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EXPOSING JUVENILE DEPENDENCY'S HARSH REALITIES

Two stories highlight the challenges and failures of the child welfare system, and how families are often separated and traumatized by the actions of public agencies and authorities.

By Panda Kroll and Roni Keller

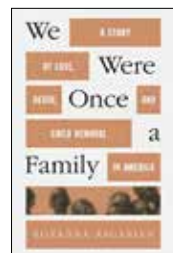
Juvenile dependency is a practice area that is relatively unknown to most attorneys. Cases arise when a complaint of neglect or physical or emotional abuse of a minor, or a risk of neglect or abuse, results in an investigation by public agencies. The investigation can lead to juvenile court orders for detention or removal of the minor from the parent or parents. Child welfare services can seek detention or removal in a variety of circumstances, including where the claim is that a minor is the sibling of a minor who was abused or neglected, or where a parent permits the minor to be present around domestic violence. Dependency defense attorneys advocate for parents and families. Rehabilitation or placement with birth relatives (if not reunification) are important alternatives to terminating parental rights and placing a minor in the foster care system.

Special rules govern where the minor has Native American ancestry. In a victory for Tribal sovereignty and Native children and their families, on June 15, 2023, in its opinion in *Haaland v. Brackeen*, the United States Supreme Court affirmed the constitutionality of the 1978 Indian Child Welfare Act, which Congress enacted “to secure the right of Indian parents to raise their families as they please; the right of Indian children to grow in their culture; and the right of Indian communities to resist fading into the twilight of history” (Justice Neil Gorsuch, in his concurring opinion).

Also in 2023, two stories – one a work of investigative journalism and the other a documentary film – tackled legal issues related to juvenile dependency. These two works of nonfiction illustrate the importance of this area of the law and the need for a rational child welfare system.

same-sex married couple who deliberately drove an SUV containing themselves and their six adopted Black children off a cliff into the Pacific Ocean. Reporters speculated on the unfathomable motives of the two women, who said all the right things to gain approval for adoption and fend off removal of the children despite previous emergency response interventions. In contrast, author and investigative reporter Roxanna Asgarian focused on the heartbreaking story of the two birth families of the murdered children, and their commonplace tragedies of intergenerational poverty and painful family separations. *“We Were Once a Family”* exposes the failings of the foster care system, including persistent racial bias. Three of the children were adopted, although their aunt was filing petitions to care for and reunite her sister’s children. Before the event, welfare agencies and police investigated child abuse complaints against the adoptive mothers in three different states as they moved from Minnesota to Oregon to Washington State. Police were called to the school after the youngest of the children reported that one of her mothers “had hit her with a closed fist, submerged her head in cold water, and withheld food from her.” The child had visible bruises on her stomach, back and waist. Oddly, the other mother had been charged with assault and pled guilty to misdemeanor domestic violence, receiving only a ninety-day suspended jail sentence and a year of probation. The mothers immediately pulled the children from public school in favor of homeschooling, isolating the children from the most likely witnesses and future reports that might lead to removal.

The book was reviewed by NPR (“*We Were Once a Family*’ exposes ills of U.S. child welfare system”), the New Yorker (“Who decides what a family is?”), the New York Times (“A family’s murder-suicide and a foster care system in crisis”), and the Washington Post (“*We Were Once a Family*’ is a riveting, grim look at the child welfare system”), and won the American Library Association’s 2024



“We Were Once a Family: A Story of Love, Death, and Child Removal in America” (Asgarian, 2023) is a compelling read. Many journalists wrote about the 2018 murder-suicide of a white

Andrew Carnegie Medal for Excellence in Nonfiction.

A significant takeaway from “*We Were Once a Family*” is the exposure of the fantasy that adoption is the perfect solution for children from less-than-perfect biological families. Asgarian refers repeatedly to the 2012 book, “*Somebody’s Children, The Politics of Transnational and Transracial Adoption*,” by Professor Laura Briggs, a feminist critic and historian of reproductive politics in the United States. In 2022, Briggs published an article, “*Twentieth Century Black and Native Activism Against the Child Taking System*,” in the Columbia Journal of Race and Law, as part of an issue consisting of contributions to a Journal-sponsored symposium, “Strengthened Bonds: Abolishing the Child Welfare System and Re-Envisioning Child Well Being.” The full issue, including Briggs’ new article, is available online at <http://tinyurl.com/mdb8fspr>. The symposium was organized in honor of the twentieth anniversary of Dorothy Roberts’ seminal book, “*Shattered Bonds: The Color of Child Welfare*,” which proposes that the child welfare system fails to factor in racial bias.



“*Take Care of Maya*” aired on Netflix in 2023. The documentary chronicles a family’s worst nightmare, that is, overreach by a child welfare system arising from a misunderstood medical condition. The film relies on interviews with the father, court testimony and audio, video, and written records kept by the family. In 2016, ten-year-old Maya Kowalski was taken by her parents to Johns Hopkins All Children’s Hospital’s emergency room in Florida for abdominal pain. Previously, a licensed medical doctor had diagnosed Maya with complex regional pain syndrome (CRPS), a rare neurological disorder that had caused her debilitating pain for years. He prescribed treatment with infusions of ketamine, which the FDA has approved as an anesthetic as well

as for other applications. Maya’s mother Beata was a nurse, and she administered the infusions at home when needed. After Maya was admitted to All Children’s, Beata insisted that the hospital use large doses of ketamine to ease Maya’s distress. Hospital officials disagreed with the unorthodox treatment and suspected abuse.

A hospital physician who questioned the CRPS diagnosis contacted Dr. Sally Smith, the medical director of the child-protection team for Pinellas County. Two days after Maya was admitted to the hospital, the parents asked to discharge her, but were told that if they left the hospital with Maya they would be arrested.

Smith, who had a reputation for interpreting cases aggressively, concluded that Maya was performing a “charade” and misdiagnosed her with Munchausen’s by proxy, now known as Factitious Disorder by Proxy, perpetrated by her mother. The Florida Department of Children and Families obtained a shelter order from a state court judge, directing Maya to remain in the hospital and preventing her parents from seeing her. During this time, however, the hospital billed Maya’s insurer more than \$650,000, which included 174 entries for treatments related to CRPS.

Pursuant to the juvenile court’s order, a licensed psychologist evaluated Beata. The doctor found “no evidence that would support the conclusion that Beata has falsified her daughter’s medical condition for any psychological purpose” and concluded that “factitious disorder by proxy may safely be ruled out.” Egregiously, Maya was detained and kept away from her parents for almost 90 days, without visitation. Maya was allowed to return home to her father and brother, shortly after Beata committed suicide.

The Kowalskis filed a complaint alleging the hospital medically kidnapped and battered Maya, and that the hospital and Florida Department of Children and Families’ actions caused Beata’s suicide. In November

of last year, after two days of deliberation, a jury reached a verdict finding the hospitable liable for all seven of the family’s claims, including false imprisonment, medical negligence, and infliction of emotional distress causing death. Although she testified at the trial, Smith was dismissed from the case. She retired in the summer of 2023, after settling the portion of the case against her and her employer for \$2.5 million. In January 2024, a judge denied the hospital’s request for a new trial but reduced the jury’s award and dismissed a claim for fraudulent billing. Nonetheless, the hospital must still pay Maya’s family \$213.5 million for economic damages and \$24 million for noneconomic damages. Beata’s meticulous documentation of virtually every conversation she had with her daughter and the hospital was instrumental in prosecuting the family’s case against the hospital. The hospital has vowed to appeal, characterizing the rulings as setting a “dangerous and unacceptable standard” for victims of child abuse and mandatory reporters.

One of the many lessons in this story for all of us who deal with juvenile dependency issues is the critical importance of assuring that families are heard fully and fairly, and that families are not victimized by presumptions in favor of institutional accusers.



Panda L. Kroll is founder of Panda Kroll, Esq. & Associates and the Timeshare Law Library, Inc.



Roni Keller has accepted appointments for juvenile dependency appeals since 1992.