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Quarterly
Newsletter
October 2003

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WE MUST TREAT IT LIKE THE HEINOUS CRIME IT IS

By Randy Burton

On Aug. 13, 2-year-old Linda Gloria Padilla died from beating injuries inflicted by her father including a fractured skull, pelvis, ribs and leg, black eyes, and bruising over her entire body. Doctors also found evidence of sexual abuse including rectal tearing. Some of her injuries were older than others. Frank Javier Padilla has confessed to both the physical and sexual abuse and is being held in the Galveston County Jail on a \$1.5 million bond.

Like so many other child murders in our state, the death of this little girl could have been prevented if Child Protective Services had aggressively investigated this case and immediately intervened to save her. We now know that a pizza delivery man had reported signs of abuse two months ago to the statewide CPS Child Abuse Hotline, but nothing was done.

CPS has called this a horrible, horrible mistake. This statement give the wrong impression that such mistakes are isolated examples of poor judgment, and, thus, are unpredictable. In fact, they are symptomatic of system-wide problems at CPS—problems that have not been cured since a statewide investigation into CPS in 1988 at the request of Houston-based Justice for Children.

Since that investigation and certain legislative attempts to remedy the situation, Texas has continue to lead the nation in the number children who have been murdered (most at the hand of their parents). And every year, CPS was aware of the problem prior to the death of these children roughly 50 percent of the time.

The No. 1 problem in preventing child abuse in Texas is the continue focus of CPS and other agencies on preserving sick families and rehabilitating offenders. What is amazing is that this policy has been blindly pursued despite the total lack of evidence that it protects children from further abuse.

Family preservation programs are predicated on the assumption that all child abuse is a treatable illness, not a crime, and that the best place for treatment is in the home. A CPS Risk Management Handbook claims that inadequate parenting and child maltreatment are ecological phenomena influenced by personal, social and societal factors. Most often they represent examples of failure and despair, rather than willful premeditated behaviors. Therefore, child abuse and neglect are principally social rather than legal problems. Punishing parents will do little to resolve the causes of the problem and such action is not the responsibility of CPS staff. Most so-called child abuse prevention programs make similar assumptions.

The distinct impression one gets from such statements is that if you are poor or under a lot of stress, you are more likely to fracture the skull of your child or sexually abuse her. It is as though the child abuse contracted an illness and can simply be cured with therapy, support and parenting classes. The illness model of abuse wrongfully assumes, however, that perpetra-

tors really have no responsibility for their actions.

The other major problem with the illness theory of abuse is that it ignores the fact that there is no known cure for child abusers. Evaluations of large national parent rehabilitation programs reveal that according to the parents' own psychotherapists, less than 50 percent of abusive families may be expected to stop physical maltreatment. Moreover, none of the successfully rehabilitated perpetrators was found to have a potential for becoming even a marginally nurturing parent.

There is even less reason to believe that child molesters can be successfully treated regardless of therapy. After years of attempting to rehabilitate criminally dysfunctional families and the expenditure of billions of tax dollars, Texas CPS has no evidence to show that the agency has reduced the incidence of abuse. Just the opposite is true. When child abuse is viewed solely as an illness, children are likely to be re-abused.

Although child abuse may be an illness, and certainly is a social problem, it is also a crime. The current system of dual reporting and investigation of child abuse cases by CPS and law enforcement has resulted in duplicated efforts, lost evidence, conflicting evidence and lost cases against child abusers. It is counterproductive, wasteful and has created an identity crisis evidenced by the numerous structures, both expensive and unnecessary, that we have developed to deal with this problem.

The solution is to make all reports of crimes against children directly to local law enforcement agencies for their investigation. The priority of law enforcement has always been to protect the child victims who is the complaining witness in their case, not the family unit.

There should be only one investigation of the child abuse case, and the people who are best trained for that function, the police, should perform it. By doing this, we would eliminate repetitious investigations of child abuse at local child welfare agencies, eliminate the obviously flawed statewide CPS-controlled Child Abuse Hotline, and save money all at the same time.

It is impossible to predict and, thus, prevent the first act of abuse. But, it is inexcusable to leave a child in a home after the abuse is discovered. Additional crimes against the child can be prevented only through aggressive intervention, investigation and placement of the child with a foster or adoptive parent.

The death of Linda Padilla provides Texans with an object lesson on the urgency for reform in our state. If we are truly interested in fixing the problem of child abuse, we must choose between child abuse prevention programs and real child protection. If we truly place children first, we must place their protection ahead of a self-perpetuating system that time and again has jeopardized the health and well being of the very children it is designed to protect.

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Justice for Children Advocates for the Passage of Two Bills

Justice for Children's (JFC) Public Policy Committee is making great strides to educate legislators and other policy makers about the issues affecting abused and neglected children, as well as the remedies for those problems. During the most recent legislative session in Texas, our committee assisted Representative Jessica Farrar's office in authoring and advocating for the passage of bills to: extend the civil statutes of limitations for actions relating to the abuse of children; limit the requirement for "reasonable efforts" to reunify "families" in which children were abused and neglected, to only those circumstances required by Federal law; and exclude testimony of the unproven and extremely dangerous theory, "Parental Alienation Syndrome" (PAS). The bill to exclude PAS testimony was one of the first of its kind, and is being used as a model for similar efforts in another state.

Although the committee was ultimately successful in achieving the passage of these bills, JFC's mission to protect abused and neglected children was made known to policy makers and many others. A great number of legislators and citizens were educated about the various impediments to children's safety imbedded in Texas law. In addition, the committee learned valuable lessons that will be useful in our future attempts to achieve our goals. The committee is currently working toward the passage of these and/or other bills in the 2005 legislative session. The Public Policy Committee is JFC's vehicle through which the organization can utilize our unique perspective and extensive knowledge of systemic and prevalent problems to protect great numbers of children. We welcome suggestions and assistance in achieving these lifesaving changes. If you would like more information about this committee or would like to volunteer for specific projects, please contact JFC Houston office.

JFC would like to recognize and thank Texas House of Representatives Member Jessica Farrar for her support of the public policy committee's goals in the 2003 legislative session. Representative Farrar sponsored bills relating to all three of JFC's goals for this session. She and her staff are to be commended for their time and efforts spent in pursuit of the passage of these bills.



COURT WATCH

311th District Court-Houston JFC has been involved in the Montgomery case since January 2002. The biological father (the alleged perpetrator) claims that the biological mother is guilty of parental alienation syndrome (pas). As a result the child was placed in foster care, then placed back into the hands of her abuser, the father. The final trial to determine custody is currently in progress. JFC is advocating for the child to be in a safe placement.

246th District Court-Houston JFC became involved in the Smart/Dickson case after the child was left bruised and with several marks over their body inflicted by their father. JFC advocated for the child to be in a safe placement and not to remain with her abuser, as CPS planned to do. At a court hearing in April 2003, the child was placed with the mother. JFC is pleased to report that the child remains with the mother and is doing well.

Galveston County -Galveston JFC became involved in the Padilla case after the death of the two year old came to light. The father is charged in the murder. This needless death comes after a CPS intake worker failed to open the case after a pizza delivery driver reported seeing the child with a black eye. JFC is advocating that the father be charged with capital murder and punished to the fullest extent of the law. The court date has not been set to date. We will update you in future newsletter regarding the disposition.

First Annual Gala Exceeds Expectations!

Houck Award Presented to Andrew Vachss...\$140,000 Raised for Area Children

With more than 200 guests enjoying an elegant evening of entertainment, presentations and fine dining at the beautiful River Oaks Country Club, the First Annual *Celebrate Children* Gala raised more than \$140,000 for our organization and served as the venue for the presentation of the **Harvey R. Houck, Jr., Award for Outstanding Service to Children**.

The evening began with a touching invocation offered by the Honorable Jan Krockner, a longtime supporter of Justice for Children. Attendees were then treated to a performance by the Houston Children's Chorus and were captivated by a moving presentation from Mr. Andrew Vachss, J.D., a nationally recognized attorney, child advocate and author. Mr. Vachss was selected as the first recipient of the newly established **Harvey R. Houck, Jr., Award for Outstanding Service to Children** based on his outstanding efforts on behalf of abused children and their rights.

The award was named after Mr. Harvey R. Houck Jr., in recognition of his numerous contributions on behalf of children's rights, as well as for the outstanding leadership he has provided in the Houston business community. Mr. Houck also graciously served as the Honorary Chairman of this year's Gala, and we are proud to have him among our key supporters.

The Master of Ceremonies for the evening was Dave Ward of KTRK-TV Channel 13, a long-time advocate and friend to our organization. A heartfelt thank you goes to event organizers Frank Douglas, Paula Patrick, and Richard DiMichele for their vision and commitment.

The black tie gala, whose theme was "Fifteen Years and Growing," was held on March 28, 2003. If you are interested in attending our next *Celebrate Children* Gala, please contact the JFC offices at 713.225.4357. We will gladly add you to our invitation list.

A special thank you to our generous supporters:

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Justice for Children -Washington D.C.

On September 15, 2003, JFC-DC celebrated its 3rd Anniversary! Newsletter readers may recall the Justice for Children newsletter describing One Voice's merger with JFC on September 15, 2000.

We are still in the same office space across from the American Bar Association and two blocks from the White House and we are encouraged by signs of progress in the last three years.

Our local Board of Directors is growing, with our first members coming from some of the best-known law firms in the metropolitan D.C. area: Deborah Givens (Arent Fox) and Donna Francescani (Skadden Arps). We are also very fortunate to have attorney Bonnie Sullivan, former Executive Director of the Fairfax Virginia CASA (Court Appointed Special Advocates) helping us get firmly established. The JFC-DC Board of Directors meets nearly every month, rotating between the law firms in downtown Washington, D.C.

JFC-DC has hosted interns from Catholic University, George Washington University as well as the Washington-Ireland Program. Our current legal intern is Mandy Werner from Catholic University. Originally hailing from New Hampshire, Mandy has a strong interest in children's rights and when she heard about JFC's work, immediately knew that this was the place for her.

Another essential member of the JFC-DC team is Jason Siroff who does pro bono investigative work. Through his extensive research Jason has uncovered information on numerous occasions that has been extremely helpful to children's cases as well as to federal agencies.

In addition to Arent Fox, Skadden Arps and Baker Botts, the law firms of Latham and Watkins and Venable have agreed to consider JFC requests for pro bono assistance. Our profound gratitude also goes to the law firm O'Melveny Myers who have donated hundreds of pro bono hours on behalf of two children in one of our cases.

In the last three years, JFC-DC cases have generated four pro bono amicus curiae briefs: two briefs on Parental Alienation Syndrome (both in Maryland), one on the duties and liability of guardian ad litem (Maryland), and one on why a child has the right to be protected from the parent who was found by child protective services sexually abused them (Ohio). For the future, we have the possibility of a brief on the failure of child protective services to intervene, leading to the death of an 18 month old child as well as one for a child who has been court-ordered to have unsupervised visitation with her adoptive father who plead guilty and was convicted of sexually abusing her when she was a toddler.

Our thanks goes to the brief writing teams led by Alene Levy (Haynes Boone) and Shira Yoskor (Baker Botts) in Houston, Texas, and to Chris Stidvent at Baker Botts in Washington, D.C. Ann Al Bahish (Haynes Boone), Heather Trachtenberg and Howard Speight (Baker Botts) and Chris Stidvent and Clarice Hodges (Baker Botts in D.C.) have produced compelling and well-argued briefs that will become part of Justice for Children's Online Brief Bank.

Gregory Jacob, Esq (formerly of O'Melveny Myers and now with the Department of Justice) is representing pro bono the minor child in the case of Fox v. Wills which is now in the Maryland Court of Appeals after the lower Court of Special Appeals affirmed that guardian ad litem enjoy a quasi-judicial immunity, no matter the harm their act (or failure to act) incurs. Oral arguments are scheduled for the December session of the Maryland Court of Appeals.

The case of Fox v. Wills has generated much attention in the family law circles of Maryland and will be watched by many with great interest. Child advocates agree that the guardian ad litem system is in need of reform, and JFC-DC sees this case as one which will draw attention to the plight of children who come to harm through the actions of the very person who has been appointed to represent their best interests.

In another recent decision by the Maryland Court of Special Appeals, the lower Court's decision to put the child into the sole and unsupervised custody of his father despite his clear description of abuse to the judge in chambers was overturned and remanded back to the Circuit Court for a new trial before another judge. A revised and amended decision included the remark that, if the father claimed Parental Alienation Syndrome (PAS) in the new trial, evidence must be produced to show the validity of PAS. The law firm of Haynes and Boone filed a friend of the court brief on PAS in this case.

JFC-DC has been active with local and national media, beginning with Regional Director Eileen King's Op Ed "The System's Woeful Best Effort" of the death of little Collin Horridge and continuing on with Ms. King being sought out for quotes in the Bowie Blade, the Washington Times and the Boston Phoenix among others. Additionally JFC-DC has given background information on child abuse cases to ABC Primetime Live for an upcoming documentary on one of our cases in Virginia.

In addition to our court watch and case work programs, JFC-DC also runs the two list servers that send out information and news, ranging from relevant legal decisions, legislation, research on the effects of child abuse as well as resources for those who work in the field. New members are welcome! For addition information email Eileen King at eking@jfcadvocacy.org

Foster Parents Take a Stand

Justice For Children is fighting for six children in Liberty County, Texas, on behalf of Patsy Dewey, Regina Kirchner, Dana Janczak, and Angelia Garvin, who for the past year or more have collectively served as the foster parents for the six youngest children of Catherine Kegg and Jack Anthony "Kendall" Kegg. Both Catherine and Kendall Kegg were convicted of injury to a child in Liberty County for the abuse of their oldest son Tyler. The disturbing 911 call records the 64 whacks from a 1" x 4" board that Catherine Kegg inflicted on her oldest child Tyler before TDPRS removed the Kegg Children in December 2001. When TDPRS removed Tyler and his then 5 sibling they found that the other children also suffered from abuse, including but not limited to food matted in their hair, baby roaches in their hair and severe developmental delays. Mrs. Kegg, pregnant at the time of removal, fled the state and returned shortly after she gave birth. After initially denying that the child had been born, Mrs. Kegg eventually told the location of the newborn and the state took custody of that child as well. The children have been living with the foster parents since their removal.

At the evidentiary hearing Judge Dunn failed to allow TDPRS to testify and granted a temporary order returning the children to their mother with TDPRS to monitor the relationship. At the time the court entered the temporary order, TDPRS had already exhausted all other extensions available under the Texas Family Code, and the case would have been dismissed unless the court returned the children to the mother. While Judge Dunn ordered that Tyler would remain in the custody of his grandparents in Arizona, he failed to protect

the other five children. Acting in the best interest of the children, the Kegg Foster Parents, who are opposed to the reunification, have intervened to terminate the parental rights and adopt the other six children. The Kegg Foster Parents contacted local media then Justice for Children for help.

On June 5, 2003, with the help of Justice for Children, the Kegg Foster Parents filed an intervention in the Kegg Case initiated by the Texas Department of Protective Regulatory Services that originally had sought to terminate the parental rights of the Keggs to their seven minor children, Tyler, Dakota, Amber, Kirsten, Kendall, Wyatt, and Zoey.

The Intervention filed by JFC on behalf of the foster parents was immediately followed by a Motion to Strike filed by Kendell Kegg's attorney. The Judge granted this motion.

Fortunately, before the six children could be returned to their mother on June 13, 2003, Catherine Kegg violated the terms of her parole and was placed back behind bars. Among her parole violations were failure to attend anger management classes, failure to go to therapy and leaving the state.

To date the Guardian Ad Litem in this case has done nothing to protect these children.

JFC cannot file an appeal against the Motion to Strike until after the TDPRS trial is over. The TDPRS trial is slated to begin at the end of September.

We will continue to fight for the children and will update you in future newsletters on the progress of this case.

Randall's Good Neighbor Program

#4220

As one of Justice for Children's good neighbors, you can link your **Randall's card** to benefit JFC clients.

1. Visit your Randall's courtesy booth.
2. Give them your Randall's card. They will scan it.
3. Ask for your card to be linked to number **4220**.
4. Justice for Children receives 1% of the total bill.

Justice for Children– Arizona

JFCA– In “Fashion”

On October 22, Neiman Marcus in Scottsdale, Arizona will be conducting a Fundraiser to benefit JFC-AZ. Tickets for this event are still available and range from \$100-150 for runway seating. Arizona board member Betty H. McRae will be acting as the chairman of this event along with the liaison to the national Board of Directors and Heidi Lisherness of Paradise Valley.

For more information on this event please contact our Arizona office.

A Case Helped by a JFC-AZ Caseworker and JFC-AZ Volunteer Attorney

A child molester was released from jail only to be reunited with his family of preteen stepchildren within days of the children’s outcries, even though he *confessed* to sexually touching them over a period of years. JFC-AZ discovered that the County Attorney declared there was no “likelihood of conviction” because the forensic interviews by the police were not properly done (words were put into the child’s mouth and needed questions were not asked). It is still an open police case. The biological father brought this case to JFC-AZ. When this case went to Juvenile court, JFC-AZ’s volunteer attorney worked long hours on a pro bono basis, striving to keep the children from the molester. Our Arizona executive director, also a stated licensed counselor, served as expert witness, testifying for seven hours regarding the safety of the children in the home of a known sexual predator.

Fortunately, the judge was convinced of the wisdom of protecting the children and denied that he be allowed to return to the house. They are still living with their mother. JFC-AZ also assisted with court costs for this impoverished family.

A Case Helped By a JFC-AZ Caseworker

A mother brought to our attention her 8-year old daughter who has been living with a *documented* batterer for two years. Our investigation revealed that she was beaten by her father and allowed by him only to go to school. The police could not intervene and our caseworker, working alongside CPS, uncovered why: a CPS letter *substantiating* the beatings never found its way to the County Attorney. Because we had a copy of this letter (CPS had lost theirs, perhaps because it was dated 9-11-01), this critical document was finally forwarded to the County Attorney with an explanation.

Due to JFC intervention, the case was reopened. Our caseworker ensured that the child saw her mother for the first time in a year. The County Attorney offered the foreign-born father “diversion programs” to teach him that girls in America are not treated abusively as they are in his country; however, he refused these anger management and parenting classes, even knowing that a warrant would be issued for his arrest if he failed to attend. The Warrant for Arrest was issued during Aug. 2003, his arrest is eminent, and the child will be returned to the safety of her mother.

*JFC-AZ Formal
Wine Tasting Event*
*JFCA would like to thank
Beaulieu Vineyards for donating
the wines for their Formal Wine
Tasting in May. As a result of
Beaulieu Vineyards generous do-
nation this event raised \$10, 000
for JFCA! Thank you everyone
who helped make this event such
a success!*

SPECIAL THANKS TO WEEKLY ARIZONA VOLUNTEERS:

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YOU ARE INDISPENSABLE!!

Paying it Forward

Volunteer SPOTLIGHT

Alene Levy

Alene Levy is a woman who understands the gift of giving of oneself. The former Bellaire High School English teacher, now a partner with the law firm of Haynes and Boone LLP, has given freely of her time and legal expertise to JFC in the hope that she can make a difference in the lives of children who are defenseless and unable to help themselves.

Alene said it all started about 5 or 6 years ago when she was asked to write an amicus brief ("... a phrase that literally means 'friend of the court' -- someone who is not a party to the litigation, but who believes that the court's decision may affect its interest." William H. Rehnquist, The Supreme Court, page 89) for a case here in Harris County to advocate the termination of parental rights in a case of severe neglect, most likely due to the use of drugs in the home. When she realized the importance of what she was doing, as well as the impact it would have in the child's life, Alene decided to commit to continuing her work with JFC whenever she was needed. She and her firm are predominantly involved in writing the amicus briefs that JFC files in trial and appellate courts across the country.

One thing Alene is emphatic about is the unwavering support of her firm. Not only were the Haynes and Boone partners supportive of her use of her time, but the associates and staff ("too many to mention without the fear of leaving someone out") have donated many hours of their time as well. In 2002, the value of the firm's donated services was approximately \$125,000, generous by anyone's standards.

Over the years, Alene has seen some devastating cases come across her desk, many times bringing her to tears. I asked her where she thought the biggest shortcomings were in the system and in society itself and where we could help to facilitate improvements. She agreed that there are too many times when children get lost in an overburdened and insufficiently funded system and remain in dangerous, life-threatening situations. She also believes that the high turnover of overloaded and emotionally drained caseworkers is only the tip of the problematic iceberg. Weak legislation, lack of funding and general public ignorance of the severity of this problem are all major contributing factors to this incredible social ill.

The solutions will not come easily, but Alene is a fervent believer that we must do all we can as individuals and as a society to work toward improvement. Parental education, improved government resources and more focus as a nation on this problem are a start. There are, of course, the violent offenders who are usually beyond the help of education. In those cases, intervention must come sooner and with swifter repercussions. It is here that JFC must act to see that our government officials are not just aware of this enormous and devastating problem, but are taking legislative action to fix it. This, she believes, must start with changing the assumption that the family is always the best place for the child. In many of the cases Alene has seen, this is clearly *not* the case. Getting the child into a safe and stable environment should far outweigh the fact of a blood relationship if the situation is potentially harmful to the child. Society's ignorance also perpetuates the problem, and that ignorance is sometimes by choice because child abuse is not a pretty topic. Not getting involved seems to have become society's way of being polite and remaining disengaged. This too, must be changed.

At the end of the day, it is up to all of us as individuals to do what we can to make a difference in whatever way we can. Alene feels very strongly about this and about giving back and it is reflected in all that she does for JFC. When asked what final point she wanted to convey, she said she would just encourage people to get involved. "Giving something of yourself is a very elevating experience. I believe in the concept of 'paying it forward.'" Clearly, Alene Levy and the attorneys at Haynes and Boone are doing just that, and we are grateful for it.

UH Law School Project ***By Hugh Howerton, Board Member***

There are times, not many, when things just go your way. JFC had been kicking around the idea of making a large database of information for a couple of years. The idea was to post the information on a website that could be used by federal and state legislators, child advocates and the general public. It was a noble venture. Nothing like it existed in the country. The very idea that one database would allow you to compare and contrast how different states protect children from abuse, and even see which specific piece of legislation did it the best, was something we all agreed was a great idea. The hitch was that the more we pondered this effort, the more we began to realize that the amount of man-hours necessary to get this database up and running was more than we could handle. It seemed like this would be a great idea that would never happen.

Now comes the good part. Whether it was divine intervention or just fate, the dots just connected themselves. Stefnee Ashlock, a JFC volunteer, had a friend who taught legal research and writing at the UH law school. An idea was born—use the creation of the database as a project for several classes. It was a win-win situation. The students got credit for the legal research and the amazing feeling of knowing their classroom efforts would be making a concrete difference in the lives of children across the country. As for JFC, well...it gave us a means to a very good ending.

The students are still working on the project. There still is a lot of work to be done, but it's funny how things just seem to fall into place when people earnestly try to reach beyond themselves.

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**Serving Children
Saving Lives**

Justice for Children does not charge for membership nor for any services provided. Contributions are gratefully accepted and are tax deductible. JFC is funded with donations from the general public and foundations.

Your contribution may be used for therapy services, casework, legal services for a child, and other services to abused children.

Your donation _____

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I would like an advocate to speak to my organization