Juvenile “Accountability”: An Overused Argument

by Kelly Ranasinghe J.D., C.W.L.S.

"Accountability" is a loaded word for juvenile practitioners. It is certainly used frequently by both juvenile lawyers and the court. Perhaps part of the allure of "accountability" is its evocation of familiar and axiomatic legal principles like duty, fairness and responsibility. But in the context of juvenile law, "accountability" connotes the idea of moralistic parental reproval, a cultural archetype so ingrained in our history that it dates back to the colonial period.1 "Accountability" appears in a number of federal and state programs,2 state juvenile codes3 and peer-reviewed articles on juvenile law and practice. Those of us who have worked in juvenile court know that arguments to "hold the child accountable" are both persistent and expected. Juvenile accountability is a broad enough argument to bolster a variety of recommendations, including placement choice, restrictions on familial or social contact, financial liberty and even the ability to engage in romantic relationships. More to the point, alluding to "accountability" focuses attention on the actions of the child, rather than the responsibilities of the agencies entrusted with the child’s care.

2. See, 42 U.S.C. 3796ee (2014) (Juvenile Accountability Block Grants Program); See e.g., Virginia Dept. of Criminal Justice Services, Juvenile Accountability Block Grant, Program Description (2014).
Continued reliance on the widespread argument to hold minors “accountable” is misplaced. Rhetorically, it is vague and circuitous, and refers only to a legal principle which should guide all decisions, not just those involving children. More troubling is the idea of framing juvenile law generally through the paradigm of “accountability”. This method casts juvenile law in a punitive light, and alludes to a troubling moral superiority reminiscent of the juvenile courts of the early 20th century. If the juvenile court couches its rationale in holding children accountable for their actions, it reinforces the idea that the court is fundamentally opposed to the children it serves. Using “accountability” as the sole guidepost for the court also characterizes juvenile law as non-deterministic, meaning that the minor is viewed as the primary and sole cause of the consequences. External influences such as poverty, trauma, abuse and peer pressure are given far less attention. Vice versa, the structural effect of using the ‘accountability’ argument improperly restricts the court’s factual inquiry to a narrow area of the minor’s conduct. This is opposite of the widespread understanding that the juvenile court should use a much broader inquiry to flush out the complexities and dynamics of a juvenile case.

Semantically, “accountability” is a ubiquitous, if not vague, term. The political theorist Schedler notes that accountability is “…an underexplored concept whose meaning remains elusive, whose boundaries are fuzzy, and whose internal structure is confusing.”4 Though lawyers think of ‘accountability’ in terms of legal duties and responsibility, the colloquial understanding of ‘accountability’ also alludes to a moral responsibility.5 These two concepts, morality and responsibility, become dangerously intertwined when legal actors attribute moral accountability to a child’s behavior, particularly when the idea of the child exercising independent ‘choice’ is uncertain.6

Independent choice is a integral point in the accountability discussion. Indeed, how many times have we spoken to clients and asked them to make ‘better choices’? Accountability has always been tied to the idea of free choice,7 the ability of an actor to independently decide between two or more options. Implicit in free choice is the understanding that the actor, in this case the child, will be held responsible for the consequences of his choice. Thus if a six-year old child who is free from compulsion or influence, makes an independent decision to steal a piece of candy, we take for granted that the child has considered the consequences of her action. In such a situation we have no problem holding her accountable for that decision because her accountability is consistent with her experience and developmental status. We assume that we have warned the child before not to steal candy, and instilled in her a fear of punishment, and that her decision to steal the candy took into consideration the deterrent factors (which were unsuccessful). This is the sort of accountability juvenile practitioners should envision. It is a source of individual responsibility which considers experience, developmental status and mental ability.

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4. Andreas Schedler, Larry Jay Diamond & Marc F. Plattner, The Self-restraining Vice versa, the structural effect
5. T.S. Scanlon, What We Owe Each Other 270-274 (1998)
Juvenile “Accountability”  
by Kelly Ranasinghe J.D., C.W.L.S.

Semantic and social science research also reflect the understanding that choice is not a binary concept. That is, choice cannot be understood as a simple yes-or-no self-inquiry. The six-year old’s decision to steal a piece of candy is a complex process. Likewise, choice can be influenced by a number of factors, or supplanted entirely. A decision which is influenced by internal and external limitations, but remains rational to the actor, is referred to as bounded rationality. A choice which may not be the best, but is generally preferable. Children make these sorts of decisions all the time. What seems rational to a child can cause an attorney (and the court) to shake their head in puzzlement. But in part, this is because we are not considering the decision within the bounds of the child’s limited rationality.

A classic example of misunderstanding bounded rationality is a court asking a minor why they have run away from placement, and then rebuking a minor for their decision. The minor’s decision was only ‘rational’ to the minor at a specific, ephemeral point in time. The minor in all likelihood recognizes the wrongfulness of their decision, but at the time, running away may have seemed like a highly rational choice given the circumstances. This is not a product of malice, but a reflection on the child’s environment, and the different decision making process in children. An experienced delinquent might consider the risk of being caught, but not the danger inherent in homelessness. Likewise a savvy foster youth might strategize where to stay while on the run, but not assess at a higher level, the danger in such places. Essentially, the court is finding fault in the mental process which drove the minor’s decision to run away. This is not helpful and appears rightfully unfair to the child. A better question might be: How did you decide to run away?

Bounded rationality requires us to have flexible understanding of choice, especially when it comes to children. Essentially, a court should consider the independence of choice by looking at juvenile accountability in broader terms. Initially, a court should always be aware of the differing mental process that children go through when making their own decisions. A court should also consider the level of influence on decision making, including the internal influences of trauma and stimuli-aversion. Finally, the court should consider the cognitive limitations of the child. Decision-making is a complex task requiring a substantial amount of working memory. One of the primary factors in measuring bounded rationality is the “…limitation on the organism’s ability to plan long behavior sequences, a limitation imposed by the bounded cognitive of the organism as well as the complexity of the environment in which it operates.” Mental limitations of a child affect the independence of the child’s choice, and are relevant when determining ‘accountability’.

A good example of these principles in action is again, the question of placement. Some of the most challenging conversations for children’s counsel and juvenile courts are discussions about out-of-home care. Within the limitations of the child’s mind, the primary considerations are separation from family, friends and school. These are also the most immediate and recognizable negative effects of placement. Both the juvenile court and child’s attorney can help a child see the benefits in out-of-home placement by tracing out a positive sequence of events occurring in the future, which can be difficult for minors to envision. This process can also help shoulder some of the cognitive burden a minor faces when considering legal options. Long-term planning, and consideration of multiple and variable consequences are inordinately difficult when a child’s sequencing ability is not fully mature. For a child operating within bounded rationality, speaking with a court can be like playing a chess game while only being able to see one move in advance...inordinately frustrating.

From the child’s perspective, he keeps losing pieces to a smarter, more powerful player.

Another consideration are the semantic problems in the widespread use of accountability. When the term “accountability” is used in juvenile courts it is anything but flexible. Accountability in rhetoric tends to take on an ‘all-or-nothing’ definition. Arguments to “hold the child accountable” by X” create a false dichotomy. The proponent of accountability restricts the court to one of two options, either the court holds the child accountable or it doesn’t. Further, the rhetorical use of ‘accountability’ assumes that the child had the freedom of choice which allows the court to hold the child completely responsible for all of their actions. In essence, the rhetorical use of this phrase acts as constructive evidence of intent. By saying “we should hold the child accountable” what we are really saying is, “the child’s mental state requires us to hold him responsible for all consequences of
his well thought out actions.” This requires the court to assume that the child had the same sense of premeditation as an adult, which is often incorrect. Further, the use of ‘accountability’ as a rhetorical device encourages over-simplifying a case through “dualism.” Dualism is the separation of phenomena into two opposing categories, a practice which is prevalent in the system. The law tends to boil down questions into dualist constructions which make analysis legal and procedure efficient, such as guilty or not guilty, true or false, complaint and response etc. The frequent use of accountability as a rhetorical device encourages a court to categorize juveniles into two groups: those who bear complete responsibility, and those who have none. This is precisely the opposite of the socially broad, holistic analysis the juvenile court is supposed to conduct. Over-emphasizing juvenile accountability shifts the court’s analysis from a multi-dimensional to a one-dimensional inquiry. Instead of looking at the profusion of factors which have shaped a minor’s decision-making process, rhetorical ‘accountability’ looks only at the conduct and the child. Essentially, this sort of inquiry is thoroughly non-deterministic. It assumes that the choice originated from the child, and only the child, rather than allowing for external causes.

An additional problem with the generic use of “accountability” is bias. The connection between morality and choice is complicated by the mistaken perception of adulthood and maturity. A 6 foot tall 200 pound varsity football player may look like an adult, but his adolescent brain is far from complete. Likewise, a teenager may present as highly functional with adult-like behaviors and mannerisms, but not have a complete grasp of adult-decision making. It is important for both juvenile courts and children’s counsel to remember that children are in a socialization process of learning to act like adults by mimicking adult behavior. This sort of situation plays havoc with our innate bias to treat people as they appear. In fact, many cognitive abilities we associate with responsibility are underdeveloped in children. Impulse-control, in particular, provides the breathing room for children to consider complex decisions, and is notoriously diminished in adolescents. Similarly, “goal-directed behavior” which we commonly associate with adulthood and the ‘acceptance of challenges’ (such as openness to long-term treatment) is emergent in the teenage brain. Bias may cause us to believe that because a child appears adult, she made an adult choice. However, the common conception of ‘accountability’ used in juvenile court is irreconcilable with these cognitive limitations.

Finally, there is the contrast between the way we want children’s brains to work, and the way they do work. All adults would like children to make informed, mature choices. It would result in a much safer, more protective world. But scholars have known for some time that trauma, mental illness, substance abuse and socialization can affect a child’s conduct in subtle and unrecognized ways. The only time we reconsider the use of accountability seems to be when the presence of mental illness is incontrovertible. This is unfortunate as it plays into common stereotypes of mental illness in both children and adults. As aptly summarized by Patrick Corrigan of the University of Chicago, the representation of the mentally ill in media generally falls into three categories, “...people with mental illness are homicidal maniacs who need to be feared; they have childlike perceptions of the world that should be marveled; or they are rebellious, free spirits.” In any of these categories, mental illness is depicted as recognizable to the layman, which is clearly not the case for all youth. Many children who are mentally ill are quite intelligent, and many more are socially adept, loquacious and affable. More to the point, a child’s decision-making process is already altered from our normative understanding because of development. A child does not need to be mentally ill for the juvenile court and counsel to critically think about accountability.

As children’s counsel, we know that the concept of ‘choice’ is vastly different for our clients. A child’s limited array of options is dwarfed by the spectrum of adult liberty. Options an adult takes for granted, such as removing himself from a home, may prove impossible for a child. Children from impoverished communities or rural environments are especially vulnerable to an isolation which fatally limits

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16. See, Broome et.al., supra note 5.
their range of options, including escape from environments which teach anti-social behaviors. Juvenile dependents are severed from their familial support system. When coupled with trauma, and the inability to speak or visit with their close relatives, children resort to behaviors which we label as unacceptable, though we provide them few alternatives. These environments restrict the choices available to children, forcing them to fall back on cognitive decision-making systems which are neurologically incomplete.

What does this all mean? As juvenile lawyers, we understand the profound effect language has on perception, both by our client toward the court process, and from the bench toward our client. This is why minor’s counsel must safeguard the semantic rules of their courtroom by not letting terms like “accountability” be used without limitation. Juvenile practice is a complex and individualized process. Juvenile law does not respond well to shortcuts or stereotyping. Letting a court refer to a minor’s conduct as something for which he should bear full accountability signals to the minor that his choice was wrong, his conduct was wrong, and he alone is the cause of the problem. It eliminates further discussion of mitigating factors which also shaped his choices. Ultimately, it sends the message that we care little for the minor, and more about what he has done.

» Juvenile “Accountability” by Kelly Ranasinghe J.D., C.W.L.S.
PRACTICE TIPS:

The Forensic Interviewing of Children

by H.D. Kirkpatrick, Ph.D., ABPP

Caveat: These practice tips are certainly not meant to be all-inclusive, but are offered as “pointers” to persons interested in forensic interviewing principles.

AN EXPLANATION OF FORENSIC INTERVIEWING AND ITS GOALS
The roots of the word “forensic” derive from the Greek word for “public forum” and the Latin word for “court of law.” Thus, a “forensic” interview is one that takes place in a legal context. The forensic interview is requested by an outside agency, e.g., the court. It is investigative. It is not therapeutic. The forensic interviewer has foreknowledge that his/her interview is seeking information which may become evidence and, as such, is subject to the rules of discovery. The forensic interviewer knows ahead of time that the interview is not confidential because it likely will be observed or listened to by others. The forensic interview most often is created within an adversarial process. The central goal of a forensic interview is to gain accurate, detailed information or evidence elicited by empirical methods and procedures that reduce the impact of interviewer biases.

Clinical interviews involve developing an intervention plan to help the child and the family. The forensic interview involves providing objective opinion to the referral source, independent of whether or not it helps the child and the family.

In child maltreatment cases, the forensic interview’s goal is evaluate the child’s functioning and to recommend needed interventions. In child custody cases, the forensic interview’s goal is to assist the court in learning about each parent’s strengths and weaknesses and what other factors might be relevant to the child’s best interests.

It is this author’s opinion that the forensic interviewer should use multiple hypotheses to approach a case and should not offer ultimate opinion testimony, e.g., the child is credible. There is a difference of opinion in law and the social sciences about “ultimate issue” testimony, but such a determination should be made by the trier of fact.

HOW ATTORNEYS CAN RECOGNIZE WEAK FORENSIC INTERVIEWS
Weak interviews often have the following characteristics:

• The interviewer has made up his/her mind about what happened, sometimes even before the interview begins.
• The interviewer leads the child, using his/her authority to suggest certain answers to fit the interviewer’s assumptions and biases.
• The interview may have a coercive tone. I recently reviewed a video-taped interview of a ten-year-old, conducted by a police officer and the child’s grandparent, both of whom asked repetitive, leading questions. The interview lasted an hour and a half.
• When an interviewer asks the same question over and over, even though the child has already given an answer, the child may deduce his/her answer is wrong and acquiesce to what the child determines the interviewer wants to hear.
• The interviewer appears naïve or ignorant about the child’s cognitive or language development, and thus asks questions that are inappropriate.
• The interviewer may ignore (by not inquiring) a statement or subject uttered by the child that does not fit the interviewer’s bias.
• The interviewer supplies possible answers to questions by asking either-or questions, e.g., “was the man walking across the street or sitting in his car?”
• The interviewer exhibits no awareness of the suggestibility of children. Suggestibility

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H.D. (“De”) Kirkpatrick, Ph.D. is a Board Certified Specialist in Forensic Psychology in private practice in Charlotte, NC. He has been involved with the NACC for about twenty years, and is the President-Elect of its Board of Directors. He frequently analyzes child forensic interviews in both civil and criminal contexts. He is also an author of two contemporary murder mysteries: Alienation of Affection and Trafficking Death. His current interests involve a psychological analysis of American slavery. Find out more at www.hdkirkpatrickphd.com, or contact him at hdkirk@aol.com.
“refers to errors that arise when witnesses are exposed to information that is false or to social pressures that encourage particular types of answers” (Poole & Lamb, 1998, p. 48).

- When an interviewer uses specific (as opposed to open-ended questions), there is a greater risk for error.
- Sometimes children get interviewed formally and informally as many as twenty times. Repeated questions can run the risk of instilling inaccurate “facts” into a child’s memory.
- An interviewer may spend an inordinate amount of time trying to make sure the child likes him/her.
- If you notice the interviewer seems to have a particular attitude towards the child (positive or negative), consider the presence of a “halo effect” or “leniency effect” (see below for definitions).
- Does the interviewer exhibit judgments, e.g., inaccurate inferences, based on possible racial or class differences or antagonisms?
- Does the interviewer use abstractions in his questions that clearly are not appropriate or even understood by the child?
- Does the interviewer use toys and props to encourage the child’s imagination?

HOW ATTORNEYS CAN RECOGNIZE STRONG FORENSIC INTERVIEWS

A solid, strong forensic interview is a combination of art and science, though ideally it is more science.

- A competent, solid interview is either audio or video recorded.
- The entire interview is preserved for the record.
- A competent forensic interviewer has nothing to hide.
- What the interviewer says and does should follow a structured format or protocol, especially if the subject of the interview is an alleged child victim of sexual abuse. A structured protocol offers the interviewer a “plan” to follow that will maximize the value, accuracy, and usefulness of the interview. The NICHD Investigative Interviews (Lamb, et al., 2008) are considered to be the best, but there are other good interview protocols available.
- When you listen to or observe a competent forensic interview, you should be able to follow the interviewer’s hypotheses.
- A good forensic interview contains a healthy dose of skepticism, especially when the child says something that sounds fantastic or seems illogical.
- Open-ended questions—even with young children—can elicit accurate, auto-biographical responses.
- Open-ended questions are more likely to elicit accurate responses.
- In my experience, the best forensic interviews are notable for how little the interviewer talks. In other words, a good forensic interviewer “gets out of the way” of the child’s narrative.
- A good forensic interviewer is thinking, “How can I test the reliability and validity of the information I am getting from this child?”

WAYS TO SUPPORT OR CHALLENGE FORENSIC INTERVIEW EVIDENCE

If possible, make a verbatim transcript of the forensic interview so you can read along as you watch the video. The following questions or issues may be useful to consider:

- How effective do you (the interviewer) think you were in your interviewing techniques?
- How did you feel about your interviewing techniques being reviewed and evaluated?
- Why did you spend so much time asking the child if she wanted to know personal things about you?
- What efforts did you take to check the reliability and validity of what you determined the child said during your interview?
- When the child answered “no” three times to your question about “X,” why did you continue to ask the same question?
- What structured interview protocol did you use for this interview?
- What is the empirical evidence that supports the reliability and validity of this interview protocol?
- Please explain why you appear to ignore the child’s implausible (fantastic) statement.
- Do you know what the “halo effect” is? The halo effect is when an interviewer develops expectations that led him/her to have a narrow or prejudicial view of the child. The “leniency effect” (when the interviewer excuses behaviors shown by the child) is the opposite of the halo effect.
- What can you tell the court about what factors comprise a solid, forensic interview?
- Did your interview accomplish this?
- What training have you received in the forensic interviewing of children?
» Practice Tips, from previous page
• What were the weaknesses of your interview?
• Its strengths?
• Do you think you made any mistakes?
• Are there things you would do differently?
• In your summary, you concluded that the child had been abused?
• Do you see any problems with making that kind of judgment?
• After all, isn’t that why we’re here today?
• If there were any elements or statements in the interview not addressed in the interviewer’s written summary or report, ask them to explain the rationale for these omissions.

Suggested Readings:

Membership Matters
by Sara Whalen, NACC Membership Director

Thank You!
Thank you, our members, for your continued membership, involvement and support in 2014! We are very grateful. As we move into 2015 and another extraordinary year of strengthening legal advocacy for children and families, we want you right there with us!

The NACC Member Directory
If you are looking to network, your NACC membership includes access to all of the member profiles in our directory — both public and private. Sign in to see who else is a member of NACC.

While you are there, please take a minute to update your own profile. We are experiencing an increase in membership and website visitors. Sign into your account at www.NACCchildlaw.org and click on "My Profile" to review.

Need Help?
Forgot your username or password? It happens! Contact us at Membership@NACCchildlaw.org and we can assist you personally.

Happy 2015!
Join or renew now and receive 15% off any membership level! USE CODE HAPPY15 AT CHECKOUT:
Case

Doe ex rel. Doe v. Whelan

by Kelsey Till, NACC Legal Intern;
SUNY Buffalo Law School,
JD Candidate 2016

The United States Court of Appeals for the Second Circuit considered the issue of whether the removal of the parents’ children from their home without a court order violated the parents’ due process rights and freedom from unreasonable searches and seizures under the Fourth, Fifth, and Fourteenth Amendments.1 The court of appeals held that the decision by the defendants to remove the children was protected by the doctrine of qualified immunity, and therefore affirmed the district court’s judgment.2

On April 30, 2005, the Doe Children, aged seven years, four years, and twenty-two months, were at home when their father, Richard Roe ("Roe"), assaulted their five-week pregnant mother, Jane Doe.3 Roe caused the mother significant injuries by repeatedly punishing her in the face.4 The DTF report that was subsequently filed indicated that there had been previous assaults.5 The report also mentioned that the actions taken to protect the children had not yet been adequate.6

Two Safety Plans were implemented on May 1 and May 5, but by June 3, only a Family Violence Protective Order against Roe, issued by the Superior Court of the State of Connecticut on May 2, remained in effect.7 The Protective Order instructed Roe not to enter the family dwelling or the dwelling or residence of the Victim.8 Defendant Whelan, a Social Work Supervisor at DCF, learned on June 3 that this case was assigned to him, reviewed the case files, and discussed the case with prior DCF workers.9 On June 4, 2005, Whelan, along with two town police officers, arrived at Doe’s home to perform a “DCF welfare check.”10 He detected that Roe’s personal items were in the home, and his car was parked in the driveway.11 Doe finally admitted that she had allowed Roe into the house (in violation of the protective order) so that he could “tuck the children into bed.”12 While there, Whelan saw Roe covertly run from the house into the woods without any shirt or shoes on.13 Whelan received authorization from Program Supervisor at DCF, defendant Mysogland, to remove the children under the Connecticut General Statute § 17a-101gf.14 This statute affords DCF authorization to remove children from parental custody for up to ninety-six hours, as long as DCF “has probable cause to believe that the child or any other child in the household is in imminent risk of physical harm from the child’s surroundings and that immediate removal from such surroundings is necessary to ensure the child’s safety...” (citing Conn. Gen.Stat. § 17a-1-1g(e).15 At 9:40 p.m., the children were removed and transported to Roe’s sister’s home.16 On June 7, Three Orders of Temporary Custody gave DCF presumptive custody of the three children.17 On June 13, following a two-day evidentiary hearing, an order vested custody with DCF.18 The Doe Children were with Roe’s sister from June 4 until September 6, when another hearing was conducted, and they were adjudicated neglected.19 They were then returned to Doe’s custody for one year under protective supervision.20 There were “Specific Steps” that Doe and Roe had to comply with, and if those steps were violated, they could be incarcerated.21

The Plaintiffs, Jane Doe and her three children, through Doe, brought this suit on June 4, 2008.22 They sought damages under 42 U.S.C. § 1983, for defendants depriving them of their rights by removing the Doe children from their home without a court order.23

The District Court granted the defendants’ motion for summary judgment because it found that defendants’ removal of the children was “objectively reasonable” under the circumstances, and that


2. Id. at 153.
3. Id.
4. Id.
5. Id.
6. Id.
8. Id.
9. Id.
10. Id.
11. Id.
12. Id.
14. Id.
15. Id. at 153-54.
16. Id. at 154.
17. Id.
18. Id.
20. Id.
21. Id.
22. Id.
23. Id.
they were entitled to qualified immunity. Plaintiffs argued that the District court erred in granting summary judgment to defendants.

The United States Court of Appeals for the Second Circuit cited its own rule from Southerland v. City of New York, that “in emergency circumstances, a child may be taken into custody by a responsible State official without court authorization or parental consent.” The state official gets qualified immunity from actions under 42 U.S.C. § 1983 “unless if the conduct of the official’s conduct violated a clearly established constitutional right.” The court ruled that, although this test is known as the “objective reasonableness test,” it is a subjective standard. Qualified immunity is a shield to state officials who must decide between “interrupting parental custody or risking injury to the child,” as long as the individual basis for their decision could be an objectively reasonable one.

Consequently, the court held that the defendants knew of the “contentious history” between father and mother here. Defendants were also aware of the various physical assaults by Roe, one that occurred when the children were at home. Whelan, observing that Roe had fled the property and left his car and shirt and shoes at the home, knew he would most likely return. He could not know when that would happen.

Whelan’s belief that the children were in immediate danger was objectively reasonable because he knew of the history of domestic violence, and because Roe was at the home late at night. The findings of two Superior Court judges also reinforced the reasonableness of defendants’ conclusion, because they stated that the children were in “immediate physical danger from their surroundings and that continuation in their home was contrary to their welfare.”

The plaintiffs cited Southerland in support of their argument, but the court of appeals found important factual distinctions between that case and Doe. In Southerland, an officer removed children from their home without a court order, and defendants were denied summary judgment qualified immunity. The court of appeals drew two distinctions here. First, in Southerland, there were significant factual disputes pertaining to the officer’s knowledge of the children’s history and what home conditions the officer actually observed, but there existed no such disputes here. Second, the Southerland Court held that the defendants had not established the presence of “exigent circumstances.” Under the objective reasonableness test, the court found that there were certainly pressing circumstances here.

The court of appeals held that “A state official who takes a child into custody without parental consent or court order is entitled to qualified immunity if there was an objectively reasonable basis to believe that there was an imminent threat of harm to the child.”

The court also held that the defendants here were entitled to qualified immunity because their actions under the circumstances met this test. The District Court’s granting of summary judgment to defendants was affirmed.

Rulings like this one allow for quick removal of children from environments of impending harm, when time is critical to ensuring a child’s safety. They also allow for the subjective judgment of caseworkers and other state officials in making that removal decision. Doe stands for the proposition that guaranteeing the safety of the child is of highest priority in these cases.

Case from previous page

32. Id. at 156.
33. Id.
34. Id.
35. Id.
36. Id.
38. Id.
39. Id.
40. Id.
41. Id.
42. Id. at 157.
44. Id.

Do you know of an important case which you feel NACC members should be made aware of?

If so, please let us know. Email: advocate@NACCchildlaw.org.
Child Welfare Law Certification

by Daniel Trujillo,
Certification Director

Minnesota
We have just submitted our application to the Minnesota Board of Legal Specialization. We hope to be open for MN applicants in early 2015!

Ohio
We are collecting signatures of Ohio attorneys and judicial officers for our application to the state. If you are an Ohio practitioner and support NACC Child Welfare Law Certification, please take a few moments to fill out our petition. [link to https://naccchildlaw.site-ym.com/?OhioPetition]

Pennsylvania
We have just submitted our application to the PBA Review and Certifying Board. We hope to be open for PA applicants in early 2015!

Congrats to these new CWLS!

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For more Certification news and information, please visit our Certification page at www.NACCchildlaw.org or contact Daniel Trujillo, 303-864-5359, or Daniel.Trujillo@childrenscolorado.org

Training Wrap-Up

by Brooke Silverthorn, JD,
CWLS, NACC Staff Attorney

The NACC Training Department has had a busy and exciting 2014! In June we traveled to Wyoming for the statewide conference of child welfare professionals. In addition to NACC faculty members conducting a few break-out sessions, the NACC faculty also provided a 1 day pre-conference training on Skills and Motions practice.

The NACC provided 9 Red Book Trainings in 8 different states during 2014. The NACC staff attorneys also are providers with the Colorado Child Welfare Training System and delivered legal trainings throughout the state of Colorado all year long. And finally, we capped off the year with the South Carolina DSS Trial Practice Academy. NACC created the curriculum and delivered 2 days of trial practice skills training to 24 Agency Attorneys.

Our New Year’s resolution for 2015 is to build on our momentum and develop training programs that are engaging, informed by adult learning theory, and include measurable outcomes for evaluating behavior change. We invite your feedback on what you would like to see in terms of training in your community. And we look forward to working with you in the New Year to address your training needs. Happy New Year!
The Year Before the NACC

by Donald Bross, JD, PhD NACC founder and Board Member Emeritus

Kendall Marlowe told me that many members of the NACC know how our organization began, some because they were there and helped ‘deliver the baby’, but not everyone knows about the preceding “gestational year” of the NACC. Less than one year after graduating from law school, it was spring, 1976. I was clerking for George Dikeou, Associate Legal Counsel for the University of Colorado and its School of Medicine. Clerking at that time paid just over minimum wage. I was also being paid a modest sum for consulting half-time for the Colorado Department of Health, and that enabled me to work on research for my PhD. On the side, I did a little bit of real estate law for extra income, but with our only son, John, having just been born in March, all of these sources of revenue did not represent a munificent total. While my wife, Jodi, wanted to return to her work at the Institute of International Education, we both wished that I might gain a full-time job.

George told me about a position on the medical faculty with a pediatrician ‘who some found difficult,’ but George said he would give me a recommendation if I was interested. “Yes, thank you” decisions cannot be made much easier. The interview with Dr. C. Henry Kempe and working at what became known as the Kempe Center for the Prevention and Treatment of Child Abuse and Neglect are other stories, but all of this provides context for how I began working with the problems of maltreated children and their families beginning in the last week of May, 1976.

The summer and early fall passed very quickly as I worked on grants, teaching, attending child protection team meetings, helping with some legislative drafting, trying to understand a new scientific literature and a largely new area of law, while in the meantime I was going to court as an attorney guardian ad litem. Earlier that year I had been a ‘third chair’ then a ‘second chair’ for Federal District Court cases on behalf of the Regents of the University, and for much of the year prior to that I had worked for more than one lawyer at the University drafting briefs and helping prepare for court and administrative law hearings. Appearing in court for children was not the same experience!

In some ways, the stakes were much higher for my new clients than litigation about occupational taxes, torts, employee grievances and even civil rights complaints because I was usually assigned to represent infants and some of them had been grievously injured by caregivers at only a few months of age. When I prepared a brief or prepared for court on behalf of the University, I was working under senior, highly respected, competent, and remarkably ethical mentors. I learned every step of the way and had oversight for every potential error. Representing child clients, it quickly became obvious, was like leaving
modern corporate law practice for an earlier time when every case was ‘hand crafted’ with no briefs from similar, prior cases for guidance or as a starting point. There were no standard practices, and no supporting mentorship. My wife was a knitter, and it seemed that instead of going to the knit shop or fabric store in order to make an item of clothing, you had to instead start with raising or buying a sheep, in order to shear it, spin its wool, dye the wool, and then knit, crochet or weave the wool to obtain a jacket that was serviceable.

During the spring earlier that year, thinking that I would become a health lawyer or university counsel at some point, I had already signed up for a meeting of the National Health Lawyers Association being held that fall in New Orleans. The topic was “Tax Aspects of Non-Profit Health Organizations.” I went ahead and attended the meeting since I had already paid good money for it. Jodi and I were able to make a trip of it with John and have a break, and I thought I had better keep my options open in the event I didn’t turn out to be suitable for the Kempe Center.

The conference was eye-opening in terms of the professionalism and insights offered by speakers and conference handouts.

As we flew back, the idea that attorneys for children should have an organization to support and help organize the development of their daily legal practices was pretty obvious. I called Jane Woodhouse to see what she might think of an “Association of Counsel for Children.” Jane was an attorney, originally from Boston, who had served in the Colorado House of Representatives in the late 1950s. She represented children and acted as a Personal Representative among her other areas of practice. Even though I had met her only that summer I was greatly impressed by her calm, thoughtful, but always insightful way of thinking. She said she thought it might be a good idea. She suggested I call Lainie Edinberg and Russ Richardson, who might be interested in the idea as well. On January 15, 1977, we held a meeting on a Saturday at the Kempe Center, which was then located in the deconsecrated St. James convent in the Montclair Park area of east Denver. In addition to 15 attorneys, pediatrician Henry Kempe and social worker Pat Beezley (later Beezley-Mrazek) welcomed everyone.

The monthly meetings held thereafter culminated in the incorporation of the NACC on August 8, 1977, and the holding of the first educational conference of the NACC in November of that fall, attended by about 150 participants from 12 states. Thanks to John Ciccolella, a Colorado Springs attorney who quickly became active with NACC, each participant received a 400 page “trial notebook” that contained 50 practice forms and a number of articles relevant to practice. From these prosaic beginnings, “look at you now!”