

The Family Defender

ADVOCATING FOR CHILDREN & FAMILIES TOGETHER



A Child Protection Watchdog Group

Issue 19

Summer 2015

In this Special Anniversary Issue: Ten Years Of Advocating Justice For Families: Examining What It Means To Protect Children By Defending Families

Family Defense Briefs

See page 2

Message from the Executive Director

See page 18

FEATURES:

Reflections On A Decade Of Justice By Founding Board Members

See page 3

Advocacy for Domestic Violence Victims in the Child Welfare System: A Ten-Year Retrospective

See page 4

Center's First Class Action Suit, Now 18 Years Old, Led to Many Basic Reforms

See page 6

Center Brings Thirteen Federal Civil Rights Cases and Two State Court Class Actions in its Decade of Justice for Families

See page 7

Noteworthy State Court Precedential Decisions

See page 8

Discriminatory Decision Against Parents With Obese, Disabled 16 Year Old Son Ends With Long-Awaited Exoneration

See page 9

DCFS Proposed Rules Would Limit Rights Of Child Caring Employees That Have Long Been Secured By Center

See page 13

Family Defense Center Befriends Advocates for Justice Nationally

See page 14

The Center's Reports and Manuals Help Families and Advocates Seek Justice

See page 15

Legislative Policy Reform And Rulemaking Advocacy Lead To Systemic Change

See page 16

Can You Believe This?

See page 17

TEN YEARS OF ADVOCATING JUSTICE FOR FAMILIES: EXAMINING WHAT IT MEANS TO PROTECT CHILDREN BY DEFENDING FAMILIES

This special 10th Anniversary issue includes a review of the Family Defense Center's history and impact. We explore how we have evolved as an organization and some of what we have accomplished in the past ten years. An interview with Diane Redleaf, our founder and Executive Director, highlights her vision when she founded the Center in 2005 and reviews the challenges the Center has faced during these momentous years. Articles reviewing the Center's achievements include a special focus on our work on behalf of domestic violence victims, p. 4. We examine our work in amicus briefs before the highest courts in our state and country, p. 14, as well as our work on special reports and self-help materials, p. 15. We also include our favorite stories from

our "Can You Believe It?" column, p. 17, and our Executive Director comments on current cases that include the vague "inadequate supervision" category of neglect, p. 18.

No newsletter of the Family Defense Center would be complete, however, without the story of a family we recently helped navigate through the child welfare system to keep them together. The story of Lon and Julia R.* shows the powerful impact of the Family Defense Center and its award winning Pro Bono Program are having on Illinois families who have turned to us for help, p. 9.

**Names have been changed to protect the confidentiality of family members.*

An Interview with Executive Director Diane Redleaf on Founding and Growing the Family Defense Center

Rachel O'Konis Ruttenberg, the Center's Deputy Executive Director, asked Diane Redleaf, founder and Executive Director, to reflect on her experience starting and heading the Family Defense Center.

Rachel: You founded the Family Defense Center in 2005, making 2015 the Center's 10th anniversary. Specifically, the Center was incorporated on June 7, 2005 and you opened its first office on August 22, 2005. When you founded the Center, what was your vision and what experiences did you have that led you to believe you could pull it off?

Diane: The roots of the Family Defense Center lie in the work I had done for twelve years earlier in my career, from 1984 through 1996, at the Legal Assistance Foundation of Metropolitan

please turn to page 14



Diane Redleaf

Board of Directors

Helene M. Snyder, *President*
Michael A. O'Connor, *Treasurer*
Michael W. Weaver, *Secretary*
Kathleen Barry
William Binder
Patricia Jones Blessman
Louis Fogel
Colleen Garlington
Antoinette Kavanaugh
Michael Koenigsberger
Padraig McCoid
Jonni Miklos
Dina Tsourdinias
Ashie Tyler

Champion Board

Annette Appell	Joy Leibman
Brigitte Schmidt	Elizabeth Lewis
Bell	Meg McDonald
Mary Kelly	Christine Naper
Broderick	Ted Otto
Susan Brooks	Eugene
Adam Caldwell	Pergament
Joan Colen	Vera Pless
Ann Courter	Andrew & Lynne
Ian Elfenbaum	Redleaf
Laurene Heybach	Rhoda & Paul
Carolyn	Redleaf
Kubitschek	Dorothy Roberts
David Lansner	Adele Saaf
Larry Lansner	Deborah Spector
Elizabeth	Michael Wald
Larsen	Elizabeth Warner
James Latturmer	Anita Weinberg

Family Defense Center Staff

Diane L. Redleaf, *Executive Director*
Rachel O'Konis Ruttenberg, *Deputy Executive Director*
Melissa L. Staas, *Staff Attorney*
Sara Gilloon, *Staff Attorney*
Ish Orkar, *Contract Attorney*
Bryan Liberona, *Litigation Support and Intake Coordinator*
Samantha Tarlton, *Administrator*
Alejandra Ballesteros, *Administrative/Intake Assistant*

The Family Defender

*is published twice yearly by
the Family Defense Center*

Editor-in-Chief Diane L. Redleaf
Contributors Rachel O'Konis Ruttenberg,
Rachael McLain, Brittany Trainer, Joshua
Kramer, Desha Logan, Brian Beck, Sara
Gilloon
Layout Complete Communications, Inc.

FAMILY DEFENSE BRIEFS

Family Defense Center's 10th Anniversary Celebration on October 7

This fall, the Family Defense Center celebrates its 10th anniversary. On October 7, 2015, at 5:30 p.m., we will gather under the beautiful Tiffany Dome at the Chicago Cultural Center to honor the many advocates and supporters who have been integral to our success. Please join us for cocktails, appetizers, a silent auction, and a special presentation for our 10th Anniversary Honorees and our 2015 Family Defender.

Tickets are \$150 each and sponsorship levels start at \$750. Supporters and friends are also encouraged to purchase a space in the commemorative program book, which will be available at the event, in order to pay tribute to our honorees or congratulate the organization. For more information on sponsorships, tickets, and tributes please visit: www.familydefense-center.net/tenth-anniversary-celebration.

This year's 10th anniversary honorees are: Mary Bird, Mary Broderick, Brigitte Carlson, Elissa Efroymson, Laurene Heybach, Mimi Laver, Michael O'Connor, Deborah Pergament, Suzanne Sellers, and Helene Snyder. We are honoring them for their leadership and the contributions each of them has made to the Center.

Diane Redleaf, our founder and Executive Director, is our 2015 Family Defender. The event chairs are: Brigitte Schmidt Bell, Patricia Jones Blessman, Louis Fogel, Denise Lazar, Dorothy

Roberts, and Anita Weinberg.

A Decade of Growth for the Center

In the past decade, the Family Defense Center has grown from having just one part-time staff member (Founder and Executive Director Diane Redleaf only working 20 percent of the time), to a bustling organization with eight staff members and myriad law clerks and interns. The Center has seen rapid and continuous growth, quickly outgrowing two—almost three—offices.

The Family Defense Center received nonprofit status in September of 2006. After officially opening its doors to clients in January of 2007, requests for assistance flooded in. Nine months later, the Center hired two full-time attorneys.

Today, the Center's staff includes: an executive director, a deputy executive director, two staff attorneys, contract attorney, an intake coordinator, an administrator, and an intake/administrative assistant. Plans for hiring additional attorneys are underway. The staff also has year-round support from numerous law clerks and interns. In fact, in the past decade, 95 temporary and full-time staff members have helped the Center advocate justice for families in the child welfare system.

The Center's Pro Bono Program Grows Exponentially, Triples the Impact of Its Staff

The Family Defense Center greatly appreciates the pro bono attorneys who have volunteered

please turn to page 17



Gala Co-chair Patricia Jones Blessman, Diane Redleaf, Simin Frazier, and Sen. Carol Moseley Braun enjoy the 2014 Gala together.

REFLECTIONS ON A DECADE OF JUSTICE BY FOUNDING BOARD MEMBERS

Anita Weinberg, Laurene (“Rene”) Heybach, and Brigitte (“B.B.”) Carlson incorporated the Family Defense Center on June 7, 2005, and became its first board. B.B. was the Center’s first board president. Here, questions about the Center’s vision, growth, and future are posed to these founding board members.

What was the Center’s vision?

Anita: The challenge then and now: to give parents a voice in the child welfare system. Only if parents are well represented can we say that we truly are serving the best interests of children.

B.B.: After representing a father in the system for several years, I had begun to see that the issues facing parents like him were not well-known or well-understood by most people. As a result, parents were not always getting the kind of help they needed. They needed expertise and dedicated advocates who could help them navigate DCFS and the court system. To me, that was (and is) the purpose of the FDC.

Rene: DCFS makes many significant and life altering mistakes to the detriment of parents and children. The only way to correct those mistakes systemically is to have an organization like FDC that fights to have families stay together.

How has the Center’s vision facilitated “A Decade of Justice for Families”?

Anita: I am in awe of what Diane and the Center have accomplished. The Center has been able to provide independent representation and to be a mover and shaker in reforming and setting policy. It also is effectively working to help stakeholders and the public understand the intersection between both the importance of parental rights and the best interests of children.

B.B.: The Center has grown much more than I ever anticipated. A goal I had for the FDC was that one of its key messages (that parents should be the ones to parent their children whenever possible) should reach a broader audience. This message resonates with both liberals and conservatives and the FDC has made great strides in reaching each of those audiences. This is important not only for fundraising, but also for the effect it has on our society, our families, and our kids.

Rene: The Center has exceeded my expectations. Getting funding is always difficult and people don’t have a clear understanding of the importance of parent representation or how it works. If DCFS is involved, the assumption is that the parents did something wrong. This is a stereotype to fight but Diane and the staff are wonderful. It is amazing how the organization has survived and grown. I always note the many lawyers and important leaders in the African American community who support the uniqueness and vitality of the work FDC does.

Where Do You See the FDC Going in the Next Ten Years?

Anita: I hope the Center continues and expands its work: representing individual families, reforming the systems that impact underserved children and families, raising awareness and educating the public about these issues, and working with families and helping them to understand how systems work. Reforms are still needed;

decades after we first started advocating for reasonable efforts when children can be safely kept in their homes, the message hasn’t been implemented fully. The Center will need to continue to be a voice for the importance of family for children.

B.B.: I see the Center continuing, expanding and improving in getting its message out. I see it going beyond the borders of Illinois. Even in California (where I live now), the issues that the Center



Brigitte (“B.B.”) Carlson co-founded the Family Defense Center in 2005 and became its first board president.

works on are very important and I think that in the next ten years we will see an expansion of the Center’s national scope.

Rene: I am optimistic that the Center will continue to secure funding and Pro Bono support to maintain excellent staff. Diane and the Center are always planning new events, a new social media campaign, a new mother’s day event—provocative as well as timely events and programs that draw in more and more people. Our country is going through another very important struggle about fundamental racial justice. The work of the FDC crosses over into the arena of unfair criminal prosecutions of parents and unfair and extreme laws. It’s critical that the FDC do whatever it can do in order to be a crack legal organization to take apart stereotypes and oppressive practices that affect people of color. Black lives matter. Whether its DCFS splitting families up or terminating rights, justice for these issues matter. FDC owns a piece of that and I feel proud of being a small part of that work.

Advocacy for Domestic Violence Victims in the Child Welfare System: A Ten-Year Retrospective

By Sara E. Gilloon, Rachael G. McLain¹ and Diane Redleaf

The Family Defense Center's work on behalf of domestic violence victims began early on and has intensified in recent years. Although there is much work to be done, the Center and its supporters have fueled substantial progress in preventing the mistreatment of domestic violence victims by the child welfare system.

In 2009, the Center started its Mothers' Defense Project, which advocates for mothers who are domestic violence victims, have mental health conditions, are non-offending caregivers blamed for the actions of their partners, are in extreme poverty, and others. The Project focuses attention on the role that poverty, prejudice, and perception play in decisions made by child welfare authorities to separate families.

An important piece of the Mothers' Defense Project is working on behalf of domestic violence victims who come to the attention of the child welfare system. In 2011, the Center started referring to the policies and practices we saw at work against these mothers as "gender-plus" discrimination. Mothers were being victimized by being not just female but members of another highly gendered category, such as being a victim of domestic violence. The categories of "teen mother" and "immigrant mother" were added later as we saw the same processes at work: use of categories and stereotypes operating in the place of evidence of a mother's wrongdoing against her child. Many mothers the Project represents fall within more than one of these categories.

To highlight the Center's work in this important area, this article reviews our work over the past 10 years in the domestic violence area and provides updates on the Center's current efforts.

The Center's work is well-documented in past issues of *The Family Defender*, especially in regards to our efforts to narrow the "environment injurious" grounds under which domestic violence victims have been mis-

labeled as perpetrators of child neglect. In the Fall of 2007, we focused on the *Nicholson* cases, which were landmark New York state and federal court decisions from 2002 through 2004. The *Nicholson* cases were brought by Carolyn Kubitschek and her partners. Ms. Kubitschek has been closely associated with the Center since its inception and became our National Advocacy Attorney in 2013. The cases set a strong national precedent by maintaining that, in order to find a domestic violence victim guilty of child neglect, there must be a nexus between harm to the children and the parent's failure to exercise a minimum standard of care. These decisions also held that the *threat* of neglect was not enough to remove a child; instead, there must be *actual* neglect. The *Nicholson* trial court explicitly rejected "any notion that witnessing domestic violence is a presumptive ground for neglect or removal" and created a highly persuasive source of law for other states. This made it harder for state agencies to indicate a parent for neglect when their "offense" was nothing more than being a victim of domestic abuse. But it has taken Illinois until 2014 to adopt a similar legal presumption, which occurred thanks to work we began in 2009 using the principles of the *Nicholson* decisions as a basis from which we could achieve legislative and policy success.

Sara Block, who is now our Domestic Violence Policy Consultant, started leading policy work on our behalf even before she had an official role with the Center. *The Family Defender*, Fall 2007 issue includes an article she wrote on "How the Illinois Department of Children and Family Services Responds — on Paper — to Domestic Violence." In 2013, Sara received a Skadden Foundation Flom Incubator Grant and came to the Family Defense Center to work with us on implementation of the *Julie Q.* case decision. Her work led to the adoption of the rules that now protect domestic violence victims. In the 2007 article and to this day, Ms. Block calls for DCFS to take several actions in order to implement constructive policies and better meet the needs of families. These actions include that DCFS: (1) educate, train, and change the attitudes of caseworkers in regards to domestic violence; (2) recognize a category of "families in need of services," where the focus would be on



Domestic violence policy consultant Sara Block did the pioneering research that led to the Center's Julie Q. victory. (Diane Redleaf, right)

protecting the children rather than placing blame on a parent; (3) provide comprehensive services to children; (4) collaborate with other service providers; and (5) recognize the manipulation of the child protection system by domestic violence abusers as a tactic of power and control.

Experts on domestic violence policy, including Ms. Block, helped us prepare a special issue of *The Family Defender* again in the Summer of 2008, which includes a roundtable discussion: *Is DCFS Policy and Practice Fair to Domestic Violence Victims? And Does it Protect Children or Stop Abusers?* The experts at the discussion were: Nisha Patel, MSW, LCSW, DCFS Statewide Administrator for the Domestic Violence Intervention Program; Charles Stoops, Ph.D., LCSW, Assistant Professor in the Graduate School of Social Work at Dominican University and founding member of the West Side Domestic Abuse Project, Inc.; Sara Block, J.D., Skadden Foundation Fellow at the Legal Assistance Foundation of Metropolitan Chicago; and Elizabeth Monk, LCSW, DCFS Specialty Services Administrator. The Center made a series of recommendations for change based on the roundtable discussion, including that Illinois stop indicating the non-offending parent for engaging in domestic violence because this is counterproductive to keeping mothers safe, which is essential to protecting children.

In June 2014, the center changed the Center
please turn to page 5

¹ Rachael G. McLain, a student at Washington University School of Law in St. Louis, Missouri, served as a law clerk at the Family Defense Center in the summer of 2015.

Retrospective

continued from page 4

had called for in the 2008 Family Defender newsletter issue actually occurred! DCFS adopted a new rule specifying that being a victim of domestic violence is presumed to not be neglect. In the summer of 2014, we also had a reprise of the 2008 roundtable when both Sara Block and Charlie Stoops joined D’Juana O’Connor from Lifespan and Kent Dean, a private attorney, for a full-day training of the Illinois Parent Attorney Network held at the Chicago Bar Association.

The Family Defender, Winter 2012 Issue, highlights the long road to changing the vague “environment injurious” grounds for neglect to be less punitive to domestic violence victims. On December 29, 2011 in the case of *Julie Q. v. Illinois Department of Children and Family Services*, a case brought by the Center and co-counsel Michael T. Brody and Precious Jacobs from Jenner & Block, the Illinois Appellate Court for the Second District held that the Abused and Neglected Child Reporting Act does not authorize DCFS to indicate persons for creating an alleged “environment injurious.” The Illinois Supreme Court affirmed this decision on appeal on March 22, 2013, declaring the DCFS rule void as a matter of law.

Despite this groundbreaking ruling, DCFS continued to indicate parents and caretakers under this vague, amorphous category of harm. This included indicating parents only because of the presence of domestic violence in the home, even if the parent was the undisputed sole victim of domestic violence and even if the children had never witnessed an incident, much less been harmed by one. Despite having already prevailed on the issue in *Julie Q.*, with the same dedicated co-counsel from Jenner & Block, we filed yet another class action complaint in Illinois circuit court, called *Ashley M. v. DCFS*, asking the court to enjoin DCFS from continuing to use the now legally-void “environment injurious” category of neglect. See *Family Defender* Issue 16.

On June 12, 2014, DCFS finally promulgated an amended version of the “environment injurious” allegation, which expressly provides that a domestic violence victim is presumed to not be neglectful. Nevertheless, DCFS continued to apply the allegation illegally and in direct violation of its new language. *The Family Defender*, Winter 2015 issue reported on the *Ashley M.* settlement. On January 9, the Illinois circuit court approved and entered the final agreed settle-



Julie Q. fought successfully to exonerate herself—leading to expungement for over 26,000 people.

ment in the *Ashley M.* litigation, securing class-wide relief for Illinois residents. Altogether, between the *Julie Q.* and *Ashley M.* cases, more than 26,000 people had their records expunged by DCFS.

These efforts are not over. While the *Ashley M.* litigation was underway, on January 1, 2014, DCFS issued a new version of the “environment injurious” allegation pursuant to what they considered “emergency rulemaking.” When DCFS issued this “emergency rule,” it failed to issue a single memo or policy guideline to its staff alerting them to the change. The final version of the rule that went into effect on June 12, 2014, through the regular rulemaking process (and had, unlike the emergency rule, been subject to a notice and comment period), finally incorporated the required statutory limitations on “environment injurious.” The final rule included an explicit protection for domestic violence victims from unfair neglect allegations. As part of the *Ashley M.* settlement, DCFS agreed to expunge findings that had been entered during a “gap period,” from May 31, 2014, when the emergency rule expired, to June 12, 2014, when the permanent, current rule took effect.

Whatever happened to those people who were indicated while the “emergency rule” was in effect from January 1 to May 31, 2014? The Center was forced to bring yet another class action lawsuit, *Etonia C. v. DCFS*, on the heels of *Julie Q.* and *Ashley M.* to address that time period. On March

17, the Center filed the third of its “environment injurious” major cases, with the help of lead counsel Denise Lazar at Barnes & Thornburg and her team.

In the Winter 2015 Issue of the *Family Defender*, Ms. Block reviewed the “*Road to Presumption against Labelling Victims as Neglectful*.” We also featured an October 2014 federal civil rights lawsuit that we filed on behalf of a victim of domestic violence victim (see picture, p. 6). Just as in *Nicholson* two decades earlier, DCFS and Children’s Home + Aid (CHAID) insisted that a client, Rochelle V., was equally culpable in causing DCFS’s intervention because she had allegedly “allowed” or “participated in” the domestic violence against her. With the Center’s help, Rochelle was reunited with her children after seven long weeks and all allegations against her were unfounded by DCFS. In the federal civil rights suit, filed on behalf of Rochelle and her infant twins against workers from DCFS and CHAID, we allege that the threats made against Rochelle, the seizure of her twins, and their long separation were unconstitutional. The lawsuit, with the law firm Latham & Watkins as lead counsel, seeks compensatory and punitive damages, as well as declaratory relief against the illegal policies and practices of DCFS and CHAID. Rochelle’s story illustrates a “perfect storm” of three sets of illegal policies and practices that deprived her and her twins of their constitutional rights to familial association: (1) the policy of threatening parents with separation

please turn to page 12

Center's First Class Action Suit, Now 18 Years Old, Led to Many Basic Reforms

After receiving its not-for-profit status in January 2007, the Family Defense Center opened its doors to clients for the first time. However, the Center's first case was already 10 years old when the Center took on the lead counsel role. That case, *Dupuy v. Samuels*, was filed by Diane Redleaf and her former law partner, Robert Lehrer, in June 1997. The class action, brought on behalf of every person in Illinois who had been "indicated" following a Hotline call, challenged the constitutionality of the standards DCFS used to deem parents and caregivers guilty without giving them a fair and timely hearing to clear their names. At the time the case was brought, over 150,000 persons were in the plaintiff class.

The *Dupuy* case settled in February 2007, with requirements that DCFS develop and maintain policies and practices to provide due process to all individuals, as well as certain rights for persons who work with children. In 2003, the federal court entered orders, which the court of appeals affirmed in 2005, requiring improved notices, a heightened evidentiary standard before indicating persons as guilty of child abuse, a high level administrator's review of the evidence for most persons who work with children before an indicated finding became final, and an expedited hearing to review indicated finding decisions. Judge Pallmeyer, who presided over the *Dupuy* case for over 12 of the 14 years in which it was pending, found that DCFS used a "practically nominal" burden of proof. According to Judge Pallmeyer, DCFS operated with "excruciating delays" in adjudicating the rights of persons to clear their names from indicated findings registered against them in the State Central Register, which operates as an employment blacklist.

The court ordered DCFS to notify persons accused of abuse or neglect of their rights and the accusations against them. It also ordered expedited review processes for persons who work with children.

After the *Dupuy* suit settled in 2007, a four-year monitoring period ensued. During that time, the Center's staff met regularly with DCFS Counsel to negotiate the implementation of the final requirements of the *Dupuy* order. Among the many achievements these negotiations produced were:



Rochelle V. was reunited with her twins after a seven-week-long nightmare after she fled violence against her.

- An agreement that union membership does not preclude expedited review of indicated findings
- An agreement as to the admonitions judges had to make at the outset of administrative hearings
- An agreement that persons who work 15 hours a week or more in a position requiring contact with children are entitled to expedited review processes and that a person's income does not have to be the "primary" support of the family to receive such processes.
- An agreement to treat as eligible for expedited processes any person whose child care employment was obvious (meaning, there should have to be no special request for expedited processes).
- An agreement to incorporate *Dupuy* policies into newly adopted procedures of the Department.

In addition, several dozens of individual class members have benefited from the direct intervention of DCFS counsel when their cases were brought to counsel's attention in order to provide them the rights guaranteed by the *Dupuy* decisions.

In 2010, the Center received attorneys' fees of over \$90,000 for its monitoring work since 2007. The case closed in 2011, with the promise by DCFS to continue working with plaintiffs' counsel on implementation.

Despite the huge victory in *Dupuy*, there are many unfulfilled promises in the litigation, including issues that were never resolved in the case. Chief among these issues is the lack of a higher burden of proof, such as a requirement that to indicate at the outset, DCFS must find that abuse or neglect is "more likely than not." The Court of Appeals expressed a lack of understanding as to why the district court was reluctant to order that change, but did not second-guess that decision. Ongoing issues also concern the entitlement of many people to expedited processes, especially if they are investigated for allegations as to their own children but they work with children. And at the administrators' conferences, parents receive do not always provide a meaningful review of the evidence, as two pending federal cases have shown. (See p. 7).



Diane Redleaf and 2015 10th Anniversary Honoree Suzanne Sellers at 2014 Gala.

Center Brings Thirteen Federal Civil Rights Cases and Two State Court Class Actions in its Decade of Justice for Families

In the Center's first ten years, it has played a leading role in major, precedent-setting federal civil rights litigation and state court class actions. The Center's staff members co-counseled each of the cases below, with law firms from our pro-bono network serving as lead counsel in most cases.

Federal civil rights cases included:

Dupuy v. Samuels (2007-2011): Class action on behalf of 150,000 persons indicated and listed in the State Central Register due to an unconstitutionally low burden of proof, deficient notices, and delayed exoneration hearings. Phase two of the case, which proved unsuccessful on appeal, challenged the lack of due process in coercive safety plans that remove children or parents from their homes without a hearing. (Center staff, Robert Lehrer, Jeffrey B. Gilbert, Reed Smith co-counsel)

Mary C. v. Calica (2012): Child care agency professional sued after she was indicated without notice or any of her *Dupuy*-related rights. She was quickly exonerated after injunctive relief was sought in federal court. (Center staff)

Laura T. v. Leggins (2013): Social worker suit challenged DCFS decision to indicate even after juvenile court ruled there was no probable cause to believe her child was abused, and had dismissed petitions against her. (Center staff)

Evans v. Richardson (2010): Child was removed from parents under a coerced safety plan. The case settled in federal district court (Julie Bauer, Winston & Strawn LLP, lead counsel)

Hernandez v. Foster (2011): A coercive safety plan was demanded after protective custody lapsed. On appeal to the Seventh Circuit, plaintiffs' claims that the safety plan could not be deemed voluntary were affirmed and the court set a clear standard that requires DCFS to seek a court order before removing a child in a non-emergency case. The case was settled after remand. (Julie Bauer, Winston & Strawn LLP, lead counsel)

S.G. v. Corona (2012): Children were removed from their mother at a child advocacy center and placed with their father without any removal hearing, even though the children had credibly accused the father of abuse. The case was settled after the initiation of depositions. (Michael Brody, Jenner & Block, lead counsel)

Jeanelle H. v. Jones (2014): Mother who had worked as a high school teacher was indicated for creating an "injurious environment" based on statements of a 5-year-old that she drank an unspecified liquid and drove. After surviving a motion to dismiss, alleging violations of the *Dupuy*-established rights to due process, the case settled for monetary damages. (Michael Weaver, McDermott Will & Emery, lead counsel)



Galas have become a way of life for the Center since the first event in 2009.

D.M. v. Berks (2014): In this first civil rights case outside of Illinois involving the Center's direct representation, parents who were subjected to a directive that they could not live with their children sued successfully for monetary damages for violation of their due process rights. (Carolyn Kubitschek, Family Defense Center; Ben Picker, McCausland, Keen & Buckland, lead counsel)

S.B.T. v. Wood (pending): Domestic violence victim who works as a child welfare caseworker was indicated for an allegation of "environment injurious" after it was declared void by the Illinois Supreme Court. She has sued for monetary damages due to her loss of child-connected employment, even though she was exonerated by the circuit court. She claims violations of her due process rights as established in the *Dupuy* case. (Christian Nemeth, McDermott Will & Emery, lead counsel)

L.W. v. Simpson (pending): Mother had her child seized from her and her contact with her child restricted based on the false allegation that she was paranoid schizophrenic. She was also indicated for the void allegation that she created an "injurious environment" for her child. A teacher and social worker, the mother was unable to work during the long period before she was exonerated of this finding. She has sued for damages for the impairment of her familial and career-based liberty interests without due process of law. (Steven Schulte, Winston & Strawn LLP lead counsel).

W.M. v. Giscombe (pending): DCFS demanded a restrictive safety plan from parents after child had a head injury due to a fall at the doctor's office. Despite no emergency and no probable cause to believe the child had been abused, as the juvenile court eventually found, the parents' rights to associate with their infant son were re-

please turn to page 8

Noteworthy State Court Precedential Decisions

A review of our decade of justice for families would not be complete without noting the five cases in which we have created precedents in state court appellate cases. Not only have these cases shaped the law in Illinois, but some have also been widely cited in other states. Thanks to these cases, the Center can now rely on the precedents it has created to advocate relief for clients with open cases.

These state court precedents and the firms of the lead counsel are:

Slater v. DCFS (2011): In this case, the appellate court decided that a freak accident did not make a teen mother a child neglecter. The court interpreted the Illinois Abused and Neglected Child Reporting Act and found that the State had not met the statutory definition of a deprivation of “necessary care” as required to make a neglect finding against a parent. (McDermott)

Julie Q. v. DCFS (2013): In this monumental case, two precedential decisions were reached. Firstly, and most well-known, the Illinois Supreme Court affirmed the appellate court’s decision, declaring that Allegation 60, the rule describing “environment injurious” as a form of neglect, was void for lack of legislative authority to enact the rule. A second less well-known holding in the appellate court’s 2011 decision was the prohibition on the use of double hearsay derived from a prior investigation as to which no in-court testimony was provided. This evidentiary ruling limits the introduction of untested and untestable information to meet DCFS’s burden in proving abuse or neglect. (Jenner)

In re Yohan K. (2013): In this singularly important case, the Appellate Court ruled that solely showing a “constellation of injuries” fails to establish child abuse. Rather, abuse must be shown to be the cause of the injuries. This case creates a strong precedent against finding abuse due to the well-known “triad” theory of Shaken Baby Syndrome cases because that triad wrongly presumes that certain medical findings can substitute for proof of abuse. (Staff)

Decade of Justice

continued from page 7

stricted for nearly three months. (Julie Bauer, Winston & Strawn LLP, lead counsel)

A.B. v. Holliman (pending): After our client fled domestic violence, DCFS removed her infant twins from her and coerced her to agree to a safety plan under which DCFS placed the twins with her abuser’s family members. Our client’s ordeal lasted seven weeks during which she had only limited contact with her children. She was indicated for creating an “injurious environment” even after DCFS rules declared that being a victim of domestic violence is presumed to not be neglect. Appellant was later fully exonerated of all neglect claims. Because the removal occurred without legal basis and without due process, the mother and her infant children seek damages for the harm the unlawful conduct caused. (Cary Perlman and Margrethe Kearney, Latham & Watkins LLP, lead counsel)

Juan G. v. Wilson (pending): Our client had been the foster parent for his nephew, who had been raised with his sister by paranoid



10th Anniversary Honoree Rene Heybach, co-founder of FDC, with Rhoda Redleaf at an open house.

In re Blanca V. (2014): This case was the first appellate court decision to invalidate a finding of “inadequate supervision”; however, the appellate court directed that the decision could not be cited as a precedent. The Center is also counsel in a currently pending appeal of an inadequate supervision finding against Natasha F., in which the argument is made that the DCFS rule on the books violates Illinois’s neglect law. (Latham)

In re Lisa F. (2015): In this case, the Appellate Court overturned a finding of inadequate supervision against a mother who had smoked synthetic marijuana (which was legal at the time) while her child was asleep. The Appellate Court found the DCFS neglect finding clearly erroneous on the basis of the agency failure to apply its own standards in its rule to the facts of the case. (Winston)

schizophrenic parents. Our client’s niece made allegations against our client that were barely investigated. Instead of providing him due process, as required by the *Dupuy* case, the investigator deliberately took action that caused him to be fired from his job at a residential care facility for foster youth. (Joshua Karsh, Hughes Socol Piers Resnick & Dym, lead counsel)

State court class actions include:

Ashley M. v. Illinois Department of Children and Family Services: Challenging DCFS failure to adopt an administrative rule after the *Julie Q.* decision and the failure to remove persons from the State Central Register after July 13, 2012. The case settled in January 2015 with over 7,000 persons’ names removed in April 2015. (Michael Brody, Jenner & Block, lead counsel)

Etonia C. v. Illinois Department of Children and Family Services: This case follows *Ashley M.* and seeks to declare the emergency rule posted on January 1, 2015 invalid because there was no emergency. This case seeks to expunge the names of persons investigated and indicated for “environment injurious” between January 1, 2015 and May 30, 2015 during the emergency rule period. (Denise Lazar, Barnes & Thornburg, lead counsel)

DISCRIMINATORY DECISION AGAINST PARENTS OF OBESE, DISABLED 16-YEAR-OLD SON ENDS WITH EXONERATION

Lon and Julie R. have a son, J.R., who was 16 years old at the time DCFS received a hotline call about his obesity. J.R. suffers from multiple mental and physical medical conditions. He has been diagnosed with autism, obsessive-compulsive disorder (“OCD”), anxiety, and attention deficit hyperactivity disorder (“ADHD”). He has also been diagnosed with morbid obesity, fatty liver disease, hypertension, obstructive sleep apnea, and metabolic syndrome. Though they live in Central Illinois, the R.’s had to look far and wide to find counsel to help exonerate them from allegations of child neglect. Fortunately, they found the Family Defense Center and the Family Defense Center reached out to Brian Beck of Holland & Knight.

In September of 2013, J.R. was 5’6” and weighed 294 lbs. His obesity, combined with his autism, OCD, and ADHD, caused several challenges for his parents as to his diet.

As a result of his autism and OCD, the foods he is willing to eat are very limited. This is a common issue in children with autism, as the high sensitivity of children with autism-spectrum disorder causes anxiety about unusual flavors and smells. J.R. is significantly affected by smells, and thus has trouble eating meats or other foods.

Lon and Julie had J.R. see a team of doctors to work on his weight and feeding issues. J. R. attended a special center for pediatric feeding disorders and his team included nutritionists, therapists (including a psychiatrist), a specialist in developmental pediatrics, and specialists in pediatric gastrointestinal issues and endocrinology. While J.R. had been making progress, his treatment team recognized that his case was very difficult and would take significant time.

Lon and Julie worked with the team to improve J.R.’s diet and activity. They eliminated junk food in the house and encouraged J.R. to eat more fruits and vegetables. They became YMCA members and took J.R. there to exercise twice per week. J.R. also began to exercise at home on a stationary bicycle and regularly walked around the block. Although J.R. refused to eat meat, the R.’s fed him milk, veggie burgers, grits, eggs, cream of wheat, chicken soy nuggets, and apple slices. As DCFS’s administrative law judge herself observed, the R.’s were both “very caring parents.”

J.R.’s pediatrician, however, became frustrated with both J.R. and his parents. In July 2013, the doctor lectured J.R. on his weight and he told Lon and Julie, in front of J.R., to just put out a bowl of green beans, and J.R. would eat when he was hungry. After that appointment, J.R. had a several hour long meltdown. J.R.’s nutritionists at the feeding clinic strongly disagreed with this recommendation and the shaming approach. Following this ordeal, Lon and Julie began looking for another pediatrician. After they left his practice, the pediatrician called DCFS’s hotline, alleging J.R. was “medically neglected.” The call wrongly claimed “the child was living on Dr.

Names have been changed to protect the child’s rights of privacy. Brian Beck assisted with this article, which draws heavily from his excellent brief.



10th Anniversary Celebration Co-chair Anita Weinberg, center, with State Sen. Jacqueline Collins, left, and Diane Redleaf, right.

Pepper and potato chips ... and hadn’t seen a doctor since 2008.”

DCFS’s investigation consisted of little more than verifying J.R.’s weight. DCFS did not speak to any of J.R.’s other medical providers. In fact, the DCFS investigator discovered that the hotline report was false — that the family’s refrigerator was filled with raw fruits and vegetables, and that they had multiple doctor’s appointments for J.R. scheduled. Nonetheless, DCFS indicated the parents for Allegation 79 (medical neglect).

Unfortunately, bias against obese persons continued into the administrative hearing. At a hearing on May 21, 2014, Lon and Julie appeared without counsel. DCFS’s only witnesses were Dr. Brooks and the DCFS investigator. The DCFS investigator testified that on inspection of the family’s home she saw “healthy foods” in the refrigerator, “milk ... vegetables, fruits ... a variety of foods,” and she found no soda or chips. But she did find frozen pizzas and reported that J.R. told her that he had eaten pizza the night before. The parents testified that J.R. will eat pizza “once a week,” but that the pizza that was in the freezer was not for J.R. In fact, J.R.’s pizzas were homemade, a healthy flatbread with low-fat mozzarella from a recipe provided by J.R.’s nutritionist.

The only opinion from a medical professional in the hearing record was from one of J.R.’s treatment team doctors, who noted that J.R.’s “weight has not increased in the last three months, which for him is remarkable.” He concluded that “a charge of medical neglect would not be something that I would have considered from my perspective.”

The administrative law judge’s recommendation to uphold the ne-

please turn to page 12

Interview

continued from page 1

Chicago (LAF). There, I started a special initiative called the “Children’s Rights Project.” I had known that LAF had a history of representing children and challenging child welfare agency policies and practices in the early 1970s, but by the time I came to LAF in 1979, none of that work on behalf of children and families in the child welfare system had continued. I convinced the LAF Executive Director Sheldon Roodman to let me try to revive a special project focusing on legal reform of the child welfare system.

Eventually, I was able to add outstanding staff to the project: Rene Heybach, Mary Bird, Anita Weinberg, Stacey Platt, Ann Courter, Amy Zimmerman, and Daniel Romero each worked at the Children’s Rights Project during my tenure. We were able to provide direct legal services and systemic litigation involving the legal rights of families in the child welfare system, and we focused on the policies and practices of DCFS that were hurting families.

Later we did extensive policy advocacy by working with LAF lobbyists. This work included writing the Family Preservation Act, the Illinois Permanency Law (an effort led by Anita Weinberg), and drafting the law on notice and rehearing when children are taken from their parents.

I went into private practice in 1996 when federal restrictions precluded LAF from handling class action cases and effectively limited its ability to carry on legislative advocacy. But my vision of having an agency that carries out systemic reform work (including class actions, affirmative civil rights cases, and policy advocacy) and also represent individual clients in need of help has always stuck with me. I had a clear model, from my days at LAF, as to how to carry out both direct service work and system change work. I continue to believe that’s the best model and the most needed approach to address the problems of families in the child welfare system. LAF could no longer do class action work or policy work, but that didn’t mean the need for those forms of advocacy had ever gone away. If anything, the need was greater than ever.

Rachel: So if the need was always there, why did it take until 2005 to start to get the Center off the ground?

Diane: An organization that could take on cases at an individual and systemic level required funding. Equally importantly, I needed to be personally ready to take on that



Hon. Patricia Martin has led family-focused reform in Chicago and nationally (here at ABA conference, 2013)

challenge, and I don’t think I was ready until I had been out on my own for a while. The law firm I formed in 1996, which continued to do cutting edge legal work for families, dissolved by 2005. At the same time, as I got good experience running a private practice law office. Our practice as a public interest firm was especially challenging. We couldn’t do the policy work that was needed or secure public support for our work. When it became clear that a private law firm carrying out child welfare reform work wasn’t going to be viable long term, I had to decide what to do next. At that point, I still had very active litigation pending in the child welfare area and a lot of ideas as to the work that remained undone.

The *Dupuy* case was very active in those years. In that case, we were still challenging the lack of due process in the registry of indicated reports and in safety plans. That case actually remained active for many years even after I founded the Family Defense Center (see p. 6). The Center took over the co-lead counsel role in 2007 and then, in 2008, we tried—unsuccessfully, as it turned out—to get the United States Supreme Court to review the rather infamous decision by Judge Posner that declared safety plans, no matter what, are voluntary. In that decision, Judge Posner analogized kicking parents or children out of their homes, under threats of putting children into foster care, to offering them a choice between a “martini vs. a Manhattan.” We had argued that this choice was not voluntary if “no thank you” wasn’t a real option. The *Dupuy* case didn’t close until 2011. But even today, we are working on implementing commitments DCFS made in the *Dupuy* case. (See articles pp. 6, 13.)

But in 2005, at a turning point in my ca-

reer, I decided that I had to try to create a freestanding family advocacy organization. I was at a real crossroads. But without my own parents, who had the means to fund the start of that effort, the Center would have been stopped in its tracks. Children need parents, and I definitely needed my own parents to make the Family Defense Center a reality.

Rachel: Once you decided to create the Family Defense Center, what did you do to make that decision a reality?

Diane: In the beginning, the most important need was to have a small working board that shared a vision and understood the need and niche that we were trying to fill. Those people were my friends Anita Weinberg, Rene Heybach, and B.B. Carlson. (See article p. 3.) Anita and Rene were people I had worked with for decades, and B.B. was sort of the “spark plug” in the group — she struck me as a very talented and energetic young lawyer who had a lot of leadership ability.

Even after we incorporated, though, it took almost two years after we filed the not-for-profit incorporation documents until we had a clear mission statement, by-laws, tax exempt status, a logo, a case for support, a program brochure and our first real strategic plan. I had to wind down my private practice and begin to raise money for a truly independent organization. The early years were very challenging!

Rachel: Were there any critical moments that helped the Center grow in the early years?

Diane: I remember September 10, 2007 as the best day we had ever had, from a purely financial perspective. That specific day was critical to our growth: we had money fall on us from what felt like the sky. We learned we had been designated to receive a very large Cy Pres award by Edelman Combs Latturner & Goodwin. And on that very same day, Elissa Efroymson — who is an extraordinarily thoughtful philanthropist that understands the needs of families in the child welfare system — made her first major grant to us from the Efroymson Family Fund. Suddenly, we had enough money to hire not just one staff attorney, but two! That critical moment felt like it was mostly luck — and of course, having the good fortune to know a few of the right people at the right time.

Rachel: Why is it necessary to have an independent organization like the Center to address the issues of justice for families in the child welfare system? Has your own vision of the Family Defense Center been the same since its founding?

please turn to page 11

Interview

continued from page 10

Diane: Since my days at LAF, I have thought that families in the child welfare system are among the most mistreated people in our society, and among the most serious victims of grave injustice. It has always bothered me deeply that one of the injustices is that they are not even widely seen as victims. The stigma they face by being accused of abuse or neglect, even when that accusation is false, is so disempowering. And the worst of it is that children's interests are very commonly pitted against parents' interests and proclaimed to be superior to the parents' interests: if children are the angels, their parents (and not the State or other institutions) are the villains. These dichotomies hurt children the most, because if there is anything children most need in this world to survive and thrive, it is loving, supportive parents.

Unfortunately, the stigma against our families extends to the way in which they are marginalized within larger advocacy organizations as well. Helping families in the child welfare system has also not been a high priority area for civil rights organizations or most foundations. There are very few foundations that have "reforming the child welfare system" as one of their priority funding areas. I think the next decade will see that change: the issues I've worked on since 1984 are starting to become more mainstream and better understood by the general public and I think there will be greater recognition of the intersection of our issues with more mainstream poverty and civil rights issues.

An organization is needed to fight back on these families' behalves and change the narrative about who the families in the child welfare system are. Our clients deserve to be treated as sympathetic victims of a system that may have good intentions but which makes serious mistakes. I have always thought that the best way we fight back in our country is through our courts, our legislatures, our own organizing efforts, and our media to insure that the people most directly affected by child welfare policies have a voice. All of these strategies require a coordinated effort. An independent organization is especially needed to give families a powerful voice in policymaking arenas: families need an undiluted voice and also a vision of what justice looks like. So even though we have many allies in poverty advocates, housing advocates, domestic violence advocates, and "individual rights" allies, the needs of families in the child welfare system to have their own voice—their own



U of I's Melissa Frydman, an active steering committee member of the Illinois Parent Attorney Network the Center founded in 2011 (left), joins former staff attorney Allegra Cira Fischer (middle) and staff attorney Melissa Staas.

organization—has always been very important to me.

I have to say that my vision of what is required is not different from what I thought years ago, but the details of what needs to change in order for that vision to be fully realized have gotten more elaborate over time. Certainly the centrality of working with major law firms to achieve that vision is something I didn't know would work as well as it has. That's been a great achievement of the Center and one I'm very proud of.

Rachel: What was the hardest part about starting the Family Defense Center?

Diane: Despite coming from a family of contrarians, I have often found it very challenging to face the high degree of skepticism about our mission and the families we serve. I've touched on this a little already, but in the beginning, and for a number of years after we opened our doors, I felt outright *hostility* to what we were about, including from people and institutions that I had thought of as allies and friends. This was partly because we didn't have the nuances of our messages exactly right, but that didn't mean our work was any less important than it is today. We were repeatedly turned down for funding from foundations, including some that have become strong supporters now. It was frightening and I was uncertain as to how we would succeed. I felt the message about the value of our work wasn't getting through. The complexities of our messaging and the questioning of how we knew that the families we represented were wrongly accused is something that was especially challenging. To this day, it remains a challenge, even though our track record is extraordinary. No one wants to be on the wrong side on an issue of children's safety and wellbeing. But the assumptions I

have often encountered, sometimes under the surface, have simply been unfair.

Rachel: Are you more encouraged now?

Diane: Absolutely. These are exciting times to be a family advocate. Because we spent so long addressing and counteracting this deep skepticism, it is very encouraging to see the growth of interest and a deeper understanding of the importance of our work in the media, legislature, and courts. There is also so much more support nationally for our kind of work, though no one has quite the model we do. I see a growing public recognition of the ways in which our child welfare system needs to change. I certainly don't feel I'm a lone voice any more. There have been so many people doing work over the last ten years, and not just in Chicago. This has really changed the national conversation about families in the child welfare system. The ten people we are honoring this year at our 10th Anniversary Celebration all provide a testament to the strength of the commitment in our community and nationally to the importance of protecting children by defending families. I'm proud to know each of them and I am also very much indebted to our board and our staff—they are the best!

Rachel: This conversation could go on much longer, couldn't it? But why don't you invite everyone to continue the conversation at our 10th Anniversary Celebration?

Diane: That's a great idea. Kind of like "Live from New York, it's Saturday night," or something? Except it's on a Wednesday, October 7. Is that what you were looking for?

Rachel: Sure. Or just tell them to go to www.familydefensecenter.org. That works, too.

Diane: That was easy! Thanks, Rachel, and to everyone who made our "Decade of Justice for Families" possible.

Retrospective

continued from page 5

from their children and coercing so-called safety plans in the absence of probable cause or an emergency, in violation of standards set by the 7th Circuit in the Center's case *Hernandez v. Foster* (a suit led by Winston & Strawn attorneys); (2) the practice of taking children into quasi-foster care settings and treating the quasi-foster parents as if they had a lawful foster parent status, in violation of basic legal standards that apply to foster care placements under federal and state law; and (3) the practice of using the legally void DCFS allegation "environment injurious" to treat a domestic violence victims as child neglectors.

A second federal civil rights suit also addresses the plight of domestic violence victims in the child welfare system. Filed on Feb. 12, 2015 with lead counsel from McDermott Will & Emery, *S.B.T. v. Woods* addresses the mistreatment of a domestic violence victim also indicated as a child neglecter under the void "environment injurious" rule. After her abuser threw a brick through her window, she was fired from her job as a child wel-



Dupuy co-lead counsel Robert Lehrer with Center's National Advocacy Project Attorney Carolyn Kubitschek.

fare worker because of an indicated finding against her. The suit seeks compensation for her loss of income and emotional harm.

This well-documented history of advocacy shows the two sides of reform work. While the Center has made enormous progress in conforming Illinois law to the principles the *Nicholson* court adopted, we continue to need to represent domestic violence victims whose rights are not yet fully recognized in Illinois or elsewhere.

As our work has grown in scope and impact, we have also gained very important financial support from foundations and individuals. The work of the Center on domestic

violence policy protection for children and families in the child welfare system has been supported generously by: Chicago Foundation for Women, Help for Children, the Efroymson Family Fund, and the Skadden Foundation. Funding for legal services and policy advocacy work has been provided by additional foundations, such as the Polk Bros. Foundation, and individual donors.

Even after all of this work, however, domestic violence victims continue to be unfairly labeled as child neglectors. As evidenced here, the Center has taken on an increasing leadership role in policy advocacy and representation of domestic violence victims in the child welfare system over the years. This work was featured recently at the American Bar Association's Parent Representation Conference on July 22, where our staff members and consultants presented, including on the intersection of domestic violence and child welfare. In the next year, Ms. Block will also be working with the Center once again on these issues through a second post-Skadden fellowship and HFC foundation support. Specially, we plan to expand the tools available to advocates and clients, and we will continue to press for implemented DCFS practices that match the laws and policies we have worked hard to enact.

Exoneration

continued from page 9

glect finding was riddled with bias against the parents based on the finding that "both parents are themselves morbidly obese." The judge concluded that the parents had neglected J.R. by "refusing to adhere to the recommended dietary plan." She omitted from her conclusions the doctor's recent opinion that J.R. was *not* neglected. She also ignored the difficulties presented by J.R.'s mental health issues, writing, "Appellants claimed J.R. had food aversions related to food textures [but] acknowledged that J.R. did not cook". The judge even implicitly endorsed the shaming technique the former pediatrician had ap-

plied and faulted the parents for not following it, stating that "when presented with the advice that they should 'put out a bowl of green beans and J.R. would eat when he was ready' they had no explanation why it was not a reasonable approach." The judge concluded that J.R. was medically neglected because "appellants had numerous excuses" for J.R.'s deteriorating health, and they used his reported aversion to "certain textures" as an "apparent excuse for feeding [him] pizza, sugared sodas and potato chips." Without identifying any specific treatment plan the parents had failed to follow, the judge concluded that the "Appellants are responsible for allowing J.R. to become morbidly obese." The judge even went further and added that the parents were responsible for his "incur[ring] the negative comments of other school children. They and not the other school children are to blame."

Fortunately, the Family Defense Center recognized the injustice and bias in this flawed decision. There was no evidence to support that Lon and Julie fed J.R. in the manner the judge described or that they pursued an unhealthy diet for their son. In fact, because Lon and Julie had been eliminating unhealthy foods from the home, J.R.'s weight was either stabilizing or going down, not increasing. He had been increasing his activity level while under the care of the feeding program. Rapid weight loss was not the plan; J.R.'s diet was not a radical starvation diet but an approach focusing on education and gradual introduction of new foods.

During the appeal to the Illinois Circuit Court, it took a lengthy briefing and argument process, masterfully led by Brian Beck, Associate Attorney at Holland & Knight. Mr. Beck focused the reviewing court's attention on the misstatements of fact in the judge's decision and the improper bias against the parents that her opinion conveyed. On May 22, the R. family's ordeal was finally over.



National Reunification Day programs have celebrated family reunification for five years. (Phyllis Rubin pictured with children at 2012 celebration)

DCFS PROPOSED RULES WOULD LIMIT RIGHTS OF CHILD CARING EMPLOYEES THAT HAVE LONG BEEN SECURED BY CENTER

On May 8, 2015, DCFS announced a proposed massive overhaul of the rule that governs the appeals individuals can request when they are “indicated” as abusers or neglectors.

DCFS’s policy changes greatly affect the Center’s litigation, namely through the decades-long *Dupuy v. Samuels* lawsuit, in which the Center assumed a lead counsel role in January 2007. See p. 6. Now, the DCFS appeal system requires specific notice and a timely opportunity to be heard before a person who works with children can be indicated as a perpetrator.

From 2011 until 2014, the Center actively negotiated policy issues with DCFS counsel related to the implementation of the commitments made surrounding the *Dupuy* settlement. In 2011, DCFS solicited the Center’s comments on a revised administrative appeal rule and promised to change their rules according to these negotiations.

However, the recommendations were never incorporated in an actual revised rule and the rule announced this year ignores much of the legal and negotiation process and the progress achieved in two decades. DCFS ignored many — if not most — of the Center’s comments and introduced provisions that are unworkable for individuals who seek to appeal indicated findings and have fair hearings.

The many concerns the Center voiced to the Joint Commission on Administrative Rules (the legislative body that considers the proposed rules) in its 36-page comments submitted on June 22, 2015 cannot all be recounted here. Significant complaints that go beyond drafting errors include the following.

1. The *Dupuy* case, as well as the Illinois Supreme Court’s constitutional decision in *Lyon v. DCFS*, requires final administrative hearing decisions within 90 days of the date an individual requests an administrative hearing to review the merits of a finding. In violation of this requirement, DCFS’s proposed rule would allow an unlimited extension of time whenever *any* witness for DCFS is unavailable to testify at a hearing. This is a gigantic loophole that makes a mockery of the speedy trial rights that the federal and state courts have directed.
2. A parent and/or child care worker have the right to present evidence and to compel the testimony of witnesses and production of documents. DCFS proposes to limit that right to only such evidence as can be identified within 3 days of the first prehearing teleconference, which may be months before the hearing and even before the parent or child care worker has an attorney.



Staff attorney Melissa Staas, in her first office at 1325 S. Wabash.

3. In violation of the constitutional right to have a hearing to review the merits of an indicated finding in a *timely* manner, DCFS proposes to bar appeals whenever there is *any* court hearing that has ruled against an individual on *any* issue, no matter if the issue is the same or related to the indicated finding as is actually required.
4. “Child care workers” have the right to an expedited time frame of 35 days for DCFS to decide their cases. Instead, DCFS proposes an unlimited amount of time for the Chief Administrative Law Judge to even decide if the person *qualifies* for expedited appeals, delaying the whole process at the outset.
5. DCFS’s proposal does nothing to correct DCFS’s draconian practice of declaring appeals to be “abandoned” almost immediately when an individual misses a prehearing phone call, even when the individual attempts to call the judge back very soon after the call was missed. There are a number of reasonable reasons for missed calls, including that the Judge calls after the stated time or DCFS has the wrong phone number. Given the variety of reasons someone may miss a phone call that have nothing to do with an individual’s decision to abandon an appeal, DCFS should propose a more reasonable process.

The Center hopes to engage in more discussion with DCFS on the proposed rules. The Center is also briefing legislators on the above concerns, and has reached out to DCFS policy makers in order to discuss the issues the Center’s comments raise. If the Center’s concerns are not addressed, the next decade of justice for families will include a similar fight for fair administrative appeal rules.

Family Defense Center Befriends Advocates for Justice Nationally

The Family Defense Center's direct legal services have focused on the legal issues presented by Illinois families in the child welfare system, but its reach in important policy cases is national. Starting in 2009, the Center has served as a "Friend of the Court" (amicus) in multiple cases, including the following:

Cornejo v. Bell (2nd Cir. 2009): We filed a brief supporting the position that qualified immunity should not be found in favor of the child welfare agency in a case in which the mother was at work when her child became unresponsive.



One honoree to another: Tenth Anniversary Honoree Deborah Pergament presents first Family Defender award to Dorothy Roberts (2009).

In re Dar. C. (Ill. S. Ct. 2011): We wrote an amicus brief supporting the father's rights to due process (notice and personal service) in the termination of parental rights process. We filed such briefs in both the appellate court and the Illinois Supreme Court. In the case, the Illinois Supreme Court ruled unanimously in favor of the father and his parental rights were restored. His children eventually were placed in the guardianship of our former board member Stephanie Crockett-McLean, who is the aunt of the children.

Camreta v. Greene, (U.S. Supreme Court 2011): We coordinated 18 friend of the court briefs in this case, which involved the seizure of a child from her classroom for interrogation about her home life. We also wrote a brief on overintrusion by the child welfare system and worked very closely with the plaintiffs' lead attorney, Carolyn Kubitsek, who later became our national advocacy project attorney, argued the case before the U.S. Supreme Court.

A.S.E. v. A.S. (U.S. Supreme Court 2013): We supported the request for the United States Supreme Court review of a termination of a father's rights that occurred in a private adoption where the indigent father was not appointed counsel. We argued in support of finding a due process violation in the failure to appoint counsel in a termination of parental rights cases in a privately filed case.

Baby Veronica (U.S. Supreme Court 2014): We joined a brief written by Patricia Millett on behalf of Casey Family Programs arguing that the Indian Child Welfare Act represented best child welfare practice.

The United States Supreme Court ruled 5-4 against the father, who was the party seeking to apply the Indian Child Welfare Act to prevent the termination of his parental rights.

Ohio v. Clark (United States Supreme Court 2015): We filed a brief in favor of allowing confrontation or the exclusion of statements of a three-year-old child in a criminal case. Our brief focused on the unreliability of young children's statements and the need for protection of the rights of persons accused based on these statements. The Supreme Court held that the statements at issue were not testimonial and therefore not subject to the Confrontation Clause.

The Center's track record in these cases is mixed. The biggest victory the Center had in an amicus briefing effort was not a victory at all. In 2010-2011, our work as amicus brief coordinator helped to prevent a potentially devastating loss to the rights of children and families under the 4th Amendment protection against unreasonable seizures. In the case *Camreta v. Greene*, the plaintiffs were a 9-year-old girl and her mother. They argued that their 4th amendment rights were violated by the seizure of the 9-year-old from her school classroom for an interrogation about her home life. Interestingly, one of the most common legal questions asked of Center staff is whether the state can interview children outside their parents' presence and without their consent — the very question the United States Supreme Court refused to answer in *Camreta*.

Amicus briefing efforts are important opportunities to educate the courts on the issues. These briefs also enable the Center to forge alliances with many groups with similar interests. As occurred in *Camreta*, the Center strengthened relationships across a broad political spectrum and its amicus briefing efforts enabled us to work with some of the leading appellate lawyers in the country.



Children's rights to play in parks has been under assault in recent months. See p. 18.

The Center's Reports and Manuals Help Families and Advocates Seek Justice

Not all of the Center's work is in courtrooms, administrative agencies, or legislative arenas. The Center's mission includes educating our clients and other advocates. In addition, we work to advance just policies through public discussion and sharing information. To that end, the Center has developed two major reports and two widely used manuals. We plan to release our third manual for our client community this winter. These reports and manuals make it possible for individuals to learn about their rights, expand their knowledge of important policy issues in the child welfare system, and facilitate advocacy for justice.

1. Medical Ethic Concerns in Physical Child Abuse Investigations: A Critical Perspective (114 pages)

In 2012, the Center had an intriguing opportunity to work with a retired lawyer who had an interest in taking on a major research project. That lawyer, George Barry, read a federal civil rights complaint the Center had filed on behalf of client Laura T., and he had one question, in particular: "Were the actions taken by the child abuse doctor actions ethical?"

In the case, the physician questioned the mother, who had not slept all night, and then testified against her based on the doctor's personal babysitting experience, not her medical education or research, as to when children would cry from a fracture. Mr. Barry's complicated, philosophical question resulted in two years of research, a 114-page report, and many opportunities for the Center to be at the forefront of a national conversation on how to hold child abuse pediatric professionals accountable under medical ethics standards.

Shockingly, George Barry's thorough research found that the medical establishment largely disregards the manner in which child abuse pediatricians typically interact with families under investigation. There are few checks and balances, and the lines between advocate, treater, and forensic examiner are frequently blurred. Even the basic proposition that one should not investigate one's own complaint to authorities has been largely ignored in the world of child abuse investigations. In addition, child abuse pediatricians have not disclosed the contracts they hold with state and local government agencies.

The Center's report has received some national attention, including from child abuse pediatricians themselves. Just this summer, Detroit news station WXYZ-TV, the ABC news station, interviewed Executive Director Diane Redleaf about the report. Also, the Center has received feedback that lawyers who have been featured in national news programs or stories have read the report, using it to advance their own calls for reform in the medical professions that handle these very sensitive cases.



Center's reports on the medical ethics in physical child abuse cases has gotten new attention. Diane Redleaf awaits WXYZ taping. (Summer 2015)

Currently, George Barry is revising the report in order to publish a condensed version. Meanwhile, the Center continues to file complaints in recent cases, based on the report's discussion of disregarded ethical standards.

2. Inadequate Supervision: "When Can Parents Let Children Be Alone?" (42 pages)

Challenged by a potential donor to undertake an outreach project in immigrant communities, the Family Defense Center had graduate student, Caitlin Fuller, research whether immigrant families have practices that make them more vulnerable to child welfare intervention based on claims of inadequate supervision. Ms. Fuller found no significant differences in such practices based on immigration status or culture, but just as she was writing up this research, a high profile case involving children walking to a park hit national news.

The Mietiv's case, in Maryland, involved so-called "free range" children and was similar to cases pending in the Family Defense Center's docket, although, none of the Center's clients are avowed "free range" parents. Instead, the Center's clients are parents who let their children be alone — outside or inside — and who have been targets for hotline calls and child neglect investigations. With news and reports criticizing Illinois for having the most stringent inadequate supervision law in the nation, we broadened Caitlin's project to include a review of the Illinois policy, actions taken by Illinois, and policy reform recommendations.

please turn to page 16

LEGISLATIVE POLICY REFORM AND RULEMAKING ADVOCACY LEAD TO SYSTEMIC CHANGE

Beginning in 2009, the Family Defense Center has been active in both advocating for administrative policies that will increase the fairness of the child welfare system and advocating for legislative reforms in Springfield. The Center's greatest successes have included its opposition to legislation that would hurt families involved in the system and working with other advocates to amend language in bills that caused unintended harm to families. The following is a list of affirmative legislative efforts we have undertaken:

In 2009, we secured passage of a bill that required certification of mailing of indicated findings. However, the lack of funding for such mailing has delayed its use.

In 2012, we secured a major compromise bill defining "environment injurious" as requiring likely harm to a child and blatant disregard of an obvious danger to the child.

In 2013, we successfully opposed the State's Attorney's proposed language that would have allowed a "constellation of injuries" on a child to establish abuse in the absence of specific evidence.

In 2014, we secured a requirement that safety plans must be in writing and must spell out the rights and responsibilities of each party



to the safety plan and a copy of the plan must be provided to each participant.

In addition, our litigation efforts have advanced policy reforms, including: spelling out that "coaching of children" is not a neglect ground and should not be the basis for any removal of children from their parent (resulting from *S.G. v Corona*); requiring admonitions of appellants as to their rights to a speedy trial (resulting from *Dupuy v. Samuels*); secured improved notice as to the basis for decisions against persons under investigation. This last commitment was another commitment in *Dupuy* that was the subject of years of discussions as to how the implementation would occur.

The main subjects of our affirmative legislative agenda have been: reforming the indicated report finding process; narrowing the grounds of intervention against families to those cases in which abuse or neglect is supported by the evidence; and creating or expanding due process in safety plans and other removals of children from their parents.

Our rule-making advocacy has resulted in amendments to the Illinois Administrative Code governing the definition of Allegation #60 ("environment injurious") and rules regarding the expedited processes required by the *Dupuy* case for persons who work with children.

Reports and Manuals

continued from page 15

A 42-page report, released in August, is the result. The report discusses the 20 Family Defense Center cases between the years of 2007 and 2014. It also highlights Natasha Felix's case, which is currently pending in the Illinois Appellate Court. Natasha let her children, ages 11, 9, and 5, play in the park adjacent to her home for 30-40 minutes. She was able to see them from her kitchen window and checked on them every 10 minutes. Nevertheless, a stranger called the DCFS hotline and Natasha was labeled as a child neglecter, preventing her from pursuing her career in healthcare. The Administrative Law Judge and the Circuit Court affirmed this label, largely on the grounds that her 11 year old and 9 year old had attention deficit hyperactivity disorder (ADHD). Without any medical or psychological testimony to substantiate such an influential conclusion—that the children could not be unsupervised or supervise their younger sibling due to their ADHD.

After the report was released, the Center received significant media coverage. CBS Chicago (Channel 2) featured Natasha's case on the 10 p.m. news and the report was covered in a lengthy article by Donna St. George in the *Washington Post*.

The Center's report represents the first lengthy policy analysis of child neglect policy's implications on parents' decision to leave their children unattended for short periods of time. We expect that this re-

port will become a focal point for future debate and policy advances. The report aims to protect children from the trauma of DCFS intervention and child removal by proposing clear guidelines that would let children play alone when their loving parents decide it is safe to let them do so. The Center's work has successfully garnered national attention for the voices of innocent parents, who are indicated for child neglect after allowing their children to play outside.

3. Pro Se and Pro Bono Manuals

Since 2008, the Family Defense Center has developed two manuals that are widely used for self-representation and pro bono representation. The pro bono manual was substantially revised in October of 2011. These manuals have become major resources for individuals and advocates involved in child welfare investigations and cases.

4. Responding to Investigations Manual (forthcoming)

In order to assist clients and others who inquire about how to respond to child protection investigations, including requests for investigative interviews with children, the Family Defense Center has been drafting a new manual. It is currently anticipated that this new manual will be available in October 2015.

All of these manuals present information about the law and procedure applicable to our core area of legal practice: helping families navigate child protection investigations and findings (including the appeal process from findings). None of these manuals, however, is intended to substitute for direct legal advice and representation in specific cases.

Can You Believe This?—Greatest Hits

We asked our law clerks Rachael McClain and Brittany Trainor to pick out their favorite “Can You Believe It?” stories from the last decade of the *Family Defender*. Here are their choices for our most outrageous “Can You Believe It?” stories!

Has the label of “domestic violence perpetrator” gotten a bit over-extended, so that sometimes true abusers are lumped together with law-abiding mothers and fathers? Unfortunately, we wish it weren’t



so, as does one of our clients: **Leslie**, a mother, engaged in a verbal argument with her husband that none of her children witnessed. Her act of “violence” during the argument was that she threw a small package of cookies at her husband, hitting him on his buttocks. The package left no marks. Recognizing no limits on its own powers, DCFS labeled our client a perpetrator of domestic violence who had subjected her children to “substantial risk of physical injury.” Next thing you know, when John Cleese of Monty Python fame

comes at someone with a dangerous banana, we’re concerned that DCFS’s Hotline will intervene! Unfortunately, without much discussion, DCFS affirmed the indicated finding on appeal and the FDC is now taking the issue to the Circuit Court for an administrative review. (See Issue 7) Update: Eventually, after a trip to the Illinois Appellate Court and her second trip to the hearing unit, Leslie won her case and was exonerated.

Sandra was a victim of sex trafficking. She is also the mother of a seven-year-old daughter, Maria. Due to severe pain and depression resulting from her own victimization, Sandra needed help in caring for her daughter. After DCFS intervened with allegations of neglect against Maria, Sandra found it increasingly difficult to see her daughter, even though the child was living in a respite home that was supposed to be temporary and voluntary placement for her daughter. The Center attempted to intervene in order to increase Sandra’s contact with her child. However, suddenly, Maria had disappeared from her voluntary placement. DCFS, working with the child’s father in Mexico, had arranged for the child to live with his family, circumventing international treaties without a court order or consent of the custodial parent. By the time the Mexican Consulate and immigrant rights groups had been alerted, Maria had already left the country with her father, with whom she had had little contact in the past. Sandra’s relationship with her child was effectively terminated without due process of law. We cannot believe that DCFS would conspire with family members to ship a child out of the country! (See Issue 11)

Lisa and her husband, Tom, are the loving and attentive parents of two very bright and inquisitive young boys: “Aaron” (9) and “Eric” (8). Each of their sons is diagnosed with ADHD and Childhood Bipolar Disorder; Eric additionally is diagnosed with Asperger’s Disorder. In order to manage their medications in the morning, Lisa and Tom decided to purchase pill containers with separate compartments for each day of the week. They let the boys pick out their colors and write their names on them, and, for months, the boys would take their morning medications as part of their daily routine

without incident. One day, due to a verbal misunderstanding, Eric took four mornings’ worth of his medication. Lisa promptly called his psychiatrist and took Eric to the emergency room. Eric presented with no symptoms whatsoever and was released later that day. Lisa also took immediate action to amend the previous dispensing system she had been using. Despite all of her precautions, DCFS received a hotline call and an investigation ensued. After an incomplete investigation, inaccurate information as to Eric’s cognitive abilities, and a misunderstanding of Eric’s medications and their impact, Lisa was indicated for *poisoning* her son “by neglect.” (See Issue 14). Update: Good news to report: Lisa won her appeal!

Sandra is a proactive advocate for her two boys, “Casey” (14) and “Timothy” (12). Casey and Timothy have ongoing mental health issues, including severe anxiety, which require psychiatric care and a non-traditional school settings. DCFS investigated the false claim that the boys were not regularly taking their medication or attending visits with their psychiatrist, which the boys’ psychiatrist immediately refuted. A DCFS investigator berated Sandra for not being “proactive” enough in continuing the boys’ education. Instead of recognizing the children’s vulnerable mental health status, the DCFS investigator also interrogated the boys, demanding to know if they “knew their Mom could go to jail” for not sending them to school regularly. The allegations against Sandra were never clarified and, after coming into the home and terrorizing the family, DCFS closed up the investigation with an “unfounded” finding, leaving the family to pick up the pieces of the emotional carnage DCFS’s needless intervention caused. Sadly, we *do* believe these threats to the children were made, because the same investigator: told another plaintiff in the *Dupuy* lawsuit, in the presence of her 10 year old son, that her son “masturbates all over the place”; told a teen’s private school that she was using drugs (causing her to lose the school placement she loved); told the grandmother and legal guardian of three grandchildren to “walk away” from her home when she was having trouble paying her utility bills; and, lastly, threatened another family that their 11-year-old autistic son could remain on the Child Abuse Registry for 50 years (there is a 5 year or age-of-23 limitation on all registries of children). What we *can’t* believe is that an investigator with such a long history of abusive conduct toward children and families remains on her job, free to damage more and more vulnerable children with her cruel and outrageous comments. (Issue 15).

News Briefs

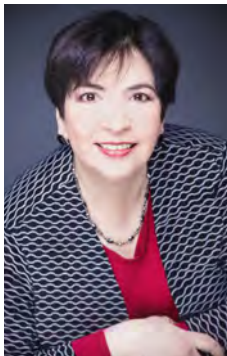
continued from page 2

their services to help the Center’s clients through individual cases and impact litigation. Since its start in 2008, the Family Defense Center’s pro bono program has experienced tremendous growth. The first pro bono training, which was held in February of 2008 at McDermott Will & Emery, had 15 attendees. Over the following six years, the program grew exponentially. In 2014 alone, the program included 90 pro bono attorneys from 15 top Chicago law firms. In fact, pro bono attorneys donated more than \$1.7 million in legal services to the Center in 2014. As of August 2015, 53 pro bono attorneys were actively working on open cases through the Center. The pro bono representation program triples the Center’s staff resources and has been instrumental in the Center’s decade of advocating justice for families.

Message from the Executive Director

REASONABLE PARENTS SHOULD BE GIVEN FREE RANGE TO RAISE THEIR CHILDREN—BAD CHILD WELFARE POLICIES SHOULD NOT COME HOME TO ROOST!

This spring, the overreach of child welfare agencies was suddenly in the news. The children were unlikely victims: two middle class white children of highly educated parents who live in Silver Spring, Maryland. Suddenly, the traumatic intervention, interrogation of parents, demands that parents raise their children differently, and a fair amount of soul searching about whether Big Brother had



gone too far in stopping parents from raising healthy and normal children started to receive serious attention. Child welfare intervention suddenly hit too close to home for middle and upper middle class families.

The news that child welfare agencies intervene and threaten the removal of children for reasons that have little to do with genuine harm was not news to any of us at the Family Defense Center. With three appellate court cases involving claims of “inadequate supervision” and over a dozen that have reached the circuit court review level,

the Center has years of work defending families from accusations that letting their children play outside is neglect. What we hadn’t had until now is a national platform to talk about how far astray our child welfare system has gone in labelling healthy and happy children neglected and loving parents as neglectors.

Sadly, it seems to take a story affecting a suburban white family before the media, public, and policy makers take notice of the trauma our child welfare system is causing to millions of children and families.

In our office, we have a new slogan: “74 is the new 60.” It means that “inadequate supervision” claims of neglect — like those in-

volving the free-range children in Maryland — are replacing the rampant overuse of “environment injurious” claims of neglect we struck down in *Julie Q*. These overreaching practices by agencies have to stop, and the best way to stop them is through clear and carefully drafted policies. But since Illinois DCFS has a long history of issuing indicated neglect findings when there is no documented harm to children, getting new policies on the books will not be easy and enforcing those policies will require concerted efforts.

I had planned to use this column to talk about the next decade of child welfare reform. But it seems that by focusing on the question of when children can play alone, I have done exactly that. The issues are the same, but the platform we have to speak about these issues and ability to influence policy is growing rapidly. Our voices grow stronger each year. The work that we have done in one area of child welfare practice is soon needed in another. Domestic violence cases, medically complex cases, inadequate supervision cases — all these continue to be at the forefront of our practice. A fair and just child welfare system is every child’s right. By 2025, it is my hope that we will be able to cite another decade of progress, but I’m also guessing that the Family Defense Center will still be needed as a voice for a child welfare system that needs to be fairer and better still.

Yours in the struggle for justice,

A handwritten signature in black ink that reads "Diane L. Redleaf".

Diane L. Redleaf
Founder and Executive Director,
Family Defense Center

The Family
Defense
Center