**Law 281.4 3 credits Fall 2013 Child Welfare Law and Policy**

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**CHILD WELFARE LAW AND POLICY SYLLABUS**

Readings will include excerpts from articles, cases, statutes, research reports and public documents posted on the course b-space website or distributed in class. The following is **a tentative schedule** for the semester which will be adjusted as we go along in response to students’ particular interests.

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What are the origins and consequences of federal and state child protection and child welfare laws and policies? Do they actually protect—or harm— vulnerable children who have been neglected or abused? Do these laws and policies disproportionately affect poor minority and immigrant children and their families or are they responding to actual maltreatment? What is “maltreatment”? What mental health, educational and other services are available for maltreated children? Why is there a severe shortage of foster and adoptive parents for children who have been removed from abusive families? What is the appropriate role for lawyers who represent children and parents subject to a State dependency action? What are the benefits and limitations of class actions seeking systemic reform of State child welfare programs? Will services for children be better or worse as a result of California’s “realignment” of responsibility for child welfare programs from the State to Counties?

 Students in this course will gain an understanding of these and similar issues through a critical analysis of child welfare policies, laws and practice. The readings will include various perspectives on the historical and contemporary functions and deficiencies of the child welfare system; legal and social science standards for assessing the needs of “at risk” children ;and youth; competing models for representing children and parents in child neglect and abuse proceedings; alternative strategies for achieving systemic reform; and different proposals for preventing child maltreatment as well as recruiting permanent adoptive families for children whose parents’ rights are terminated. A number of federal statutes will be discussed, including the Adoption and Safe Families Act (ASFA), the Indian Child Welfare Act (ICWA), the Multiethnic Placement Act (MEPA), the Fostering Connections to Success and Increasing Adoptions Act of 2008 (FCSIA), and the Immigration & Naturalization Act’s provisions on Special Immigration Juvenile Status (SIJS).

 This course will be of particular value to students considering an internship or field placement with one of the Bay Area’s many child advocacy organizations, including the National Center for Youth Law (NCYL), Legal Services for Children (LSC), the Youth Law Center (YLC) or the family protection program at the National Center for Lesbian Rights (NCLR).

 Students may opt to write a longer [20 pages] paper or 3 shorter papers [6-7 pages each] based on the readings and some additional research. With the instructor’s permission, students may be able to begin or complete a Writing Requirement in this course.

 **Tentative Reading Assignments**

**August 22: Introduction. What Are the State’s Responsibilities for Protecting Children From Parental Neglect and Abuse?**

In addition to providing an overview of the course and my expectations for your participation, we will discuss some of the challenges of defining and responding to child abuse and neglect. For example, what parental behaviors warrant state intervention in the parent-child relationship? How do front-line child protection workers "know" when to
remove a child from her family? Can the State do a better job of protecting children against abuse and neglect than their parents?

Readings will include excerpts from:

Article on the 1874 Case of Mary Ellen
Akka Gordon, *Taking Liberties* (2000) [The travails of a New York City caseworker]
Nina Bernstein, *Like Father, Like Son,* NYT Mag Feb 2001

Helen Epstein, *The Besieged Children*, 2012

Kempe Foundation Reports on Child Abuse Prevention

National Child Maltreatment Data

**August 29: Emergency Removals of Children and the Duty to Investigate**

Cal. Juvenile Dependency Proceedings Flowchart

Cal Wel & Ins Code S. 300

Mandatory Reporting Laws

Texas Raid on Polygamous Community:

*In re Steed* (Tx Ct App 2008)

*In re Steed* (Tx Sup Ct 2008)

D.Lithwick, *Sex and the Sect,* Slate, 2008

M. Guggenheim, *Polygamy and Child Welfare*, 46 Hous. L. Rev. 759 (2009)

*DeShaney v. Winnebago Co. DSS,* 489 U.S. 189 (1989)

*Weatherford v. Arizona*, 81 P3d 320 (2003)

Recent Developments

**September 5: Preventive Services & Federal Reasonable Efforts Requirements**

Katherine Boo, *Swamp Nurse*, New Yorker, Feb 6, 2006

H. Boonstra, *Home Visiting & The Obama Administration* (2009)

David Bornstein, *The Power of Home Nursing* (2012)

Emily Bazelon, *A Question of Resilience*, NY Times Mag (2006)

Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. Rev. 637 (2006)

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Two Perspectives on the Adoption & Safe Families Act (ASFA)

Articles by E.Bartholet and D. Roberts

Summaries of Key Federal Child Welfare Legislation 1974-2012

**September 12: Reasonable Efforts & Termination of Parental Rights**

U.S. Supreme Court cases:

*Santosky v. Kramer,* 455 U.S. 745 (1982)

*Lassiter v. DSS,* 452 U,S, 18 (1981)

*M.L.B. V. S.L.J.,* 519 U.S. 102 (1996)

Illustrative state court opinions: e.g. *Cynthia D.* (Cal 1993)

Cal Wel & Ins Code 361.5 et seq.

**September 19: Representing Children in Child Welfare Proceedings**

*In re Zeth,* 31 Cal 4th 396 (2003)

Cal Wel & Ins Code 317 et seq.

Standards for Lawyers and GALs: Children’s “wishes” or “best interests” or “hybrid”?
 Excerpts from:

 Articles by Jean Peters Koh, Emily Buss, Martin Guggenheim

ABA Standards and NACC Standards
Proposed new Uniform Act for Children’s Attorneys

Lustbader & Pitchal, Study Evaluating the Performance of Children’s Lawyers

Dixon & Nussbaum, *Children’s Rights and A Capabilities Approac*h (2012)

**September 26: When Children are in State Supervised Out-of-Home Care**

Foster Care:

*Smith v. O.F.F.E.R*., 431 U.S. 816 (1977) & Notes

*In re Ashley K*., 571 N.E. 2d 905 (1991)

*Procopio v. Johnson*, 994 F2d 325 (1993)

*Rodriquez v. McCloughlin* (excerpts from fed court opinions)

*In re Jasmon O.*, 8 Cal4th 398 (2004)
 Jeff Katz, *Barriers to Recruiting Foster & Adoptive Parents* [Exec Summary]

Pew Commission Projects & Reports on Children in Foster Care [excerpts]

Kinship Care:
 Jill Duerr Berrick, *Foster Family Care and Kinship Care* (FOC 1998)
 CLASP, Advantages of Kinship Care. (2007)
 Mark Testa, Excerpts from Articles on Subsidized Guardianship & Kinship Care

 Recent developments

**October 10: Constitutional Protection of Parent-Child Relationship: What “rights” for children?**

*Meyer v. Nebraska, 262 U.S. 390 (1923)
Pierce v. Soc'y of Sisters, 268 U.S. 510 (1925)
Prince v. Massachusetts, 321 U.S. 158, 166 (1944);
Stanley v. Illinois, 405 U.S. 645 (1972)
Wisconsin v. Yoder, 406 U.S. 205 (1972)
Parham v. J.R., 442 U.S. 584 (1979)
[Lassiter and Santosky would go here...but we've already discussed them]
Troxel v. Granville, 530 U.S. 57 (2000) [particularly, O'Connor's opinion for the plurality]) [Who are "parents"?]*AND Martha Minow, *What Ever Happened to Children's Rights*? (1995)

**October 17: Transracial Foster & Adoptive Placements and “Disproportionality”**

Excerpts from *Pediatrics* 2010 review of national data and other articles on the “Disproportionality” Conundrum & The Harvard 2011 Child Advocacy Conference

Multiethnic Placement Act: Hollinger Overview
GAO Q&A on MEPA
J.H.Hollinger, MEPA Update 2006-07

*Adoption of Vito* (Mass. 2000)

Excerpts from Articles by B.B. Woodhouse, R. Banks, E. Bartholet, S. Haslanger, & A. Allen

Office of Civil Rights, Excerpts from Ohio Findings re MEPA Violations

**October 24: Should sexual orientation be among the factors considered in determining the suitability of foster and adoptive parents?**

Hollinger Overview (2009) and Discussion of Prop 8 Supreme Court decision [expected June 2013]

Williams Institute, *Adoption & Fostering by Gays & Lesbians*

Michael Wald, *Adults' Sexual Orientation and State Determinations Regarding Placement of Children*, 40 Fam. L.Q. 381 (2006)

Class actions challenging the exclusion of Gays & Lesbians:

 Florida Litigation: *Lofton* and *Gill* cases; Hollinger amicus brief

 Arkansas Litigation: Plaintiffs & Defendants Briefs

 Using expert witnesses: Michael Lamb testimony

**October 31: The Indian Child Welfare Act (ICWA)**

*Adoptive Couple v. Baby Girl* (US 2013) and Hollinger amicus Brief….decision expected June 2013

Hollinger, ICWA Outline
Hollinger, *Who is an Indian Child under ICWA*?

*Mississippi Band of Choctaw Indians v. Holyfield* (U.S. 1989) pay attention to discussion of JURISDICTION

In re Bridget R (Cal App Ct 1996)
In re Vincent M. ( Cal App. Ct 2007)
Barbara Atwood*, Permanency for Native American and Alaska Native Children* (2009)
skim Adoption Law and Practice ch15 ICWA

Skim South Carolina Supreme Court ICWA opinion, cert petition and Hollinger amicus brief to U.S. Supreme Court

**November 7: Undocumented Parents and Citizen Children**

Student Presentations

Reading materials on why children are harmed when parents are deported

See Folder on Resources page

We will also discuss Michael Wald’s paper, *Preventing Maltreatment or Promoting Positive Development –Where Should A Community Focus Its Resources?* (2008)

**November 14:**

Claire Huntington, *Rights Myopia in Child Welfare*

Marsha Garrison, *Reforming Child Protection: A Public Health Perspective* (2005)

Student Presentations

Readings suggested by presenters

**November 21:**

Student Presentations with readings suggested by presenters

**November 28: THANKSGIVING**

**Final papers due Friday December 13 by noon……further instructions will be distributed in class**

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