The Family Defense Center managed a very busy legislative session this year, which marked the first full year of our policy advocacy project. Angela Inzano served as the staff attorney coordinator of our policy work, with the expert assistance of Government Affairs Consultant Phil Milsk and our legal staff. We successfully secured the passage of two important pieces of legislation we drafted on behalf of Illinois families, initiated a DCFS working group in order to work on a plan for deflecting cases out of DCFS investigations, and prevented passage of another bill, backed by the Cook County State's Attorney, that could have been extremely damaging for Illinois families. We also supported a number of bills spearheaded by other organizations and individuals, as well as continuously tracked legislation that could potentially help, or harm, families involved in the Illinois child welfare system.

**SB2909: DCFS Safety Plans**

The first bill that we successfully drafted, lobbied and secured passage of by the Illinois General Assembly under the outstanding leadership of sponsor Senator Julie Morrison, was SB2909, a first step toward making DCFS accountable for safety plans that separate families during a child protection investigation. As this newsletter goes to print, SB 2909 is currently awaiting the Governor's signature.

The language of the bill was drafted with the assistance and support of lawyers from the Chicago Medical-Legal Partnership for Children and was negotiated with DCFS itself.

**Why Safety Plan Legislation Is Important to Illinois Families.** DCFS separates thousands of families a year for indefinite periods of time through the use of informal written or oral arrangements known as “safety plans.” The Center has long been concerned about the lack of monitoring and the lack of standards for imposing these plans, including the use of these plans against families that are innocent of any wrongdoing.

In 2002, the head of DCFS’s Division of Child Protection testified that there were an estimated 10,000 safety plans annually that DCFS implemented with families. Numbers are not tracked systemically, however. Some plans are oral directives commanding that parents cannot live with their children and sometimes these directives are not reduced to writing. Other plans are written with a child’s relatives and not given to the child’s parents who are subject to them. These plans are used during and after investigations by the Department without any court process to review them or to insure that the conditions they impose are reasonable. The Center has long been working to limit safety plans so that they are truly voluntary and disrupt family life as little as possible, while allowing DCFS to insure safety of children in cases in which there is a genuine safety concern. See e.g., www.familydefensecenter.net/cases and press Dupuy v. Samuels or Hernandez v. Foster (Center cases challenging the voluntariness of safety plans).

At the Family Defense Center, we often refer to safety plans, and other out of court directives, as Illinois’ “shadow foster care system” which has allowed Illinois’ numbers of actual foster care cases to drop, while operating below the radar of policy makers and decision makers. Under safety plans, DCFS calls for children to live with relatives or family friends, or requires the parents to move out of their homes, often for an indefinite period of time, without any court review. These informal out-of-home placements typically last for weeks or months while DCFS investigates alleging...
In the wake of the Center’s landmark appellate victory last spring in *In re Yohan K.*, and its successful efforts to roll back that victory through legislation that would have overturned that victory, see p. 13, the Center decided to recognize two leaders in the efforts to exonerate our clients from wrongful allegations that their children have head injuries due to abuse. We have named Ellen R. Domph, trial counsel in *In re Yohan K.*, and Prof. Deborah Tuerkheimer as the recipients of our top annual awards.

In addition, special recognition is given to Louis Fogel, partner at Jenner and Block, for his exemplary community and professional service and the Goodman Theatre for its role in educating the community about child welfare through its presentation of *Luna Gale*.

This year’s benefit will take place on September 21 from 4-7:30 at the MidAmerica Club, 200 E. Randolph, 80th Floor, with cocktails, hors d’oeuvres, desserts, and a live and silent auction and raffles, as well our annual awards presentation. Tickets are $150 apiece and sponsorships start at $500 (including two tickets). Tributes to our honorees for the program book may also be purchased separately starting at $50 and run $1000 for a full page tribute.

Please contact Diana Hansen at 312-251-9800x27 (admin@familydefensecenter.net to discuss sponsorship, tributes or auction item ideas or contact Bea Radakovich at x10 (bea@familydefensecenter.net) regarding ticket orders.


David Tobis is one of the most influential child welfare policy makers in the United States—or, for that matter, in the world. Indeed, the Family Defense Center can trace its own existence to actions Tobis took as head of the New York-based Child Welfare Fund. A visionary leader who understands the importance of parents’ voices in developing child welfare policies and practices, Tobis was instrumental in creating several organizations in New York that provided a model for the creation of the Family Defense Center, including the Child Welfare Organizing Project and the Center for Family Representation. Now Tobis has written a book about his work in changing the child welfare policy, please turn to page 11.
Federal Court Allows Civil Rights Suit of Jeanelle H. First Family Defense Center Suit To Allege Violations of Teacher’s Rights to Dupuy Protections to Proceed Towards Trial

By Maura Mitchell

In December 2012, the Family Defense Center, along with co-counsel Michael Weaver of McDermott Will & Emery, filed a 42 U.S.C. § 1983 civil rights suit in the United States District Court for the Northern District of Illinois against a DCFS investigator and supervisor for alleged violation of teacher Jeanelle H.’s Fourteenth Amendment’s guarantee of due process of law. Jeanelle had been working as a high school computer teacher both prior to and after DCFS intervened through an unwarranted Hotline call.

As someone seeking a teaching job, Jeanelle should have been protected by the Seventh Circuit’s decision of Dupuy v. Samuels, 397 F.3d 493 (7th Cir. 2005) and provided certain “expedited” processes to protect her career. Instead, she had to wait over a year to be cleared from allegations that never should have been credited and she lost her ability to pursue her career while the DCFS case against her languished. Now the federal court has cleared the way for Jeanelle to prove her case at trial and potentially recover compensatory damages for the harm DCFS caused.

In Dupuy, the named plaintiffs brought a section 1983 class action claim on behalf of child care workers who had been indicated as perpetrators of child abuse or neglect in reports maintained on the State Central Register by DCFS. Dupuy, 397 F.3d at 496. Executive Director Diane Redleaf co-led the Dupuy team (with Robert Lehrer) for 10 years as a private civil rights lawyer (prior to the founding of the Family Defense Center) and continued to prosecute the case as part of the Family Defense Center’s docket from 2007 to its conclusion in 2011. Dupuy addresses the constitutionality of the “credible evidence” standard for indicated child abuse and neglect reports, the procedures applied during DCFS investigations, and the expungement process.

Jeanelle H.’s Story

Jeanelle H. was accused of allegedly “drinking” at her seven-year-old daughter’s school bus stop. But the accuser was a five-year-old child who was never asked to distinguish between drinking water and drinking alcohol. In fact, Jeanelle does not drink alcohol. An Illinois-certified school teacher, Jeanelle identified herself as someone seeking employment as a teacher at the time of the indicated finding. DCFS never had any evidence that Jeanelle’s daughter was placed in any likelihood of harm and no evidence that Jeanelle had ever blatantly disregarded her parental duties. Despite the lack of evidence, however, DCFS indicated a finding of Allegation 60, a now-notorious “environment injurious” allegation that had been declared void by the Appellate Court and later was affirmed to be void by the Illinois Supreme Court in Julie Q. v. Dep’t of Children and Family Servs., 2013 IL 113783 (March 2013). The errors in Jeanelle’s case were compounded at the hearing she had. First, the DCFS attorney and judge refused to afford her the expedited appeal rights that Dupuy guarantees. Then, at the non-expedited hearing she was afforded, to defend herself from the allegations of being intoxicated, Jeanelle explained she took medication that sometimes made her appear drowsy. This explanation was turned against her, however, and used by DCFS to justify the indicated finding, on the ground that medication contains as standard warning “not to drive,” effectively turning a disability of Jeanelle’s against her. Jeanelle found herself in the DCFS register and unable to extricate herself and save her career, even though her due process rights as established in Dupuy had been roundly ignored. It took a further appeal to the Circuit Court before DCFS agreed to expunge the indicated finding against Jeanelle.

The complaint that the Center filed with McDermott Will & Emery alleges procedural due process violations due to the DCFS defendants’ (a) failure to notify Jeanelle of her rights as a child care worker, by failing to provide her with the required CANTS notice; (b) refusal to consider plainly exculpatory evidence that any responsible child protection investigator or administrator in their position would consider; (c) failure to offer Jeanelle an Administrator’s Conference, which is requisite under Dupuy before indicating her for child neglect; and (d) failure to provide an expedited appeal of her indicated finding. The complaint also alleged that use of Allegation 60 against Ms. H. violated her substantive due process rights, because Allegation 60 was void as a matter of law (as Julie Q. had held).

The case was assigned to Federal Judge John Tharp. As is common in cases of this type, DCFS moved to dismiss the case in its entirety. DCFS’s argument for dismissal urged that Jeanelle’s procedural due process rights were satisfied by the administrative hearing she had and lost. The arguments were fully briefed, with Michael Yellen of McDermott Will & Emery joining Michael Weaver in representing Jeanelle. On April 17, 2014, Judge Tharp issued a 13-page memorandum opinion that denied DCFS’s motion to dismiss as to Jeanelle’s procedural due process claims, finding the defendants do not enjoy qualified immunity as to these claims insofar as Dupuy clearly establishes the law.

At the same time as it gave the green light to most of Jeanelle’s procedural due process claims, however, the federal court granted the Defendants’ motion to dismiss as to the substantive due process claim that the indicated finding against her for Allegation 60 was unauthorized and arbitrary. The federal court held that the Defendants were entitled to qualified immunity from this claim because Jeanelle’s indicated finding for Allegation occurred prior to the final Illinois Supreme Court ruling in Julie Q.

Not only did Judge Tharp recognize that Jeanelle had presented a valid claim that her constitutional rights had been violated, but he also recognized that the claims were ones that could and should be settled without further trial. Accordingly, as this newsletter is going to print, the parties have begun court-ordered settlement discussions and hope to report a final settlement shortly.

1 Maura Mitchell is one of the Center’s 2014 summer law clerks. She is a third year law student at DePaul Law School.
The Family Defense Center has an enviable track record of victories in the higher courts of Illinois, with three major precedential cases in the last three years. While the latest victory on behalf of “Bonita” V. is not as sweeping as Julie Q., Slater, or Yohan K. (see Family Defender Vol. 12 and 15, in part because the Bonita V. case cannot be cited as precedent, it nevertheless represents an important vindication of a mother who was unfairly labeled neglectful due to a minor child care lapse. The Appellate Court decision clears Bonita of neglect findings that had been registered against her since 2011.

Bonita is the mother of three children; 8-year-old daughter Ava, 4-year-old son Alex, and 1-year-old son Evan. On June 1, 2011, Bonita accidentally overslept and woke up feeling out of sorts. Her infant son Evan had been sick all that week and, as a result, she had been barely able to sleep. When she woke up that day, she realized that she had missed Alex’s bus for school, so she had to drive him instead. In her rush out the door, she did not immediately realize that she had left Ava and Evan at home by themselves. As soon as she arrived at school, however, she dropped Alex off with a classroom assistant and rushed home to her other children. She was gone for twenty minutes at most.

When she returned home, Evan was watching television in Bonita’s bed and Ava had turned on the television to the morning program that he likes, which is his normal morning routine. Ava also had completed her normal morning routine and was dressed and ready for school. Bonita then walked Ava to her bus with Evan. A hotline call to DCFS was made at some point after the incident and a subsequent DCFS investigation ensued.

Ava told the DCFS investigator that, during those twenty minutes, she was not scared and that she knew only to open the door if it was her mother or neighbor. Alex also told the investigator that his parents had never left him alone in the house. Despite the fact that being left home for a short time was a one-time incident and Ava proved to be perfectly capable of taking care of her little brother while her mother was gone, Bonita was indicated by DCFS on June 27, 2011 for Inadequate Supervision and added to the State Central Register as a perpetrator of child neglect.

Bonita appealed the indicated finding. Jonathon Fazzola, then a member of the FDC legal staff, represented her at her Administrative Hearing. At the hearing, Bonita testified that she and her husband had prepared her children about what to do in an emergency. She had told Ava to knock on their neighbor Norma’s door, who has babysat the children before, if Bonita was not home or if Bonita became incapacitated for some reason. Bonita’s husband also told the children that if something happened, they were to go the neighbor’s or call 911. Both Bonita and her husband testified at the hearing that Ava is a very smart girl and helps a lot with housework and taking care of the younger boys.

The Administrative Law Judge (“ALJ”) made findings of fact based on the testimony given at the hearing including that Ava was not afraid when she realized her mother had gone; neither child was harmed, Ava was dressed and prepared for school; and she had turned on the television for her brother to watch his regular morning program. Ava knew what to do in case of emergency; she is a mature 8-year-old who helps her parents with chores and with her siblings; and she was mature enough to care for herself and Evan for a limited amount of time. The ALJ applied the facts to the regulatory language of the “inadequate supervision” allegation of harm and the factors to be considered when determining whether a child has been inadequately supervised. The ALJ found that, taking these factors into consideration, Ava was able to care for herself and was able to provide adequate and appropriate care for Evan. Based on these findings, the ALJ found that DCFS had not met its burden of proof to show that the allegation of inadequate supervision was supported by a preponderance of the evidence. Consequently, the ALJ recommended that DCFS’ director grant Bonita’s request for expungement of the indicated finding from the State Central Register.

Despite the ALJ’s express finding that Ava was capable of caring for

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1 Kailey Grant is a summer law clerk for the Family Defense Center who will continue to work for the Center during the school year. She is a second year law student at Northwestern University School of Law.

2 The names of the client and her children have been changed to protect client confidentiality.

National Reunification Day on June 7, 2014 at Sulzer Library brought families together for both advocacy and fun.
herself and her brother for that very short period of time, the DCFS director overruled the ALJ’s recommendations and issued the department’s final administrative decision denying Bonita’s request for expungement. The director disagreed with the ALJ’s reasoning that Ava was mature enough to be left home alone with Evan because the assessments of Ava’s maturity were based on her actions when adults are present supervising her and assisting her. The Director concluded that it was unreasonable to leave an 8-year-old child alone for twenty minutes to supervise a sixteen-month-old child.

Bonita appealed the director’s final administrative decision denying the plaintiff’s request. By the time the case was decided against Bonita, staff attorney Fazzola was an attorney at Latham & Watkins. Due to his fluency in Spanish and his familiarity with the case, the Center asked Mr. Fazzola to continue to pursue the case. His firm agreed. After losing the first level review in the Circuit Court, Fazzola was also able to enlist Latham and Watkins in pursuing the case to the Illinois Appellate Court. At the appellate court level, it is necessary either to convince the reviewing court of a legal error, a misapplication of the legal standard, or that the DCFS Director had made factual error that was contrary to the manifest weight of the evidence.

On May 15, 2014, the Illinois Appellate Court held that the DCFS Director’s decision was clearly erroneous because the director failed to consider all the relevant factors listed in the allegation for inadequate supervision. Rather than considering the actual incident that occurred, the DCFS Director had only considered abstract propositions about an 8-year-old not being mature enough to care for a 16-month-old, not the actual facts about Ava, as was required. The Court found that this incident happened one time, it was of limited duration, and it happened in the children’s home, where Ava could and did feel safe. For this specific situation and under these specific circumstances, the finding that Ava was an inadequate or inappropriate caregiver for Evan was clearly erroneous. Therefore, on May 15, 2014, the Court set the Director’s decision aside and DCFS was ordered to expunge Bonita’s indicated finding from the State Central Register.

Unfortunately, the Court did not publish its opinion, even though it directed a remedy for Bonita. The Center and Latham & Watkins had requested publication of the opinion because inadequate supervision cases represent a huge percentage of the DCFS investigation caseload and many of the cases are very similar to Bonita’s—involving short errands in which children are unharmed while left home. Indeed, the Center has several similar cases pending in reviewing courts, including another appellate case handled by Alyssa Ramirez, Joelle Ross and Gregg McConnell of Winston & Strawn. While Bonita’s decision has not been published, the Center believes it is only a matter of time before another inadequate supervision case will make its way into a published appellate precedent. When that occurs, it will be in significant part due to the initial groundwork done by Mr. Fazzola in Bonita’s case.

After nearly three years of involvement with DCFS and litigation for a one-time incident, which was the result of stress and lack of sleep and resulted in no harm whatsoever to her children, Bonita and her family’s ordeal is finally over. Bonita’s name as a perpetrator of child neglect has rightfully been expunged from the State Central Register. The Center is especially grateful that Jonathan Fazzola and Latham & Watkins were willing to pursue Bonita’s rights not to be labeled a neglectful mother all the way to an appellate court victory.
In this feature of the *Family Defender*, we highlight two of the recent cases in which our office has signed on to “friend of the court” briefs filed in other state appellate courts. The Family Defense Center assesses the merits of these cases, the consistency with our message and work generally, and the benefit of forging stronger links to the groups that are seeking a legal policy change through the briefing process.

A. The Family Defense Center Supports Efforts to Prevent Stigma against Parents with Mental Disabilities

The Family Defense Center (“the Center”) is dedicated to protecting the rights of parents with intellectual disabilities, having seen firsthand many cases in which parents are wrongly assumed to be inadequate parents because of a speech delay, a mental health condition or a lower-than-average score on standardized tests. See “Can you Believe This?” at p. 15 (Tamara’s story) for a recent example of an investigation, family separation and indicated finding that was based entirely on a mistaken assessment of a mother's intellectual capacity.

In February 2014, the Center signed an amicus brief prepared by the Center for Rights of Parents with Disabilities in support of an appeal to the Colorado Supreme Court to hear *In the Interest of M.H.*

In this case, M.H.’s parents have intellectual and developmental disabilities and M.H. has Fragile X syndrome, a severe genetic disorder that impacts her neurological development and behavior. M.H. had bonded to her parents, who met her needs when they were with her, and it was determined that the time M.H. spent with her parents was beneficial to her. In the end, however, M.H.’s parent’s rights were terminated over the objection of the guardian ad litem; the termination order was issued, in part, on the basis of their intellectual and developmental disabilities. In the appeal, the parents allege that the Colorado statute impermissibly focused the court’s inquiry on the parents’ disabled status rather than on their conduct towards their child.

Parents with disabilities face legislative, administrative, and judicial obstacles when creating and maintaining families. The issues presented in the *M.H.* case are of pressing national concern as disabilities and mental health issues are considered during the rights proceedings especially when their children also have disabilities. In the lower court decision in the case, the court relied on its conclusion that the parent was unable to be the “sole provider” for the child, but the amicus brief points out that this standard is unfair especially when the trial court found that elimination of the biological parents from the child’s life was not in the child’s best interest. The brief also argues it was improper to grant a termination of parental rights that is predicated upon a hope that the potentially adoptive home would continue a relationship between the biological parents and the child where the best interests of the child show that the child benefits from an ongoing relationship with the parent.

Unfortunately, on March 24, 2014, the Colorado Supreme Court denied review in the case. However, the Family Defense Center appreciates the opportunity to join with advocates like the Center for Rights of Parents with Disabilities. The Center will continue to work with other advocates to raise legal issues regarding the treatment of parents whose rights to an ongoing relationship with their children are denied, especially when the denial is based on discrimination.

B. Family Defense Center Supports State Court Appeals of Changes in Permanency Goals

In February, 2014, the Legal Aid Society of the District of Columbia asked the Family Defense Center to sign onto its amicus brief seeking an *en banc* review in an appeal in the District of Columbia Court of Appeals. Because the facts of the case and the important legal issues involved are clearly aligned with the mission of the Family Defense Center to advocate justice for families in the child welfare system, the Center agreed to sign onto the brief, lending its voice to support potentially important changes throughout the United States.

**The Facts of the Case.** In March of 2008, A.L. and Ta.L. were removed from the care and custody of their biological parents, after both parents were arrested and subsequently incarcerated for a domestic violence incident in the family’s home.1 The Child and Family Services Agency (“CFSA”), which is the District of Columbia’s equivalent to DCFS in Illinois, immediately assumed custody of the children and placed them in foster care. The biological parents identified two family members, the father’s sister and his aunt who were willing to become kinship foster care providers for the children. After the sister learned she would be unable to complete the licensing process, the aunt understood she would be second in line to get the children as a kinship foster care provider. However, the aunt’s

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1 Initials have been used to protect the identity of the parties involved.
The children were adjudicated neglected on May 1, 2008 and committed to CFSA’s custody and care, with a permanency goal of reunification with their biological parents to be achieved by May 2009. On May 14, 2009, the trial court changed the children’s goal from “reunification” to “adoption” due to the biological parents’ noncompliance with requirements of their service plan. On June 12, 2009, the children’s foster care parents petitioned to adopt the children. The children’s aunt who had been identified as a potential kinship foster care provider at the initial permanency hearing began to visit the children. She requested more visits with the children, which were denied. On October 9, 2009, this same aunt petitioned to adopt the children. The biological parents consented to the aunt’s adoption petition and indicated that their view that it was in the children’s best interests to be adopted by the aunt rather than be returned to their own care. CFSA, however, supported the foster parents’ petition for adoption.

The adoption trial took place in May of 2011. The legal standards for proceedings of this nature are that the trial court must find by clear and convincing evidence both that the custody arrangement chosen by the parents would clearly not be in the best interest of the child and that the parents’ consent to adoption is withheld contrary to the child’s best interests. Furthermore, under the D.C. law, the biological parents’ choice must be given weighty consideration and may be overcome only by a showing of clear and convincing evidence that the parent’s choice of custodian is clearly contrary to the child’s best interests. Despite this strong, legal presumption in favor of the biological parents’ custodial choice and the trial court’s express finding that the aunt a “forceful, healthy, and competent person” and that it did “not doubt her fitness as a caretaker” for the children, the trial court granted the foster parents’ adoption petition based on the bonds formed between the children and their foster parents.

Both the aunt and the biological parents challenged the trial court’s decision in the D.C. Court of Appeals, which is D.C.’s highest court. The appellate court found on August 22, 2013 that the trial court had failed to give weighty consideration to the adoption petition of the aunt who was the biological parents’ preferred caregiver. Unfortunately, due to the nature of permanency cases, which require full briefing and are placed on the court’s regular calendar, two years had passed since the trial court entered its order awarding custody of the children to the foster parents. and the children had now been in their care for nearly three years. Thus, the appellate court could not state that the best interests of the children were to award custody of the children to the aunt. The appellate court reversed and remanded to the trial court.

The foster parents, however, asked for rehearing en banc, which means that the case will be reheard in front of all the judges of the court rather than a panel of only three judges. The case, In re R.W, is now pending before the D.C. Court of Appeals sitting en banc. This is the point at which the Family Defense Center was asked to support an amicus brief on behalf of the aunt and parents’ position.

Amicus Brief Legal Argument. The In re R.W, case represents a perfect illustration of the problem that arises when appellate review occurs long after a change in the permanency goal. Had CFSA placed the children with the aunt, either during the reunification period or once the permanency goal changed and the biological parents’ preference for adoption by the aunt was expressed, there would be no dispute for the Court to resolve years later. The amicus brief, to which the Family Defense Center has signed onto, argues that the D.C. Court of Appeals sitting en banc should reconsider the Court’s decision in In re K.M.T., 795 A.2d 688 (D.C. 2002) (per curiam), which had held that a change in permanency goal from family reunification to adoption is not appealable, and which therefore prevented the earlier review of the change in goal.

The inability to appeal a change in permanency goal is a pervasive problem. In Illinois, there is authority that makes permanency goals appealable by permission of the appellate court. In re Curtis B., 203 Ill. 2d 53 (2002). But in a petition to the Illinois Supreme Court on behalf of Kenny R. (pictured above), the Center’s request to have that discretion exercised to overturn a guardianship goal that was entered against our client was summarily rebuffed. In cases like these, recognizing the importance of timely review of permanency goals is especially important. Delays in review of goal changes can be further exacerbated by the presence of expert testimony that asserts that children’s future development will be harmed by implementing the goal that should have been adopted and implemented sooner—exactly what occurred at the trial court stage of the R.W. case. It can then prove difficult for a relative or parent who does not have custody of the child to access expert opinion to counter the effects of the bonding that occurs due to delays in adjudication and review.

Fortunately, D.C. is in the minority in its decision to not allow appeals of permanency goal changes. Only four other states, including Arizona, Missouri, Ohio, and Texas, have barred immediate appellate review of a permanency goal change. Every other state has rightfully recognized that any change in a permanency goal has the potential to be outcome determinative in a subsequent termination of parental rights or adoption proceedings and, therefore, the change should be appealable in some shape or form.

The Family Defense Center is happy to support the efforts of advocates in other states and the District of Columbia, as in the R.W. case, that may help to create appellate remedies to protect families’ rights to be heard and preserve familial relationships.
This year, the Family Defense Center is giving top awards to two leaders in our community who are known for their work in medically complex criminal cases. The overlap between the defense of a family torn apart by medically complex allegations in a child welfare case and the defense of the same father or mother in a criminal case is striking, even if the procedural rules governing the way that defense is presented are quite different.

Recognition for a criminal defense lawyer like Ellen R. Domph is long overdue. Unfortunately criminal defense lawyers like our honoree Ellen Domph rarely get the recognition they deserve when they provide stellar legal representation to individuals accused of crimes or separated from their families. That’s because many defense lawyers like Ellen are solo or small firm practitioners who have very little support staff, let alone any public relations operation that would be able to put energy into submitting award nominations—a process that is remarkably like doing a grant proposal.

It takes a lot of people behind you in order to get nominated for an award like the Founders’ Award, see pp. 9-11 infra, and that village includes having people on staff or contract who urge the nominations on and pull the materials together. Few private criminal defense lawyers have any PR resources; often, they don’t even have any administrative support staff.

Despite the lack of any trappings of a fancy law office, however, Ellen Domph is a lawyer’s lawyer. She is a “take no prisoners” litigator in the finest Clarence Darrow tradition. A master of cross-examination who revels in her art, and wiz at trial preparation who weighs every word she says in the courtroom, the Family Defense Center has been honored to have worked on some of our most important cases with her. That growing group of cases includes, of course, In re Yohan K., in which Ellen singlehandedly (and under intense and often acrimonious opposition from other parties in the courtroom) served as sole trial counsel in a complex medical case, with 11 doctors no less testifying. The case involved alleged subdural and retinal bleeding and an alleged fracture to an infant who also had undiagnosed seizures prior to the time the bleeding systems were uncovered. Without Ellen’s masterful development of the trial record, our precedential appellate victory would have been impossible.

Ellen is truly our “go to” attorney whenever we have a case that involves the potential for criminal charges to be filed against a client. We have come to rely on her more than we have any right to do; our clients and our community owe a great debt to her for her dedication to justice, her commitment to exoneration of the wrongly accused, and her deep commitment to the essential rule of law that requires the State to prove its case, and does not force clients to prove their innocence in order to keep their freedom and their families.

Law professors also often toil alone, and do painstakingly careful research and writing that only sees the light of day after years of effort. So it is with Professor Deborah Tuerkheimer, another of our heroes, whose praises we will sing on September 21. Her long awaited book, Flawed Convictions: Shaken Baby Syndrome and the Inertia of Injustice (Oxford Press, 2014), is a testament to her intense scholarly commitment to analyzing the sources of injustice (in the form of poor medical and legal practices) that have contributed to an overwhelming increase in wrongful convictions of child care givers who have been accused of shaken baby syndrome. By focusing her extraordinary intellectual gifts on this pressing problem of unjust convictions of innocent child caregivers, she has become a leading voice for change that will affect the criminal justice and child welfare systems enormously.

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A former prosecutor focused on crimes against women in the Manhattan District Attorney’s Office, Professor Tuerkheimer also embodies both the commitment to the rights of domestic violence victims and is known for her scholarship in the reproductive rights area. Her academics interests thus mirror both the medically complex case defense and the Mothers’ Defense Project areas in which the Family Defense Center focuses much of its advocacy efforts.
Introducing Diane L. Redleaf, 2014 Alliance For Women Founders’ Award Winner

By Laurene (Rene) Heybach¹

I t is wonderful, as a feminist and a lawyer, to be here today. I have the good fortune to introduce my good friend and mentor, the remarkable Diane Redleaf. Let me tell you about her.

Born in New York City, reared in Minnesota, a graduate magna cum laude of Carleton College, Diane earned her J.D. from Stanford Law School in 1979. She started her career at the Legal Assistance Foundation of Chicago (now LAF) where she remained for 16 years as part of first its Women’s Law Project and later the founder of its Children’s Rights Project.

I knew of Diane before we met. In the mid ’80’s, I was litigating to improve conditions in Florida’s detention facilities for children. One of my colleagues drew my attention to a most remarkable complaint filed in Cook County Circuit Court. Entitled G.S. v. Goodman, the case was a class action lawsuit against Cook County seeking broad injunctive relief to overhaul the manner in which children in the juvenile court here were provided legal guardians and legal representation.

One could not read this complaint without feeling, as I felt: a compelling case was made that the representation of the children was shameful and that Cook County— and the legal profession— had a duty to right this injustice. At that moment, I knew I wanted to meet the complaint’s principal author, Diane Redleaf.

Meet her I did. In 1987, Diane hired me to join her in the Children’s Rights Project. There I quickly learned that Diane was not a force to trifle with. The G.S. v. Goodman case had shaken the County and the Circuit Court, motivated its leadership, and redrawn the county budget. It was settled with the opening of a dynamic new office, the Juvenile Division of the Office of the Public Guardian which drew into it some of the finest lawyers ( who were predominantly women) I have ever met. Many of whom came to be fierce allies and friends and were mentored by Diane.

I also learned that the gravamen of Diane’s work was a vision: that children are best nurtured and supported as part of their families; that we must first and foremost protect and support families and address the injustices they face which are formidable: poverty, racism, sexism and violence. Diane’s lens as a feminist, progressive, and an anti-racist person brought this vision sharply into focus for me.

With her colleagues at LAF, Diane had created this exciting time, expanding legal assistance for thousands of children in Cook County, inspiring many women attorneys, and initiating what came to be a long period of important and much-needed child welfare reform in Illinois.

Diane and I together litigated Norman v. McDonald, a class action on behalf of impoverished and homeless parents to prevent DCFS’s removal of children for lack of adequate housing. Norman established a multi-million dollar fund to help secure housing for families. Out of that work, LAF created a Homeless Advocacy Project in which my own work took root.

In 2005, Diane started her present endeavor, the Family Defense Center. This is a critically important not-for-profit legal advocacy organization focused on preventing the unfair treatment of families by the child welfare system. Starting with only a handful of women incorporators (Anita Weinberg, B.B. Carlson and myself), a tiny office, and little funding, the FDC is now an award-winning six-staff office with a half million dollar annual budget. Cases taken there are often so legally and medically complex that other attorneys cannot accept them. By developing excellent staff, most notably attorney Melissa Staas, and bringing together exceptional legal teams of pro bono counsel from firms such as Winston & Strawn and Jenner & Block, Diane has built a powerful organization. One recent victory is the Julie Q. v. DCFS case before the Illinois Supreme Court.

To her credit, Diane now has more than 62 published cases according to a recent Lexis search. She has taught, published articles and handbooks and sat on the boards of national advocacy organizations.

Diane has nurtured, trained, hired, encouraged or mentored scores of women attorneys from the current Solicitor General of Illinois to award-winning professors at Stanford and Loyola Law School, to assistant attorney generals, founders of other not-for-profits, fellowship recipients, and litigators at private firms.

She has brought so many of us together, made us feel empowered and even made it fun.

Diane made a lifetime commitment to the well-being of all children, not simply her own. Diane’s mother, Rhoda, modeled this commitment, devoting her own life to expanding early childhood services.

For all these reasons, Diane Redleaf well-deserves the award you confer upon her today. She has very significantly contributed to the advancement of women in our profession, and reflected the highest level of professional achievement, ethics and excellence.

¹ Rene Heybach has been the Director of the Law Project of the Chicago Coalition for the Homeless since 1997.
ACCESSION SPEECH, MAY 15, 2014 ALLIANCE FOR WOMEN FOUNDER’S AWARD LUNCHEON

By Diane L. Redleaf

(Note: Laurene “Rene” Heybach’s beautiful speech recounts some of the highlights of my now-long legal career, and some of our own work together, is reprinted at 9). Since Rene Heybach is the most eloquent and passionate advocate I know, I’m always sorry whenever I have to speak after her. If I deserve this award, it is in large part because I made the wise decision in 1987 to hire Rene as a staff attorney at the Legal Assistance Foundation in the Children’s Rights Project. She and I did wonderful work together; some of our best work. Thank you to the Alliance for Women (Rachel Moore and Esther Chang, co-chairs) for honoring me with this most meaningful award. Today, I’m overwhelmed by being in the company of such stellar leaders as Judge Joan Lefkow, Pam Strobel, Wendy Pollack and Julie Bauer, three of the past Founders Award winners whom I feel privileged to know. Special thanks are due to Julie Bauer for nominating me for this award, for encouraging me, and for leading one of the Center’s most significant civil rights cases (Hernandez v. Foster).

I don’t think I can adequately put into words my gratitude to the friends and colleagues who have been so supportive of me throughout my career. I will try to say something that sums up the meaning of this award. I’m comforted, however, by Julie Bauer’s wise counsel when I asked her how to prepare this speech. Julie told me it really didn’t matter what I said because “everyone would forget it a year from now.” That’s not quite true because I do remember Julie’s speech from a few years ago. I’m going to take that as solace and also strive to be as gracious as Julie was when she received the Founders’ Award.

One thing I have learned very well over the 35 years in which I have practiced law is to surround myself with excellent people who help make me look good. I’m very lucky to have so many people not just supporting me, but actually doing the hard work that I sometimes get to take credit for. That includes all the outstanding staff of the Family Defense Center: Melissa Staas, the best staff attorney in the City of Chicago, Diana Hansen, the best operations manager, Angela Inzano, our rising star policy attorney; and our law clerks, administrator, and our very supportive and thoughtful board of directors with such outstanding leaders as Helene Snyder and Michael O’Connor, and that includes other stellar advocates like Stacey Platt, Anita Weinberg, Amy Zimmerman and so many others. All of you are the people who deserve to stand up here with me to accept this award.

This award has special meaning to me because it recognizes mentoring. Of course, mentoring is like parenting. Anyone who knows me knows that I’m the proudest mother on the planet. No one should get me started about my own children—my son Jonathan is sitting here saying, “please don’t go there Mom!” It is hard—no it is impossible—to get me to stop once I start. It is the same with the people I’ve mentored. They are amazing in what they have accomplished. Many people I’ve helped to mentor are running their own law projects, teaching students, leading boards, and serving the community in huge ways. It’s extremely gratifying to see the work they have done.

I’m proudest, though, of my mentoring of an organization, the Family Defense Center, and helping to mentor a field of practice in the law: family rights in the child protection system. In 2005, I decided to establish the Family Defense Center. Quite a few people told me I shouldn’t do it because the project wouldn’t succeed and it would just stress me out to try. The image of the parents I represent is so lousy and the available funding to help them navigate the legal system is so limited that even I, headstrong as I am, worried that I was pursuing an impossible pipe dream. I should acknowledge that, without the best mentors in the world, my own ex-

Two of Diane’s inspirations, her mother, Rhoda Redleaf and her son Jonathan Libgober, share the spotlight with Diane at the Alliance for Women Awards Luncheon.

Two of Diane’s inspirations, her mother, Rhoda Redleaf and her son Jonathan Libgober, share the spotlight with Diane at the Alliance for Women Awards Luncheon.

tremely supportive parents, I couldn’t have started the Family Defense Center. But with their help, and with the encouragement and constant support of my husband Anatoly, I forged ahead.

I started the Family Defense Center in 2005 because I felt there was so much more that needed to be done to make the child welfare system better and fairer. I thought then, and still believe now, that a separate organization was needed because, without its own organization, that mission of advocacy for justice for families in the child welfare system is easily marginalized, just as the parents we represent are marginalized. I’ve worked to make family defense a respected endeavor and a better understood area of the law. The parents I’ve helped are all ones whose rights to be parents to their own children have been challenged by the “coercive intervention of the awesome power of the State,” as an early Second Circuit constitutional case Duquesne v. Sugarman put it. I’m proud to have been able to create an organization that truly gives voice to the least powerful and most stigmatized people in our society. For who is more stigmatized than a mother who has lost custody of her children because of a false accusation of abuse or neglect? Who is more helpless than a person who has no access to legal help to fight injustice that strikes at the heart of her family?

Awards like this matter. I’m so happy that after I’ve been swimming upstream and against the tide of public opinion against my clients for over 30 years that the tide is finally start-
Acceptance

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ing to turn. In fact, just today I saw that Ms. Magazine has an article about mothers losing custody to the child welfare system. It hasn’t always been respectable to be a family defender. It hasn’t necessarily been popular to say that parents’ rights matter to children’s rights. It has not been popular to say that services that help families should be expanded in the face of a constant clamor to expand child abuse reporting, investigations, and child abuse registries at the cost of prevention and services for families in need. And it has not been easy work—not easy at all—to get these unpopular positions to be adopted by courts and legislatures. But we are succeeding beyond my dreams in doing exactly that.

I am proud to have created an organization that stands up and fights for the most shunned, the most stigmatized and the most mistreated people, the unjustly accused parents whom we help to exonerate. It is a true privilege and very humbling to represent so many wonderful parents who have turned to me and to the Family Defense Center for help. It is important to continue to work to change the narrative about families in the child welfare system. I’m proud that our pro bono legal services program is helping to do exactly that by winning appellate and federal court victories and helping each and every client to have a fair shot at justice. I’m proud that our message has provided hope to so many people and that our agency has been a refuge and a national model. And I’m proud that our network of advocates is getting stronger each year.

This award is a validation that the work we do as family defenders is critical, that it is every bit as challenging intellectually and as rewarding emotionally, and spiritually, and as essential to our democracy and our future as a society, as any other civil liberties, civil rights, poverty law or public interest agenda. Receiving this award lets me proclaim that the families in the child welfare system are not the media stereotype; they are all of our families in their strength and diversity and they need help from all of us. All of us need to continue to be vigilant to ensure that the child welfare system treats our families with dignity and respect in accordance with the law. We still have a long way to go to ensure that the child welfare system is fair. So on behalf of the families who rights we work to enforce, on behalf of the field of family defense in the child welfare system as a career and a calling, on behalf of protecting children by defending families, and on behalf of women’s rights including mothers’ reproductive right that includes the right not just to bear children but to raise them, I am proud to accept this award.

News Briefs

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fare system in New York by giving voice to parents, called From Pariahs to Partners (available from the Family Defense Center at a discounted rate of $20—plus shipping costs if in-office pickup is not possible).

Tobis recognized the important work being done in Chicago and reached out to Executive Director Diane Redleaf to plan a stop on his current book tour. Fortunately, the days of his tour coincided perfectly with the Center’s long-planned training on domestic violence and child welfare for the Illinois Parent Attorney Network on July 18 at the Chicago Bar Association.

The Center started the Illinois Parent Attorney Network in the fall of 2011 to provide training for Illinois parent attorneys throughout Illinois. The Network has also provided a forum for attorneys throughout Illinois to raise policy and practice concerns and learn about new legal developments. By offering presentations by nationally-renowned leaders like David Tobis, the Center and IPAN are able to continue “raise the bar” for advocates and parents throughout the state while reinforcing the message that parents’ voices, and parent advocates’ voices deserve to be listened to.

Suzanne Sellers Leads New Writing/Advocacy Program for FDC “Know Your Writes”

Following National Reunification Day, the Family Defense Center is running a two-part advocacy workshop, led by Suzanne Sellers. Ms. Sellers has studied the art of telling one’s story through training she received Second City, and has turned her own powerful story into a vehicle for outreach, organizing, advocacy, and policy change. An unprecedented number of parents (12) attended the first formative meeting of the Exercising Your Writes program that Suzanne is leading for the Center following National Reunification Day. It is hoped that after parents complete the two-part workshop, their stories will be published in The Family Defender, in the Center’s new e-newsletter and in Rise Magazine, the national magazine by parents for parents involved in the child welfare system. Discussions are underway as to how to implement the program for policy advocacy, so that parents who write their stories can also learn how to tell their stories to their legislators and other decisionmakers. See www.youtube.com/watch?v=TswidBBrxiE (Suzanne Sellers’ monologue at Mothers’ Defense Breakfast).

National Advocacy Project Update: Plaintiffs Prevail In Summary Judgment Ruling In Pennsylvania Due Process Case

The Family Defense Center, and our co-counsel Benjamin Picker, at McCausland Keen & Buckman, recently won a significant victory in a lawsuit in Pennsylvania, D.M. v. Berks County. On June 20, 2014, Federal Judge Michael Baylson has ruled that the defendants are not entitled to judgment in their favor, and the lawsuit will go to trial.

The defendants made a motion for judgment in their favor without a trial, claiming that they did not violate the D.M. family’s rights because the parents “voluntarily” chose to place their children with relatives. They also claimed that the law was unclear, and therefore they were entitled to immunity from suit.

The federal court disagreed, ruling that the parents had a right to a trial, and the jury would decide whether they voluntarily agreed to give up their children or were forced to do so by the caseworker, the police officer. The judge also concluded that the law was clear in 2012 that child protective services cannot take children from their parents unless they give the parents and children a trial, where the judge will decide whether the parents have abused or neglected the children after hearing all the evidence.

The D.M. trial is scheduled for this fall. Carolyn Kubitschek, the Center’s National Advocacy Project Attorney, has been co-counseling this case with Mr. Picker. The Center welcome the opportunity to work with civil rights attorneys on cases that challenge the involuntary removal of children from their parent without due process of law.
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legations against a parent or other caregiver.

In the course of our work representing families we have repeatedly encountered a host of problems with these plans including:

- No centralized monitoring or tracking within the Department (so that no one knows how many safety plans are currently in effect or have been in effect);
- Threats of foster care despite lack of evidence to support an involuntary removal of the child if parents do not comply with a demand to sign a safety plan and separate from their children;
- No information, accountability, or limitations regarding rights and responsibilities of families or caretakers;
- No definite time frames for review of the plan or for modification or termination of highly intrusive plans;
- No guarantee of safety for the children involved; and
- Sometimes, requirements for no-contact between a parent and his/her children for lengthy period of times.

The Center hoped to address all of these concerns about safety plans, but it recognized that legislative reforms require consensus. During the legislative session, our proposals were pared down substantially in order to reach agreement. The legislation now requires five conditions for safety plans:

1. That the safety plan be in writing;
2. That the Department provide a copy of that written plan to each parent or guardian and responsible adult caregivers participating in the plan;
3. That the parent or guardian and responsible adult caregivers each sign the plan, as does a Department representative;
4. That the plan is reviewed and approved by the investigator’s supervisor; and
5. That each parent or guardian and adult caregiver be given information on:
   a. how to obtain medical care;
   b. emergency phone numbers; and
   c. how to notify schools or day care providers as appropriate.

SB2909 does not end many of the safety plan practices that most concern the Center; it does not limit DCFS’s practices of using safety plans to change custody without due process. It does, however, hold DCFS to a minimum uniform standard for communication with families subject to the plans and facilitates greater accountability for safety plans. For that reason, the legislation represents a milestone in the Center’s longstanding efforts to shine more light on the Illinois shadow foster care system. With the leadership and commitment of our sponsor, Senator Julie Morrison, we look forward to building on this bill’s momentum in future legislative sessions and in our work to implement SB2909.

SB2782: Educational Surrogates

The second bill that the Center secured the passage of in the spring 2014 session (and that is also on the Governor’s desk for signature currently) was SB2782. The language of the bill was drafted with

the assistance and support of lawyers from the Chicago Medical-Legal Partnership for Children and negotiated with the Illinois State Board of Education (ISBE) and DCFS. The lead legislative sponsor of the bill was Senator David Koehler. FDC Board Treasurer, and past president, Michael O’Connor spearheaded the drafting of this legislation, based on a case that he had recently handled that cried out for a legislative solution.

Mr. O’Connor’s client was an adoptive mother who had been an exemplary foster parent; the child involved had severe behavioral problems that led to his hospitalization and his inability to return home after his hospitalization. Mr. O’Connor represented the boy and his mother at an ongoing special education hearing. DCFS stepped in to take custody of the boy, however, when he was ready for discharge from the hospital, because the mother could not safely care for the boy without endangering herself and other family members. When DCFS took custody however, the mother suddenly became powerless to serve as the boy’s advocate for a special education placement. Mr. O’Connor too found himself no longer authorized to proceed in the special education arena after DCFS became the formal custodian for the boy. This sudden loss of parental authority to act as an educational advocate had the ironic impact of preventing the boy from securing potentially appropriate residential care that the mother and Mr. O’Connor were poised to secure through the special education hearing process.

The reason for this sudden disenfranchisement of the parent was a gap in Illinois law: there was no provision in the Juvenile Court Act for a parent to serve as the educational surrogate for their own child whenever DCFS assumes custodial powers. This gap in Illinois law was present even though federal law provides that parents can con-
While the legislative session was underway, however, the results of after three more years. We also asked for language about periodic sponsored by Senator Hunter, which would restart the program for cess except if child safety is compromised. Therefore, in the 2014 community-based services and out of a harmful investigation pro response program was not reinstated.

Some cuts in intact services were later restored, the differential re cuts which fell heavily on all in-home services to families. Although abrupt too. This action occurred due to across-the-board budget response program was suddenly discontinued and the study ended included a control-group study as to outcome of the diverted cases with DCFS. But in 2012, midway through the pilot project, which The Family Defense Center supported the expansion of the differen- tial response program and had discussed its ideas for that expansion with DCFS. But in 2012, midway through the pilot project, which included a control-group study as to outcome of the diverted cases as compared with those that had been investigated, the differential response program was suddenly discontinued and the study ended abruptly too. This action occurred due to across-the-board budget cuts which fell heavily on all in-home services to families. Although some cuts in intact services were later restored, the differential response program was not reinstated.

The Center continues to support all efforts to deflect cases into community-based services and out of a harmful investigation process except if child safety is compromised. Therefore, in the 2014 legislative session, we proposed renewed legislation, SB3146, again sponsored by Senator Hunter, which would restart the program for an additional three years. We also asked for language about periodic reporting of the results and implementing it as a permanent program after three more years.

While the legislative session was underway, however, the results of the control group study for two years of the pilot program were released. In the interest of reviewing these results before re-implement- ing a program, a working group was suggested as a way to evaluate the differential response program and make recommendations. Our office will have a seat in the working group with other interested organizations and advocates. We look forward to the working group getting started in the next few months and hope that a new and improved program can be reinstated as a result of these discussions.

**SB2798: Constellation of Injuries**

Our office, spearheaded by the Center’s indomitable staff attor- ney Melissa Staas, negotiated intensively with State’s Attorney’s office concerning a bill that sought to legislatively overrule the decision of the Illinois Appel- late Court in *In re Yohan K.* (See Family Defender Issue 15). That decision held that the State cannot prove child abuse merely by showing a constellation of injuries.” The bill sought to make the presence of a “constellation of injuries” prima facie evidence of child abuse in juvenile court. In medically complex cases, chang- ing the prima facie evidence stand- ard would shift the burden to the parents to prove that they did *not* abuse their child. This sort of shift, however, was exactly what the Illinois Appellate Court said was unfair to parents.

Fortunately, the bill was identified early in the legislative session and we were able to educate the sponsor as to its potential dire ef- fects. This educational effort consisted of conference calls, letters, and constituent meetings with the sponsor and other Senators on the committee. In all, over 17 doctors, lawyers and clients from across Illinois, including some nationally renowned experts in head injury cases, contacted legislators to voice concern about the pro- posed legislation. In fact, past FDC Board president Mary Broderick met with the sponsor, her own Senator Mulroe, for over two hours and explained the negative impact such a bill would have on Illi- nois families. Other notable participants in this victory include the Loyola University Chicago School of Law Civitas Childlaw Center, the Cook County Public Defender’s Office, the Illinois Innocence Project, the Chicago Bar Association, and a number of doctors, other attorneys, and affected parents state-wide (and even nation-wide). At the conclusion of these efforts that resulted in the bill not being called for a vote in committee, Sen. Mulroe offered to work with Ms. Broderick on future legislation to help keep families together. Both Melissa Staas and Mary Broderick deserve special thanks for their extraordinary efforts to protect family rights in the face of an effort that the State’s Attorney’s office may not have known we would have the strength to oppose.

**Other Successful Legislation the Center Supported**

During the 2013-14 legislative session, the Center also supported the efforts of other advocates to enact positive changes to Illinois law.

**HB5686: Gail Smith of Chicago Legal Aid for Incarcerated Moth-
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er (CLAIM) and Linda Coon from Families’ and Children’s AIDS Network (FCAN) spearheaded HB5686, a bill to strengthen short-term guardianship. Short-term guardianship is a critical tool in enabling parents to provide for their children’s care while in pretrial detention, serving a short sentence, undergoing a hospital stay, or completing drug treatment. The new legislation protects courts’ authority to rule in children’s best interest when a legal guardian decides to remove children from Illinois, and it requires guardians to keep courts updated regarding their current residential address. The bill will prevent situations in which guardians flout courts’ authority, make parent-child visits and reunification impossible, and violate constitutionally-protected parental rights. There was substantial support for the bill in the community, with 16 legal aid and advocacy organizations backing the bill, including our office.

HB5598: Spearheaded by Heather O’Donnell from Thresholds, and Toni Hoy, a parent advocate and friend of the FDC, this legislation requires an interagency agreement between the Department of Children and Family Services, the Department of Human Services, the Department of Healthcare and Family Services, the Illinois State Board of Education, the Department of Juvenile Justice, and the Department of Public Health to address the needs of families who are seeking services for their child’s serious mental illness or serious emotional disturbance and to prevent them from having to relinquish custody in order to receive such services. The interagency agreement would outline the appropriate state agency from which the parents should seek services for their family. This measure stems from the much larger problem cited above in regards to our educational surrogate bill (SB2782), involving the way in which the State of Illinois addresses the needs of families where children cannot be adequately cared for in their homes through no fault of their parents or guardians.

The Center also supported HB4501, an initiative of the Chicago Coalition for the Homeless, which authorizes unaccompanied minors to consent to their own non-emergency medical treatments and HB4652 and HB4773, proposed by the Loyola University Law School ChildLaw Policy and Legislation Clinic, which increase the number of post-secondary education scholarships awarded to youth who are current or former foster children currently working towards graduation and codify in law the existing Statewide Youth Advisory Board and regional youth advisory boards.

Conclusion: The Family Defense Center can proclaim many legislative successes this session. Moreover, nearly every victory represents an important first step in a larger vision of legislative advocacy for families involved in the child welfare system. We have noted a rapidly increasing interest in our legislative initiatives and input, and we hope to continue to increase the impact that our voice has in the legislative arena. To that end, we have founded the Illinois Parent Advocacy Network (IPAN) in the hopes that affected parents will join us in advocating for families like theirs who have been negatively impacted by the bad polices and laws the FDC is working to improve.

For more information about our policy initiatives, or to get involved, contact our Policy Project Coordinator, Angela Inzano, or our Policy Consultant, Phil Milsk.

FDC Board members celebrate recognition for Center founder Diane Redleaf, recipient of Alliance for Women’s Founder’s Award. Back row left to right: Michael O’Connor, Michael Brody, Michael Weaver, Louis Fogel; front row left to right: Diane Redleaf, Helene Snyder, Jonni Miklos, Karen Teigiser and Colleen Garlington.

Policy Victories

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Toni Hoy, honored by FDC in 2012 with Parent Advocate Award, led efforts to secure interagency agreements regarding care for children with emotional and behavioral issues that put them at risk of forced custody relinquishment to DCFS, due to lack of treatment alternatives.
Can You Believe This?

Sometimes DCFS investigates allegations that, even if true, wouldn’t amount to abuse or neglect. But in the past few months, we’ve seen several cases in which DCFS ignores evidence that shows they have no basis for continuing an investigation, let alone “indicating” parents for abuse or neglect. We still cannot believe it!

More Allegation 60 Tall Tales—If Only They Weren’t True!

Apparently DCFS will now label alleged victims of domestic violence as child neglectors even when there is no evidence that any actual domestic violence took place! Our client Leslie,1 mother of five year old Jason, was previously in an abusive relationship with Jason’s father but ended that relationship three years ago. Leslie obtained an order of protection against him, and he is no longer involved in her or her son’s lives. Someone at Jason’s school called the Hotline, however, when Jason had scratches on his neck. The Hotline caller claimed that Jason said these scratches resulted from him falling on the floor during a fight between his mother and father. This was hard to believe by itself, since Jason has speech delays that make it hard for him to have verbalized such a complaint. Additionally, when the DCFS investigator asked Jason if he had seen his mom and dad fighting, he said “no” and when asked if he had a scratch, Jason said his six-year-old brother had hit him. Despite all these contradictions to the Hotline call, DCFS indicated Leslie for “Allegation 60,” which has been declared void by the Illinois Supreme Court. DCFS listed the prior history of domestic violence as a factor in its rationale—even though there was no domestic violence documented for three years and Leslie had taken entirely appropriate actions to end the violence against her. DCFS also ignored its new policy that expressly provides that a victim of domestic violence is presumed not to be neglectful. Thankfully, the FDC was able to get DCFS’s attorney to voluntarily unfound the alleged finding without a hearing. Still, we can’t believe that DCFS would continue to use the void Allegation 60 to label a victim of domestic violence neglectful even when there is no evidence of domestic violence.

Tamara N. is a high school graduate who works at O’Hare Airport as a security guard. Last June, she became pregnant and was living at a residential maternity facility. Staff at the facility wanted Tamara to give her baby up for adoption, but she refused. Soon thereafter, the DCFS Hotline was called against Tamara. Remarkably, the allegations included that Tamara had significant intellectual deficits. Tamara eloquently refuted those allegations, demonstrating that she was a high school graduate who held full time employment that would have been impossible to maintain had she been as delayed intellectually as the Hotline call claimed. Believing the biased Hotline call and ignoring Tamara’s school and work performance, DCFS “indicated” Tamara for the infamous “Allegation 60” even after that allegation had been declared void by the Illinois Supreme Court. DCFS also restricted Tamara’s contact with her baby to “supervised contact” only. Fortunately, once Tamara’s appeal reached the DCFS hearing’s unit, DCFS own counsel agreed the evidence against Tamara was insufficient and the case was expunged. While we certainly do believe that there is prejudice against persons with mental disabilities, we just can’t believe that DCFS takes the word of a biased reporter in support of those prejudices against parents accused of development delays, when the parent has no such delays at all.

“Inadequate Supervision”—The Next Frontier in the Center’s Effort End Unbelievable Findings Against Innocent Parents

Jennifer B., the mother of 17-month-old Alex and a child-care worker actively seeking employment, was living in a long-term domestic violence shelter apartment, and was in hiding from her abusive ex-boyfriend. Jennifer was indicated by DCFS of “inadequate supervision” because on a cold day in December, she took the trash downstairs to the dumpster (right outside her building) while her son Alex was taking a nap. She was gone for less than ten minutes. Alex could not get out of his crib at that time, was sleeping soundly, and Jennifer had the functioning baby monitor with her at all times. Despite all of these precautions, DCFS received a Hotline call and the DCFS investigator indicated Jennifer for inadequate supervision of Alex. In making the finding, the investigator stated that Jennifer’s baby monitor was not sufficient because they were intended for parents who had “large homes.” The investigator then went on to inappropriately contact Jennifer’s estranged parents, her hostile ex-husband, and very same ex-boyfriend Jennifer was hiding from. Luckily, with the help of pro bono attorneys, the FDC was able to get DCFS to voluntarily unfound the report without a hearing—but not before Jennifer’s ability to care for and provide for Alex was put in jeopardy for months. We know that DCFS overreaches in finding many parents guilty of “inadequate supervision” even when children are unharmed, but what we cannot believe is that DCFS put both Jennifer and Alex at risk of serious harm in the name of protecting a child who was safe in his crib.

One morning, Ronna took her child to camp, just ten minutes from home, and left her eight-year-old son Jeremy home. Jeremy didn’t realize that Ronna’s boyfriend was in the home, asleep. Jeremy cooperated and let a person serving a subpoena into the home while his mother was out. The result: the process server (who happened to work for DCFS) caused Ronna to get indicated for leaving her son with “inadequate supervision.” The only problem with this result: there was an adult in the home the whole time, there was no harm to Jeremy, and Ronna quickly returned home. Despite these factors, Ronna lost her administrative hearing and has had to pursue further appeals. We can’t believe that even after an appellate court victory like Bonita V.’s, see p. 5, parents are being indicated and registered as “child neglectors” when their children are safe and unharmed. What we can’t believe is that DCFS doesn’t have more serious abuse to attend to than fighting to keep good parents like Ronna on the child abuse register.

1 All names have been changed here to protect the confidentiality of the parents and children involved in these unbelievable cases.
On May 15, 2014, I was a very fortunate person: I received the Chicago Bar Association’s Alliance for Women’s Founders Award. According to the Alliance for Women, this award is given to “honor women lawyers who have significantly contributed to the advancement of women in the legal profession or other areas, and whose careers reflect the highest level of professional achievement, ethics and excellence to a woman leader in the bar.” By itself, this statement of purpose makes receiving an award like this pretty heady stuff. But reviewing the list of past honorees, which includes several federal judges and national bar leaders, felt overwhelming to me. And being honored very publicly at a luncheon attended by a broad cross-section of the legal community was a once in a lifetime experience.

In our field, and in many other areas of public interest practice, recognition by the larger legal community sometimes seems hard to come by. In fact, that’s one of the reasons the Family Defense Center is both generous and strategic about the awards we give to the people we honor each year at our Benefit. Awards matter—the Chicago Bar Association, for example, has led the way in giving awards for public interest lawyers including the Morsch Award. (I nominated Rene Heybach for the very first Morsch award and she won it!). We take awards seriously. How could we not? In 2010, when we received the first Axelson Center Award for an Excellent Emerging Organization, it helped to propel us forward and attracted more support, acceptance and interest in our work in the legal community. It made it easier to recruit new law firms to our pro bono program, and it even got a little bit easier (though still not easy) to get foundation grants. Melissa Staas’s receipt of the prestigious Sun Times Fellowship has not only been a wonderful peer recognition, but it has substantially helped defray the ongoing costs of school loans, too.

I explained the meaning of the Founders Award to me, and the reasons awards matter so much in my acceptance speech, which a few people asked me to reprint in this Family Defender issue (see p. 10). It is very important that lawyers who toil very hard, and often thanklessly, for clients who cannot show recognition of the value in dollars, do receive public thanks and acceptance by the larger legal world. It is a most meaningful validation of the importance of the work we do, and the importance of persevering in that work.

We have jumped onto the awards bandwagon with a vengeance, but at the same time we have stuck to our principles. We will not give an award simply to pander to a wealthy donor or to court a potential donor. Nor will we give an award that lacks a deep and meaningful connection to our work. But we will give awards to people and institutions that have been exemplary in their commitment to justice for families, looking out especially for the unsung heroes in our midst. This year, we’re proud to honor people who are exemplary in every way. We will continue to celebrate awards and rejoice that we have such worthy recipients to recognize each year.

Yours in the struggle for justice and with gratitude,

Diane L. Redleaf
Executive Director, Family Defense Center