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NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

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www.NACCchildlaw.org
The Mission of the NACC is to:

- Strengthen the Delivery of Legal Services for Children
- Enhance the Quality of Legal Services Affecting Children
- Improve Courts and Agencies Serving Children
- Advance the Rights and Interests of Children

Dear Valued NACC Members:

Thank you to those who attended the NACC 34th National Child Welfare, Juvenile, and Family Law Conference in August in San Diego, California! As always, the conference showcased highly qualified speakers presenting on topics of national importance, while also offering members an unparalleled opportunity to network with colleagues who share a passion to strengthen legal advocacy for children and families in the child welfare, juvenile, and family law systems.

The conference featured a full-day pre-conference session Eliminating Bias — Race: The Power of an Illusion, Bias in Decision-Making, and Child Safety Decision-Making: An Introduction to Key Concepts and Tools, sponsored by the National Council of Juvenile and Family Court Judges and the ABA Center on Children and the Law. This powerful session confronted myriad misconceptions surrounding the concept of race, privilege, policy and justice, exposed how ideas about race have been shaped by history, social institutions and cultural beliefs, and discussed how implicit bias can occur within the child welfare practice.

The conference opened with a session titled, All Alone in the World: A Child’s Eye View of Criminal Justice, presented by Nell Bernstein, author of All Alone in the World: Children of the Incarcerated, Coordinator of the San Francisco Children of Incarcerated Parents Partnership, and Contributing Editor at New America Media.

The NACC annual luncheon featured Peter Samuelson, a media executive and serial pro-social entrepreneur, who spoke on Child Abuse and Neglect in America: An Illustrated History in Film. A special thank you to the Children’s Advocacy Institute at the University of San Diego School of Law for its generous sponsorship of the NACC Luncheon!

The controversial United States Supreme Court case Greene v. Camreta was the topic of the networking luncheon. NACC members joined

Betsy Fordyce, Recipient of this year’s Stephen M. Cahn Young Lawyer Award, pictured with Shari Shink and Stephanie Villafuerte from the Rocky Mountain Children’s Law Center
Dear Valued NACC Members:

amicus curiae brief drafters for a lively discussion of whether police officers investigating suspected child abuse violate a child’s and/or parents’ Fourth Amendment rights by questioning the child at school without a warrant, probable cause, or parental consent.

Fr. Greg Boyle, SJ, Jesuit priest, Founder and Executive Director of Homeboy Industries, and author of *Tattoos on the Heart: The Power of Boundless Compassion*, presented with two Homeboys. Following the audience’s standing ovation, Fr. Greg and the two Homeboys signed books.

During the annual reception, the NACC presented awards to the newly certified Child Welfare Law Specialist and other award recipients, held a fun and profitable silent auction to benefit the NACC, all while listening to a Steel Drum Band Performance by students from the Monarch School in San Diego.

The conference concluded with a live theater performance of *Switch*, a production by Playwrights Project from *Telling Stories: Giving Voice to Foster Youth*. Founded in 1985, Playwrights Project is a nonprofit organization devoted to advancing literacy, creativity and communication by empowering individuals to voice their stories through playwriting programs and theatre production. The Telling Stories program is designed to encourage foster youth and their caregivers to voice their experiences through theatre, in an effort to communicate the unique issues facing those involved in the foster care system.

As a reminder, all NACC members have access to the electronic conference materials — including PowerPoint presentations, NACC Law Manual, etc. — available at: http://www.naccchildlaw.org/?page=2011Materials.

NACC conferences would not be possible without member participation and dedication. The success of the conference is due in large part to your enormous contribution as members. Thank you!

Please save the date for the 35th NACC Conference, August 13–16, 2012, at the Hilton Palmer House in downtown Chicago! Abstract submissions will be accepted December 1, 2011 through February 1, 2012. As we begin planning for the 2012 conference, if you have suggestions on particular topics and/or speakers, please let us know.

Again, thank you for your continued support and we hope to see you next year in Chicago!

Kind regards,

Anne Kellogg, JD
NACC Staff Attorney / Resources Director

Farewell to Anne Kellogg, JD

Due to budget restraints the NACC recently eliminated Anne’s position. We are immensely grateful to Anne for her extensive contributions to the organization over the past three and a half years. Our recent successes are due in large part to Anne’s efforts. Her innovative ideas led to significantly reforming and improving the way NACC delivers the national conference and have led to maximizing staff time and energy. She will be missed!
Earlier this year, Judge Janis Sammartino of the United States District Court for the Southern District of California awarded costs of $62,734.64 against Kenneth L. Marsh. Marsh was the Plaintiff in a damages suit against Rady Children's Hospital in San Diego, the County of San Diego, and a few physicians who had testified in the 1983 trial in which Marsh was convicted of second degree murder in the death of his girlfriend's 2 1/2 year old son, Phillip Buell. Previously, on May 6, 2009, Judge Sammartino had summarily dismissed the damage suit. Her dismissal of Marsh's lawsuit was affirmed by the Ninth Circuit Court of Appeals.

Marsh served about twenty years of a twenty-to-life sentence before he was released after the District Attorney of San Diego County, perhaps mindful of his eligibility for release, decided not to oppose a petition for a writ of habeas corpus. Among a number of dubious theories, the petition alleged a conspiracy between various doctors, the Children's Hospital, and the County of San Diego. The petition was developed by attorneys involved in the California Innocence Project, which is housed at the California Western School of Law. After the petition for habeas corpus, Marsh succeeded again in a claim against the State of California for about $750,000 for "false imprisonment." This claim was only weakly defended by the State Attorney General. Marsh then brought his damage suit against the doctors, the Rady Children's Hospital, and San Diego County.

The petition, the claim against the State for false imprisonment, and the damage suit all utilized the same set of allegations, theories, and arguments. The third incarnation was defended vigorously, yielding a more balanced picture for decision.

In sponsoring this case, and perhaps in other recent ventures, the California Innocence Project may have lost some of its innocence. Its national reputation depends on finding just cases, and in pursuing them prudently. These cases have historically used reliable, scientifically-validated evidence, such as DNA samples, to re-examine convictions. Or, they present dispositive new evidence not presented or available at trial. They have corrected the record and laudably exonerated innocent people. The Marsh case hopefully does not represent its future case criteria.

Ironically, the Innocence Project's civil prosecution in Marsh, instead of correcting the record, itself rested on false accusations. In this case, they were the outlandish claims of a conscious conspiracy (among officials and doctors) to imprison an innocent man. Of even greater concern, the case departed from reliable, corrective evidence and sought the retrial of a 20 year old case based on "expert witnesses" frequently retained by criminal defense counsel, who espoused idiosyncratic and scientifically questionable theories.

The California Innocence Project is well advised to check its own excesses in campaigning for reversals of prior convictions, and for compensation. The alternative will be the further deterioration of its reputation for corrective justice.
Dependency
Waiver of a Child’s Privilege (Colorado)

Colorado state statute prohibits disclosure of privileged communications between a psychotherapist and the client. When a mental health professional has been retained to assist in litigation, disclosure of privileged information by the mental health professional to the privilege holder’s attorney does not waive the privilege because the mental health professional serves as the agent of the attorney.

However, privilege is waived when the privilege holder has expressly or impliedly forsaken the holder’s claim of confidentiality with respect to the information in question.

The Department and the GAL expressly waived the privilege when they obtained privileged information from the therapist and disclosed that information to the court in advocating termination of mother’s parental rights. Such conduct effectively waives the privilege so long as one of them had the authority to do so.

The court held that a court does not have the authority to waive the privilege for the child. In other words, the court cannot act as or on behalf of the privilege holder.

However, the court held that the GAL does in fact have the authority to waive a child’s privilege. First, such authority is consistent with the broad powers of a GAL to “sue or defend” on behalf of an infant or incompetent person. Further, an existing or specially appointed GAL may determine whether the child’s privilege should be asserted or waived where, as here, a parent is conflicted and the child is not sufficiently mature to make the decision.

Second, the GAL’s conduct in releasing the letter constituted an implied waiver and did not exceed her authority, even if the ultimate consequence of a broader waiver was not in the child’s best interests.

In this case, the lower court limited the waiver by denying mother access to the therapist’s file. The court of appeals found that because privileged information from the therapist portrayed mother negatively, and this information was used by the Department and the GAL in seeking to terminate parental rights, the lower court improperly deprived mother of her fundamentally fair opportunity to protect those rights.

The waiver extended at least to all material in the therapist’s file that supported, related to, or contradicted the therapist’s statements and opinions as presented in a letter at issue and the therapist’s testimony at the hearing.

Note: The judgment terminating mother’s parental rights was vacated because the notice requirements of the Indian Child Welfare Act of 1978 were not met.

Corporal Punishment (New York)

Allegations that mother maltreated her daughter by the use of excessive corporal punishment was not supported by substantial evidence where mother intended to hit child with a belt on her behind, but the mother accidentally hit the child’s face with the belt buckle when mother grabbed the child as she was running away.

Termination / Incarceration (Delaware)

Family court properly found that the parents had failed to plan adequately for the child, and that termination of parental rights served child’s best interest. The family court did not err in failing to consider the mother’s incarceration in its “failure to plan” analysis. Instead, the family court considered a number of factors in its analysis, including mother’s failure to visit consistently when not incarcerated, her failure to take advantage of services offered in prison that were required in case plan, and her issues related to finances, housing, substance abuse, and criminal history.
Termination / Material Breach of Case Plan (Florida)

In the Interest of C.N., 51 So. 3d 1224 (Fla. Dist. Ct. App. 2d Dist. 2011)

Court improperly terminated father’s parental rights after it found father’s breach of the “no-new-law-violation” task required in his case plan was not a material breach of his case plan sufficient to terminate his parental rights. Father’s case plan required that he show stable housing and stable income for nine months. Father was arrested three months into his case plan. His breach of his tasks to maintain stable housing and income were a result of the facility’s lack of services, not a result of his incarceration itself. Thus, father did not commit a material breach of his case plan sufficient to terminate his parental rights.

Termination / Adoption (Mississippi)

K.K. v. N.F., 53 So. 3d 870 (Miss. Ct. App. 2011)

Child was adopted by a couple who later consented to child’s adoption by a second set of adoptive parents. One year later, the first adoptive parents filed a motion to set aside the second adoption and/or terminate the second adoptive parent’s rights. The appellate court found no error in the lower court’s dismissal of the case because the first adoptive parents filed their case past the statute of limitations and nonetheless, no evidence existed to support the motion.

Termination / Reasonable Efforts (Delaware)


After mother’s release from prison, she remained in Connecticut while her daughter remained in her home state of Delaware. The court found that the Department of Family Services (agency) made reasonable efforts to reunify mother with child, despite the fact that it did not subsidize mother’s travel costs from Connecticut to Delaware to visit her child. The agency provided mother with support services in Connecticut to assist her in complying with her Delaware case plan, made reasonable efforts to place the child either with relatives or with the mother in Connecticut, and paid for the child to travel to Connecticut. Thus, the fact that the agency did not pay for train tickets for the mother to travel to Delaware did not legally detract from, or negate, the effect of the other efforts and services the agency provided.

Termination (Arkansas)


Affording parents more time to pursue reunification with their child was in the child’s best interest and did not conflict with the child’s need for certainty, stability, and permanency. Termination of parental rights did not serve the child’s best interest given that there was no evidence that either parent had ever physically abused or harmed the child or were a threat to do so in the future. Further, termination would not necessarily provide greater stability for the child given that he lived with his grandparents, the grandmother expressly stated her desire that the child have continued contact with his parents, the grandparents were willing to continue to care for the child and presumably be just as willing to adopt him at some future time should reunification efforts ultimately fail.

Termination / Permanency (Iowa)

In the Interest of B.L.W., 2011 Iowa App. LEXIS 262 (Iowa Ct. App. Mar. 30, 2011)

At the time of the termination hearing, the child was six years old, had been out of his mother’s custody for twenty-four consecutive months, had lived with his foster family for almost fifty months, was fully integrated into that family and they expressed a desire to adopt him. The child was in desperate need of permanency and could not be deprived of such “by hoping someday [his mother] will learn to be a parent and be able to provide a stable home for the child. In re P.L., 778 N.W.2d 33, 41 (Iowa 2010). The Court held that terminating the mother’s parental rights so the child could be permanently placed gives primary consideration to the child’s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional needs of the child.

Termination / Telephonic Testimony (Massachusetts)


Allowing an institutionalized child to testify telephonically in termination proceeding did not violate mother’s right to due process. The court noted, “We are not persuaded that the unique characteristics of a termination of parental rights proceeding require incorporating the art. 12 right of face-to-face confrontation… .” Adoption of Don, 435 Mass. 158, 169, 755 N.E.2d 721 (2001).
Further, there were logistical difficulties and clinical reasons justifying the judge’s exercise of his discretion to allow telephonic testimony. However, the court noted that it may be prudent, if feasible and also appropriate from a clinical perspective, to have a child present in court when he/she provides testimony. A child’s testimony regarding termination may benefit from face-to-face proceedings where the judge would be able to assess not only her words but her demeanor and body language.

**Right to Privacy (Arkansas)**  
The Arkansas Supreme Court held that preventing an unmarried adult who cohabitates with a sexual partner from adopting or becoming a foster parent is an unconstitutional infringement on a person’s right to privacy.

**Child Abuse Registry (District of Columbia)**  
Entry of father’s name in the child abuse registry was proper based on the following substantial evidence: (1) that petitioner used excessive violence on his then 13-year-old son by using a cord or other object, (2) photos of scars on the boy’s body, and (3) father’s “shifting” and “non-specific” explanations of his son’s injuries, which allowed the court to discount father’s credibility and to accord greater weight to hearsay reports attributing the injuries to the father.

**GAL for Parent (New Hampshire)**  
*In re Jack L., 161 N.H. 611 (N.H. 2011)*  
Whether the parents should have been appointed guardians ad litem was irrelevant because termination of their parental rights was based on a proper finding of abandonment. The parents relocated out of state after the neglect proceedings were initiated and after their relocation the mother made virtually no efforts, and the father made no more than minimal efforts, to communicate or have contact with the child.

**Consent to Adoption (Idaho)**  
*Idaho Dep’t of Health & Welfare v. Doe (In re Doe), 2011 Ida. LEXIS 122 (Idaho Aug. 8, 2011)*  
The Department had legal custody of the child. Child’s parents consented to termination; thereafter, the child’s grandparents petitioned to adopt the child. Trial court denied grandparents’ petition to adopt grandchild where the Department would not consent to such adoption because consent of the child’s custodian (here, the Department) is required for adoption under state law. The trial court did not err in holding that the grandparents could not adopt the child without written consent from the Department, regardless of what facts grandparents presented.

**Attorneys Fees (Virginia)**  
After the Department removed father’s children based on allegation of abuse and neglect, the court dismissed the Department’s petition. Father sought attorney’s fees, arguing that the state statute permitted the court to award attorney’s fees to a party who prevailed against the Commonwealth. Specifically, father argued that the General Assembly waived the Department’s sovereign immunity in suits in equity where a party sought attorney fees.

The Department motioned to dismiss based on a special plea of sovereign immunity, which was properly granted, given that the state statute did not expressly and specifically waive the Department’s immunity. Further, because the state statute did not specifically allow the award of attorney’s fees and because the opposing party was a government agency protected by sovereign immunity, father was not entitled to attorney fees.
Family Law

Restraining Order (Connecticut)
A restraining order against father was properly entered as he posed a continuous threat of present physical pain or physical injury to his wife and the children. Father had threatened the family’s safety and the family had lived in fear for one year.

No-Cost Appeal (Texas)
In re C.H.C., 331 S.W.3d 426 (Tex. 2011)
Court held mother was entitled to a free record on appeal because it was shown by a preponderance of the evidence that mother was unable to afford the costs of appeal given that she was unemployed, had no investments, real estate, property or retirement, received $1200 per month in child support, had a small amount of cash, a total debt of $50,000, and $3500 in monthly expenses.

Health Care Decision-making (Florida)
Mother opposed immunizing her child due to her religious beliefs; father supported immunizing child. The court noted that while courts have consistently overturned restrictions on exposing a child to a parent’s religious beliefs and practices, they make an exception where there is “a clear, affirmative showing that these religious activities will be harmful to the child.” Mesa v. Mesa, 652 So. 2d 456, 457 (Fla. 4th DCA 1995). The immunization issue in this case involves an issue that could cause physical and serious harm to the child. When parents cannot agree, the court must make a decision based on the child’s best interests.

Following conflicting testimony by multiple experts concerning the effectiveness of vaccinations, the court properly awarded the responsibility for the child’s health care and vaccination decisions to father over mother.

Delinquency

Expungement of Criminal Records (Maryland)
Juvenile court was correct in expunging juvenile’s criminal records where juvenile pled guilty in trial court and was transferred to juvenile court for disposition. The state statute authorizing expungement of criminal records when case involving a child is transferred to juvenile court applies to juveniles who are waived after a plea is entered but before disposition.

Statutory Rape (Ohio)
In re D.B., 129 Ohio St. 3d 104 (Ohio 2011)
Two boys under the age of 13 engaged in sexual activity. The prosecutor chose to charge only one of the boys under the statutory rape law. Ohio has a “strict liability” rape statute that considers it a felony to have sexual intercourse with anyone under age 13. The Defendant was adjudicated delinquent under this statute, even though both he and the uncharged boy were both under 13, and in the class of children that the statute aimed to protect.

The Defendant appealed to the Ohio Supreme Court, arguing that the statutory rape law was unconstitutional as applied to him. The court held that the statute was unconstitutional as applied to a child under the age of 13 who engaged in sexual conduct with another child under the age of 13. Further, the fact that the prosecutor chose to charge defendant but not the complainant reflected discriminatory enforcement. The court found that the statute was
unconstitutionally vague in violation of the Due Process Clause of the United States Constitution as applied to juveniles under the age of 13. Similarly, application of the statute violated the Equal Protection Clause of the United States Constitution because only one child was charged as a delinquent, while the other similarly situated boy was not.

**Amicus Curiae Participation**

The NACC Amicus Curiae Program promotes the legal interests of children and families through the filing of amicus curiae (friend of the court) briefs in state and federal appellate courts. The NACC files its own briefs and participates as co-amici in cases of particular importance to the development of child welfare and juvenile law. In recent years, the NACC has filed briefs in numerous state appellate courts, federal courts of appeal and The Supreme Court of the United States. To view briefs or submit a request for the NACC to participate as Amicus Curiae in a case, visit www.NACCchildlaw.org and click the “Amicus Curiae” tab.

**People v. Gabriesheski, No. 08SC945 (Oct. 24, 2011)**

The Colorado Supreme Court issued an opinion in the case People v. Gabriesheski finding that attorney-client privilege, as set out in Colorado Statute, does not strictly apply to communications by a child to a guardian ad litem. The NACC, and signatories Rocky Mountain Children’s Law Center and the University of Colorado Law School’s Juvenile and Family Law Program, filed an amicus curiae brief in support of the appellate court’s decision, People v. Gabriesheski 205 P. 3d 441 (Colo. App. 2008).

The issue before the court was whether the Colorado Court of Appeals erred in concluding that conversations between a child and her guardian ad litem in a dependency and neglect case are confidential communications protected by attorney-client privilege. The underlying case involved a man charged criminally for abusing his step-daughter. While the criminal case was pending, the department filed a dependency and neglect petition in juvenile court and an attorney-GAL was appointed to represent the child. During the criminal case Prosecutors attempted to call the attorney-GAL as a witness to testify about statements made by the child to her attorney-GAL. Both lower courts found that these statements were confidential under the attorney-client privilege.

The Colorado Supreme Court found that a child who is the subject of a dependency and neglect proceeding is not the client of a court-appointed GAL. Therefore, neither the statutory attorney-client privilege nor ethical rules governing an attorney’s obligations of confidentiality to a client strictly apply to communications by the child. The dissent strongly disagreed with the majority’s findings, and noted that Colorado law uses language that requires both adherence to traditional attorney-client privilege and representation of the child’s best interests.
Amicus Curiae Participation


The NACC signed on to an amicus brief drafted by attorneys from Juvenile Law Center — Marsha L. Levick, JD, Counsel of Record, Jessica R. Feierman, JD, and Monique N. Luse, JD — in support of a petition for a writ of certiorari from the United States Supreme Court. The brief argued that J.D.B., a thirteen-year-old special education student, was in custody for Miranda purposes when he was questioned by police officers in his school. The case involves an incident in which J.D.B. was taken out of class by a uniformed police officer and escorted to a school conference room. In the presence of several school officials, he was then questioned by an investigator with the Chapel Hill Police Department about a series of neighborhood break-ins (offenses completely unrelated to the school or school property).

After J.D.B. confessed to the break-ins, the police officer told him he was free to leave. The North Carolina Supreme Court rejected the argument that J.D.B. was in custody for Miranda purposes when he was interrogated. They reasoned J.D.B.’s age could not be a consideration in the custody determination, and therefore that Miranda warnings were not necessary. The brief focused its discussion on how Supreme Court jurisprudence and research in adolescent development supports the view that juveniles need special protections at the interrogation stage. The brief further argued that the age of the suspect, as well as the school setting, are relevant to the Miranda custody determination.

The Supreme Court determined that remand was warranted because a child’s age properly informed the Miranda custody analysis since (1) a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go, and courts can account for that reality without doing any damage to the objective nature of the custody analysis, and (2) a child’s age differed from other personal characteristics that, even when known to police, have no objectively discernible relationship to a reasonable person’s understanding of his freedom of action.


Brock Swartzle, an attorney with Honigman Miller Schwartz and Cohn LLP, drafted a series of amicus curiae briefs on behalf of the NACC challenging Michigan’s pervasive practice of assuming jurisdiction of children based solely on a plea by a non-custodial parent.

In the case of **In re Moore**, the trial court obtained jurisdiction over the children based solely on a plea entered into by a non-custodial father who had not seen the children in two years. The mother, who vehemently challenged the allegations in the petition, was denied the right to have a trial and was instead ordered to engage in a service plan, based on the father’s plea. An appeal followed. The NACC was not successful in convincing the Michigan Court of Appeals to grant Ms. Moore an adjudication hearing.

In the case of **In re Bratcher**, the Michigan Supreme Court accepted the NACC amicus curiae brief; however, the Court appeared to avoid the constitutional issue by relying on admissions made by the mother during an emergency removal hearing.

In the case of **In re Mays**, the issue involved the termination of a father’s parental rights. Based solely upon a finding against the mother, the trial court ordered that the father participate in a treatment plan, including drug testing and counseling. The father tested negative for drugs and successfully completed most of the requirements of the treatment plan. However, the court determined that the father’s overall efforts fell short and terminated his parental rights. The three arguments were as follows: (1) the court violated the father’s due process rights (same issue as Moore and Bratcher), (2) failed to consider the children’s views, and (3) failed to consider adequately that termination was not required because the children were living with a relative.

The brief was filed in August of 2011. The Michigan Supreme Court heard oral arguments in early October of 2011. Vivek Sankaran, member of the NACC and NACC Amicus Curiae Workgroup, provided the oral argument on behalf of the NACC.

Although the court may reverse the termination of the father’s parental rights on narrow sufficiency-of-the-evidence grounds and avoid the constitutional issues, the NACC hopes that the court will reach the broader constitutional issues. These briefs were filed throughout 2011.

**Demiraj v. Holder, 631 F.3d 194 (5th Cir. 2011)**

The NACC signed on to an amicus curiae brief in support of a cert petition before the United States Supreme Court in **Demiraj v. Holder**. The
The brief was authored by Miguel Ruiz, counsel for *amicus curiae* and an attorney from the firm Milbank, Tweed, Hadley & McCloy LLP in Los Angeles, CA.

This case is primarily an asylum case. The brief argues in sum that the Fifth Circuit improperly interpreted/applied federal law to exclude children from asylum protection where their persecution is in retaliation for the acts of a family member.

The facts are as follows and are not in dispute: An Albanian national cooperated with U.S. prosecutors by agreeing to testify against an Albanian mobster wanted for human smuggling and sex trafficking. The mobster escaped back to Albania (now a fugitive of American justice) and instead of protecting the government witness, they deported him. When he returned to Albania, the mobster kidnapped him, tortured him, and shot him. The witness miraculously escaped, returned to the U.S., and was granted Withholding of Removal. The mobster then went after his family, sending his parents into hiding and his brother to Greece. He captured the witness’s nieces, trafficked them to Italy and Germany, tortured them, and forced them into sex slavery. They escaped to the U.S., and were granted asylum. Thereafter, the witness’s wife and teenage son (who are most certainly targets of the mobster if they are removed to Albania) applied for asylum and were denied on the basis that they failed to demonstrate that the persecution from the mobster was “on account of” their family membership. The Fifth Circuit takes the view that the Immigration and Nationality Act only protects refugees fleeing persecution based on family membership where the persecutor seeks to destroy the entire family line or wants to attack the family identity directly. Every other circuit to have looked at the Act has interpreted it to protect persecution in response to the acts of a family member. The brief argues that the INA protects family members under the circumstances and urges the Court to correct this error.

The brief was filed July 25, 2011. The case is currently pending.

*In re The Termination of MSR & TSR, No. 84132-2 (Supreme Court of the State of Washington); In re D.R. & A.R., 168 Wn.2d 1035 (Wash. 2010)*

The NACC has participated as *amicus curiae* in two cases before the Washington Supreme Court. In both cases, the issue is the same: whether children have a constitutional right to independent counsel in termination of parental rights proceedings.

Under Washington law, children involved in dependency proceedings are provided a volunteer GAL or CASA. Children age 12 or older may request counsel and the court may appoint legal counsel to represent the child’s wishes and interests. Children may also receive legal counsel if the court or the GAL / CASA determine that the child should be independently represented by counsel.

*Amici’s* position in both *D.R. & A.R.* and *MSR & TSR* is that Washington State’s procedures for appointing counsel for children in dependency and termination proceedings violates the due process rights of foster children. Further, *amicis* believe that because dependent children possess a constitutional due process right to counsel, denial of counsel amounts to structural error and require that the order terminating parental rights to be reversed as a matter of law.

In the first case, *In re D.R. & A.R.*, the appellate court refused to hear the constitutional issue. Therefore, Columbia Legal Services filed a petition for review in the Washington State Supreme Court. The Washington Supreme Court dismissed the appeal, concluding that review was improvidently granted because there is no aggrieved party. Counsel for the children drafted a motion for reconsideration, arguing that Washington State’s substantial public interest doctrine allows the Washington Supreme Court to review when constitutional issues like this one evade review and have substantial public implications. In February of 2011, the Washington Supreme Court dismissed the appeal, concluding that review was improvidently granted because there is no aggrieved party.

The case of *MSR & TSR* followed. NACC signed on to the *amicus curiae* brief filed in September of 2011.
QIC Application Fee Waivers — 2012

We are pleased to announce that the QIC Child-Rep from Children’s Bureau will be funding an additional 200 certification applications in 2012. We will begin accepting applications and waivers on January 1, 2012.

Red Book Trainings

The NACC recently partnered with Illinois and Wyoming to offer the one-day Red Book Training free of cost to practitioners. The Administrative Office of Illinois Courts offered 10 trainings across the state to over 330 attorneys.

Montana held a training on October 12 as part of the 6th Annual Office of the Public Defender Statewide Meeting and Training Conference. Additionally, Rhode Island DCYF held a training October 7.

The Red Book training helps promote best practices for lawyers representing parties in child welfare proceedings. It covers the major competency areas of child welfare practice as outlined in the Red Book and explores the intersection of federal law and state practice.

Contact Daniel Trujillo if you are interested in bringing the training to your community.

Now Open in Oregon

We’re pleased to announce we are now accepting applications in Oregon. Attorneys and judges are encouraged to apply when we begin our 2012 cycle on January 1, 2012.

2012 Target States

The NACC is applying to open certification in Alabama, Arizona, and Minnesota. We anticipate accepting applications as early as January 2012.

Interested in Bringing Certification to Your State?

Please contact Daniel Trujillo, Certification Administrator, at Trujillo.Daniel@tchden.org or 303-864-5359.
On behalf of the National Association of Counsel for Children (NACC), its President, its staff and its Executive Committee, we join in your applause for the honor here bestowed to our colleague Dr. John Stuemky. John has been on the Executive Committee of NACC for almost ten years now. He served as Chair of the Board from 2008–2010. This was a difficult time for our organization in numerous respects. We encountered unexpected emergencies and disruptions, while at the same time the need for competent attorneys became increasingly important for America’s abused and neglected children. Many of us are attorneys, and we benefited from John’s encyclopedic knowledge of pediatrics. And we also gained much because here was one doctor who was willing to relate to attorneys day after day, year after year, and still retain his good humor. Somehow, the world collapsing around you does not seem so dire when someone is able to make you laugh at it and at yourself. His mature perspective, his patience, his help with financial back-up, and his calm judgment have held us in good stead. It is quite appropriate in our eyes, to have this endowed chair named after John.

Bob Fellmeth, President
NACC Board of Directors

Dr. Stuemky pictured with NACC staff members Janis McCubrey and Maureen Farrell-Stevenson at this year’s national conference

Submit children’s law news and job openings to: advocate@NACCchildlaw.org and visit the NACC website for the latest Children Law News, Case Updates and more! www.NACCchildlaw.org

Congratulations John Stuemky!
The University of Oklahoma College of Medicine, Children’s Hospital Foundation and Children’s Medical Research Institute recently announced the “CMRI John H. Stuemky, M.D. Endowed Professorship in Pediatric Emergency Medicine.”

Visit NACC Board Member Erik Pitchal’s Blog to Read his Thoughtful Perspective on Current Child Welfare Legal Issues
Recent blog entries include “The Shame of Child Abuse in Ireland,” “Federal Court to Abused Kids: Go Away!!!,” “So Sue Me!,” “It Takes a Village,” and “Supreme Court: Kids Have Rights!! (Or Do They??).” Available at: http://open.salon.com/blog/erik_pitchal

Illinois Mother First Parent to Take Advantage of 2009 Illinois Law to Restore Parental Rights

Recession Linked to Increase in Abusive Head Trauma
Article available at: http://pediatrics.aappublications.org/

A Job-Loss Recovery Hurts Children Most
Article available at: http://www.nccp.org/media/releases/release_135.html

The CAPTA Reauthorization Act of 2010
News

Children’s Bureau Website
Find grant announcements, policy announcements, agency information, and recently released publications at: http://www.acf.hhs.gov/programs/cb/new_site.htm

Homeboy Industries
A conference highlight was Father Greg Boyle’s, founder of Homeboy Industries, presentation *Tattoos on the Heart*. The mission of Homeboy Industries is *Jobs not Jails*. Homeboy Industries assists at-risk and former gang-involved youth to become positive and contributing members of society through job placement, training and education. There are number of ways to support Homeboy Industries — from making a donation to purchasing Homeboy merchandise. For additional information please visit http://www.homeboy-industries.org.

Representatives from Homeboy Industries speaking about their life experiences during this year’s national conference

Publications

*Tattoos on the Heart: The Power of Boundless Compassion*
By Father Greg Boyle; available for purchase at: www.simonandschuster.com

*All Alone in the World: Children of the Incarcerated*
By Nell Bernstein; available for purchase at: www.thenewpress.com

*A Time to Bond: A Parent-to-Parent Guide to Visits with Children in Foster Care*

*The Impact of Child-Focused Recruitment on Foster Care Adoption: A Five-year Evaluation of Wendy’s Wonderful Kids*

Trainings

ZERO TO THREE, 26th National Training Institute
Friday, Dec 9 – Sunday, Dec 11, 2011
Pre-Institute Thursday, Dec 8, 2011
Gaylord National Resort & Convention Center
National Harbor — Washington, DC
http://www.ztnticonference.org/

The 26th Annual San Diego International Conference
Saturday, Jan 21 – Saturday, Jan 28, 2012
The San Diego Conference focuses on multi-disciplinary best-practice efforts to prevent, evaluate, investigate, treat, and prosecute child and family maltreatment.
Town and Country Resort & Convention Center
San Diego, California

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Historic Palmer House Hilton
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Online submissions only: www.NACCchildlaw.org

Conference Brochure Available May 2012

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