



CITATIONS

MARCH - TWO THOUSAND TWENTY FOUR

FOR THE LOVE OF MONEY OR THE GAME?

By *Christal Joy Porter*

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JOSHUA S. HOPSTONE
PANDA KROLL AND
RONI KELLER
IAN ELSENHEIMER

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PRESIDENT'S MESSAGE

by Joshua Hopstone

Education serves as a vital gateway to accessing the legal and justice system in which we all serve. By providing knowledge about laws, rights and legal procedures, education helps to level the playing field and empowers individuals to understand their rights and navigate legal processes more effectively. Elementary education fosters the development of critical thinking and problem-solving skills, which are essential for engaging with legal issues and making informed decisions. It also plays a crucial role in diversifying the legal profession, ensuring that the makeup of our profession looks like the communities it serves and providing opportunities for historically underrepresented groups to participate not only as clients and parties, but as practitioners and jurists.

The Ventura County Bar Association is committed to fostering education within the legal community and greater public community through a variety of initiatives. VCBA was proud to offer its sponsorship and support (again) to the Ventura County Office of Education's Mock Trial competition, which occurred throughout February 2024 at the Hall of Justice. This competition simulates a realistic trial proceeding in which students play the roles of pretrial counsel, prosecuting and defense attorneys, witnesses, court clerks, and bailiffs. More than 700 middle school and high school students participated, and dozens of local attorneys and judges volunteered their time on evenings and weekends to serve as scorers and presiders. Our heartfelt thanks go out to all who contributed, and particularly **Hon. Gilbert Romero**, for their contributions. The event was a resounding success.



2024 Mock Trial Competition

Since 2022, VCBA has continued to facilitate its Attorneys Sharing Knowledge program ("A.S.K."), an initiative created by former VCBA President **Jacquelyn Ruffin**.

A.S.K. provides a platform for attorneys to offer educational talks and presentations on substantive legal issues to students of all grade levels and backgrounds, with a particular focus on targeting high school students in underserved communities within the County. It also aims to inspire students to consider pursuing a career in the legal profession by delivering presentations and informal discussions on what it is like to be an attorney, pathways to law school, and legal subjects in general. Thank you to VCBA President-Elect **Bert Partida** for spearheading VCBA's appearance this year at the Oxnard Union High School District's Career Expo set for March 15, an invaluable opportunity to connect directly with students interested in pursuing careers in the legal field.

Unfortunately, education alone is not always enough to protect vulnerable youth from interaction with the justice system. Ventura County has historically strived to provide robust protection to children within the local justice system since the formation of its first Probation Committee in 1909. Today, these responsibilities largely fall to the Ventura County Juvenile Justice and Delinquency Prevention Commission (formerly Juvenile Justice Commission). Authorized through Welfare & Institutions Code § 225 et seq., this Commission assures the support and well-being of youth in the County's juvenile justice system by ensuring equal and accountable treatment of minors and their families; arranging and conducting inspections of the 12 juvenile holding facilities within the County; monitoring conditions of juvenile confinement; interacting with local law enforcement and probation officers, the Board of State and Community Corrections, and the Presiding Judge of the Juvenile Court; and engaging with public and private agencies in the community providing services to minors in need. Upcoming in October 2024 will be a large resource fair orchestrated by the Commission, for youth and families to access information and resources available to the community, to help them before they end up "in the system."

On a personal note, I am the first attorney in my immediate family but come from a long line of educators. My grandparents were teachers and administrators in New

York City public schools. My mom devoted over 30 years to public education as a teacher, program specialist, vice-principal, principal, and district-level Director. At all stages, her focus was on special education and applying concepts of restorative justice practices, commonly thought of in a criminal context, to the public education context. After moving to Ventura County in 2022, she wasted no time pursuing an appointment to the Ventura County Juvenile Justice Commission, a role she previously held in Contra Costa. Two of my brothers are now also public-school teachers. This environment of promoting justice within education partially inspired my pursuit of a career in law.



Oxnard, November 10, 2022 – Toby Hopstone, Ed.D. is sworn in by **Hon. Manuel J. Covarrubias (Ret.)** as a Commissioner of the Ventura County Juvenile Justice Commission.

For members of the VCBA, our long list of substantive educational programming speaks for itself. VCBA typically offers three to four continuing education programs per month spanning a variety of different practice areas. In February alone, attorney **Melissa Hatch** presented to the Family Law section on crossover issues in special education and family law; **Douglas H. Ridley** offered a discussion to the Criminal Defense section regarding 2024 updates to the Penal Code; and **Hon. Michele M. Castillo** moderated a panel discussion of the Tri-Counties Judicial Mentor Program of Ventura, Santa Barbara and San Luis Obispo County Superior Courts, announcing support and mentorship to prospective candidates considering the judicial application process.

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Education remains an important prong of VCBA's mission to "promote legal excellence, high ethical standards and professional conduct in the practice of law; to improve access to legal services for all people in Ventura County; and to work to improve the administration of justice." VCBA will continue to act as a cornerstone of legal education and community outreach through programming efforts like Mock Trial, the A.S.K. initiative, and ongoing continuing legal education for its members in 2024 and into the future.



Joshua S. Hopstone is a partner at Ferguson Case Orr Paterson LLP. His practice focuses on business and real estate litigation, trust/probate litigation, and appeals. He can be reached at jhopstone@fcoplaw.com or (805) 659-6800.



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EXPOSING JUVENILE DEPENDENCY'S HARSH REALITIES

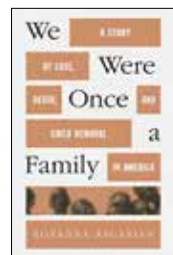
Two stories highlight the challenges and failures of the child welfare system, and how families are often separated and traumatized by the actions of public agencies and authorities.

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.



“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

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

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.



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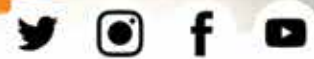


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FOR THE LOVE OF MONEY OR THE GAME?

by *Christal Joy Porter*

At 22 years old, college senior and female basketball player Caitlin Clark is making more money than some NBA players, including Jordan Miller of the Los Angeles Clippers and Jaylen Clark of the Minnesota Timberwolves. Clark is a point guard at The University of Iowa. Clark has surpassed and is currently setting a new all-time college women's basketball scoring record. This standout female student-athlete, in addition to receiving free education, is making around \$800k in "NIL" (Name, Image, Likeness) contracts. Bronny James, USC basketball freshman and son of NBA star LeBron James, has a NIL value of around \$7.2 million. In the football world, Colorado quarterback Shedeur Sanders has a NIL value of \$4.7 million. Not far behind Shedeur is University of Texas quarterback Arch Manning with a NIL value of \$2.8 million. Are the days when a student-athlete's payoff was the privilege to play a game they loved, in front of a national audience while earning a free education, gone?

Current NIL Legal Landscape

Publicity and related privacy rights have historically been regulated by individual states, and when it comes to student-athletes this is also the case, at least for now. Each state has its own NIL laws to which student-athletes and college institutions are bound. In California, the *Fair Pay to Play Act* [Section 67456 of the Education Code] governs the rights of student-athletes to earn compensation for the use of the student's name, image, likeness, or athletic reputation. In essence, the terms of the act provide:

- 1) A College/University or the NCAA shall not prevent a student from earning compensation as a result of the use of the student's name, image, likeness, or athletic reputation.
- 2) A College/University or the NCAA shall not prevent a student from participating in intercollegiate athletics as a result of the compensation of a student for the use of the student's name, image, likeness, or athletic reputation.
- 3) A College/University or the NCAA shall not provide a prospective student-

athlete with compensation in relation to the athlete's name, image, likeness, or athletic reputation.

- 4) A College/University or the NCAA shall not prevent a California student-athlete from obtaining professional representation in relation to contracts or legal matters, including representation provided by athlete-agents or legal representation provided by attorneys.
- 5) A student-athlete shall not enter into a NIL contract if a provision of the contract conflicts with a provision of the athlete's team contract.
- 6) A student-athlete who enters into a NIL contract shall disclose the contract to an official of the institution.

While each state has its unique set of laws regarding student-athlete NIL contracts and compensation, most mirror California's provisions, as California was the first state to enact a law allowing college athletes to earn compensation from their NIL or athletic reputation. As well thought out as the provisions above seem, what has been the impact thus far?

New Marketplace

The release of restrictions preventing student-athletes from benefiting from the use of their NIL or athletic reputation has created a new marketplace. This new marketplace allows student-athletes to engage with companies, organizations, agents, and attorneys. For many student-athletes, this new marketplace creates pressure on the student-athlete to increase their social media presence in hopes of leveraging and attracting NIL contracts. Student-athletes who are profiting from their social media presence and ability to garner attention from their athletic talent are what I believe the Legislature wanted to support and encourage. On the other hand, there have been movements for Boosters (now called "Collectives") to pool funding to help secure certain star athletes to play for a college/university. Essentially, creating NIL contracts for athlete recruiting and retention purposes, *not* based on the student-athlete's influence in the community or social media. For example,

University of Georgia quarterback, Carson Beck, hinted on Twitter that he was soliciting Collective offers in order to either play another season with the Georgia Bulldogs or find another college/university with a better NIL offer. Not too long after Beck decided to stay with the University of Georgia for another season, he purchased a Lamborghini worth roughly \$300,000.

This new NIL marketplace currently has no union or standardized rules, considering it is state-by-state law and the NCAA has been unsuccessful in setting a standardized playing field for all institutions regarding NIL contracts. All bets are off with Boosters (Collectives) throwing money at college athletes, not for sponsorships per se, but to recruit and keep the best talent for the college/university. If a student-athlete is not playing for a top athletic school, there are still online marketplaces, such as Opendorse, where a student-athlete can sell services such as making a social media post, an autograph, or special appearance for a price with most services starting at the low price of \$10.

What's Next?

From ten dollars to one million dollars, the release of NIL restrictions for college level student-athletes has created new layers to life as a college athlete, with seemingly more obstacles in preserving amateurism at the collegiate level. NCAA's Commissioner is lobbying Congress to pass Federal legislation in order to address the multi-state law issue and provide uniform laws and regulations surrounding student-athlete NIL contracts. With this new Pandora's box of student-athlete compensation, the days of fulfillment from simply seeing the inspiration-filled eyes of a child after a game as full payment for the blood, sweat, and tears spent in practice and the game may be gone.



Christal Joy Porter is a former Division 1 student-athlete who participated on Rice University's women's basketball team from 2011 - 2015. She is now a trust and estates litigation Associate at

Rodnunsky & Associates. She can be reached at (424) 416-4109.

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BARRISTERS' CORNER

Recap of Bridging the Gap 2024

Despite the rain, the Ventura County Barristers hosted another successful “Bridging the Gap” MCLE event at the Ventura campus of the Colleges of the Law on January 20, 2024.



The event started with a presentation by **Hon. Gilbert A. Romero**, Supervising Judge of the Juvenile Division of Ventura County Superior Court. Judge Romero’s

presentation included a discussion about general “dos” and “dont’s” in the courtroom and best practices when appearing before the Bench. Judge Romero followed his presentation with information about the Ventura County Mock Trial Program and the upcoming 2024 high school and middle school mock trial competitions.



Next, **Hon. Von T. Nguyen Deroian** presented on “Courtesy and Candor in the Courtroom.” Judge Deroian, who currently presides over criminal matters in Santa Barbara

County Superior Court, spoke about the importance of civility, the duties imposed upon attorneys as “officers of the court,” and the various ethical issues attorneys face in the courtroom setting.

Robin L. Oaks, Esq., a distinguished attorney and professional in the well-being field, then presented on competence, health and well-being. Her presentation touched on the negative impacts to emotional health commonly associated with the practice of law and included strategies to manage stress, burnout, and other barriers to attorney happiness.



Hon. Kevin G. DeNoce, Presiding Judge of the Ventura County Superior Court, followed with a presentation on the “State of the Superior Court.” Judge DeNoce’s

presentation included an overview of bench composition, current and upcoming vacancies, court leadership, case volume, filing procedures, the role of the Presiding Judge and much more.



Next, **Jon F. Light, Esq.** presented on “Lawyer Marketing and Networking – Tips from the Trenches.”

Mr. Light, managing attorney at LightGabler LLP, shared his insight on successful marketing techniques in the legal profession, including, but not limited to, using social media, generating content, attending speaking engagements, advertising, and networking.



Lastly, **Justice Hernaldo J. Baltodano**, an Associate Justice of the Second District Court of Appeal, delivered his presentation on implicit bias. Justice Baltodano’s presentation

included an overview of what implicit bias is (and is not), the State of California’s efforts to address implicit biases and practices that we can employ to combat our own implicit biases.

The Ventura County Barristers would like to thank our esteemed presenters, the attendees, the Colleges of Law, and the Ventura County Bar Association for their contributions to the success of Bridging the Gap 2024.

Please be on the lookout for information about future Ventura County Barristers’ events!



Ian Elsenheimer is a real estate, land use and business attorney at Ferguson Case Orr Paterson LLP. Elsenheimer is also the current President of the Ventura County Barristers.



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HAVE YOU HEARD JUDGE DANA K. CAUDILL TAKES THE BENCH



Judge Dana K. Caudill took the bench on Monday, February 26, 2024, as Ventura County's newest Superior Court Judge. The Honorable Benjamin F. Coats (Supervising Judge of the Civil Division) administered Judge Caudill's judicial oath of office.

Judge Caudill was appointed by Governor Gavin Newsom on January 29, 2024. She fills the vacancy created by the retirement of Judge Manuel J. Covarrubias who retired in 2023.

Since 1996, Judge Caudill was an attorney with Farmers Insurance Company. Prior to her appointment to the bench, she was the Managing Attorney for Farmers' Los Angeles office. She also worked for Farmers as a Supervising Attorney and Trial Attorney. From 1994 to 1996, she was an Attorney at Porter, Scott, Weiberg & Delehant and a Law Clerk/Associate

Attorney at Matheny, Poidmore & Sears from 1993 to 1994.

Judge Caudill's professional associations include the American Board of Trial Advocates (California Coast Chapter) (2004 - present); Ventura County and Santa Barbara County Bar Associations (2001 - 2008); and the Jerome H. Berenson American Inns of Court (2001 - 2008). She served as a Judge Pro Tem at the Ventura Superior Court from 2007 to 2011.

Judge Caudill earned her Bachelor's degree from the University of California, Santa Barbara (1989) and received her Juris Doctor degree from the University of the Pacific, McGeorge School of Law (1993).

Judge Caudill has been assigned to the Family Law Division and she will preside in Department 33 at the Hall of Justice in Ventura.

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