult’s responses are unreliable, inappropriate, or simply absent, the game falls apart. Without the responsive interaction that builds neural connections, the architecture of the child's developing brain may be weakened, and later learning, behavior, and health may be impaired. Young children and their caregivers both can initiate and respond in this ongoing process.

Skill begets skill as brains are built from the bottom up, with increasingly complex circuits building on simpler circuits, and increasingly complex and adaptive skills emerging over time.

The gradual acquisition of higher-level executive function skills, including the ability to retain and use new information, flexibly adjust to different situations, and control impulsive behavior, is supported by the development of the prefrontal cortex (the front third of the brain) from infancy through late adolescence and into early adulthood. A significant part of the formative development of the prefrontal cortex occurs during early childhood, as critical connections are forged between this region and other parts of the brain that it controls. This circuitry continues its development and becomes more efficient during adolescence and the early adult years.

**Adversity Disrupts the Process of Development**

Toxic stress responses impair development, with lifelong effects on learning, behavior, and health. When we are threatened, our bodies prepare us to respond by increasing our heart rate, blood pressure, inflammatory reactivity, and blood sugar. These changes are brought about by the rapid deployment of stress hormones such as adrenaline and cortisol. This "fight or flight" response can be life-saving in the face of an acute threat, but its continuous activation can have a wear and tear effect on a wide range of important biological functions.

Learning how to cope with adversity is an important part of healthy child development. When a young child’s stress response systems are activated within an environment of supportive adult relationships, these physiological effects can be either blocked by the adult’s presence or restored to baseline quickly. The result is the development of a well-functioning stress response system. However, if the stress response is extreme and long-lasting and buffering relationships are unavailable to the child or inadequate, the result can be a system that is set to learn fear rapidly, shift into defensive mode with very little provocation (act now, think later), react strongly even when not needed, or shut down completely. This may have negative repercussions across the lifespan, requiring more intensive and costly solutions later.

Any child who experiences prolonged adversity is at risk for physical and mental health problems, and individuals who are more vulnerable to stress are even more likely to experience long-term impacts. Early exposure to child abuse or neglect, family turmoil, neighborhood violence, extreme poverty, racial discrimination, or other hardships can prime biological systems to become hyper-

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1. “Traumatic stress” is another widely used term; when used to describe a set of physiological responses that may be precipitated by a wide range of adverse experiences, including neglect, we understand it to be similar in meaning to “toxic stress.”
2. Sometimes referred to as “fight, flight, or freeze.”

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responsive to adversity. Stress-inducing experiences such as these early in life, particularly for children with constitutional vulnerabilities, are associated with increased risk of lifelong physical and mental health problems, including major depression, heart disease, and diabetes. \(^3\) Earlier and longer-lasting stresses are associated with greater risks.

**Neglect disrupts the development of brain architecture in multiple ways.** Scientists understand neglect as the persistent absence of responsive care, and have learned that neglect threatens development in two important ways. First, a neglected child has too few of the serve- and-return experiences that are necessary to build strong and solid brain architecture. Second, because responsive relationships are developmentally expected and biologically essential, their absence signals a serious threat to child well-being, particularly during the earliest years, and activates the body’s stress response systems, which can have lifelong physiological consequences.

Deprivation, neglect, or emotional abuse, though less visible and easier to ignore than overt physical abuse, can actually cause more harm to a young child’s development, with effects including subsequent cognitive delays, impairments in executive functioning, and increased risk of a wide range of health problems over a lifetime. Severe neglect has been associated with decreased development of the pre-frontal cortex as well as abnormal activities in areas of the brain associated with emotion, stress regulation, attention, and self-control.

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**It can be the first step to healing—just acknowledging what has happened to them and that it is not their fault—their brains were doing exactly what they needed to do in that environment.** • Moira Szilagyi, M.D., Ph.D., UCLA

**Protective Factors Build Resilience**

**Providing the right conditions for healthy development from the start produces better outcomes than trying to fix problems later.** Scientists use the term “plasticity” to refer to the capacity of the brain to learn from experience, which is greatest early in life and decreases with age. Although windows of opportunity for re-shaping the brain remain open for many years, trying to change behavior or build new skills on a foundation of brain circuits that were not wired to support these behaviors or skills from the beginning requires more effort — for both individuals and society.

Positive early experiences, support from responsive adults, and the early development of adaptive skills can counterbalance the consequences of adversity. No matter what form of hardship or threats may have been experienced, research shows that the children who end up doing well are most often those who have had at least one stable and responsive relationship with a parent, caregiver, or other adult. \(^4\) These relationships add the support, scaffolding, and protection to children’s lives that both buffer them from developmental disruptions and help build key capabilities — such as the ability to plan, regulate behavior, and adapt to changing circumstances — that enable them to respond to adversity and thrive. Positive experiences, supportive relationships, and adaptive skills build the foundation of what is commonly known as resilience.

Positive life outcomes can be achieved when there are nurturing, capacity-building experiences to counterbalance the effects of adversity. Like weights on either side of a simple balance scale, positive experiences accumulate to tip a child’s life trajectory toward good outcomes, and a pile-up of negative experiences tip it toward bad outcomes. Resilience happens when a child’s health and development are tilted in the positive direction, even when a heavy load of negative forces is stacked on the other side.

**Adults Require a Set of Core Capabilities to Meet Life’s Basic Demands**

These core capabilities — which work like an air traffic control system in the brain — include self-regulation and executive function. For adults, these skills and abilities are essential to both effective parenting and meaningful participation in the workforce and community. Self-regulation helps us draw on the right skills at the right time, respond effectively to the world around us, and resist inappropriate responses. Executive function includes the ability to focus and sustain attention, set goals, follow rules, solve problems, and delay gratification. Overcoming the effects that adversity can have on the development and use of these capabilities requires both reducing sources of significant stress and actively building skills.
The foundations of executive function and self-regulation are built in early childhood, but these skills continue to develop into adolescence and early adulthood. Most young children begin showing the early building blocks of executive function skills before age 3, with a remarkable burst of improvement between ages 3 and 5, followed by another significant increase between ages 15 and 25–30. These changes reflect improved communication between the prefrontal cortex and other brain regions. Acquiring the foundations of executive function and self-regulation is one of the most important and challenging tasks of the early childhood years. The opportunity to build further on these core capacities is critical to healthy development through middle childhood, adolescence, and into adulthood.

A pile-up of adversity makes it difficult to develop and use these foundational skills. Three interlocking problems stand in the way. First, serious early adversity overdevelops the “fear circuitry” in the brain, making people more likely to perceive and focus attention on potential threats throughout life. Second, severe and frequent stress experienced as an adult overloads our ability to use the skills we do have. Chaotic, threatening, or unpredictable environments activate the “fight or flight” response and make it difficult to engage executive functions. The same individual, faced with significant financial stress, is likely to show diminished cognitive capacity, compared to when he or she has sufficient resources available. Third, frequently experiencing circumstances that seem beyond our control can lead to a low sense of self-efficacy — the belief that we can be agents in improving our own lives — which is needed to engage in planning, goal-oriented behaviors.

Helping adults build and use these core capabilities is essential not only to their own success as parents and workers, but also to the development of the same capabilities by the children in their care. There are two complementary and mutually reinforcing ways to approach this work. The first is to change the environments in which adults live, work, and access services—for example, by reducing the ways in which systems and services designed for adults living in poverty overload and deplete their self-regulation skills; minimizing stigma; and addressing basic needs to relieve some of the key stressors in people’s lives. The second is to provide individuals with coaching or training in specific self-regulatory and executive function skills, such as strategies for assessing stressful situations and considering alternatives.

Linking the Science to Child Welfare

How might these scientific findings from child development help us come up with powerful new solutions that could help to improve child welfare systems? Three directions emerge as particularly promising.

Science points to the prevalence of individuals in child welfare systems who are experiencing toxic stress. Many people involved with child welfare systems have experienced toxic stress, and this is true for parents as well as children. It is not true, however, for everyone. There are vast individual differences in how people respond to stressors. The type, duration, and intensity of stressors varies widely. The extent to which adults have had the benefit of supportive relationships for part or all of their childhood also varies. Nevertheless, it makes sense to think about toxic stress and to look for its consequences when we attempt to engage with and help both the children and the adults who become involved with the child welfare system.
The science of toxic stress gives us a way of understanding developmental and behavioral challenges common in child welfare. Many of the most common behavioral challenges encountered by child welfare systems are predictable responses to toxic stress. The neglected baby who appears unresponsive to her new caregiver’s attempts to comfort her; the teenager who becomes furious at even slight provocation; the parent who has difficulty planning and following through—all of these show in one form or another challenges of a stress response system that has been disrupted, with negative effects on the development of key capabilities. From a biological standpoint, this is adaptation, not pathology. If the environment is perceived as dangerous, it makes sense to tune up the stress response system for immediate survival rather than to devote resources to planning for a future that may never arrive. But these responses can persist even when the environment becomes less threatening and, in many cases, can’t be simply switched off.

Science provides insights into factors for both children and adults that help build resilience and prevent or moderate the toxic stress response. These factors include: responsive caregiving that promotes healthy development and buffers the stress response; focused attention on building core capacities; and a safe, well-regulated, and supportive environment that makes the risk of trying and testing new skills and behaviors manageable. We elaborate on these factors — relationships, skill-building, and environmental context — in “Opportunities to Apply Developmental Science to Child Welfare” which will be published in the next issue of The Guardian.

EDITOR’S MESSAGE

The Guardian Moving from Monthly to Quarterly

The Guardian published its first issue in 1979 with a purpose to bring NACC members an in-depth look at matters affecting practitioners in the fields of child welfare, family law, and juvenile justice. Each issue includes policy updates, tips and advice from leading experts in child welfare law, upcoming trainings, case reviews, and other relevant information for NACC members. Although the articles do not directly represent NACC’s position on any given issue, we do feel it is important to give our readers a wide variety of perspectives, information, and topics for consideration in an effort to spark meaningful dialogue among our membership community.

Our goals and passions for The Guardian have not changed over the last 38 years, and our membership has grown to know and love the journal for what it has become today. But now, more than ever, our members are turning to the internet for the most timely information and we at NACC are following suit. The Guardian will continue to publish on a quarterly basis with an in-depth look at the most critical issues facing our membership, but you can also find and engage with us every single day on Facebook and Twitter, reach out to our legal community via the NACC listserv, and don’t forget to check your inbox for NACC’s weekly digest The Advocate. The NACC staff is also here to the help if you ever have questions, need resources, or are looking for training opportunities — send us an email or give us a call, we’d love to hear from you!

As difficult as this decision was to make, our Board of Directors and staff trust that this is the best direction for dynamic growth at the NACC. We will continue to bring comprehensive, relevant, and compelling issues of The Guardian to you each quarter and look forward to connecting with each and every member throughout 2017 and beyond. Thank you to our readers and contributors for your sustained support and helping The Guardian serve as a meaningful source of information for our NACC membership community. We look forward to the next 38 years!

Amanda M. Butler
Editor, The Guardian
National Association of Counsel for Children
The Humanity of Our Children

WRITTEN BY
Tobeka G. Green
President and CEO, National Black Child Development Institute

When news broke that an elementary school teacher in Baltimore used the words "idiots" and much worse — racial slurs — while addressing her class of eighth graders, many across the country were stunned. Unfortunately, we at the National Black Child Development Institute (NBCDI) were not. For 46 years, we have been working to advance the quality of life for black children and families through education and advocacy, and over the decades from the civil rights movement of yesterday, to the black lives matter movement of today, we know that we must fight to protect our children’s civil rights and ensure they have access to an equitable education and humane treatment in the classroom. We applaud so many of you for taking on this fight in your daily work.

Black children experience harsh discipline practices. A high school student — still a child — was picked up while still in her seat and slammed to the ground. That happened in South Carolina. Another student, who was six-years old, was forced to wait under the stairs until she was taken away in handcuffs for allegedly taking a piece of candy from a teacher’s desk. This was in Chicago. Happening all over the country, these “disciplinary” actions have become all too common, the response by a system and teachers who, if probed, say they feel overwhelmed by and ill-equipped for the responsibilities at hand.

In these moments, anger and contempt is too often hurled at their black students. This has become a practice that we must all deem unacceptable. Instead of simply pointing fingers of contempt, there is something we can do about it: better equip our educators with culturally-relevant tools and training. We must also equip parents and caregivers to advocate for children. NBCDI offers these resources through our Family Empowerment Program.

Ensuring that our children are treated with respect and that suspensions and expulsions are no longer acceptable practices in early learning centers and elementary schools in your community is one way you can join us in our efforts. Data from the U.S. Department of Education’s Office of Civil Rights shows that children of color are suspended at disproportionate rates. Black preschool children are 3.6 times as likely to receive one or more out-of-school suspensions as white preschool children. These practices disrupt learning and impact the social and emotional well-being of our children. Moreover, there is a domino effect and correlation to the school-to-prison pipeline that sets our children up for higher rates of incarceration later in life.

Bringing solutions to the table is going to become even more important in the months and years ahead, following the most unprecedented presidential election result in recent memory and a climate of racial animosities and fears swelling throughout the country. Since the election, many organizations and individuals have released statements in response. NBCDI issued a call to action to activate parents, caregivers, advocates, and concerned citizens on important issues that impact our children and families and to spur collaboration at the local level in our communities with organizations such as the NACC. We must become engaged in work that challenges presumptions and changes policies to reshape the trajectory for our children.

I urge you to identify the discipline policies in your local jurisdictions and communities; share this information with colleagues, friends, families at local schools, and other community members; and have them join you in advocating for the elimination of suspensions and expulsions, sharing your concerns with appointed and elected officials. To assist you in this process, and ensure you know the access points and levers that you can use to demand the necessary changes, NBCDI with our partners, the NAACP Legal Defense and Educational Fund, White House Initiative on Educational Excellence for African Americans, The Leadership Conference on Civil and Human Rights, The Education Trust, and the U.S. Depart-

ABOUT THE AUTHOR:
Ms. Green earned her Bachelor of Science degree from Florida A&M University and her Master of Public Administration from Baruch College — The City University of New York (CUNY), where she was a National Urban Fellow. Ms. Green is a member of Community of Hope African American Episcopal (AME) Church, The Recording Academy (GRAMMYs), and Delta Sigma Theta Sorority, Incorporated.
Renewing Commitments, Energy, Goals, and Tackling Challenges

by Brooke Silverthorn, JD, CWLS, NACC Staff Attorney

It’s now January, the beginning of a new year. For me, like many of you I am sure, the beginning of the year signals a time to both reflect and renew. I reflect on the past year’s experiences, victories, disappointments, milestones, challenges and opportunities for growth. But it is also a time to renew my commitments, my energy, my goals, challenges I want to tackle and obstacles I want to overcome.

One of the experiences that serves as an area of reflection this year is taking cases as a guardian ad litem attorney. I had never represented children, or their “best interests” before and most of my experience in juvenile court was as an agency attorney. By way of background, let me just confess that as an agency attorney, I had a clear bias about the duties, roles and responsibilities of various other “players” in the dependency court system. In my mind, the agency attorneys clearly worked harder than the children’s or the parent’s attorneys. I carried that bias with me for pretty much the eight-plus years that I represented the agency. I forgot my own #1 rule in juvenile court: it’s not about me. Thankfully, that bias changed the day I got my first case as a GAL. My number one rule stared me in the face as a young child stood before me with tears streaming down his cheeks asking when he could see his mom again. I didn’t fully appreciate the emotional toll it would take to have child clients (and their parents for that matter) calling me evenings and weekends and expecting me to solve their crisis. I learned very quickly about the need for professional boundaries, but I’m not sure I ever mastered implementing them. This was all very new to me. As agency attorneys, we have a buffer between ourselves and the families because the caseworker is the primary contact.

Last month, I had my last court hearing as a GAL in Colorado. It was bittersweet to say the least. On the one hand, serving as a GAL was a tremendous experience for me professionally. I would like to think that its many challenges made me a better attorney and advocate. But, on the other hand, I am also ready to move on from that chapter and begin some new chapters. Therefore, as I reflect on my experiences as a GAL over the past year and the challenges and opportunities for growth it presented me, I must also make a commitment to renewal.

I am not sure what the future holds in 2017, but I do know that it’s important for me to renew my commitment to the child welfare field and strive to work with all parties to improve the system for families. It is time for me to take the experiences I had over the past year as a children’s best interest advocate and apply what I learned to serve as a resource for others who also want to work together to improve the system for families. Who’s with me?
What I Have Learned from NACC Members

by Donald C. Bross, JD, PhD, Professor of Pediatrics and Family Law

We recently sat down with the man credited for the founding of NACC and who has contributed endlessly to our organizational history and continuity over the last 40 years. Dr. Don Bross shared stories of NACC members and some of the valuable lessons he has learned from them. The following narrative is Dr. Bross bringing those stories alive.

One of the best things about being a member of the NACC is meeting and learning from a number of particularly wonderful colleagues. There are so many that I can’t enumerate them all, but here are a few examples of what I have learned from listening to my friends.

Not long after the National Association of Counsel for Children began, Damon Gannett called from Billings, Montana. Damon was assigned a case that involved traveling 50 miles out of Billings to represent a young boy with severe medical conditions for which the parents were refusing medical care. I had experienced a similar case recently and wrote Damon a few page memo consisting of precedents from other states I had found along with thoughts about presenting similar cases to a judge. From the beginning, Damon, who is an extraordinarily good trial lawyer, was reaffirming of my belief in what constitutes proper professional practice — reaching out to and sharing both questions and information with colleagues.

Some years later, I heard from a mutual friend in Montana of another case of Damon’s, which he confirmed when we were attending an NACC meeting. Damon’s client was about 15 years old at the time when she witnessed the murder of her mother, father and her brother in a motel in Billings. Damon was assigned as her legal representative and guardian ad litem under Montana statutes. Damon helped arrange what was necessary [legally and practically] for her to be cared for by an aunt in California. He was also able to facilitate support for her as a victim witness, including behavioral health support at a time when victim’s assistance was a novel idea for much of the country. During the trial, when this young woman was returned to testify as the primary witness in the case, both the defense and prosecution had all of their questions of the witness offered by Damon. This information speaks for itself in terms of the reputation and credibility of Damon in his community.

At the first Rocky Mountain Child Training Advocacy Institute, I was a student — which raised eyebrows for some — but I knew I could always learn and was anxious to participate in this first ever effort. I met (and regret that I cannot remember the name of, although I have tried to find the name a number of times over the years) a young attorney from Chattanooga, Tennessee. It turned out that most her practice was not with respect to representation of children, although she did some of that. She was primarily focused on representing victims of domestic violence. As we were talking, I asked how she was able to support and practice exclusively with these clients when (in my experience) it is often very difficult for clients in this position to be able to retain (afford) good counsel. She confirmed that, in fact, during the first several years of her practice, she had real doubts as to whether she would be able to continue to
afford primarily representing women and children. She came up with the idea that she would ask each of her women clients to simply tell her what they felt they could afford to send her on a monthly basis. In the beginning this was still insufficient, but as several more years passed, she began to believe that this was going to work both for her clients and for her. Her practice has continued and grown. I thought it was a marvelous example in finding a way that clients could help themselves and in the process support outstanding representation.

Two members, at different points in time and with slightly different approaches, taught me about trial notebooks. The first time I was introduced to the concept I had been in pro bono solo practice for barely a year. It was 1977, and the NACC was about to hold its first national conference. John Ciccolella had joined the organizing group, and said that we should offer a trial practice notebook related exclusively to representing maltreated children, and this would become the conference manual. At that time, the risk of making a good suggestion was that you typically ended up being the person to carry the suggestion forward. John, in fact, edited a 400 page trial notebook that had elements of what I have since come to understand is what should make up a trial notebook. There were also articles that would be typical of many conference manuals and state law magazines. I still appreciate, in particular, the way he collected 50 example motions for practice in the field, a collection which has grown significantly — as I found out recently while going through the NACC bookshelves.

John Ciccolella’s embodiment of outstanding practice is not confined to the example I have just given and his stories are known to many of the members. But I’m not sure how many are aware that in the 1980s he was assigned to represent a child whose parents (one or both) were in the US military and stationed in the Colorado Springs area. Their infant suffered what was properly diagnosed as inflicted injury, services were offered, the case was closed, and the family left the military and moved out of the state of Colorado. John received a phone call informing him that his former client had been severely brain injured in St. Louis. I wonder with our different views of the role of a child’s representative what course of action any of us would take under those specific circumstances now. John’s course of action was to make some phone calls back to the agency to find out what proceedings with respect to this child would be taking place. He bought a plane ticket and went to St. Louis, showed up at the child protection hearing and asked if he might provide information to the court. The judge asked him what his role was in the present day hearing and John explained what it had been. The court asked if he had had an official capacity in the case. John had anticipated an answer because he had asked the caseworker if it might be possible for him to be called as a witness in the department’s case if nothing else. Recognizing that sooner or later John would be heard, the judge said “well go ahead” and John was able to explain. The judge decided he was going to have to hear Ciccolella one way or another and so he did. John was able to provide a more thorough briefing of the prior case than what (in his view) had been provided previously about this child’s life and what the history John could provide might imply for the child’s life going forward.

The next person that reminded me of the value of trial notebooks was Cheryl Karsteadt. She, along with her husband were among the first 15 members and founders of the NACC in 1977. It was the Karsteadts that recommended that we have a newsletter and this became The Guardian you are reading today. Cheryl went on to work for the Colorado Department of Education as an attorney but she had a very practical and organized approach to trial notebooks and organized it extremely well in terms of what you would need in preparation for court and in each stage of the proceedings. Somehow it always seemed that the order in which she had made her trial notebook was exactly the order that was needed when I was going to court. I always enjoy asking NACC members questions about their practice when we meet at our conferences, because the answers are always insightful and are often illuminating.
Thank You!

Thank you for your continued membership, involvement, and support in 2016 — we are very grateful. As we move into 2017 and begin another remarkable year of strengthening legal advocacy for children and families, we want you right there with us!

NACC Marketing Materials

Are you using the NACC marketing materials available to you? We have marketing materials to help you promote your involvement with the NACC. By publicizing your membership with NACC, you show your support for our organization and highlight your personal commitment to improving the lives of children and families.

- **Membership Banners** can be added to your email signature or website in just a few moments. You’ll find a small and a large image for each of our four membership levels.
- **Membership Certificates** can also be downloaded, saved, and printed as proof of good standing with the NACC. Consider framing or hanging your certificate in the office.

Log in to access your membership materials.

Interested in upgrading your membership? Check out our different membership levels here or contact us at Membership@NACCchildlaw.org for more details.
PRESIDENT’S MESSAGE

Season’s Greetings and a Happy New Year to You

It is quite possible that most of us experienced 2016 in a curious, paradoxical way. On the one hand, the year went by at a blistering pace. I had just put away the tree decorations for 2015 and realized it was time to bring them back down from the attic. On the other hand, the presidential campaign seemed to never end. It was like watching mismatched paint colors dry. And when it was over, well, never mind.

As we turn the corner into 2017, the NACC Board hopefully will be able to introduce our new Executive Director. One of her or his first tasks will be to re-focus and enhance the NACC’s strategic plan, which will include renewed efforts to expand our membership. We are very excited about our 40th annual Child Welfare, Juvenile & Family Law Conference in New Orleans, August 10-12. Professor David Katner promises no interference from torrential rains. If anyone is interested in being considered as a presenter, the deadline for conference abstract submissions is February 1, 2017.

On behalf of the staff and board, let me say a heartfelt thanks to all of you who make the NACC such a special organization.

Affectionately,

H.D. Kirkpatrick, PhD, ABPP
President, NACC Board of Directors

Red Book Third Edition and Certification Exam

The third edition of the Red Book was released last August and we have plenty of applicants asking the same question — when will the exam change to the third edition? All 2016 exams covered content from the second edition only. The 2017 exam year will be split between editions. We encourage anyone with a second edition to sit for the exam early in 2017, as the second edition exam will be replaced with the third edition exam in mid-to-late 2017.

Learn More About Certification

Visit the Certification page at NACCchildlaw.org, or contact Daniel Trujillo at 303-864-5359 or Daniel.Trujillo@childrenscolorado.org for more information.

Congratulations to All Our New CWLS

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Abstract Deadline is February 1, 2017!


The conference will be held August 10–12, 2017 at the Roosevelt New Orleans with our pre-conference sessions held on August 9, 2017. As always, presenters will receive complimentary registration to the conference.

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Overturning precedent, the District of Columbia Court of Appeals rules (1) that permanency goal changes from reunification to adoption are appealable, (2) permanency hearings must meet due process requirements, (3) a parent must be proven unfit to grant an adoption petition, and (4) attachments to long-term foster parents could overcome the “weighty consideration” due a parent’s choice of alternative caretakers.

The District of Columbia Court of Appeals, sitting en banc, issued a decision in December which may dramatically change court permanency hearing practice in D.C. and reflect a model for other states.

Before I address the case, I must acknowledge a bias — I have written about the issues the court decided in a 2011 law review article, that article was cited in some of the briefs submitted to the court, and the court largely followed the approach I advocated.

This case is an appeal from a trial court order granting foster parents’ petition to adopt two children, Ta.L. and A.L., who were then 3 and 16 months old, respectively. In March 2008, the trial court found that the parents had neglected the two children, then an infant and a toddler, and placed them in foster care with non-kinship foster parents. Two different family members volunteered to be kinship foster parents. The agency would not license the first option because her partner failed a background check. The agency did not contact the second option — the children’s aunt — and the aunt did not pursue a license because she knew the permanency goal was reunification.

At the first permanency hearing, held in May 2009, the trial court changed the goal from reunification to adoption, based on facts presented in the agency’s permanency hearing report. There was no testimony, cross examination, or formal evidence heard. The court noted that the trial judge said she wanted to make a permanency goal decision “right quick” and did not resolve a dispute about the parents’ visitation record with the children.

The foster parents, R.W. and A.W., soon filed a petition to adopt the children. The agency then finally contacted the aunt, who soon became a licensed therapeutic foster parent and filed an adoption petition. The parents said they would consent to the aunt’s adoption petition, but not the foster parents’.

Two years later, in 2011, the trial court held a competing adoption trial, after which it granted the foster parents’ adoption petition and denied the aunt’s. The court concluded the aunt was a fit caretaker, but that the foster parents’ attachments with the children formed in the intervening outweighed the parents’ preference for the aunt.

The biological parents and the aunt appealed, and challenged both the ultimate adoption decision and earlier decisions which led to it. The D.C. court of appeals ultimately affirmed the adoption, issuing four separate holdings.

Holding 1: Some permanency goal decisions are appealable

The facts of the case illustrated a problem with a rule set in 2002 that permanency plan decisions were not appealable. In re K.M.T., 795 A.2d 688 (D.C. 2002). Following K.M.T., neither the parent nor the aunt appealed the 2009 decision shifting the permanency goal from reunification to adoption. As a result, for the two years until the adoption trial (not to mention the five years of appellate litigation which followed), the children lived with and formed attachments to the foster parents. If there was an error at the permanency hearing, there was no way to remedy it without waiting for the subsequent adoption trial.

The court recognized that the permanency hearing is often a decisive moment. After a change away from a reunification goal, “the parents’ efforts to build or maintain a positive relationship with their...
I would broaden this ruling to make any decision to change a permanency plan appealable. Shifting a goal to guardianship does not promise to terminate parental rights, but it still cuts off efforts to reunify the family and commits the state to make reasonable efforts to form a new permanent family through guardianship—which research shows is just as lasting a family as adoption.

A shift away from reunification as a permanency goal ends state efforts to reunify a family and imposes a legal obligation on the state to make reasonable efforts to create a new legally permanent family—and, in so doing, destroy the birth family. This momentous decision requires appellate review to correct errors, incentivize better trial court practice to avoid errors in the first place, and develop law regarding a very important set of decisions.

### Holding 2: More “formal” permanency hearings

The court therefore overturned In re K.M.T. and held that permanency hearing decisions are appealable—at least when the court changes a goal from reunification to adoption.

The first question is when. The court repeatedly refers to cases in which the court changes a permanency goal from reunification to adoption. Just as I would broaden the rule for appealing permanency goal orders, I would broaden that rule about when more formal procedures are required—anytime the court changes a permanency plan away from reunification, it should follow heightened due process protections for family integrity.

The next question is what heightened due process protections should apply? The court’s answer seems to be an evidentiary hearing—rather than reliance on reports—followed by specific factual findings. The government must prove by a preponderance of the evidence that it “provided the parents with a reasonable plan for achieving reunification, that it expended reasonable efforts to help the parents ameliorate the conditions that led to the child’s removal, and that the parents have failed to make adequate progress towards satisfying the requirements of that plan.”

When such steps are proven, then a change in permanency goals may be “presumptively consistent” with a child’s best interests. Before changing the goal to adoption, at least one other finding is required—that “other vehicles for avoiding the pursuit of termination… have been adequately explored,” including kinship guardianship.

### Benefits for children and for the development of the law

More formal permanency hearings will affect lawyers’ roles. Lawyers for the state will need to prove up the need for changing the permanency goal away from reunification—and to counsel the agency when it cannot prove the requisite findings.

When the state does request a goal change, lawyers for parents and children can hold the state to its proof. There will be easy cases, of course, when parents may want to stipulate to certain facts rather than let the judge hear them more formally and in more detail. But in closer cases, lawyers can make a tremendous difference for their clients through their factual investigation, factual and legal arguments about required findings, and ability to negotiate alternative solutions to avoid contested permanency hearings.

In addition, before a goal of adoption is set, lawyers have a tremendously important role in determining...

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1. In D.C., those lawyers are guardians ad litem, charged (inconsistently) by statute with both “represent[ing] the child” and “in general” her best interest. D.C. Code § 16-2304(b)(15).
if alternatives to adoption, especially kinship placements, are considered. (In Ta.L., one wonders whether the lawyers for the agency, the children, or the parents could have ensured the aunt was involved sooner in case.)

In re Ta.L. should also lead to more permanency hearing appeals. The court acknowledged that such decisions should occur expeditiously to respect a child’s sense of time, and encouraged parties to use an existing procedure for expedited appeals. Time will tell if that procedure leads to sufficiently prompt appellate decisions.

More appeals will also let appellate courts engage in important case-by-case development of the law. Both the statute and existing case law (including Ta.L.) leave essential questions unanswered: What specifically amounts to a reasonable plans to ameliorate conditions of neglect, or reasonable efforts to put such plans into action? What is, in the court’s phrase, “adequate progress” towards reunification by a parent? When is a kinship placement properly ruled out in favor of a permanency plan of adoption by a non-kinship foster parent? Those are all hard questions that will benefit from nuanced answers developed over future permanency hearing appeals.

Holding 3: A termination of parental rights requires findings of parental unfitness

This third holding may not seem surprising for those familiar with other states child protection systems. But the District of Columbia has long been an outlier in that its adoption and termination statutes do not require a finding of unfitness, and several past cases have held that some parents who had never been found unfit could nonetheless have their rights terminated if that served their children’s best interests. These authorities long existed in tension with U.S. Supreme Court holdings that parental fitness is the lynchpin of state intervention in families, and that children’s best interests are presumptively served by deferring to fit parents. The Ta.L. court resolved that issue, holding that an unfitness finding is required unless parental custody “would grievously harm the child” — situation that would be quite rare if the parent is fit. A concurring opinion went further, and called on the D.C. Council (the equivalent of D.C.’s state legislature) to revise its statutes to conform to the constitutional focus on parental fitness — a step well worth taking.

Holding 4: Preference for parentally-chosen caretakers in adoption cases

So what happened to the actual children in this case? The court affirmed the trial court’s decision to grant the foster parents’ and not the aunt’s adoption petition.

The essential point to the court was that parents seeking custody for themselves differ from parents endorsing adoption by someone else. Terminating the rights of a parent who seeks custody generally requires clear and convincing evidence of parental unfitness. But defeating a parent’s preferred custodian only requires clear and convincing evidence that such custody would be detrimental to the child — not that the proposed caregiver was not fit. On that point, the children’s long-term placement with foster parents led to significant attachment with them — and disrupting that attachment would be detrimental to the children, even if the aunt was a perfectly fit custodian.

This final result leads me to mixed emotions. I would not want to remove these two children from the formerly foster and now adoptive parents who have raised them since 2008, when one was a toddler and the other an infant. Yet I am troubled by the process which led to this point — especially the failure to resolve contested facts at the permanency hearing or to consider the aunt as a placement until the children had already lived with the now-adoptive parents for more than a year. I am hopeful, however, that In re Ta.L. will lead to future cases in which we can all have less doubt in the results — because essential decisions will be made more rigorously due to more formality and more appellate review.
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The Guardian is an NACC publication.
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303-864-5320 © 2017 NACC