

COURTS: Gatekeepers for Families in Crisis

BY JUSTICE HARRIET O'NEILL



Vanessa,¹ 15, was an exemplary student when a caseworker unexpectedly appeared at her school one day and took her to a shelter located in another school district. Her turbulent family situation had suddenly exploded, and she could no longer safely live at home. She had no change of clothes or personal toiletries, no school supplies, and no idea where she might end up.

Andre, 10, was the primary caregiver to his three younger half brothers due to his mother's debilitating drug addiction. When she could no longer function, Andre was taken from his home, separated from his siblings, and placed in a shelter with strangers — his future uncertain.

Children like Vanessa and Andre, who are removed from their homes due to abuse or neglect, often find themselves lost in a strange new world. Their lives are at a turning point, and their fate is in the hands of a judge.

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On any given day, there are some 20,000 Texas children in foster care. Approximately 32,500 passed through the foster care system last year.² Nationwide statistics show that almost half of these children spend at least two years in the system, and nearly 20 percent wait five years or more for a safe, permanent family. On average, children in foster care move through three different foster family placements, frequently with little or no warning, and 118,000 are waiting to be adopted. About 19,000 older youth “age out” of foster care each year without a permanent family to support them.³

What kind of future do these kids face? More than one-third earn neither a high school diploma nor a GED. One-third of those who age out of the system evidence mental problems such as post-traumatic stress disorder, alcohol or substance abuse, and major depression. About one-fourth will be incarcerated within the first two years after they leave the system.⁴ More than one-fifth will become homeless at some point after age 18.⁵ According to estimates, the crime that abuse induces costs society anywhere from \$6.7 billion per year on the low end to \$62.5 billion at the high end.⁶

For teens, incarceration is a dangerous prospect. An institutionalized juvenile is especially vulnerable to sexual victimization and assault. Many come out further alienated from their families and society, and more committed to a life of crime. The Coalition for Juvenile Justice reports that juvenile justice facilities today suffer from inadequate educational services, substandard confinement conditions, poorly trained staff, and inadequate aftercare.⁷ One of the biggest weaknesses is the lack of support and supervision for youth released back into society. These kids, with little or no aid in readjusting, often return to the dysfunctional families from whence they came. And the cycle starts all over again.

The Courts' Role in Child Protection

Courts play a critical role. No child enters foster care, leaves foster care, or does anything significant in between without a court order. A judge decides when a child should be removed and where the child will live, with whom, and for how long. While the child is in foster care, a judge decides whether he or she will be allowed to see siblings and other family members, how often, and under what circumstances. Courts develop family reunification plans, determine what counseling or mental health services are needed, and monitor parents' progress to see if they can get their act together so that the family can stay intact. And a court will decide whether a child's relationship with his or her parents will be terminated forever. Clearly, courts have a profound impact on children and families — and the stakes are exceedingly high.

Unlike other cases that follow the traditional adversarial process, child-protection cases require a collaborative, multi-disciplinary approach. Attorneys need specialized training not only in child-welfare law, but also in other areas that may be unfamiliar, such as substance abuse, domestic violence, and

mental illness. Courts must be equipped to respond in a manner that respects the child's needs, and the child's clock. By statute, these cases must be resolved within 12 months, with the availability of one 180-day extension if the family is making significant progress.⁸ While this deadline may appear short to parents who are struggling to overcome addiction, it can seem like an eternity to a child. A knowledgeable and well-equipped judiciary is essential if we intend to maximize favorable outcomes for children and families in the foster-care system.

What's Happening at the Texas Supreme Court?

As gatekeepers for families in crisis, Texas courts are committed to the goal of securing safety, permanency, and well-being for all abused and neglected children and the Supreme Court of Texas is assuming a leadership role. In collaboration with other courts, child-protection agencies, and the many stakeholders, the court is studying and prioritizing issues integral to improving outcomes for families and children.

In 2004, the Pew Commission on Children in Foster Care — a national, blue-ribbon panel of experts dedicated to improving the lives of foster children — recommended four key strategies for strengthening courts in the child-protection system:

1. Courts must have the ability to track children's progress, identify children in need of attention, and identify sources of delay in court proceedings.
2. Courts and public agencies must effectively collaborate to protect children and promote their well-being.
3. Children and their parents should have a direct voice in court, effective representation, and the timely input of those who care about them.
4. There must be leadership from the highest state court to act as champions for children in the dependency court system.⁹

We have made significant progress on each of these strategies.

Since 1993, the Supreme Court Task Force on Foster Care has overseen the Court Improvement Program (CIP), a federal grant program created to enhance court practice in child-welfare cases. The task force, under the leadership of the Hon. John J. Specia, Jr., has launched many significant initiatives with these funds. With recent federal foster-care reform and a successful track record, Texas now receives a larger basic CIP grant and two additional CIP grants aimed at technology solutions and training efforts.

To enable courts to track children's progress through the system, identify children in need of attention, identify sources of delay, and make sure no child falls through the cracks, the court in March 2006 appointed a 20-member Task Force on Child Protection Case Management and Reporting. This “data task force” was charged with developing a statewide caseload management and tracking system to improve court practice in child-protection cases. The data task force responded with a detailed five-year plan in which the Office of Court Adminis-



tration will take the lead on a project known as “TexDECK” (Texas’ Data-Enabled Courts for Kids). TexDECK will use CIP grant funds to assist courts with technology solutions. Visit www.supreme.courts.state.tx.us/cip/tfhome.asp to learn more about the TexDECK initiative.

The Pew Commission recommendations encourage an increase in specialized training for judges, attorneys, and court personnel and cross-training with other child-welfare professionals. A subcommittee of the Task Force on Foster Care is considering innovative and collaborative ways to provide this training, including the development of an Advocate Academy that would allow attorneys across the state to access free or low-cost CLE on the basics of representing parents and children, as well as specific advanced topics for the experienced practitioner. In August, the Texas Center for the Judiciary hosted an interactive conference, “Beyond the Bench,” for the Fort Worth region. I will be opening a three-day conference for all Texas judges who hear child-protection cases at the CPS Judicial Conference in San Antonio, Sept. 5-7.

Perhaps the most significant development, certainly the one I am the most excited about, is the court’s current consideration of a permanent Judicial Commission for Children, Youth, and Families. The proposed commission would act as an umbrella organization for court-improvement initiatives and would foster collaboration, sponsor and enhance professional training, identify additional resources, fill in gaps that may exist across the state, develop best practices, and help raise public awareness of the need on a statewide level. For the past year, this concept has been vetted with key stakeholders, and the response has been overwhelmingly positive. To advise on the commission’s optimal structure and composition, the court appointed a consultative group composed of experts from within the child-protection community, as well as business and bar leaders. The consultative group held a two-day strategic planning session where core values and concepts were developed and specific recommendations regarding the organization of a commission were made. You can review the consultative group’s report and learn more about the proposed commission at www.supreme.courts.state.tx.us/cip/tfhome.asp.

The culmination of this year of preparation will be a public hearing before the court on Sept. 25, 2007, to consider creation of the proposed commission. It is anticipated that participants in the child-protection system, as well as national and state leaders, will share their knowledge and views on the potential for such a commission. This historic hearing will be the first order of business as the court begins its 2007-08 term, emphasizing the important role that courts play in improving outcomes for Texas children, youth, and families in the foster-care system.

The court has worked hard to create a strong in-house CIP staff. Last summer, the court hired its first-ever staff attorney for Children, Youth, and Families, Kristi Taylor, who has extensive experience as an ad litem in child-protection courts. In May of this year, Tina Amberboy, who is experienced in representing child-welfare clients and serves as an adjunct professor at Baylor Law School on family rights and child-welfare litigation, came on board as executive director of the Task Force on Foster Care. Tina is slated to be the executive director of the proposed commission. And this month, the court hired Bryan Wilson, who brings to the CIP extensive grants-management experience. The court is fortunate to have such a talented and committed team as we move forward on these important initiatives. I hope that you will feel free to contact Tina or Kristi should you have any questions or want to learn more about the proposed commission or the CIP programs.

You Can Make a Difference

And so you might ask, what can I do? As lawyers, you are in a unique position to provide a strong, effective voice for children and parents. The Pew Commission identifies effective representation as an integral component of success, and in Texas, excellent attorneys and advocates are needed more than ever before. You can also serve as a volunteer adoption-day attorney or as a Court Appointed Special Advocates (CASA) volunteer. You can volunteer to mentor a child, or even be a foster parent. You can make a difference.

Represent children and/or parents. If you are a seasoned attorney and know your way around the Family Code, consider taking a case pro bono or dedicating a percentage of your practice to child-welfare cases. It’s a win-win. You will be providing a valuable service to your community, and, more important, you will positively impact a child’s life.¹⁰

Learn more about this important work. If you have no experience in this area but want to learn, you will see a continued increase in specialized CLE, support, and resources as judicial and attorney education are targeted as key strategies to improve the system.¹¹

Volunteer for National Adoption Day. Each November, the courts in Texas and across the country are filled with teddy bears, children dressed in bow ties and frilly dresses, and new parents, celebrating their family’s adoption day. In some counties, a local bar association committee organizes the entire event and provides pro bono legal services for the adoption of eager

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children and teens. Volunteer attorneys do not need any experience and come from many areas of practice. Many counties offer a brief Adoption Day CLE where forms and detailed instructions are provided. Attorneys file the necessary pleadings for the one or two adoptions they have been assigned and appear for a very informal, yet memorable, hearing to give a child a forever family.

Serve on the board of a local program such as CASA, the Child Advocacy Center, or a Rainbow Room. Many communities have local chapters of these nonprofit agencies that need your time, talent, and resources. Also, you can find local mentoring programs through which you can positively, and profoundly, impact a child's life.

Be a voice and a resource for statewide initiatives and local projects. Share your problem-solving ideas. What will improve the lives of abused and neglected children in your community?

It is through committed people like you that children are able to turn their lives around. Take Andre and Vanessa, for example. Where are they now? I am happy to report that, through strategic collaboration with dedicated community members, Vanessa was able to graduate from high school with an A average and received a scholarship to attend the University of Texas. Andre has found a loving and stable family, and his grades and outlook have improved significantly. Without the volunteer efforts of many who cared, Vanessa and Andre might not have made it.

Conclusion

I can think of no better way to conclude than by sharing a former foster youth's own poignant words:

In foster care, you grow up not knowing that you can really be somebody. When I was in foster care, it didn't seem like I had any choices or any future. All kids deserve families. They need a family, to have someone. This is father, this is mother. They need a family so they can believe in themselves and grow up to be somebody. This is a big deal that people don't realize. I wish everyone could understand.¹²

Former foster youth who make it, like Andre and Vanessa, generally point to one person who made a difference in their lives, who changed the path they were on and affected their lives forever.¹³ Let us each resolve to be that person who is a catalyst for change, who makes a difference in a child's life. Over the course of a long and distinguished legal career, it will be your most enduring legacy.

Notes

1. The children's names have been changed to protect their privacy.
2. Children's Bureau, U.S. Dep't of Health and Human Servs., *Foster Care FY2000-FY2005 Entries, Exits, and Numbers of Children in Care on the Last Day of Each Federal Fiscal Year* (2007), available at www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/entryexit2005.htm.
3. Home At Last, *Foster Care Fact Sheet*, available at <http://fostercarehomeatlast.org/docs/?DocID=21>

(launched in October 2005, Home At Last's efforts focus particularly on the Pew Commission's recommendations to improve court oversight). See generally U.S. Dep't of Health and Human Servs., *Adoption and Foster Care Analysis and Reporting System (AFCARS) Report* (2003).

4. Mark Courtney, et al., "Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19," Chapin Hall (2005).
5. Northwest Foster Care Alumni Study, Casey Family Programs (1998), available at <http://www.casey.org/Resources/Publications/NorthwestAlumniStudy.htm>.
6. Erdal Tekin & Janet Currie, *Does Child Abuse Cause Crime?* (Andrew Young School of Policy Studies, Working Paper Np. 06-31, 2006), available at <http://aysps.gsu.edu/publications/2006/index.htm>.
7. See <http://www.juvjustice.org>.
8. Tex. Fam. Code §263.401 (2006).
9. Pew Comm'n on Children in Foster Care, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care*, 17-18 (2004), available at <http://pewfostercare.org>.
10. See www.texaslawyersforchildren.org. Texas Lawyers for Children offers a pro bono network where lawyers can choose from several volunteer options, such as a limited agreement to answer questions, to taking a case as the attorney ad litem. This network includes attorneys from all practice areas, such as probate, immigration, and trial, to assist when, for example, a disabled child needs a trust account. The TLC Attorney Email Network also provides opportunities for lawyers to connect and mentor those who are less experienced in this area.
11. A great resource for an overview of child-protection cases is *A Handbook for Parents and Guardians in Child Protection Cases*, by the Child Abuse and Neglect Committee of the State Bar of Texas, available at <http://www.texasbar.com>.
12. *Fostering the Future* at 9.
13. See Center for Public Policy Priorities, *All Grown Up, Nowhere to Go: Teens in Foster Care Transition* (2001), available at www.cppp.org/research.php?aid=128. (The Texas Foster Care Transitions Project provides a first glimpse of foster youth in Texas who have transitioned from the care of the state to independence.)



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