Vermont Juvenile Defender Newsletter

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In this issue:

LANGUAGE IMPAIRMENT

Many of our clients, both juvenile and adult, are unable to use language as an effective tool, disrupting the ability to learn, adapt behavior and engage with other human beings meaningfully. Communication and language disorders, if not treated by the age of five, can continue on into adulthood. Children with language disorders, often precipitated by poverty and abuse, have difficulty acquiring the vocabulary and the skills necessary to use language effectively.

A very detailed study of this problem can be found in a recent University of Wisconsin Law School paper entitled "Breakdown in the Language Zone: The Prevalence of Language Impairment among Juvenile and Adult Offenders and Why it Matters", by Michele LaVigne and Gregory J. Rybroek. It can be downloaded without charge from the Social Science Research Network Electronic Paper Collection at: http://ssrn.com/abstract=1663805

The paper emphasizes the lack of understanding of the guilty plea process by defendants. With respect to juveniles there is only a slightly better understanding by seventeen year olds than thirteen year olds, even after explanation, and even among those with previous juvenile court experience.

The article goes on to explain the legal liability caused by language impairment as subjective judgments are made about character, credibility and remorse affecting the communicatively-impaired juvenile or adult defendant. A linguistically-disabled individual may not be capable of self-regulation, and their limited language may come off as abrasive or even aggressive. At a very young age they may be considered hopeless rather than given rehabilitative opportunities.

As noted in the paper, "[T]he Seventh Circuit Court of Appeals [has] observed that credibility assessments can be too personal and culturally based, and too often inaccurate, to deserve the deference afforded them….The same fate awaits the linguistically-impaired defendant who cannot conform his narratives and demeanor to the rigid expectations of the courtroom."

A proper expression of remorse requires substantial verbal skills combined with an effective delivery. Where demeanor falls short here, it may be interpreted as insincere and the defendant pays a price for their language impairment.

Obviously forms and manuals need to be written in simpler language to be more comprehensible for the language-impaired.

The bottom line is the importance of recognizing language impairment, and

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raising this as an issue of competence. Finding someone who can administer the MacArthur Judgment Evaluation and Juvenile Adjudicative Competence Interview can be a helpful tool. Use the defense of comprehension deficits and language impairment, and offer it as an explanation or mitigating factor at adjudication or sentencing when you discover these deficits.

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The science of language disorder and its effects is well known and can withstand "*Daubert, Frye*, general relevance, or any other standard for admissibility of expert testimony."

Education Matters

In the **State of Vermont** the link between poverty and lower test scores is clearly shown in the recent NECAP statistics:

40.0% Percent of students receive free/reduced lunch

Students enrolled for past 3 years who took Fall 2010 NECAP = **23,911**

Percentage of students scoring proficiently on 2010 NECAP - All Students:

- **67.3% in Math, 74.5% in Reading, 70.9% Average**

Percentage of students scoring proficiently on 2010 NECAP -Students Receiving Free/Reduced Lunch:

- **53.2% in Math, 61.8% in Reading, 57.5% Average**

DETERMINATION OF COMPETENCE

Remember that under V.R.F.P. 1(i) "The issue of a child's competence to be subject to delinquency proceedings may be raised by motion of any party, or upon the court's own motion, at any stage of the proceedings."

It is important especially with young children to raise this issue as the court will often grant the motion. Depending upon the findings of the examination it is helpful to address any impairment found as expeditiously as possible.

UPDATED DCF POLICIES

The DCF policies on Juvenile Court Proceedings on CHINS cases (#82) and Delinquency cases (#83) have been revised. New sections have been added addressing:

1. criteria for non-emergency CHINS petitions
2. protective supervision for both CHINS and Delinquency cases.

Other changes include clarification of:

1. when a child has to appear in court,
2. who can file for a protective order, and
3. the use of the initial and disposition case plans.

Policy #89 has been restructured making it easier to follow and deals with Locating and Evaluating Suitability of Noncustodial Parents, Relatives and Others, with the most significant changes in Part 3: Relative and Others with Significant Relationship with Child. The changes incorporate the new federal requirements of the Fostering Connections Act and new state requirements under 33 V.S.A. § 5307, and notification as required by Title IV-E of the Social Security Act.

Additionally guidance is given about situations in which there is a strained relationship between a parent and an in-state relative who is willing to assume care of custody of a child.

Newly designed brochures for family members contain a side by side comparison of the rights, responsibilities and benefits available depending upon whether one becomes a foster parent or assumes custody of the child. There are three versions, one each for parents, non-custodial parents, and relatives. These help family members understand all the factors that come

into play at the early stage of the proceedings when the judge is making a decision on whether to transfer temporary custody of a child for reasons of safety and well-being.

Additionally options for and limits of school choice are addressed when the child is in the temporary custody of a relative until disposition.

Number of Permanent Guardianships created in
FY10: 15
FY09: 4
FY08: 6
FY07: 7

REPURPOSING OF WOODSIDE

Section 97 of the Budget Adjustment Act (H.65) repurposes Woodside from a "detention" center to a "treatment" center. This was done for two reasons: 1) To restructure the program so that greater services could be provided to youth who are placed there for short periods of time, some of which were not available to youth who were previously placed on the former "detention wing" as opposed to the former "treatment wing," and 2) By meeting certain federal requirements that allow Woodside to be deemed a treatment facility rather than a "detention" facility the State is able to draw down Medicaid funds that would not be available if Woodside were a "detention" facility.

Section 95 of the bill contains additional language that identifies treatment rather than detention being the focus of 33 V.S.A. § 5267 by changing the word "detention" to "pre-violation" as it relates to hearings and uses the language 'apprehended and placed" rather than "detained."

Section 94 of H. 65 also replaces the terms "detention" and "detained" in 33 V.S.A.§ 5266 with "apprehension" and "placement.'

Finally, to make very clear that the statutory changes will not deprive youth placed at Woodside of their due process rights, Section 97 states that "the commissioner shall ensure that a child placed at Woodside has the same or equivalent due process rights as a child placed at Woodside in its previous role as a detention facility prior to the enactment of this act."

TWO CASES BEING HEARD IN THE USSC IN MARCH

The outcome of these cases will bear on the cooperation between school officials and law enforcement when investigative interviews are conducted at school.

In the first case, *Camreta v. Greene, et al.*, arguments were heard March 1. The question is whether a nine-year-old girl's Fourth Amendment rights were violated when she was pulled out of class and questioned by a state child-welfare caseworker with a deputy sheriff present, about whether her father sexually molested her, where they admit they lacked probable cause, a warrant or parental permission.

Petitioners, state child-protective services caseworker Camreta and deputy sheriff Alford, prevailed on appeal to the Ninth Circuit and were granted qualified immunity. However the Ninth Circuit overturned the district court ruling which held that the seizure at school of S.G. was "objectively reasonable." Since law enforcement was involved in the interview the Ninth Circuit ruled the seizure could not be conducted without a warrant, parental consent, a court order, or the special circumstances that sometimes arise in a situation dangerous to officers. The Supreme Court may assess what standard should be applied in assessing the constitutionality of this type of seizure involving the police at school, and

what rights a student questioned as a witness and possible victim of sexual abuse has.

The case has generated great interest. Twenty seven states urged the Court to take up the case, while mother urged the justices not to disturb the Ninth Circuit ruling. At least twenty three amicus briefs have been filed, many more in support of the respondent mother.

Respondent Greene (mother) asks that the Court decline to review the court of appeals' Fourth Amendment ruling, or dismiss the writ as improvidently granted as to the Fourth Amendment question presented. Respondent argues there is no Article III case or controversy to allow review of the Fourth Amendment ruling, that Camreta and Green, after being granted qualified immunity, have no standing, and the issue is moot.

Respondent's brief states that the coercive, age-inappropriate custodial [relentless] police interrogation using leading questions, repeating those leading questions when the child gave negative answers, telling the child "No, that's not right," when the child gave answers that contradicted the interrogators preconceived notions of the facts, detaining the child for a lengthy period [she could see the school buses preparing to leave] – was contrary to well-known effective questioning techniques for child welfare investigations.

The second case, *J.D.B. v. North Carolina,* is being heard March 23, and involves a thirteen year old who argues that his age figures into whether he should have been advised of his *Miranda* rights because he was in custody. He was interrogated at school, after being removed from class by a uniformed, armed school resource officer. He confessed after an assistant principal attending the session urged him to "do the right thing."

The Juvenile Law Center has written an amicus brief advancing that J.D.B.'s age is particularly relevant to the custody determination, given his special needs and the school setting.

Defense attorneys should be raising this issue in delinquency and criminal cases. The briefs in this case can be very instructive as this type of questioning without a parent or representation happens often in schools. Recognition that children are not at the same developmental age as adults has been recognized in the past by the U.S. Supreme Court and it is hoped their reasoning will extend to the situation in this case.

IMPORTANT DATES

April 6 – 9 ABA Section of Family Law Spring Conference, Amelia Is., FL

April 8-10 Vermont Foster/Adoptive Family Association Annual Conference, Bruce Perry Institute Speaker, Sheraton Hotel, Burlington, www.vfafa.org

April 16 – 20 National Conference on Child Abuse & Neglect Washington DC http://www.pzl-tech.com/web/OCAN

May 20 Working with Youth Conference, Killington Conference Center, Frank Kros, keynote speaker, contact Kreig Pinkham, 802-229-9151, kpinkham@wcysb.org

June 8, 9, 10 Office of Defender General Training, with the focus on Juvenile Law on Wednesday**, June 8**