



Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment

By Judge Leonard Edwards (ret.)

INTRODUCTION

The serious consequences of abuse and neglect proceedings including placement in foster care and termination of parental rights mandate that parents and children receive competent and well-trained legal representation. Unrepresented parents and children cannot match the expertise and sophistication of government lawyers and trained child welfare workers in complex child abuse and neglect proceedings. To ensure a fair opportunity to present their positions, answer their questions, and guide them through a challenging legal, administrative, and emotional process, courts must provide trained and well-prepared legal counsel to parents and children.¹ Counsel protects important constitutional and legal rights, helps prevent the unnecessary entry of children into foster care, and assists in strengthening family supports.

Many state legislatures provide attorneys for parents in abuse and neglect cases,² while some states provide for only discretionary appointment. In others, the appointment occurs late in the case at the adjudicatory or termination of parental rights hearing.³ Federal law mandates that the child have representation from a guardian *ad litem* (GAL)

1 Recent studies have demonstrated that the quality of parent representation improves outcomes for families. Those outcomes include more timely hearings, more family reunifications, and few terminations of parental rights. See C. Gemma, *Quality Representation of Parents Improves Outcomes for Families*, 6 CHILD COURT WORKS, April 2003, ABA Center on Children and the Law, and B. Bridge & J. Moore, *Implementing Equal Justice for Parents in Washington: A Dual Approach*, 53 JUVENILE & FAMILY COURT JOURNAL, Fall 2002, 31-41.

2 These cases have different names in different states including Juvenile Dependency, Child Protection, and CHINS—Children In Need of Protection. This article will refer to these proceedings as abuse and neglect cases throughout.

3 See the discussion *infra* at Section V—Practice Across the Country.

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in abuse and neglect proceedings,⁴ and some states supplemented the federal law with statutes mandating legal representation for children.⁵ Policy makers and experts have written widely on the benefits of representation and the proper role of the attorney and GAL in abuse and neglect proceedings,⁶ but one issue receives sparse attention: the timing of the appointment.⁷ Unless the court appoints the attorney/GAL well before the initial hearing and the client receives representation from the beginning of the case, the representation will likely be ineffective.

This article discusses the importance of appointing legal representatives for parents and children in child protection cases prior to the commencement of any court hearings. First, it briefly discusses representation in child abuse and neglect cases. Second, it addresses the critical nature of the initial or shelter care hearing. Third, it discusses the importance of legal representation at the initial hearing. Fourth, it reviews the appointment-of-attorney practice in most jurisdictions around the country, a practice in which the court usually appoints representatives too late to be effective at the initial hearing. Fifth, it discusses a number of reasons why attorneys do not litigate issues and particularly the reasonable efforts issue at the initial hearing. Sixth, it enumerates the perceived barriers to early appointment, and discusses why these barriers should not prevent early appointment of legal representatives. The article concludes with a recommendation that presiding judges and court administrators appoint attorneys and GALs simultaneously with the filing of an abuse and neglect petition and before any court hearings occur. Early appointment enables appointed attorneys to prepare properly for the initial hearing, and assures the competent representation of parents and children at all hearings.

4 Child Abuse Prevention and Treatment Act of 1974 (CAPTA), 42 U.S.C. § 5103(b)(2)(G). In some states the appellate courts have mandated representation for parents in abuse and neglect cases. *See* Danforth v. State Department of Health and Welfare, 303 A.2d 794, (Me., 1973). *Black's Law Dictionary* defines guardian *ad litem* as "a special guardian appointed by the court in which a particular litigation is pending to represent an infant, ward or unborn person in that particular litigation." (6th ed. 1990), at 706.

5 For example, see California Welfare and Institutions Code § 317(a), West, 2011. For a comprehensive examination of state legislative acts regarding the appointment of attorneys to represent children in juvenile dependency cases, refer to A CHILD'S RIGHT TO COUNSEL: A NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR ABUSED AND NEGLECTED CHILDREN, First Star and Children's Advocacy Institute (2nd ed., 2009).

6 There is a great deal of literature addressing the role of the attorney/GAL in abuse and neglect cases, but these publications neglect addressing the early timing of the appointment. For example, see REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT AND CUSTODY PROCEEDINGS ACT, National Conference of Commissioners on Uniform State Laws, 2005, at 10-12; M. Ventrell, *Rights and Duties: An Overview of the Attorney-Child Client Relationship*, 26 LOYOLA LAW JOURNAL, 259, at 268-9; D. DUQUETTE, *ADVOCATING FOR THE CHILD IN PROTECTION PROCEEDINGS: A HANDBOOK FOR LAWYERS AND COURT APPOINTED SPECIAL ADVOCATES* (1990); M. Laver, *Promoting Quality Parent Representation through Standards of Practice*, 26 ABA CHILD LAW PRACTICE, March 2007, 1, 6-8; and NACC, *LEGAL REPRESENTATION OF CHILDREN* (2001), at 3-18.

7 A few commentators have mentioned the importance of the timing of appointment. *See* L. Edwards, *Improving Juvenile Dependency Courts: Twenty-Three Steps*, 48 JUVENILE & FAMILY COURT JOURNAL, 1997, 1-23, at 7; CALIFORNIA JUDICIAL COUNCIL, CALIFORNIA COURT IMPROVEMENT PROJECT REPORT (April 1997), at 76; AMERICAN BAR ASSOCIATION, *ABA STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES* (February 1996), at 20-21. None of these discusses the details of early appointment.

I. REPRESENTATION IN CHILD ABUSE AND NEGLECT CASES

Many state statutes and case law provide for the appointment of counsel for parents and children in abuse and neglect and termination of parental rights cases, but the United States Supreme Court determined that parents have no constitutional right to counsel in these cases.⁸ The Court stated that termination proceedings were civil and not criminal in nature, and that an indigent litigant has a right to appointed counsel only when, if the litigant loses, he or she may be deprived of physical liberty.⁹ Because child abuse and neglect cases are also civil in nature and normally precede termination proceedings, it is clear that there is no constitutional right to counsel in those proceedings either.

Some states provide representation for indigent parents only at the adjudicatory or termination hearing,¹⁰ while in other states appointment is a matter of judicial discretion. Whether judges appoint attorneys for parents varies greatly in this latter group of states.¹¹ In two states, Mississippi and Idaho, the statutes allow parents to

⁸ *Lassiter v. State Department of Social Services*, 452 U.S. 18 (1981). The majority opinion held that the Fourteenth Amendment does not require courts to appoint counsel for indigents in every parental status termination proceeding. The court noted that there was no loss of liberty at stake. In order for counsel to be appointed in a civil case the trial court must weigh several factors including the private interest at stake, the government's interest, and the risk that the procedures used will lead to erroneous decisions. The dissenting justices pointed out the seriousness of a termination of parental rights case and the necessity of counsel to protect a parent's rights. However, the majority opinion did note that it would be "wise public policy" to "require that higher standards be adopted than those minimally tolerable under the Constitution." The court stated that "Informed opinion has clearly come to hold that an indigent parent is entitled to the assistance of appointed counsel not only in parental termination proceedings, but in dependency and neglect proceedings as well," 33-34.

⁹ *Id.* at 23-25.

¹⁰ For example, Virginia, VA. CODE ANN. § 16.1-266 (2011). The Virginia statute does, however, require appointment of counsel and guardian *ad litem* for the child prior to any hearing alleging abuse or neglect of the child.

¹¹ These states include Hawai'i, Indiana, Minnesota, Missouri, Nevada, New Jersey, Oregon, Wisconsin, and Wyoming. Even though appointment is discretionary, in Hawai'i the court regularly appoints counsel for indigent parents. (E-mail to the author from Presiding Judge Bode Uale, Oct. 24, 2011, on file with the author). In Wisconsin, the legislature passed a statute prohibiting judges from appointing counsel for parents in abuse and neglect cases. The state trial judges and parents brought suit to declare the statute unconstitutional, and the Wisconsin Supreme Court struck down the statute. *Joni B. v. State of Wisconsin*, 549 N.W.2d 411 (1996). Currently, some trial courts appoint counsel for parents, but others often do not because of financial considerations. (E-mail to the author from Judge Christopher Foley, Oct. 24, 2011, on file with the author). In Nevada, practice varies from county to county. All indigent parents are appointed counsel in Douglas County, and all children have a CASA volunteer as a GAL. (E-mail to the author from Judge Michael Gibbons, Oct. 25, 2011, on file with the author). However, in Clark County (Las Vegas), not all children are appointed counsel or GAL, and the parents' attorneys are usually appointed at the initial hearing. State Assembly Chair Barbara Buckley has been working to provide representation for all children in dependency proceedings. She predicts Clark County will achieve that goal in 2012. (E-mail to the author from Assembly Member Barbara Buckley, Oct. 31, 2011, on file with the author). In Indiana, there is no statutory right to counsel for indigent parents, but some courts appoint counsel, usually at the initial hearing. The Indiana trial courts appoint counsel for parents in almost all of the termination of parental rights cases. In Minnesota, most judges will not appoint counsel for an indigent parent unless the parent is a party, and non-custodial parents are not parties. In most cases the attorney for a parent is appointed at the Emergency Protective Care hearing which is held within 72 hours of removal. This means that the attorney does not appear until the admit/deny hearing, which happens 10 days later. (MINN. STAT. § 260C.163). (Information in e-mail from Judy Nord, CIP Director, Nov. 2, 2011, on file with the author.)

retain counsel but fail to provide for the appointment of counsel for indigent parents.¹²

Children have a federal statutory right to a GAL in child abuse cases,¹³ and some states' statutes provide children the right to representation by an attorney.¹⁴ Some states require the GAL must be an attorney, while in others the GAL need only be a trained volunteer, often with the assistance of counsel, if necessary.¹⁵

Some commentators view representation as a "problematic aspect" of case processing in child abuse and neglect proceedings.¹⁶ Many attorneys prefer not to work in child abuse and neglect proceedings.¹⁷ They devalue work with children and families and view the subject matter as social work rather than legal representation. Juvenile court work lacks prestige in legal circles.¹⁸ As a result, legal representation in child abuse and neglect proceedings sometimes becomes a training ground for new attorneys who then quickly move on to other "more important" and more remunerative work in the legal system.¹⁹ One commentator summarized the situation: "In some jurisdictions . . . attorneys are

12 MISS. CODE ANN. § 43-21-201; *In re* I.G. 467 So. 2d 920. In termination of parental rights cases in Mississippi, the court has the power to appoint counsel but only after determining "whether the presence of counsel would have made a determinative difference." *K.D.G.L.B.P. v. Hinds County Department of Human Services*, 771 So. 2d. 907. The Idaho statutes refer to the right of the parent "to retain and be represented by counsel," but there is no reference to appointment of counsel for an indigent parent. IDAHO CODE § 16-1611. The Idaho Code does mandate appointment of a guardian *ad litem*, and, if appropriate, an attorney for the guardian. IDAHO CODE § 16-1614. In 2006, the Idaho Court Rules (Rule 37, Right to Counsel) were amended so that the parents, guardian, or legal custodian has the right to appointed counsel if financially unable to pay for such legal services, available at www.isc.idaho.gov.

13 Child Abuse Prevention and Treatment Act (CAPTA—P.L. 93-247), 42 U.S.C. 5101 et. seq., 42 U.S.C. 5116 et. seq., 41 C.F.R. 1340 (2011).

14 For example, CAL. WELF. & INST. CODE § 317(c), West, 2011.

15 For example, IDAHO CODE § 15-1614.

16 NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, CHILD ABUSE AND NEGLECT CASES: REPRESENTATION AS A CRITICAL COMPONENT OF EFFECTIVE PRACTICE, 1998, at 15 [hereinafter CHILD ABUSE AND NEGLECT CASES: REPRESENTATION].

17 *Id.*, at 38-39.

18 See L. Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 JUVENILE & FAMILY COURT JOURNAL, 1992, at 34-36; See also *Chen v. County of Orange*, 96 Cal. App.4th 426 where the appellate court noted:

[T]here is a general perception among the bench and bar that juvenile court, both delinquency and dependency is "Siberia"—the place where you pay your dues or are sent when you have incurred management's disfavor. Hence both judges and county lawyers (county counsel, deputy district attorneys, public defenders) are typically rotated in and out of a juvenile assignment, and new judges and county lawyers, i.e., those lowest on the seniority totem pole, have to "do time" there before they can progress to what are perceived to be more exalted assignments (footnote 2 at 932).

19 *Id.* Also see California Standard of Judicial Administration 5.40(c)(4) Advisory Committee Comment:

Fees paid to attorneys appearing in juvenile court are sometimes less than the fees paid attorneys doing other legal work. Such a payment scheme demeans the work of the juvenile court, leading many to believe that such work is less important. It may discourage attorneys from selecting juvenile court practice as a career option. The incarceration of a child in a detention facility or a child's permanent loss of his or her family through a termination of parental rights proceeding is at least as important as any other work in the legal system. Compensation for the legal work in the juvenile court should reflect the importance of this work.

underpaid and overworked, receive inadequate training, are not appointed in a timely manner, and lack crucial supports to zealously represent parents.”²⁰

Despite these challenges, some data suggest that parent representation significantly improves outcomes for children and families. In the past few years, the Washington State Office of the Public Defender enhanced its representation of parents by creating lower caseloads, higher compensation, and providing support such as investigatory and expert services. These changes resulted in dramatically improved results in the dependency system including increased reunification rates (by 50%), a decrease in termination of parental rights (by 45%), and a 50% reduction in children who “age out” of the foster care system.²¹ Additional studies indicate that high-quality parent representation results in cost savings.²²

III. THE INITIAL HEARING²³

The initial hearing takes place shortly after the removal of a child from parental care,²⁴ within 72 hours in most states. The hearing takes place on an emergency basis because time is of the essence in a child abuse and neglect case.

The importance of the initial hearing led the experts who wrote *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* to recommend that the hearing last at least an hour in order to address the critical issues facing the court.²⁵ Written by the National Council of Juvenile and Family Court Judges (NCJFCJ), *Resource Guidelines* recommendations address how juvenile courts should conduct child abuse and neglect proceedings.²⁶ The *Guidelines* enumerate the critical issues as well as the value of a thorough examination of the facts so that a child is not unnecessarily placed out of home.²⁷

20 V. Sankaran, *Protecting a Parent's Right to Counsel in Child Welfare Cases*, 28 ABA CHILD LAW PRACTICE, No. 7 (2009) at 101.

21 NCJFCJ, IMPROVING PARENTS' REPRESENTATION IN DEPENDENCY CASES: A WASHINGTON STATE PILOT PROGRAM EVALUATION (2003), available at www.opd.wa.gov/Reports/DT-Reports.htm; M. COURTNEY, J. HOOK, & M. ORME, EVALUATION OF THE IMPACT OF ENHANCED PARENTAL LEGAL REPRESENTATION ON THE TIMING OF PERMANENCY OUTCOMES FOR CHILDREN IN FOSTER CARE, PARTNERS FOR OUR CHILDREN (2011), available at <http://partnersforourchildren.org/pocweb/userfiles/PRP%20Discussion%20Paper.pdf>.

22 E. Thornton & B. Gwin, Improved Outcomes for Families and Potential Cost-Savings Associated with Providing Parents with High Quality Legal Representation (2012) (unpublished manuscript, available from the author at elizabeth.thornton@americanbar.org) [hereinafter “Improved Outcomes”].

23 Some refer to this hearing as a shelter care hearing, a preliminary protective hearing, a detention hearing, an emergency protective care hearing, a temporary custody hearing, or an emergency removal hearing. This article will use the term initial hearing throughout.

24 In Delaware, the judge reviews the factual basis for removal on an *ex parte* basis before the child is physically removed. The petition is filed the next day. DEL. CODE tit. 13, § 2512. Louisiana has a similar judicial review before a child can be removed from parental care. LA. CODE Ch. C, art. 613 & 615.

25 NCJFCJ, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES (1995), at 42 [hereinafter RESOURCE GUIDELINES]. “A complete preliminary protective hearing requires a substantial initial investment of time and resources” at 32.

26 The *Resource Guidelines* have been approved by the Conference of Chief Justices, the American Bar Association, the California Judicial Council, and the National Council of Juvenile and Family Court Judges.

27 RESOURCE GUIDELINES, *op.cit.*, note 25, at 31.

Judges make critical decisions throughout juvenile dependency cases and particularly at the initial hearing. The judge must decide whether to return the child immediately and safely to parental care before the adjudicatory hearing. Many policy makers believe that this initial decision is the most important decision in an abuse and neglect case.²⁸ Often the decision to remove at the initial hearing creates the status quo that can be difficult to change in subsequent hearings. As noted in the *Resource Guidelines*, “Once a child is removed it becomes logistically and practically more difficult to help a family resolve its problems.”²⁹

Other decisions the judicial officer makes at the initial hearing include whether notice to the parents and relatives has been properly completed, who the child’s legal parents are, and whether the child has Native American heritage. The judicial officer makes certain that the parties (parents and child) understand the nature of the proceedings and the possible consequences and, in some states, that they are represented by counsel or a GAL. The judicial officer also makes two additional inquiries and findings, both required by federal law. First, the judicial officer determines whether it would be “contrary to the best interest of the child” to remain in the home,³⁰ and, second, whether the agency has made “reasonable efforts to prevent removal of the child.”³¹

The emergency nature of the initial hearing places pressure on the judicial officer. When the docket is crowded and time is short, no opportunity for a full discussion of the issues exists. Some courts devote only a few minutes to the initial hearing. The most conservative judicial position is to remove the child “just in case” more abuse or neglect may take place.³² After all, the thinking goes, there will be time to sort things out and, in the meantime, no harm can come to the child from placement for a few days. The seemingly cautious and “safe” approach which allows more time for the social worker to investigate the situation, fails to take into account the fact that removing a child from parental care is perhaps the most significant governmental form of intrusion into a family.³³ Such intrusion is traumatic to all family members. Child development experts believe that the child needs consistent care from a caretaker, and removal disrupts the child’s stability.³⁴ Placement in foster care, even for a few days, may have a lasting

28 *Id.* at 30.

29 *Id.* at 30.

30 Section 472(a)(2)(A)(ii) of the Social Security Act and 45 C.F.R. 1356.21(c).

31 Section 472(a)(2)(A)(ii) of the Social Security Act and 45 C.F.R. 1356.21(b)(1).

32 “Removing a child from her home is a monumental decision and one that should not be made lightly or quickly. Too often, these important hearings are conducted in a matter of minutes with few if any participants other than the caseworker and perhaps, the parents.” N. MILLER & C. MAZE, *RIGHT FROM THE START: THE CCC PRELIMINARY PROTECTIVE HEARING BENCHMARK: A TOOL FOR JUDICIAL DECISION-MAKING* (NCJFCJ, 2011), at 11 [hereinafter *RIGHT FROM THE START*].

33 “Unfortunately, many social service agencies believe it is safer to remove the child as a preventive measure and return the child to the family only after a full investigation is completed. This perspective ignores the great risk of out-of-home placements, the disruption such placements cause to the child and family, and the emotional and fiscal costs involved in placing children.” *RESOURCE GUIDELINES, op.cit.*, note 25 at 30.

34 VERA FAHLBERG, *A CHILD’S JOURNEY THROUGH PLACEMENT* 170-174 (Prospective Press, 1996). Some research indicates that some older children may have better outcomes remaining at home, even a neglectful home. C. Lawrence, E. Carlson, & B. Egeland, *The Impact of Foster Care on Development*, 18 *DEVELOPMENT & PSYCHOPATHOLOGY*, 2006, at 57-76. For an extensive discussion of the need for timely

negative impact upon the child.³⁵ With confused and inexperienced parents and children appearing in court, it becomes even more important for a more deliberate and lengthier hearing with well-prepared attorneys and GALs.

IV. THE IMPORTANCE OF EARLY APPOINTMENT OF COUNSEL BEFORE THE INITIAL HEARING

Both parents and children need competent representation at the initial hearing. The majority of parents in child abuse and neglect proceedings are poor and uneducated.³⁶ They find the courtroom setting intimidating and have little or no experience with the complex child protection system. Most parents do not understand what happens in child abuse and neglect proceedings. They require assistance when facing the state with all of its resources and power. They need someone who understands the issues before the court, what the agency and court expect as the case proceeds, and how best to advise them to achieve their goals. They also need someone who understands how to reinforce messages from the court and agency that are designed to assist them, and to speak up and challenge the positions taken by the child protection agency and its attorney when those positions are not supported by the law or evidence.

Often, parents do not understand the myriad issues that the judicial officer will decide. Nor do they know the appropriate information to present to the court to better inform the judge. For example, understanding the nature of the initial hearing could result in a suggestion for intensive in-home services to permit the child to remain safely at home. Assistance from an attorney could result in a less intrusive placement than foster care. A relative might move into their home, the child could be placed with a relative, the allegedly abusive parent could be ordered to move out of the home and the “safe” parent remain in the home with the child, one parent could move to a safer location with the child, as well as a number of other possibilities. If the court removes the child, the attorney can offer suggestions that mitigate risk factors which results in faster reunification. In addition, the attorney can maximize visitation between the parent and child. Visitation after placement has long been problematic for parents in abuse and neglect cases, and skilled advocacy can help them maintain regular contact with their child perhaps with participation by relatives, neighbors, or friends.³⁷ Most importantly, parents certainly are unaware that the court must make a finding that the agency has demonstrated to the court that it exercised reasonable efforts to prevent removal or that they could question agency action regarding this issue.

action in a child protection case see L. Edwards, *Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process*, 58 JUVENILE & FAMILY COURT JOURNAL, Spring 2007, at 5-6.

35 FAHLBERG, *id.*; J. Doyle, *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 THE AMERICAN ECONOMIC REVIEW, 2007, at 1583-1610. Moreover, there are significant human costs associated with extended foster care placement. See “Improved Outcomes,” *op.cit.*, note 22.

36 As the Wisconsin Supreme Court observed: “These parents are often poorly educated, frightened and unable to fully understand and participate in the judicial process. . . .” *Joni B. v. State of Wisconsin*, 549 N.W. 2d 411 (1996).

37 See L. Edwards, *Judicial Oversight of Parental Visitation in Family Reunification Cases*, 54 JUVENILE & FAMILY COURT JOURNAL, Summer 2003, 1-24.

Parents also do not understand that the petition alleging parental abuse or neglect may not state sufficient facts to justify state intervention and removal of the child, that the supporting documentation may contain insufficient evidence to support the agency's request, or that the parent may have additional evidence that he or she does not know how to present. This lack of understanding is especially true in cases that involve language and cultural barriers. Often situations arise in which only an attorney or GAL would know to challenge the validity of the petition. For example, a New York federal court judge held that the state cannot remove a child from a parent because that parent is the victim of domestic violence and the child is present when the domestic violence occurs.³⁸ The judge held that such a removal violates both the substantive and procedural due process rights of both the parent and the child.³⁹ The judge further held that the agency has an obligation to take steps to protect the victim. Only a trained lawyer or GAL will be able to probe this type of legal issue effectively.

Attorneys can assist the parents in other ways. They can help the parent work effectively with the social worker and the judge. They can explain what services might be necessary to help the parents address the problems that brought their child to the attention of the court and then help them access those services. Often transportation issues prevent the parents from carrying out aspects of the service plan. The attorneys can identify transportation issues quickly and call the court's attention to them. Attorneys can provide confidential advice to their clients as well as much needed encouragement to engage in services and attend court hearings. Because of their confidential relationship with the parent, attorneys are also more likely to know where a parent is living and how to contact a parent when the social worker cannot. These services are enhanced many times over in jurisdictions where parents' attorneys employ or have access to in-house social workers.⁴⁰

The child is even more helpless in abuse and neglect proceedings. A large percentage of children in these cases are too young to comprehend legal proceedings. Older children can speak for themselves, but only if they are brought to court and understand

38 *Nicholson v Scopetta*, 344 F.3d 154 (2003). This holding was confirmed by the Court of Appeals of New York: *Nicholson v Scopetta*, 3 N.Y.3d 357; 80 N.E.2d 840 (2004).

39 Other appellate courts have written similar opinions regarding different fact situations, holding that the legal petition does not state sufficient facts to justify state intervention on behalf of a child. For example, in the case of *In re Jennifer P.*, 174 Cal. App.3d 322 (1985), the appellate court reversed the trial court's finding of dependency. The child had been abused by the father, but the mother obtained a restraining order keeping him away from the child, engaged the child in therapy, and took other protective steps. The appellate court held that state intervention is not necessary where the parent takes sufficient protective steps to protect the child. Other appellate cases hold that parental problems are insufficient for state intervention on behalf of a child unless there is a nexus between the parent's conduct and child safety. For example, a parent's mental illness must be shown to be harmful to the child. A parent's neglect, even where sexual abuse is involved, must be demonstrated to be unreasonable. Where the parents left their two children for 20-30 minutes with a family friend on two occasions and that person molested the children, the court held that was insufficient evidence to sustain dependency. *In re Savannah M.*, (2005) 1321 Cal. App.4th 1387. And a mother's sexual conduct with a 15-year-old neighbor may be the basis for criminal proceedings, but unless the conduct has an impact on her children, dependency proceedings are not proper. *In re B.T.* (2011) 193 Cal. App. 4th 685.

40 L. Edwards, *The Defense Attorney at the Dispositional Hearing: The Need for Social Worker Assistance*, NLADA BRIEFCASE, 48-54, Vol. XXXIV, No.2, Dec/Jan 1976-1977. All of the jurisdictions cited in this article concerning cost savings associated with providing parents with high-quality legal representation employ social worker/attorney teams for their clients. "Improved Outcomes," *op.cit.*, note 22.

the legal proceedings. Even the most mature youths will likely not understand the legal standards the court applies to the facts of the case or the strategies available to avoid placement, nor do they understand the “contrary to the best interest” and “reasonable efforts” issues the court must decide. Nevertheless, children should appear in court and participate in the initial hearing.⁴¹

Taking more time at the initial hearing will produce better results for children and families. NCJFCJ’s Permanency Planning for Children Department conducted an experiment in three juvenile courts in which the judicial officer spent additional time at the initial hearing and asked specific questions from a benchcard.⁴² This study demonstrated that an enhanced initial hearing including representation for all parties resulted in fewer children being removed from parental care, more family placements, and fewer children placed in non-relative foster homes.⁴³ Adding the input from well-prepared attorneys will surely result in even more positive results.

Early appointment of counsel for parents and the child results in more meaningful initial hearings, more attention to critical issues, a strong voice for parents and the child during legal proceedings, and more accountability for the child welfare agency. Early appointment also serves the best interests of the child.⁴⁴

V. PRACTICE ACROSS THE COUNTRY

Some state statutes do not provide legal representation for parents in child protection proceedings.⁴⁵ Other state statutes authorize appointment of counsel only at the adjudicatory hearing,⁴⁶ at the termination of parental rights hearing,⁴⁷ or only on a discretionary basis.⁴⁸ The parents who appear without counsel at an initial hearing are at

41 RIGHT FROM THE START, *op.cit.*, note 32 at 12. The Santa Clara County Juvenile Dependency Court has recently created a “Youth in Court Practice” protocol, which encourages youth to be present in court at all hearings. The judge is required to inquire about an absent youth, document if the youth is present and if not, why not. The judge is also encouraged to engage the youth in conversation in an age-appropriate fashion. The protocol also requires the child’s attorney to prepare the youth for the hearing and debrief the youth after the hearing. A copy of the protocol is available from the author. The Los Angeles County Juvenile Dependency Court has for years had a policy encouraging children to attend court hearings. To implement this policy, the court has arranged for school buses to pick up children all across the county on a daily basis.

42 A benchcard is a one or two page sheet of questions that a judge should ask at a particular hearing or when a particular issue arises. The NCJFCJ has produced benchcards for several types of hearings and issues. The three jurisdictions in this study were Omaha, Nebraska, Portland, Oregon, and Los Angeles, California.

43 NCJFCJ, RIGHT FROM THE START: THE CCC PRELIMINARY PROTECTIVE HEARING BENCHCARD STUDY REPORT: TESTING A TOOL FOR JUDICIAL DECISION MAKING (2011), at 3.

44 CHILD ABUSE AND NEGLECT CASES: REPRESENTATION, *op.cit.* note 16 at 30. “It is in the best interests of the child if parents are adequately represented and represented as early as possible in the proceedings.”

45 *Id.* at 23-26. “Eleven state specialists noted that counsel for parents is generally not appointed,” at 23. Apparently, the courts in these states have the discretion to appoint counsel, but decline to do so.

46 *Id.* “Of the remaining 10 states, half appoint counsel at the adjudicatory hearing, and half at the termination proceeding,” at 26.

47 *Id.* “In two states, counsel is usually appointed only at the termination phase,” at 24-25.

48 Statutes in Hawai’i, Indiana, Minnesota, Missouri, Nevada, New Jersey, Oregon, Wisconsin, and Wyoming provide judges with discretion to appoint counsel in abuse and neglect cases. In Texas there is a

a significant disadvantage in these states. Yet even when the court appoints an attorney, numerous factors prevent the attorney from providing effective representation at the initial hearing.

A. Attorneys Face Time Pressures

In most states, if the court appoints attorneys to represent parents and children, appointment usually occurs at or just before the initial hearing.⁴⁹ The agency generally provides copies of the petition or other moving legal papers as well as supporting documents at or just prior to the initial hearing. As a result, the attorneys or GALs have insufficient time to prepare fully for that hearing.⁵⁰ The attorney must locate and meet the client, develop an attorney-client relationship, and learn the facts of the case. The attorney must also inquire about alternative placements and services that might provide a less-intrusive placement than foster care, such as with a relative. In addition, the attorney must review the moving papers filed by the child protection agency and the supporting documents. Those documents may differ significantly from the facts provided by the client, and the attorney must discuss those differences with the client. If relatives can provide placement alternatives, the attorney will have to discuss the case with them. The attorney must also discover what efforts the agency made to prevent removal and determine whether these efforts were reasonable given the facts of the case. All of this must happen in the face of judicial and peer pressure to call the case and complete the calendar.

As a result, the parent and the parent's attorney have little to say at the most important stage of the child protection process, the initial hearing. A national survey of representation in abuse and neglect proceedings summarized this situation when it concluded that "there is poor preparation" by attorneys.⁵¹

statutory right to counsel for indigent parents (TEX. FAM. CODE § 107.013), however some judges appoint counsel for parents later in the case. SUPREME COURT OF TEXAS, CHILDREN'S COMMISSION, LEGAL REPRESENTATION STUDY: ASSESSMENT OF APPOINTED REPRESENTATION IN TEXAS CHILD PROTECTION PROCEEDINGS (January 2011), at 20 [hereinafter LEGAL REPRESENTATION STUDY].

49 "The practice in 27 states is to appoint counsel for parents at the initial or shelter care hearing. In 11 states appointment occurs at the filing of the petition, and two states appoint counsel upon removal of the child. Of the remaining states, half appoint counsel for parents at the adjudicatory hearing, and half at the termination proceeding." CHILD ABUSE AND NEGLECT CASES: REPRESENTATION, *op.cit.*, note 16 at 25-26. This conclusion is also drawn from communications by the author with judges, attorneys, and court improvement program (CIP) representatives across the country.

50 CHILD ABUSE AND NEGLECT CASES: REPRESENTATION, *id.* at 21-30 and 44-49. Mimi Laver's article on Standards of Practice *op.cit.*, note 6, sets out standards for preparation (at 6), but these steps are difficult to achieve at an initial hearing unless the attorney is appointed before the hearing. As one court appointed attorney wrote:

"We receive letters for possible appointment after the initial ex parte order is granted. The Preliminary Protective Hearing is scheduled within ten days. We get notice during those ten days. We then meet with the potential client before the PPH for about five minutes to fill out the Motion and Affidavit to be Found Indigent and attempt to review the Petition for Custody. **We do not have time to prepare for the initial hearing**" (emphasis added). (E-mail from an appointed attorney, Oct. 27, 2011; on file with the author.)

51 CHILD ABUSE AND NEGLECT CASES REPRESENTATION, *id.* at 16-17. Over half of the experts in states where the attorney is appointed at or before the initial hearing believed that the appointment did not occur early enough. *Id.* at 27.

The children's attorney/GAL faces the same time frame and obstacles. The child may not be in court or may be too young to provide any information. If the child comes to court and is mature enough to speak to the attorney/GAL, some communication may occur, but the time constraints will limit the advocate's ability to prepare and present a case to the court just as it did for the parent's attorney.

The lack of appellate case law reflects the failure of attorneys to appeal actions taken at the initial hearing. In some jurisdictions, no appeal rights attach following an initial hearing, only writ rights. In either case, an attorney seeking appellate relief bears the burden to review transcripts and file briefs, generally without additional compensation. Very few appellate decisions address trial court decisions made at the initial hearing, and very few address the "reasonable efforts to prevent removal" issue. A nationwide review of appellate decisions reveals that the "reasonable efforts" issue is rarely appealed by parents or children.⁵² The author's discussions with judges and attorneys around the country confirm the fact that the reasonable efforts issue is rarely mentioned, much less litigated at the initial hearing.⁵³

B. Attorneys Have Too Many Cases

Because attorneys representing parents are often under-paid, they often have to carry high caseloads or take on other case types in their legal practice to make a living. The demands of too much legal work can result in cutting corners, being unprepared in court, and providing less than zealous advocacy for their clients.⁵⁴

C. Attorneys Lack Training

Even if the parents are represented by counsel at the initial hearing, many attorneys lack training to alert them to the issues that should be raised, particularly the reasonable efforts issue.⁵⁵ A national study of parents' attorneys and GALs reported that training was the area needing the most improvement.⁵⁶ This training should include the dynamics of domestic violence, substance abuse, mental health, child development, family dynamics,

⁵² See the cases cited in Kathleen S. Bean, *Reasonable Efforts: What State Courts Think*, 36 U. Tol. L. Rev. 321 (2004-5) and Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation*, 12 B.U. Pub. Int. L. J. 259 (2002-3). Additionally, the author has conducted a research project using legal assistants, contacts with attorneys, court improvement officials, and judges in all 50 states, and reviewed legal articles discussing the child protection system. New York is an exception to the national trend. The New York Family Courts regularly address reasonable efforts to prevent removal issue at N.Y. Family Code Annot. § 1027 hearings. See *In the Matter of Jamie C.*, 26 Misc. 3d 580, 889 N.Y.S.2d 437 (N.Y. Slip. Op. 229458 – 2009).

⁵³ One judge informed the author that the reasonable efforts issue is regularly tried at initial hearings in his court. He could not explain why there is no appellate law on the issue in his state or why, apparently, the issue is not tried in other courts in his state. (E-mail from Judge Michael Key, Oct. 27, 2011, on file with the author.)

⁵⁴ Sankaran, *op. cit.*, note 20 at 103-104.

⁵⁵ "In the majority of states, attorneys for parents currently receive only some or no additional training." CHILD ABUSE AND NEGLECT CASES: REPRESENTATION, *op. cit.*, note 16 at 33.

⁵⁶ "The number one area identified as needing the most improvement with regard to representation was training of attorneys and guardians ad litem (GAL's)." *Id.* at 15.

and legal issues such as the reasonable efforts finding.⁵⁷ As with all attorneys practicing child welfare law, they receive little to no training on how to engage and successfully communicate with the client population or deal with vicarious or secondary trauma, thus increasing the rate of burnout, particularly among parents' attorneys. The lack of training can be partially explained by the fact that parents' attorneys usually are the lowest paid attorneys in the legal community.⁵⁸ Often representing parents in juvenile dependency court is the first job for a new attorney. After a year or two many are eager to move on to another legal field where the pay is better and where they are not "engaged in social work."⁵⁹

D. Attorneys Do Not Understand Their Role

An additional barrier to effective representation for parents is confusion about the role an attorney will play in the complex dependency system. Should the attorney be proactive and conduct research to understand the dynamics of a family? The same national study found that two-thirds of the experts contacted indicated that attorneys appointed for parents are only "somewhat" or "not at all" proactive in their representation of their clients.⁶⁰ Moreover, attorneys must understand the notion that all advice must be "forward-looking," with an understanding that the fluid nature of child welfare cases can frequently change case dynamics.

E. Attorneys/GALs for Children Do Not Raise Critical Issues

Court decisions reflect that parents' attorneys and GALs for children rarely, if ever, raise legal issues at the initial hearing such as the legal sufficiency of the petition, whether the agency has made a prima facie case,⁶¹ and whether the agency exercised reasonable efforts to prevent removal. Perhaps these attorneys and GALs do not understand that their role encompasses the adequacy and timeliness of services to parents and children. Children's attorneys and GALs may see these issues as between the parents and the children's services agency and not relevant to their client. Some parents' and children's attorneys state that they do not raise the reasonable efforts issue because "it won't benefit my client." They believe that the issue relates to the relationship between the local children's services agency and the federal government. Unfortunately, these attorneys do

⁵⁷ *Id.* at 33-35.

⁵⁸ "[N]early ³/₄ of specialists interviewed believed that attorneys for parents and attorneys for children are under-compensated." *Id.* at 89.

⁵⁹ Refer to the appellate court statement in note 18. The low status of attorneys working in abuse and neglect courts reflects the low status that many juvenile courts have across the country. *See* Edwards, *op.cit.*, note 18 at 34-36.

⁶⁰ CHILD ABUSE AND NEGLECT: REPRESENTATION, *op. cit.*, note 16 at 39. For a comprehensive discussion of the role of the child's attorney/GAL in dependency cases, refer to NACC's LEGAL REPRESENTATION OF CHILDREN, *op.cit.*, note 6 at 7-12.

⁶¹ This legal motion resembles a demurrer. The attorney would be arguing that the petition on its face does not state a legal cause of action justifying any further judicial intervention.

not understand how effectively litigating the reasonable efforts issue can benefit not only their client, but all parents and children appearing in child protection proceedings.⁶²

For example, in a domestic violence case, the attorney could argue that the child could safely remain with the victim of the abuse (usually the mother) by either removing the batterer or placing the child with the victim in another setting such as a domestic violence shelter.⁶³ In a parental substance abuse case, the child might be placed with the mother in a substance abuse treatment program or with a relative. An attorney can show the court that the child protection worker's failure to consider alternatives to foster care placement violates the reasonable efforts requirement. These strategies benefit the client before the court, and they will put the child welfare agency on notice that the court will examine similar preventive services in the future. The attorney has offered a plan for his or her individual client, suggesting an alternative to placement. All future parents appearing in abuse and neglect proceedings will benefit from the higher social worker standards set by the court.

Early appointment provides the opportunity for the attorney/GAL to contact the child the day before the hearing and possibly visit the child before the hearing. This gives the attorney/GAL a great deal of information that may prove useful at the initial hearing. Of course, if the attorney/GAL is appointed at the initial hearing or is otherwise unprepared to proceed, the best strategy may be to ask for a short continuance to prepare for the hearing.

VI. BARRIERS TO EARLY APPOINTMENT

Judges and court administrators do not purposely deny parents adequate representation at the initial hearing. In most situations, they follow practice that originated in criminal courts where attorneys often are appointed for indigent defendants upon commencement of the first hearing.⁶⁴ Child abuse and neglect cases differ from criminal cases in the nature of the proceedings, the time necessary to be adequately prepared for the hearing, and the critical decisions that are made at the initial hearing. Early attorney appointment is necessary to protect the interests of the parents and the child.

Many judges have been reluctant to appoint attorneys early in child abuse and neglect cases. Some typical judicial concerns are discussed below.

⁶² See L. Edwards, *Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980*, 45 JUVENILE & FAMILY JOURNAL, Summer 1994, 1-28, at 19-21.

⁶³ "The juvenile court should prioritize removing any abuser before removing a child from a battered mother." NCJFCJ, *EFFECTIVE INTERVENTION IN DOMESTIC VIOLENCE & CHILD MALTREATMENT CASES: GUIDELINES FOR POLICY AND PRACTICE* (1999), Recommendation 60, at 110. See also *Nicholson v. Scoppetta*, *op. cit.*, note 38.

⁶⁴ They may also resist appointment because of financial considerations. This is particularly true when appointment is discretionary. Refer to the experience in Wisconsin when the legislature passed a statute forbidding the court from appointing counsel for indigent parents in abuse and neglect cases (note 11). Even after the statute was declared unconstitutional by the state legislature, many Wisconsin judges are reluctant to appoint counsel for parents because of the cost. (Refer to the observations of Judge Foley in note 11).

A. I Can't Appoint an Attorney When I Don't Know Whether the Client Wants One.

Some judges believe that they cannot appoint an attorney until the case comes to court and the client asks for an attorney. They ask, "What if the client does not want an attorney?" Parents usually request an attorney in abuse and neglect cases, but should a parent decline legal representation, the judge can relieve the appointed attorney once the parent indicates his or her desires. This solution will work if the judge and court administration have created a working relationship with the attorneys who typically represent indigent parents in abuse and neglect proceedings. The details of such an arrangement are described below.

B. What if the Client Comes to Court With a Private Attorney?

If the client comes to court having retained a private attorney—another rare occurrence in most juvenile and family courts—once again the judge can relieve the appointed attorney at that time.

C. How Does the Court Know if the Parent Is Indigent?

Judges have an additional concern. What if the parent does not qualify for an attorney at state expense? The court could require the attorney to determine whether the client is indigent when he or she first meets the client. If the client is not indigent, the attorney could advise him or her about retaining private counsel. Some courts have gone so far as to permit the contract attorney to represent the client through the initial hearing, and the county financial office can seek reimbursement from the client after the hearing. This practice demonstrates the court's emphasis on having a meaningful initial hearing.

D. How Can an Attorney Work Without an Appointment?

Some judges believe that an attorney cannot begin working with a client without a judicial appointment from the bench. However, the judge and court administration can develop a contractual agreement with the attorneys and GALs who represent indigent parents and children in child abuse and neglect cases.⁶⁵ The agreement would specify when the appointment would begin, typically immediately after a petition is filed on behalf of a child, if not sooner. The child welfare agency can be ordered to deliver the moving papers and supporting documents to the designated attorney or attorney's office immediately after filing the petition. Several court systems accomplish this electronically. The attorney receives a copy of the petition as well as the supporting documents, meets

⁶⁵ The court has the authority to appoint lawyers for indigent parents. That authority encompasses the ability to make contractual arrangements concerning the details of the terms of appointment.

with the client, and begins preparation for the initial hearing. If an indigent parent agrees to attorney representation for the initial hearing and now wishes to waive his or her right to an attorney, the court can permit the attorney to withdraw from the case. If the attorney is not relieved, the court can confirm the appointment from the bench, and that attorney represents the client for the remainder of the case.⁶⁶

Several juvenile courts hearing abuse and neglect cases instituted these procedures years ago. They worked with the attorneys who represent parents and the attorneys and GALs who represent children and devised a protocol that ensures that these representatives are well prepared at the time of the initial hearing. The judges and administrators in these courts report that the system works very well.⁶⁷

E. We Can't Afford to Hire Attorneys for Parents

Many juvenile courts refuse to appoint counsel for parents because they believe they do not have the resources to pay for counsel.⁶⁸ The Wisconsin Legislature went so far as to pass a law prohibiting judges from appointing attorneys for indigent parents in abuse and neglect cases, a move the Wisconsin Supreme Court struck down.⁶⁹ Nevertheless, where appointment of counsel is discretionary, many courts are reluctant to appoint counsel or do so only late in the case. As the research in this article demonstrates, without well-prepared counsel the parents and child are unable to participate meaningfully in court hearings. Moreover, late appointment of counsel may be more costly to the state. Research indicates that the delayed appointment of counsel results in more children being removed from their parents unnecessarily, thus costing the community more money in foster care payments.

⁶⁶ Continuity of representation is another important goal of effective representation. Attorneys who represent a client throughout an abuse and neglect case are able to build up a stronger, more effective relationship with the client. The client is more likely to trust the attorney working more closely with him or her. The "zone defense" practice in many law offices where a different attorney appears for a client at each hearing may serve the office well, but it is poor practice and confuses the client.

⁶⁷ The Sacramento Superior Court met with attorney offices and devised a procedure similar to that described. The law office representing parents is automatically appointed pursuant to a standing court order. That office receives the petitions electronically. They may not receive the supporting documents, however, until the day of the initial hearing. They report they usually have enough time to increase the quality of representation for the initial hearing. The Utah juvenile court (a Model Court in NCJFCJ's Victims Act Model Court project) has been using this system for years to the great satisfaction of its recently retired Presiding Judge, Sharon McCully. Judge McCully reports that the appointment occurs so early that all attorneys, the parents, and the social worker are able to meet and confer the day before the initial hearing. In Santa Clara County, California, another NCJFCJ Model Court, the petition and supporting documents are sent electronically to the parents' attorneys and the children's attorneys the day before the initial hearing. In each of these jurisdictions court administration and the attorneys have reached an agreement as to the attorney's duties and involvement with their clients before the initial hearing.

⁶⁸ This financial barrier was acknowledged by attorneys and judges across the country. For example, a Texas study indicated that appointments are heavily controlled by budgetary constraints. This is a major factor contributing to the late appointment of attorneys for parents. LEGAL REPRESENTATION STUDY, *op.cit.*, note 48, at 20 and 25-26.

⁶⁹ *Joni B. v. State of Wisconsin*, *op.cit.*, note 36.

VII. RECOMMENDATIONS

Meaningful initial hearings require well-prepared advocates for parents and children. Current practice must be modified so that parents' attorneys and GALs are appointed simultaneously with the filing of a petition, or sooner.⁷⁰

One court recognized this reality when the lead judges re-structured their case management process and scheduled a second shelter care (initial) hearing. The judges in Multnomah County (Portland), Oregon, schedule a second shelter hearing a few days after the initial hearing to address more carefully the critical decisions made at the outset of the case.⁷¹ An evaluation of the second shelter hearing concluded that more parents appear at this hearing, and that they remain involved through the adjudication process. This hearing also resulted in increased numbers of fathers and relatives identified and shortened the time for that identification. Additionally, more valuable information was available to the court by the time of the second shelter hearing.⁷²

Whether or not a court adopts the second shelter care hearing, presiding judges and court administrators should modify their procedures to appoint attorneys and GALs no later than the moment a child abuse and neglect case is filed. States that do not provide attorneys for indigent parents at the initial hearing should rewrite their statutes to provide counsel for indigent parents throughout the abuse and neglect case, including any termination of parental rights hearing. The child welfare agency should be required to send copies of the petition and supporting documents to the appointed attorney's office immediately after their office has filed the petition. The appointed attorney should immediately contact the client and begin preparing for the initial hearing. Should the client decline representation, the attorney should report that to the court. If the client is not indigent, the attorney should inform the client to retain a lawyer immediately or provide representation the client through the initial hearing with reimbursement to the court thereafter.⁷³ At the initial hearing, the attorney should vigorously address a number of critical issues including the reasonable efforts to prevent removal, the legal sufficiency of the petition, relative placement, and visitation. If the court appoints the attorney/GAL at the initial hearing, the attorney/GAL should ask for a short continuance to prepare for

70 "Appointment of the parent's attorney should be made 'immediately after the filing, but before the full adversary hearing. . . .'" LEGAL REPRESENTATION STUDY, *op.cit.*, note 48 at 53. Some jurisdictions are experimenting with pre-filing appointment of counsel. Marin County, California, has a pilot project in which counsel can represent parents before a petition is filed. For more information, contact Marymichael Miatovich, a staff attorney at the Center for Families, Children & the Courts, a division of the California Administrative Office of the Courts, at mmiatovich@jud.ca.gov.

71 The second hearing is referred to as the second shelter hearing. For details, see NCJFCJ, THE PORTLAND MODEL COURT EXPANDED SECOND SHELTER HEARING PROCESS: EVALUATING BEST PRACTICE COMPONENTS OF FRONT-LOADING, Technical Assistance Bulletin, Vol. VI, No. 3 (July 2002); see also Edwards, *Achieving Timely Permanency*, *op. cit.*, note 34 at 13.

72 THE PORTLAND MODEL COURT, *id.* at 98.

73 A few courts have concluded that representation at the initial hearing is so important that they permit the appointed counsel to represent a client even if the client is not indigent. After the initial hearing, the client is charged for the legal services received and is instructed to secure private counsel for subsequent hearings.

the hearing. By using benchcards and other materials created by the NCFJCJ,⁷⁴ attorney effectiveness at the initial hearing should increase dramatically.

Use of these procedures ensures that the parents and child have effective representation at the initial hearing. Absent some court procedure that results in early appointment of counsel, the attorney will be unprepared, and the parents and child will be helpless before the juvenile court. More children will be detained at the initial hearing, many unnecessarily, and other critical issues will not be addressed fully, if at all.

⁷⁴ Refer to RIGHT FROM THE START, *op.cit.*, note 32.