

The Juvenile Law Reader

Two Major Research Studies Describe Dire Outcomes for Foster Youth



By Mark S. McKechnie, MSW

In March 2005, the Casey Family Foundation released a research report, **"Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study,"** on young adults who had aged out of foster care systems in the Pacific Northwest. In May the Chapin Hall Center for Children at the University of Chicago released its report on outcomes for two groups of 19 year-olds -- those who were still in foster care and those who had left care. All together, the two reports examined the lives of 1,445 young adults across five states: Oregon, Washington, Illinois, Iowa and Wisconsin. A summary of some of the findings from the Northwest Foster Care Alumni Study can be found on pages nine and ten of this issue.

The Chapin Hall report, **"Midwest Evaluation of the Adult Functioning of Foster Youth: Outcomes at Age 19,"** provides extensive findings on

the social, emotional, educational and material well-being of the two cohorts of young adults— those who are still in foster care and those who have left care— and compares foster care outcomes with the well-being of youth nationally.

The findings, though not surprising, were disturbing. The Chapin Hall report found little difference in educational outcomes between the 19 year-old cohort still in foster care and the group who had exited foster care. More than one-third of each group had attained neither a high school diploma nor General Education Diploma (GED). The significant difference between the group still in care versus the group who had left foster care was that two thirds of the group still in foster care was enrolled in secondary or post-secondary education, while over two-thirds of the group no longer in care was not enrolled in any educational program.

The Chapin Hall report compared findings among the 19 year-olds in foster care or who had left foster care with a nationally representative sample of 19 year-olds from the National Longitudinal Study of Adolescent Health.

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In comparing the foster care groups with the national sample, 39% of the 19 year-olds who were in foster care or recently left foster care were still enrolled in high school or GED programs, compared to only 2% of the national sample of young adults. Conversely, of the young adults who were enrolled in any type of educational program, 62% of young adults nationally were enrolled in four-year college programs, compared to only 18% of the current and former foster youth.

The Casey report found that only 2.7% of foster care alumni in Washington and Oregon, aged 25 years and older, had received a bachelor's degree or higher, compared with 27.5% of the general population ages 25 to 34 years.

In the Chapin Hall report, 30.9% of the total foster care group and 37% of the group no longer in care reported that they were neither in school *nor* employed. This is in contrast to 12.3% of the national sample who were neither in school nor employed.

72.9% of 19 year-olds no longer in foster care had earned less than \$5,000 from employment in the preceding year.

In examining outcomes, young adults who are still in foster care and those who have left foster care as compared with their peers in the general population, the Chapin researchers conclude:

" [Y]outh making the transition to adulthood from foster care are faring worse than their same-age peers, in many cases much worse, across a number of domains of functioning. They approach the age of majority with significant educational deficits and relatively few of them appear to be on a path that will provide them with the skills necessary to thrive in today's economy."

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Publications

Two Chapin Hall publications feature information on the plight of youth in foster care. Specifically, they address adoptions from foster care and youth who run away from foster care.

"Adoption Dynamics: An Update on the Impact of the Adoption and Safe Families Act" analyzes adoptions from foster care using data from Chapin Hall's Multi-state Foster Care Data Archive. It discusses and attempts to understand the effects of the federal law, AFSA, on the proportion of children admitted to foster care that were later adopted and on the time needed to complete those adoptions.

The second article "Youth Who Run Away

from Out-of-Home Care" discusses the outcomes for children who run away from foster care. The article draws on findings from a Chapin Hall study of runaways in Illinois in collaboration with Illinois Department of Children and Family Services (DCFS.)

For full text or other information on these or similar articles, please visit www.chapinhall.org. To order hard copies of Chapin Hall publications, please call: 773-256-5213.



CASELAW UPDATES

Dennis v. Dennis, Case No. A121938 (April 13, 2005)

The Oregon Court of Appeals reversed an award of custody to a grandmother holding that the legal parent is entitled to custody of a child when that parent meets the child's needs. Richard Dennis, the father, appealed a judgment awarding Linda Santineau, the grandmother, custody of his two minor children. The trial court had previously granted custody to the grandmother, pursuant to ORS 109.119, and allowed supervised visitation for the parents. The father, who has a long history of drug and alcohol use, was also

incarcerated for 18 months for an act of domestic violence against the children's mother.

The main issue in the case was whether the grandmother rebutted the statutory presumption that favors the legal parent by a preponderance of the evidence. If it was found that she had, then the court would look to whether it was in the best interests of the children to award her custody. The court found that the father's voluntary efforts to change outweighed the evidence presented to rebut the statutory parental presumption. Thus, the award of custody was reversed and remanded.

Ayotte v. Planned Parenthood, NH Sup. Ct. Case No. 04-1144, (May 23, 2005)

The Supreme Court granted New Hampshire Attorney General's petition for writ of certiorari in a case challenging the constitutionality of a state law that requires unemancipated minors to obtain parental consent before having an abortion. The district court found the Parental Notification Prior to Abortion Act of New Hampshire unconstitutional and found it lacked an explicit exception to protect the pregnant minor's health. The Attorney General appealed the district court's ruling where the United States Court of Appeals for the First

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May is National Foster Care Month

FACTS ABOUT CHILDREN IN FOSTER CARE

National Statistics

- 523,000 children were in the U.S. foster care system as of September 30, 2003
- The average age of a foster child is 10.2 years old
- Gender: 53% Male, 47% Female
- Children of color are over-represented in the foster care system relative to their percentages in the U.S. population in general
- In 2002, children requiring foster care remained in the system an average of 32 months.
- 54% of children leaving care were reunified with their birth parents or primary caregivers.
- In 2003, more than 23% of youth living in out-of-home care were residing with their relatives.
- Each year, an estimated 20,000 foster youth "age out" of the system. The majority are only 18 years old and still need support.

OREGON'S FOSTER CHILDREN

- A total of 11,958 children were served in Oregon's foster care system in 2004.
- 5,515 children entered foster care in 2004, compared to 4,946 children who entered in 2003.
- Average length of stay in Oregon foster care is 28.1 months
- 61% of children had 2 or fewer placements
- Number of exits from foster care in 2001 - 4,587
- Of those children exiting foster care, 58.3% were reunified
- 23.4% of exiting foster children were adopted
- There are still approximately 2,680 children in foster care waiting for adoption

Selected Sources:

- Adoption and Foster Care Analysis and Reporting System (AFCARS)
<http://www.acf.hhs.gov/programs/cb/dis/afcars/publications/afcars.htm>
- U.S. Census Bureau, Census 2000, special tabulation. Characteristics of Children Under 18 Years by Age, Race and Hispanic



"Like people, plants respond to extra attention." - H. Peter Loewer

or Lation Origin, for the U.S.
<http://www.census.gov>

-Child Welfare League of America - National Data Analysis System,
<http://ndas.cwla.org>

-Bradford & English (2004)
Foster youth transition to independence study. Seattle, WA: Office of Children's Administration Research, Washington Department of Social and Health Services

-The Children's Defense Fund, *The State of America's Children 2004* (Washington D.C.; Children's Defense Fund, July 2004).

- Oregon DHS:
<http://egov.oregon.gov/DHS/abuse/publications/children/abusestats2004.pdf>



The Child Client - Representing children ages 0-3

By Julie Goss, Americorps Attorney

Representing a child client can be a difficult and often bewildering task for the attorney and child client alike. The basic tenets and ethical obligations of representing an adult client remain essentially the same when representing a child client. Differences in cognitive abilities, social/emotional maturity, and verbal abilities can throw a challenging twist to what is otherwise straightforward client representation.

The attorney must first determine what role she will play in representing the child client. The child's capacity to understand, consent, and make decisions will be an important factor in determining whether the attorney will be advocating for the child's best interests or the child's expressed wishes.

Oregon Rule of Professional Conduct 1.14 *Client with Diminished Capacity* applies to child client representation. The rule provides that when a client's capacity to make decisions in representation is diminished due to minority, mental impairment, or some other reason, the attorney shall **maintain as normal a client-attorney relationship as is reasonably possible**. Although ORPC 1.14 (b) allows an attorney, who reasonably believes his client has diminished capacity, that substantial physical, financial or other harm would occur and that the attorney cannot adequately act on behalf of the client, to seek appointment of a guardian ad litem, guardian, or conservator, such appointments on behalf of children in juvenile cases are rare.

Under the Oregon State Bar Association's Specific Standards for Representation in Juvenile Dependency Cases, the attorney must determine whether a child client is capable of considered judgment. Standard 3.3. Children

in the 0 to 3 age range are pre-verbal or too limited in verbal abilities and do not have the necessary cognitive development to be capable of considered judgment, and thus, under the Standard, the attorney should advocate for what is in the client's best interests. Despite being allowed by the Standard to advocate for the child's best interests, ORPC 1.14 still requires the attorney to maintain, as much as possible, the traditional attorney-client relationship.

Perhaps the most difficult part of representing the best interests of the child is the investigatory work which the attorney must pursue to adequately know what is the best interests of the child. It is important to interview family members, teachers, daycare workers, as well as to be familiar with theories of attachment, child development, parenting, and sibling relationships.

Attorneys should be familiar with normal development for infants and toddlers. There are many books for new parents that outline developmental expectations in this age group. Two books from the DANA Press are recommended: *A GOOD START IN LIFE, Understanding Your Child's Brain and Behavior from Birth to Age 6*, by Norbert Herschkowitz, M.D., and Elinore Chapman Herschkowitz (2004) and *THE DANA GUIDE TO BRAIN HEALTH* edited by Floyd El Bloom, M.D., M. Flint Beal, M.D., and David J. Kupfer (2003). This book is useful for research on disorders as well as development. For more information go to: www.dana.org.

“The child’s capacity to understand, consent, and make decisions will be an important factor in determining whether an attorney will be advocating for the child’s best interests or the child’s expressed wishes.”

Empowering Foster Youth: Inclusion in Court Hearings and Decision-Making

By Jennifer Rodriguez, Legislative and Policy Coordinator, California Youth Connection

Many people reminisce on their childhood as a time blissfully free from adult worries, painful information, and hard decisions. Growing up in foster care, I was exposed far too early to worries about survival and cannot remember a time when I did not have full responsibility for my own well-being. However, rather than feeling the freedom commonly associated with not having to take part in hard, adult decisions, I felt enormous frustration and anger that I was largely excluded from the decisions made about my placement, permanency, education, family relationships and future. It made me feel completely powerless that people who barely knew me, my dreams, my fears, my strengths or weaknesses were making decisions behind closed doors in courtrooms that would impact the rest of my life. By the time I aged out of foster care, I had almost become resigned to accepting that my life was completely out of my own control.

I wish that the social workers, judges, attorneys and providers who were responsible for me for so many years had let me participate in planning for my future from the start. As the Legislative Policy Coordinator for the California Youth Connection, a foster youth empowerment and advocacy organization, I have the honor of witnessing the power of foster youth participation in decision-making in many different arenas. I believe that one of the most important places that foster youth need to be included is the dependency courtroom. Because so many important decisions happen in court, it is critical that foster youth have the opportunity to attend their court hearings and address the judge.

There may be no task as critical and as

difficult as that of a dependency court judge. Dependency judges make decisions that can completely change children and families' lives in painfully short time frames, often with little information or without knowing the people involved. It is estimated that dependency judges have six minutes to make decisions about a child's life. In order to make those six minutes meaningful, foster youth must be in court so that judges can get direct, accurate information about their wishes, needs and progress.

California's foster youth have fought to reinforce the right for youth to attend their court hearings. However, many youth report that although they have the right to attend their court hearings, they are not informed of this right, not sent notice of their hearings (it goes to the provider), and are discouraged from attending the hearings by their social worker or



“By the time I aged out of foster care, I had almost become resigned to accepting that my life was completely out of my own control.”

attorney. When youth do find out about and receive permission to attend court hearings, they are often not provided with the assistance (transportation, excuse from school, etc.) they need.

Some judges worry that the court process is too complex and procedural for foster youth to be able to participate effectively. It is true that many youth find the court process mysterious

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Pew Commission Proposes Overhaul of Foster Care System

By Trisha Gonzalez, Summer Law Clerk from University of Oregon School of Law

On May 18, 2004, the Pew Commission released a report, "Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care", that recommends a major restructuring of the nation's foster care system. The Commission, a national nonpartisan organization funded by a grant from the Pew Charitable Trusts, completed a one-year in-depth evaluation of the current foster care system. Composed of leading experts in child welfare, the panel concluded that significant reform was needed in two main areas: (1) The Role of Federal Financing and (2) The Role of the Courts.

Many government officials support the Pew Commission's recommendations and agree that the foster care system is in desperate need of repair. For instance, Commission Vice Chairman William H. Gray (D-PA), former Majority Whip and Chairman of the House Budget Committee says, "...Every state has now failed the federal foster care reviews and we've seen far too many news stories of children missing from the system or injured while in care. We must act now on behalf of the half a million children currently in foster care." The proposals by the Commission offer a plan for improving the outcomes of children currently in the foster care system and for those at risk of entering.

Under the first proposed reform area, the role of federal financing, the panel found

that current federal funding avenues for child welfare utilize an over-reliance on foster care. This is done at the expense of other services that might keep families together or move youth quickly and safely from foster care to a more permanent placement.

The Commission's proposals demand stronger accountability for the spending of public dollars used on youth in the child welfare system. Some other recommendations in this area include asking for current funding to be redirected, allowing states the freedom to make decisions on individual cases and also helping states to build a range of services from prevention, to treatment to post-permanence.

The second suggested area of reform, the role of the courts, calls for a strengthened court oversight system. The panel concludes that "...the courts are vested with enormous responsibility...and have an obligation to ensure that children are protected from harm." Recommendations to improve this area include adoption of court performance measures by dependency courts to be able to track and analyze caseloads, requirements for effective collaboration between courts and agencies, better leadership from court leaders and effective representation by more well-trained attorneys and volunteer advocates.

For additional information about the Pew Commission on Children in Foster Care, or to obtain a copy of the Commission's report or 50 state data about foster care, please visit the website at: www.pewfostercare.org. To interview commission members, please contact Gina Russo at 202-687-0697 or grusso@pewfostercare.org

NEWS BRIEFS

MANDATORY SENTENCING LAW DIFFICULT TO ALTER

As reported in The Register-Guard last month, shaving time off of mandatory Measure 11 prison sentences is proving to be very difficult.

Twice this session hearings with such proposals were canceled because of a fear they would not go anywhere, said Senator Ginny Burdick.

The article cites opponents of Measure 11 saying that the expanding corrections budget builds prisons while money gets cut from already depleted education reform pro-

CASEY STUDY IN THE NEWS

The Casey Study (see page 9) was covered by *The Oregonian*, in an article on April 7, 2005. The news piece also interviewed children in the foster care system, including Brian Gardner, 17, who has been in the Oregon foster system since age 3. Brian said he has had to endure "at least a dozen different moves." He adds that constant moving "was more difficult than anything I experienced with my birth mother," and he feels he is still suffering the effects today. Kevin George, foster care manager for DHS, states they will take the report's findings to heart.

FIRESETTING RESEARCH

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has announced the availability of "**Juvenile Fire-setting: A Research Overview.**" This 8-page Bulletin was written by Charles T. Putnam and John T. Kirkpatrick.

In a typical year, fires set by children and youth claim hundreds of lives and destroy more than \$300 million worth of property. Drawing on information compiled by the National Association of State Fire Marshals, the Bulletin describes research and theories related to juvenile firesetting, notes limitations of past research, and recommends prevention strategies.

Resources:

"Juvenile Firesetting: A Research Overview" (NCJ 207606) is available online at

<http://www.ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=12133>.

A limited number of printed copies are available from the Juvenile Justice Clearinghouse (JJC). Copies can be ordered online at <http://puborder.ncjrs.org> or by calling JJC at 800-851-3420. Please use the document number when ordering.

CASE LAW UPDATES

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Circuit affirmed the district court's holding.

State v. Illig-Renn, Case No. A114387, (April 13, 2005)

The Oregon Court of Appeals found ORS 162.247(1)(b) to be overbroad and thus, facially unconstitutional. The statute states that a person commits the crime of interfering with a peace officer if the person, knowing that the other person is a peace officer, refuses to obey a lawful order. The original case came about when Rose Mary Illig-Renn refused to leave her automobile after being stopped on a traffic violation. She was then charged with refusing to obey a police order. The Court of Appeals held that the statute was overbroad.

The state appealed and the court later granted the state's petition for reconsideration. The state argued that ORS 162.247(1)(b) was not subject to an overbreadth challenge because the statute did not expressly mention any constitutionally protected conduct. The Court of Appeals disagreed on many grounds and held that the statute is facially unconstitutional.

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Case Law

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State ex rel Juv. Dept. v. Spencer, Case No. A118483 (March 30, 2005)

This case involves a juvenile who admitted to sexual abuse of another minor and began treatment. The state filed a delinquency petition and issued a subpoena seeking all records concerning the juvenile's treatment. The treatment center refused to supply the records and the trial court agreed. The state appealed the denial. Under OEC 504(2), a youth's psychotherapy and treatment records are privileged unless the youth consents to their disclosure. However, under ORS 419B.040(1), this privilege may be abrogated in cases of child abuse. The parties clashed on whether the statute abrogated the privilege when the person is the accused rather than the victim. The court held that it did and that the statute makes no textual distinction. Thus, the psychotherapist-patient privilege is abrogated for communications between a victim as well as for the alleged abuser.

Selected Findings of the NW Foster Care Alumni Study

By Mark McKechnie, MSW

This study looked at outcomes of alumni from foster care systems in Oregon and Washington. Between 2000 and 2002, researchers reviewed case records for 659 alumni. Interviews were conducted with 479 of those. The participants had been in foster care through one of three agencies: Casey Family Programs; The Oregon Department of Human Services, Division of Children Adults and Families; or the Washington Department of Social and Health Services, Children's Administration, Division of Children and Family Services. The study was conducted by the Casey Family Programs and researchers from Harvard University, University of Washington and the University of Michigan. The sample consisted of 54.4% people of color and 60.5% women.

32.3% of the foster care alumni in this study had experienced 8 or more placements.

Placement History (Mean length of time in care was 6.1 years.)

- 31.9% had three or fewer placements.
- 35.8% had four to seven placements.
- 32.3% had eight or more placements.

Education

- 65% of alumni experienced seven or more school changes from elementary through high school.
- 30.2% experienced ten or more school changes.
- 28.5% of alumni completed high school by passing GED tests (compared to 5% of the general population). Unfortunately, GED completion has been correlated to significantly lower higher education completion and lower incomes in adulthood, compared to completion of a high school diploma.

The overall graduation rate of foster alumni in this study was

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because no one has ever explained it to them, and because no one has explained the basics (i.e. that they can address the judge, how to dress, the right to meet privately with the judge, what types of issues the court can assist with, etc.) However, attorneys can help facilitate foster youth attendance by explaining the court process and proper courtroom etiquette, role-playing the process, and assisting the youth with transportation and letters to school or employers. Before and after court hearings, attorneys can assist youth clients by “translating” what is said in court and what the impact will be. Judges also can help to make the court hearing more youth-friendly and easier to understand. Having the chance to observe the court process and their attorney in action advocating for them gives youth more confidence about the decisions that are made.

Some child welfare professionals worry that the information discussed in court about the youth’s lives and families is disturbing and upsetting to the youth. It is a natural and honorable reaction to want to shelter children from the painful realities of the abuse, poverty, neglect, drug addiction, and mental illness that most foster children were removed from. However, people seem to quickly forget that this was our life before we came into foster care, that we have lived with these realities, and that we can never be sheltered from them. Professionals often try to protect youth from information that they worry will upset them, without realizing that not having realistic information ends up hurting more in the long run. In order to accept the available choices and be able to plan for

“Having the chance to observe the court process and their attorney in action advocating for them gives youth more confidence about the decisions that are made.”

the future, youth need to know what is going on. Hearing difficult information in an appropriate setting, with support available, makes working through resulting feelings more manageable.

Foster care can be a dehumanizing experience for youth, and often at best a disempowering experience. Foster youth want the opportunity to attend court and be part of the planning process for their permanency, education, transition to adulthood and well-being. Allowing foster youth to exercise their right to attend and participate in their court hearings accords foster youth the respect they deserve and allows youth to have a part in deciding their own future.

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NW Findings

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significantly higher than previous foster care studies. 84.8% of foster alumni had received a high school diploma or GED certificate, compared to 87.3% of the general population.

Only 2.7% of foster care alumni aged 25 and older surveyed had completed a bachelor's or higher degree, compared to 27.5% of the general population, ages 25 to 34 years.

Preparation for Adulthood

- 47.4% had health insurance at exit from care
- 56.9% reported they were somewhat or very prepared for independent living.
- 67.9% had access to independent living training groups or workshops.

Alumni who had the following when leaving care:

- A driver's license: 33.3%
- \$250 in cash 38.4%
- Dishes and utensils: 23.7%

Self-Sufficiency and Poverty

- One third of alumni lived in households at or below the federal poverty level (three times the national poverty rate).
- One third also did not have health insurance (double the national rate).
- Twenty-two percent experienced homelessness after leaving foster care.
- 16.8% reported receiving TANF cash public assistance, compared to 3% of the general population.

Mental Health

Fifty-four percent (54.4%) of alumni had clinical levels of at least one mental health problem in the previous 12 months (compared to 22.1% of the general population).

- Twenty percent had three or more mental health problems.
- The rates of PTSD among the foster care alumni population were found to be double the rate among U.S. war veterans.

Source: Casey Family Programs, Research Services, "Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study," March 2005

http://www.casey.org/NR/rdonlyres/4E1E7C77-7624-4260-A253-892C5A6CB9E1/300/nw_alumni_study_full_apr2005.pdf

Foster Youth Dire Outcomes

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***"They are less likely to be employed than their peers, and earnings from employment provide few of them with the means to make ends meet. This is reflected in the economic hardships many of them face and the need that many of them have for government assistance. A large number continue to struggle with health and mental health problems. Too many of them have children for whom they cannot provide a home. They are much more likely than their peers to find themselves involved with the criminal justice system."* (p.71)**

The full Chapin Hall report and an executive summary can be found on-line at:

http://www.chapinhall.org/PDFDownload_new.asp?tk=1181955&ar=1387&L2=61&L3=130 .

**Upcoming CLE for new
juvenile lawyers**

ESSENTIALS OF JUVENILE COURT

PRACTICE - October 17 - 18

Don't forget to save the date for this important training that gives a comprehensive overview of what a new attorney needs to know to practice juvenile law in Oregon!

Focus: This CLE is intended to provide critical information to newer juvenile court practitioners. Comprehensive materials provided include: reference to statutes, caselaw, administrative rules, materials on child and adolescent development, the Indian Child Welfare Act and much, much more!

Dates: October 17-18, 2005

Location: Lane County Juvenile Justice Center on the John Serbu Youth Campus in Eugene, OR

Costs: Contributions from many sponsors will help keep the cost low and accessible to all interested attorneys.

Registration: Begins in late summer

28th National Law Conference

The 28th National Law Conference of the National Association of Counsel for Children, "State of the Art Advocacy for Children, Youth, and Families," will be held August 25-28, 2005, at the Renaissance Hollywood Hotel in Los Angeles, CA.

This high quality annual conference features a variety of different speakers on four tracks, including: (1) Abuse and Neglect (2) Juvenile Justice/Delinquency (3) Family Law and (4) Policy Advocacy. It is designed for professionals in a range of fields, including law, medicine, mental health, social work and education. The focus is on the practice of children's law through interdisciplinary training. Highlights of the event include "Ethical Issues in the Practice of Juvenile Law," "Representing Lesbian, Gay, Bisexual, Transsexual and Questioning Youth in Both Dependency and Delinquency Cases", a tour of the Edelman Children's Courthouse and The Children's Law Center of Los Angeles and much, much more!



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Juvenile Rights Project, Inc. (JRP) is a public interest law firm and advocacy organization promoting the rights and interests of our community's most vulnerable children – those involved in the child welfare and juvenile justice systems. JRP has a 29 year history of representing children individually in the Multnomah County Juvenile Court and through class action litigation. JRP also advocates for Oregon's children in the legislature and with public agencies, and offers training and technical assistance to families and to social service and legal professionals around the state who care for and work on behalf of some of Oregon's most disadvantaged children.