



The Child Protection Clinic: A mixed method evaluation of parent legal representation☆☆☆



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ABSTRACT

Providing parents with low incomes accused of child maltreatment access to quality legal representation is both a social justice issue and potential resource for improving their children's well-being. This mixed methods research evaluates a law school clinic which provides indigent parents with legal representation by law students supervised by experienced attorneys. Thirty-nine individuals knowledgeable about the clinic (12 court professionals, 5 law school faculty, 2 parent mentors, 11 students, and 9 parent clients) participated in in-depth, semi-structured, audiotaped interviews focusing on the quality of parent representation. Interviews were contextualized by extensive participant observation and document reviews. Quantitative analyses of administrative data focused on case outcomes identified by participants as desired during qualitative interviews: family reunification, timely case closure and children's placement with relatives. Outcomes for 19 children whose parents were represented by student attorneys did not differ significantly from those of a propensity score matched comparison group of 19 children whose parents were represented by fully licensed attorneys. Participants described clinic staff as providing strong legal counsel to parents, building positive attorney–client relationships, possessing positive personal characteristics, and providing a needed service to the broader community. Participants also identified areas for improvement including: educating parents around court procedures, and better cross system collaboration between child welfare and legal professionals. The Child Protection Clinic is a promising model for providing quality legal representation to parents involved with child protection in order to support child well-being.

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1. Introduction

This mixed methods study evaluates an innovative “Child Protection Clinic” (Clinic) at a Midwestern law school. The Clinic provides free legal counsel to parents with low incomes involved in child protection cases by law students supervised by experienced attorneys. Parent mentors, former child protective services (CPS) clients, provide additional emotional, social and practical support to clients. Providing parents with low incomes accused of child maltreatment with access to quality legal representation is a basic social justice issue. In addition, the role of attorneys in facilitating positive child outcomes through their direct

practice with parents is a relatively unexplored resource in child welfare.

Law clinics representing parents involved in CPS are emerging across the country, but little empirical research has examined their effectiveness. Traditionally, law school clinics in the U.S. have the dual purpose of providing legal services to clients with low incomes and practical legal education to students. Clinic faculty members must balance the educational needs of student attorneys to fully experience representing clients with their obligation to provide the highest quality legal services to clients involved in complex, high stakes cases (Joy & Kuehn, 2002). Yet relatively little empirical research has examined: 1) the role of clinics in achieving positive case outcomes for children, and 2) the strengths and challenges of such clinics in providing quality client representation to parents. Answers to these questions are fundamental to any future efforts to establish the law school clinic model of parent representation as a widespread resource for children and families involved in CPS.

1.1. Representation of parents involved in child welfare cases

Although defendants in criminal proceedings have the right to legal counsel under the 6th Amendment, there are no such mandates under juvenile law. The U.S. legal system is based on the assumption that

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justice is most likely to result from an equal contest of opposed interests. Yet when parents already stigmatized by child welfare involvement enter into this contest without competent counsel and handicapped by a lack of economic resources and knowledge of the judicial system, the contest is grossly unequal. In *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981), the U.S. Supreme Court held that the Due Process Clause of the 14th Amendment does not automatically confer the right to counsel to indigent parents facing termination of their parental rights. Instead, the Court determined that trial courts have the responsibility to determine on a case-by-case basis whether or not the facts of a particular case create a federal constitutional right to counsel (see *Duffy, 1982; Sankaran, 2010*). Furthermore, not all states provide a statutory right to counsel after child protection proceedings have been initiated or in termination proceedings. States that do provide a statutory right to counsel vary widely in when this right may be exercised: when the child is removed, at the shelter hearing, at the adjudication hearing, or only upon request (*Melonakis, 2006*, as cited in *Wood & Russell, 2011*).

Even when parents are appointed legal counsel, there is no guarantee that the attorney has the specialized knowledge of relevant law and the child welfare system to effectively represent them. The American Bar Association (*ABA, 2009*) has concluded that although quality representation and due process for all parties involved in the child welfare system are essential, they are not always achieved. Inadequate parent representation can exact significant costs for children and families, and the state. Children can be unnecessarily separated from their families for extended periods of time, if not permanently. The state has to provide foster care support payments, caseworker and court time, and resources to children and families, who may not have needed to be separated, or separated for so long, had parents had an effective voice in the process. “A national consensus is emerging that quality legal representation for parents is necessary to ensure the most appropriate outcomes for families and children involved in the child welfare system” (*ABA, 2009, p. 1*).

Empirical research on the role of parent representation in ensuring the safety, permanency and well-being of children in foster care is relatively rare. *Courtney and Hook (2012)* evaluated the impact of a program of enhanced parental legal representation on the timing of permanency outcomes for 12,104 children who entered court-supervised out-of-home care in Washington State for the first time between 2004 and 2007. In 2000, the Washington State Office of Public Defense created a Parent Representation Program to enhance the quality of defense representation in dependency and termination hearings. Attorneys were selected and trained, and provided with access to expert investigative resources (e.g., expert testimony) and social work staff. The availability of legal representation sped children’s reunification with their parents, and for those children who were not reunified with their parents, the achievement of permanency through adoption or permanent legal guardianship.

1.2. Law school clinics and parent representation

Another model for providing quality representation to parents with low incomes involved with CPS is the law school clinic. U.S. law schools have a tradition of closing the “justice gap” for people with low incomes by training law students to represent vulnerable client populations (*Wildman & Moss-West, 2014*). Indeed, law school clinics have existed in the U.S. for over 100 years (*Joy, 2004*). They serve the dual purpose of providing legal aid to people with low incomes, and legal education (*Land, 2011*). In-house clinical programs expanded greatly in the 1960s, based on the widely shared belief that conventional classroom methods were not sufficient to inculcate law students with professional standards. Educators argued that real life experiences were better for inspiring student concern, interest, and feelings of responsibility (*Joy, 2004*).

The ABA’s promulgation of a Model Student Practice Rule in 1969 was key to placing students in the role of lawyer. Student practice

rules allow law school clinic students to assume the role of lawyer by representing clients under faculty attorney supervision. Law school clinic students certified under student practice rules become “student-lawyers” and perform all of the tasks for a client that a lawyer may perform. They are held by the ABA to the same professional liability standards as any regularly admitted lawyer.

By 1996 the ABA amended its accreditation standards to provide that every ABA-approved law school must offer live-client or other real-life practice experiences. Today, every state, the District of Columbia and Puerto Rico have student practice rules, and many of these jurisdictions base their rules on the ABA Model Student Practice Rule. Furthermore, more than 90% of APA-approved law schools have in-house clinical programs, and those that do not have externship programs (*Joy, 2004*).

There are a variety of challenges clinic staff members may experience when representing parents involved with CPS including parents’ failure to engage in court ordered services necessary for reunification. Parent mentor programs have emerged in child welfare to help engage parents who may not cooperate with child welfare workers or see any need for change. Parent mentor programs pair veteran parents who have been successfully reunited with their children with parents new to the system. Veteran parents help new parents to navigate the process by providing social, emotional and practical support, and helping them to advocate for themselves. The *ABA Center for Children and the Law (2015)* has identified the availability of parent mentors as an indicator of quality parent representation. Yet relatively little empirical evidence has examined the effectiveness of parent mentors in facilitating positive child welfare case outcomes (but see *Summers, Wood, Russell, & Macgill, 2012* for a description of parent mentoring).

1.3. Research questions and hypotheses

This report is part of a larger program of research evaluating a law school clinic’s representation of indigent parents involved in CPS. In this report we address two related research questions and hypothesis:

1. How successful is the Clinic in achieving child outcomes desired by participants? We hypothesize that cases handled by fully licensed attorneys will achieve more positive outcomes for children than those handled by student attorneys.
2. What are the strengths and challenges of the Clinic’s parent representation from the perspectives of parent clients, clinic staff, and court professionals?

2. Methods

2.1. Design

We approach these research questions and hypothesis using a sequential, primarily qualitative mixed method design (QUAL → quant) for the general purpose of “complementarity” and “expansion” (*Greene, 2007*); that is, we use different social perspectives (e.g., clinic staff, court professionals and clients) and different methods (qualitative interviews and quantitative analysis of administrative data) to more comprehensively study the clinic’s case outcomes, and its strengths and challenges. The qualitative component of our study is ethnographic in design. The quantitative component is a quasi-experimental, posttest only design with multiple posttest observations (*Shadish, Cook, & Campbell, 2002*). We use quantitative analyses of administrative records to test our hypothesis that fully licensed attorneys will achieve more positive outcomes than student attorneys using child outcomes identified by participants as desired during qualitative interviews. To interpret the results from these outcome analyses, as well as to support the further development of the Clinic, we examine Clinic strengths and limitations using qualitative interviews contextualized by participant observation and document reviews.

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