

California Social Work Education Center

C A L S W E C

**LEGAL GUARDIANSHIP AND
CHILD WELFARE IN
CALIFORNIA:
AN EMPIRICALLY BASED CURRICULUM**

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Title IV-E Child Welfare Stipend Project*

1995

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CALSWEC PREFACE

The California Social Work Education Center (CalSWEC) is the nation's largest state coalition of social work educators and practitioners. It is a consortium of the state's 18 accredited schools of social work, the 58 county departments of social services and mental health, the California Department of Social Services, and the California Chapter of the National Association of Social Workers.

The primary purpose of CalSWEC is an educational one. Our central task is to provide specialized education and training for social workers who practice in the field of public child welfare. Our stated mission, in part, is "to facilitate the integration of education and practice." But this is not our ultimate goal. Our ultimate goal is to improve the lives of children and families who are the users and the purpose of the child welfare system. By educating others and ourselves, we intend a positive result for children: safety, a permanent home, and the opportunity to fulfill their developmental promise.

To achieve this challenging goal, the education and practice-related activities of CalSWEC are varied: recruitment of a diverse group of social workers, defining a continuum of education and training, engaging in research and evaluation of best practices, advocating for responsive social policy, and exploring other avenues to accomplish the CalSWEC mission. Education is a process, and necessarily an ongoing one involving interaction with a changing world. One who hopes to practice successfully in any field does not become "educated" and then cease to observe and learn.

To foster continuing learning and evidence-based practice within the child welfare field, CalSWEC funds a series of curriculum sections that employ varied

research methods to advance the knowledge of best practices in child welfare. These sections, on varied child welfare topics, are intended to enhance curriculum for Title IV-E graduate social work education programs and for continuing education of child welfare agency staff. To increase distribution and learning throughout the state, curriculum sections are made available through the CalSWEC Child Welfare Resource Library to all participating schools and collaborating agencies.

The section that follows has been commissioned with your learning in mind. We at CalSWEC hope it serves you well.

ABOUT THE AUTHORS

The curriculum was developed by Brian Simmons and Richard Barth. Brian Simmons is currently a doctoral candidate at the School of Social Welfare at UC Berkeley, studying child welfare policy and practice, with particular attention to legal issues in child welfare. He has extensive experience as a worker, supervisor, and manager in public child welfare services. Richard Barth is Hutto Patterson Professor at the School of Social Welfare and Principal Investigator of this study.

CHILD WELFARE RESEARCH CENTER

The Child Welfare Research Center (CWRC) was established in 1990 as part of the Family Welfare Research Group with a cooperative agreement from the Children's Bureau of the Administration of Children and Families and the Office of Planning and Evaluation, U.S. Department of Health and Human Services. The Child Welfare Research Center's efforts are focused on local, state, and national research in the areas of child abuse and neglect, foster care, adoption, and the organization and finance of child welfare services.

For information on other CWRC materials, please call us at 510-642-1899.

ACKNOWLEDGMENTS

This curriculum on legal guardianship is the product of the efforts of many people. Without the assistance of scores of child welfare workers across California, this effort would lack much of the grounding in the reality of day-to-day practice that only they could provide. They participated in focus groups in which they provided their views on how legal guardianship is implemented (or not implemented) in California's child welfare system. They also completed a written survey that gave us insights into the dynamics of the permanency planning decision-making process and gave us new information on guardianship disruptions and the fates of children who emancipate from guardianship. We are deeply indebted to them for the texture they provided to our research. Likewise, we extend our thanks to the child welfare managers of the 10 counties in which we conducted our research. Without their attention to myriad details and their patience with our constant stream of questions and requests, this work could not have been accomplished.

Our colleagues at the Child Welfare Research Center provided extensive assistance in the development of this report. Jill Duerr Berrick, Emily Bruce, Ruth Lawrence-Karski, Bettina Murphy, Barbara Needell, and Deborah Newquist all assisted with conducting focus groups throughout the counties. Jill Duerr Berrick, Emily Bruce, and Barbara Needell were part of the project's initial planning team. Emily Bruce and Melissa Lim assisted with data entry and graphics production. Susan Katzenellenbogen and Rina Mehta assisted with producing the actual document. We appreciate them all.

PROJECT DESCRIPTION

The Child Welfare Research Center at the University of California, Berkeley, received a curriculum grant from the California Social Work Education Center (CalSWEC) to develop empirically based teaching materials to assist in the realization of competency-based child welfare social work practice.

This legal guardianship curriculum is divided into several parts, each offering information relating to legal guardianship policy, practice, and outcomes. It is designed to be used as a whole or in part by the classroom instructor. Materials are not currently copyright protected and may be reproduced by the instructor for social work/welfare students. Teaching tools are provided in the form of materials that may be printed out for use with an overhead projector, with a computer, or as handouts.

The project was made possible with the assistance of child welfare managers and staff in the following 10 California counties: Alameda, Butte, Fresno, Los Angeles, Riverside, San Diego, San Mateo, Santa Clara, Solano, and Stanislaus.

The curriculum is based upon research conducted in several domains. First, data were collected through focus groups with child welfare workers throughout the state. Second, a survey was distributed to a sample of child welfare workers in the 10 California counties listed above. Last, an extensive literature review was conducted on all material currently available in the area of legal guardianship.

The materials are designed for use by child welfare faculty in California's Schools of Social Welfare/Work with students working toward their MSW with an emphasis in the field of child welfare.

MODULE I

**LEGAL GUARDIANSHIP:
PERMANENCY PLANNING'S OBSCURE OPTION**

MODULE I

LEGAL GUARDIANSHIP: PERMANENCY PLANNING'S OBSCURE OPTION

INSTRUCTIONAL GUIDE

The following paper is designed as a complete overview of legal guardianship, including its history, its role in the implementation of the philosophy of permanency planning, and some of the issues surrounding its use. Research conducted by one state agency and one county agency on their respective guardianship programs is reviewed.

The paper can be used by the classroom instructor as background material, or it can be assigned to the students to read themselves.

INTRODUCTION

After years of conceptual work by child welfare and legal professionals to lay the foundation, Congress passed Public Law 96-272, the Child Welfare Reform and Adoptions Assistance Act, in 1980. The most significant child welfare legislation since the original Social Security Act, the law sought to implement sound casework practice, introduce procedural safeguards, and provide incentives to encourage the adoption of hard-to-place children. The law's reforms included limiting the amount of time a child can live in foster care while his or her parents work toward reunifying the family. If, after the designated amount of time, the parents are unable to effect a return of their child, the law requires the public child welfare agency to propose to the juvenile court a plan for the child's permanent living arrangements away from his or her family of origin. This plan is to include a "permanency planning goal."

The statute provides for three possible goals. In order of preference (by degree of permanence), these goals are adoption, legal guardianship, and long-term foster care. Volumes have been written about adoption, its dynamics, and its problems. Likewise, foster care has received significant attention in the professional literature. Legal guardianship, however, is conspicuous by its absence from the permanency planning discussion. Indeed, with rare exception, legal guardianship is virtually ignored in the child welfare literature, even in works whose contexts suggest it would be discussed (e.g., Albers, Reilly, & Rittner, 1993; Derdeyn, Rogoff, & Williams, 1978; Finch, Fanshel, & Grundy, 1986; Gambrill & Stein, 1985; Hegar, 1983; Humm, Ort, Anbari, Lader, & Biel, 1994). This absence seems peculiar, given the importance accorded guardianship by P.L. 96-272. This void has recently been noted with some alarm and an accompanying call for increased work in the area of legal guardianship (Courtney & Barth, in press).

THE PERMANENCY PLANNING MOVEMENT

Several attempts have been made to define permanency planning. Stein and Gambrill (1985) offer a short, concise definition: "Permanency planning refers to activities undertaken to insure continuity of care for children." Maluccio and Fein (1983) offer a more comprehensive definition:

Permanency planning is the systematic process of carrying out, within a brief time-limited period, a set of goal-directed activities designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers and the opportunity to establish lifetime relationships.

The practice and philosophy of permanency planning must manifest themselves whenever the child welfare services system encounters a child and his or her family. Foster children, however, have been and remain particularly vulnerable to the consequences of lack of planning and the discontinuities inherent in the child welfare system. Prior to the implementation of permanency planning, children were left in foster care with no sense of how long they would be there and no grasp of what their lives held for them in either the short or long terms. Parents would exit, re-enter, and again leave their children's lives, sometimes making some vague or token efforts at ameliorating the conditions that led to the family disruption. Rarely were controls, such as goal-oriented case plans or systematic case reviews, in place to prevent this process from repeating itself, adding to the uncertainty and lack of connectedness felt by the children. This phenomenon came to be called "foster care drift" (Maas & Engler, 1959).

The history of the permanency planning movement can be traced to the 1950s (Stein & Gambrill, 1985). Beginning early in that decade, several studies appeared which bemoaned the lack of planning for children in foster care. Maas and Engler's (1959) landmark work gave evidence of the magnitude of the problem. Their study indicated that parents of children in care "typically had no relationship with the agencies responsible for the care of their children or their relationship was erratic or untrusting" (pp. 390-391). Following Maas and Engler, additional studies (cited in Stein & Gambrill) over the next 20 years reached similar conclusions (e.g., Fanshell & Grundy, 1975; Festinger, 1975, Gambrill & Wiltse, 1974; Gruber, 1978; Knitzer, Allen, & McGowan, 1978; Sherman, Neuman, & Shyne, 1973). Others began looking at formal planning for children in care and the impediments to planning (Stein & Gambrill). As a result of these

efforts, HR 3535 was introduced and ultimately enacted into law as P.L. 96-272. Guardianship was formally validated as a legitimate permanent option for children in foster care.

GUARDIANSHIP DEFINED

All children in the United States have a legal “disability” based solely on the condition of their age (known commonly as “infancy” or “minority” status). The law creating this disability assumes that children have neither the maturity nor the experience to care for themselves or manage their own affairs (Costin, Bell, & Downs, 1991). Others must assume this responsibility for them. This person is the guardian.

For most children, under most circumstances, the parent or parents fulfill this role; the parent is sometimes referred to as the “natural” guardian of the child. However, when a parent is unable to be the guardian, either through death, disability, or when society determines the parent has failed to afford his or her child some minimal level of protection, another person can be named in the parent’s place. Depending upon the nature of the appointment (see below), the guardian assumes a wide range of authority over the person and/or property of the child, and has a responsibility to assert that authority to serve the best interest of the child. At one time, legal guardians had the right to make a profit from their relationship with the child, and it was only over time that the position evolved into a protective one (Weissman, 1949).

Weissman (1949) provides an interesting history of the many types of guardianship as they evolved from Roman to English and Napoleonic law. The reader is referred there for the full discussion, but some highlights are worth noting. (For another history of guardianship in England and in the United States, see Taylor, 1935, pp. 9-30.)

Ancient Roman law provided for two kinds of guardianship for children without parents—tutorship and curatorship. The former pertained to boys under the age of 14 and girls under the age of 12. The law assumed such young children needed to have someone to assist them in doing things they could not legally do themselves. A *tutor* was appointed to make decisions for the child. After the age of puberty, children were legally entitled to enjoy full property and personal rights and the tutorship was dismissed. The law recognized, however, that a young person would still need assistance in handling his or her affairs, and thus provisions were made for the appointment of a *curator*. Gradually these two forms were consolidated, and the distinction was lost. Vestiges of that system have made their way to modern times, where the term *curator* is still used in Missouri and Louisiana guardianship law.

Weissman (1949) discusses 10 types of guardianship found in English law (see Table 1 below). Of the 10, only 4 have evolved into recognizable forms in modern American practice.

Table 1. Forms of Guardianship From Old English Law

Type of guardianship	Description
1. Nature and Nurture	The father maintained guardianship over his heir apparent until the latter's 21 st birthday (nature); the father maintained guardianship over the person of his younger children until the boys were all 14 and the girls 16
2. In Chivalry	Referred to the right of the feudal lord to military service from his tenants; in lieu of this service, the lord could assume custody of the person of males under 21 and females under 14 and control the profits of their estates; he could also sell the females into marriage
3. In Socage	Involved the obligation of the heir over 14 years of age to provide service or pay rent to the landlord who became his guardian
4. By Election	Resulted from the minor's choosing a guardian after he turned age 14
5. By Prerogative	Limited exclusively to the Royal Family
6. Ecclesiastical	The right of the Church to appoint guardians of person and estate for children who had personal property
7. By Special Custom	Mayors or aldermen assumed guardianship over orphaned children or assigned it to other responsible adults
8. Testamentary	The right of the father to award custody of the person and the estate, if any, of his minor children upon his death by last will and testament
9. Ad Litem	A representative of a child during civil court action; this person had no right to the child's person or estate
10. Chancery	The chancellor (and subsequently, local courts) had the authority to name a guardian for children coming to their attention

(Adapted from Weissman, 1949)

The first of these, of course, is the *nature and nurture* form. As discussed above, the child's parents are considered the *natural* guardians until a replacement or substitute is needed. It is only relatively recently, however, that mothers have received equal co-guardian status with fathers (Weissman, 1949).

The second contemporary form of guardianship is testamentary guardianship, wherein a parent names a guardian in his or her will for whatever minor children may be surviving.

The third type parallels what was once called chancery guardianship. Like our modern involuntary foster care system, the courts had authority to appoint guardians for children in situations which came to their attention. In the latter two situations, a person may be named guardian of either the child's person, his or her estate, or both. A guardian of the child's person has the authority to make the same routine decisions about a child that a parent would: education, employment, medical care, entry into military service, etc. Of interest, and a point which will be raised again later, is the idea that legal guardians are charged with the care of the child, but are not under any actual obligation to support the child from their own funds. Nor is the guardian entitled to the earnings of their ward as a parent would be of his or her child. Guardians of estate have authority to act on behalf of their wards in matters involving the child's property and/or money. Such a guardian is typically appointed when a child inherits a large estate or is the recipient of a large cash settlement from a lawsuit or insurance claim (except when the estate is small, even parents must be named guardians of their children's estate in such situations). Sometimes the same person is appointed as the guardian of both the estate and the person, but this need not happen. Indeed, if a potential conflict of interest exists or if a person appropriate to be the guardian of person might in some way not be

appropriate to be guardian of the estate, another party will be named.¹ The appointment of a legal guardian can be terminated by resignation, by removal for cause, or by the successful petition of a parent to reassume the child's guardianship (Taylor, 1966). The appointment terminates automatically when the child reaches the age of majority or in the case of a guardian's death. In the latter situation, if not otherwise provided for, a *successor in interest* can petition the court for appointment as the new guardian.

The fourth remaining type of guardianship, the guardian *ad litem*, is an occasional topic in the child welfare and children's law literature. Courts in many jurisdictions routinely appoint a guardian *ad litem* to represent the child's interests in legal proceedings in which the child is an interested party. A guardian *ad litem* is routinely appointed in juvenile court proceedings in matters of abuse and/or neglect in many jurisdictions. This person may or may not be an attorney (Davidson, 1981).

Guardian *ad litem* is *not* the type of guardianship on which this paper focuses. Because the term is frequently heard in child welfare circles, the distinctions between the two should be clarified. This provides an opportunity to briefly contrast legal guardianship with adoption and simple custody as well.

Guardians *ad litem* have no authority over the child's person and/or estate, and the relationship with the child does not extend beyond the narrow confines of the legal proceeding or series of proceedings for which he or she is appointed. The legal

¹ Both Costin et al. (1991) and Weissman (1949) cite examples of the potential for abuse, based on cultural stereotyping. Costin tells of the exploitation of property of Indian children who received settlements from the division of Indian Territory in 1901-1905 by their Caucasian guardians. The latter were appointed on the assumption that the children's parents were too inexperienced to be deemed proper guardians of their children's estates. Weissman cites frequent examples from the early and middle decades of the 20th century in which widowed women had to petition for guardianship of person of their own children following the death of their husbands.

guardian, on the other hand, assumes those responsibilities delineated above. A child might have both.

Custody suggests that the child is living with an adult who has acquired it, and that this person has general responsibility to provide for the child's day-to-day needs. Guardianship suggests a higher degree of both leeway and obligation regarding the major or more significant decisions about the child's care (Costin et al., 1991). While a guardian may indeed be awarded custody, this is not a necessary factor, especially when only guardianship of the estate is awarded.²

In adoption, the birth parent's legal rights to the child are dissolved and the child becomes a member of the adoptive family, the same as if by birth. The child has the same rights to support and of inheritance as a birth child; the adoptive family's relatives become his or her relatives. In guardianship, the birth parent's rights are merely held in abeyance. The guardian has no obligation to support the child financially (unless the child has some independent means that can be used *and* over which the guardian has some authority) and the child enjoys no inheritance rights to the estate of the guardian. Because the birth parent's rights are not severed, the child's formal and legalities to the family of origin remain intact.³

² A recent statement by the Child Welfare League of America [CWLA] (1994) regarding custody may be somewhat misleading. They say, "(W)hen the plan is for kinship care to be permanent, criteria should be established for the kinship parents to obtain legal custody" (p. 64). While an award of custody provides a legal basis for a child to be in the relative's home absent the parents' consent, it does not authorize the custodian, for example, to consent to medical treatment, apply for public assistance, or consent for a driver's license. This kind of authority comes only with more significant legal standing (e.g., guardianship).

³ Of course, as suggested earlier, unless the court makes specific orders dictating otherwise, the adoptive parents assume guardianship of the child once the adoption is finalized.

GUARDIANSHIP AND CONTEMPORARY CHILD WELFARE

Well over two decades ago, Appelburg (1970) commented that "(In) major books on child welfare, the issue of legal guardianship is hardly mentioned." The situation is unchanged today. Perhaps coming as no surprise, the topic falls mostly in the domain of the legal journals. Even there, however, legal guardianship receives only scant attention. Social welfare's lengthiest look at guardianship, produced by the Children's Bureau many years ago (Weissman, 1949), was a description of legal guardianship in general and the incidence and practice in six states. Weissman was examining guardianship from a much broader child welfare perspective than simply foster care, and, while interesting, offers only a little to the present discussion. He later wrote another article (Weissman, 1964) in which he expressed concern for the number of informal arrangements in which many children were living without legal protection for themselves and/or their caretakers. He opined that the state should pursue identifying these children and regularizing their status (i.e., obtain legal guardianship for them). This second paper also did not specifically address foster care issues. Neither did another early work (Breckinridge & Stanton, 1943), which concentrated on the needs of children whose fathers were veterans of World War II. Appelburg addressed legal guardianship as a child welfare issue, but still in terms of a replacement for a deceased parent, not as a substitute for a living parent. She urged social workers to have parents of children in care make some arrangements so the children would be provided for in case the parents died before the children could come home. She believed that workers fear their own deaths and are uncomfortable with the subject of death, which inhibits their willingness to raise the issue of guardianship. Appelburg also suspected there may

be a class issue at work: in the upper classes, naming a guardian for one's children is the rule rather than the exception. Most social workers come from middle and lower classes, where naming a guardian is not thought of as much. With the passage of P.L. 96-272, however, the perception and function of legal guardianship have changed to include substitution for a living parent in addition to replacement of a deceased one. Whatever their original merit, Appelburg's insights are of limited use in the present discussion.

Perhaps the first to suggest that legal guardianship could be a means of exiting foster care was Taylor (1966). She observed that existing guardianship law seemed to assume that guardianship arrangements were pre-arranged by the child's parents to care for the child when the parent died or became disabled. By omission, the law did "not suggest that the child is or ever was 'nobody's child,' or a 'social agency's child,' or a 'ward of the state'". She observed that in order for legal guardianship to become a genuine alternative to foster care, there would have to be some change in the mindset of workers and agencies about its worthiness to be included with adoption for consideration as an option for children. Ahead of her time, she also called for state-supported fiscal subsidies for those guardians whose wards had no other source of income.

One cannot minimize the importance of Taylor's contribution to the conceptual underpinnings of permanency planning. In testing the thinking on legal guardianship, she pioneered the idea that having a lifetime family was an option open to a group of children in addition to those experiencing adoption. These children need not be relegated to merely aging out of foster care.

The call for a more aggressive use of legal guardianship as an alternative to long-term foster care was echoed by Leashore (1984-1985). He observed that legal guardianship as a plan of care for dependent children was underutilized, and suggested it would be a more useful alternative if "legislatures and agencies took action to clearly define specific rights and responsibilities of dependent children, their legal guardians, and biological parents." Williams (1991) also sees legal guardianship as an underutilized resource, especially for children of color for whom the extended family network is already being used as a placement resource.

Most recently, Schwartz (1993), while not offering empirical evidence to support her claim, argues that the lack of state-supported subsidies to legal guardians is limiting the expansion of legal guardianship as an alternative to long-term foster care for those children for whom adoption is not an alternative. She also views guardianship as a possible means for preventing initial entry into the foster care system and suggests the creation of a system of *co-guardians*. She envisions this primarily as a means to assist young, inexperienced parents or those with substance abuse problems, wherein a relative or friend would be appointed co-guardian of the child along with the parent. This co-guardian would have shared decision-making authority with the parent, or perhaps have authority in certain areas of the child's life in which the parent would have no authority. This person could then fill the role of protector for the child, thus obviating the need for other, more intrusive civil action by the child welfare agency and the juvenile court. This arrangement, Schwartz notes, would still require social service support from the agency and likely financial support as well. Schwartz's proposal is interesting and worthy of further comment; however, such is beyond the scope of the present effort.

Courtney and Barth (in press) studied factors associated with discharge outcomes for a group of older adolescents who were leaving foster care. They developed a model to explain the relative impact selected variables had on the probability that a child exited foster care by way of one of three means: by reaching the age of majority while still in care (including legal emancipation to independent living); by reunifying with the birth family, placement with relative or guardian, or adoption; or by an *unsuccessful* route, such as running away, or involvement with either the mental health or juvenile justice systems. The type of last placement, including a guardianship placement, was found to be related to final discharge status. What they found, however, is that a last placement with a guardian "is associated with a decrease in the odds of either successful discharge outcome relative to the comparison group." Why this might be so is not readily apparent. The authors suggest that a guardianship placement may be so similar to a family-like placement that the adolescent has little to gain by returning to the family of origin or by being adopted. If that were so, they point out, one would expect that the odds of emancipation would be higher for this group, but that was also not the case. The authors were unable to offer any further explanation.

A team of researchers recently studied permanency planning outcomes, including legal guardianships, for a sample of foster children ($N = 1,165$) in San Diego, California, and Pierce County (Tacoma), Washington (Davis, English, & Landsverk, 1995). They found that guardianship was not frequently used in either site as a permanency outcome for children (6.3% of the Pierce County children and 3.7% of the San Diego children; 4.2% of the total sample exited via guardianship). Of those who did exit care via guardianship, children in kinship care placements were overrepresented

given the expected frequency. African American children were overrepresented in guardianship among the California children, but not in Washington. All of the guardianship placements in both sites were intact 12 months after the plan had been implemented. The mean number of days in foster care, from the date of entry to the date the outcome decision was made, was longer for children going to legal guardianship than for any of the other outcomes. Other meaningful comparisons were not possible, given the small numbers of children for whom guardianship was chosen as the permanent plan.

The Child Welfare Research Center at the University of California Berkeley recently released a report on California's foster care population, including children in guardianship (Needell, Webster, Barth, Monks, & Armijo, 1995). The study reviewed the cases of all children who had entered foster care from 1988-1990 and examined their status 4 years later. The study found essentially that guardianship is a tool used by kinship care providers almost exclusively. Seven percent of children who were originally placed with their relatives exited the foster care system via guardianship, while this was true for only about 1% of children placed in traditional foster care. The study also found that exit via guardianship was more common for infants placed with their relatives (9.5%) than for older children (7%) or teenagers (4%). Hispanic and Caucasian children placed with kin utilized guardianship at approximately equal rates (about 8%), with 6% of African American children placed with kin exiting via guardianship.

The Commonwealth of Massachusetts and San Bernardino County (California) have studied child welfare legal guardianships as implemented in their respective jurisdictions. These two studies are presented next in some detail.

The Massachusetts Legal Guardianship Program Evaluation

Massachusetts initiated its legal guardianship program after an in-house assessment of its case review system discovered a large number of adolescents in foster care for whom neither return home nor adoption were realistic alternatives. Guardianship was proposed as a means for them to exit foster care. After preliminary planning and a small pilot (Wheat, 1983), the State established the program in March 1984. After a year in operation, a formal evaluation (Wheat, 1986) that primarily focused on program process indicators, but also included some descriptive data of the children and caretakers participating in the program, was conducted.

The study sought answers to four questions: (a) how well did the program follow its own policies and procedures; (b) does guardianship offer children a more positive and more stable option than long-term foster care; (c) from the viewpoint of the guardians, is the program a success; and (d) how long did it take to move the children through the guardianship process?

The study had two parts. First, data were gleaned from Guardianship Referral Forms (N = 110) completed by social workers and submitted to the staff attorney for processing. Second, a survey was sent to those guardians (N = 18) whose petitions had been granted at least 6 months earlier.

Guardianship Referral Forms were to be completed on all children who met all of the six criteria established by state policy: the child could not return home; the child could not be adopted; the child had been residing with the potential guardian for at least a year; the child was at least 12 years old; the child, proposed guardian, and parents (if available) consented to the guardianship; and the child and proposed guardian had a

stable relationship that could be maintained without services provided by the public agency (Wheat, 1986).

One might reasonably suggest that these cases seem to be more likely than most to be destined for a successful outcome. Even the state instructions to the workers on referring cases to the program indicate they will "tackle the more difficult cases" later. To her credit, Wheat acknowledges the obvious *creaming* potential created by the guidelines. Information gained from evaluating a program based on such a preferred population can only be generalized to programs with these referral criteria.

Of those children referred, 46% were male and 54% were female; however, 67% of the children whose guardians participated in the survey phase were male. In apparent compliance with the policy, most of the children in both groups were over age 12. Those who were younger tended to be siblings of referred children who met the age criterion. Twenty-nine percent of the referral population and over 41% of the survey population were in voluntary placement, while the others were court dependents (no comparison data are provided regarding the foster care population as a whole). Twenty percent of the referred children and 4% of the survey group were identified as having disabilities (either physical or mental). About one third of the proposed guardians in the referral group were related to the child, while this was true of half of the survey group. Typically, the proposed guardian was the child's foster care provider.

Over half the caretakers in the referred population indicated they would need a post-guardianship subsidy or AFDC in order to maintain the child in their home. Sixty-seven percent of the caretakers already named guardians were receiving a subsidy or AFDC.

The program process data are of limited interest. Generally, social work staff followed the program requirements and what exceptions there were appeared reasonable. Missing data posed problems in most of the areas surveyed. The requirement of parental consent (if available) did not appear to deter staff from referring children without such consent if legal guardianship appeared to be an appropriate goal.

Even though the question was posed, the evaluation did not address in any meaningful way the issue of the relative levels of *positiveness* and *stability* of legal guardianship and long-term foster care. The guardians' questionnaire used in the study did not contain any valid items to test the *positive* and *stable* questions, and Wheat does not offer any comparison data for children living in long-term foster care. What Wheat does report is that most of the guardians indicated that their feelings of responsibility, commitment, and affection toward their ward had either increased or remained the same since the guardianship had been granted. (The survey also asked if the guardian thought the child's feelings of security, stability, acceptance, and affection toward the guardian had changed since the change in status. The responses were not reported.)

Two thirds of the guardians reported overall satisfaction with the program as it was. Eleven percent indicated that some changes were in order, while one guardian (5.5%) felt significant changes were needed. Two guardians reported being unsure of what they thought about the program. Suggestions for improvement were made in the areas of speeding up the process; increased subsidy; better facility at reaching a worker when needed; and specific clarifications in the guardian's role, especially vis-a-vis a disabled child aging out of guardianship.

The final question addressed the length of time it takes to move a child through the process. Unfortunately, the date that guardianship was selected as the permanent plan goal is not among the data provided. Without that information, some of the other statistics are less meaningful. That is, without knowing how long legal guardianship has been the goal, one does not know how to interpret such things as *placement date to petition date* or *placement date to date petition is granted*. The child could have been in the home under another permanent plan goal for quite some time, and the guardianship action could actually have been handled relatively expeditiously, once the goal was changed. Likewise, the amount of time from the date the worker submitted the Guardianship Referral Form to Counsel until the petition date is also missing. If delays in processing are taking place, it would be helpful to know where the impediment is located. The statistics Wheat does provide include the following: the mean amount of time between placement date (defined as date first continuously placed with the caretaker who will assume guardianship) to date of petition is reported to be 3.7 years; the median is 2.4 years. The mean time between the petition date and the date of *allowance* (the term used in Massachusetts for the granting of a petition) was 4.5 months; the median was 4.2 months. The mean time between placement date and allowance date was reported to be 3.6 years. There is an obvious discrepancy, in that one would expect the time between placement and petition to be shorter than the time between placement and the petition being granted. This perhaps can be explained by noting that the samples for the two variables are different: the number of children for the first variable is 74, while only 46 for the second (Wheat notes the latter are only those children who had reached the allowance date at the time the study was conducted).

Unfortunately, Wheat does not offer any explanation.

Despite its flaws, the Massachusetts work is important in that it is the only effort undertaken by a state to evaluate and describe its guardianship program that this author could identify. It provides useful descriptive information about the participants. One can glean ideas about directions for further research from it.

The San Bernardino County Guardianship Program

The only other study of legal guardianships located was one recently conducted by a group of San Bernardino County (California) Department of Public Social Services employees as a project for completion of their Master of Social Work degrees (Miller, Saswa, & Watkins, 1994). This exploratory examination of local guardianship cases sought to define "some of the characteristics, demographics, and experiences" of the County's caseload of children who had exited foster care via legal guardianship and their caretakers, now guardians.

Their sample included 64 guardianship cases open during the review month, randomly selected from a population of 332 guardianship cases. See Table 2 for a summary of some of the descriptive statistics. The mean age of the sample was 11 years; the sample was fairly evenly distributed between sexes (53% males, 47% females). The ethnic breakdown of the sample was as follows: White, 38%; African American, 30%; Hispanic 68%; and mixed ethnicity, 10%. (As in the Massachusetts study, comparable figures for the foster care population are not provided, so we do not know how well this sample represents the total population.)

Table 2. Characteristics of San Bernardino County's Wards

	Children (N = 64)	Percent
Gender		
Male	34	53
Female	30	47
Ethnicity		
White	24	38
Black	19	30
Black/White	1	1
Hispanic	14	22
Hispanic/White	4	6
Asian	0	0
Asian/White	2	3
Age at time guardianship granted*		
0-2	7	11
3-4	13	20
5-7	17	27
8-10	13	20
11-12	6	9
13-15	7	11
16-18	1	1

* Percents do not total to 100 due to rounding.
Adapted from Miller et al. (1994)

The mean age at the time of removal was 5 years; the mean age at the time guardianship was granted was 7½ years. Using a scale based on parental occupation or source of income, 80% of the children were rated as coming from low SES homes, 12% middle, and 8% unknown. Guardian characteristics were also studied and are summarized in Table 3. Generally, the caretakers/guardians were married couples (72%). Their mean age at the time the petitions were granted was 46 years; 27% were over age 50 at the time guardianship was ordered. Fifty-one percent were White, 23% African American, 11% Hispanic, 1% mixed ethnicity, and 5% unknown. Females outnumber males (58% to 42%). Using the same SES scale, 11% of the guardians were rated as having a low SES, 59% low-middle, 22% middle, and 6% unknown.

Table 3. Characteristics of San Bernardino County's Guardians

	Number	Percent
Marital status		
Married	33	72
Single female	10	22
Single male	1	2
Two adult females	2	4
Number of petitions granted	46	100
Gender		
Male	34	42
Female	47	58
Total number of guardians	81	100
Age at time guardianship ordered		
20-25	3	3
26-30	4	5
31-35	10	12
36-40	15	19
41-45	21	26
46-50	6	7
51-60	14*	17
61+	8	10
Total number of guardians	81	100
Ethnicity		
White	48	59
Black	19	23
Hispanic	9	11
Hispanic White	1	1
Unknown	4	5

* The original chart from Miller et al. (1994) shows 4, which the author assumes is a typographical error. Using 14, both the total of 81 and the percentage of 17 agree.

Adapted from Miller et al. (1994)

The authors attempted to evaluate the stability of the guardianship placements. Arguing that they had "great respect for others' subjective reality and little confidence in collective wisdom" (p. 37), they opted not to define stability. Instead, they relied on the varying definitions and interpretations of events by the individual case-carrying workers as gleaned from a review of the case recordings. Therefore, if a worker

described an event as a threat to placement stability, it was so noted. Likewise, if nothing was noted in the record as being threatening, the case was regarded as stable. Efforts to achieve interrater reliability among those reading the cases for stability are not described. From their reading, the authors categorized the cases as either *Stable*, *Currently Stable After Incidents Threatening Disruption*, *Guardianship Terminated—Minor 18*, and *Disruptions Resulting in Physical Removal*. *Stable* appears to equal intact. While certainly that is an important component, *stable* also suggests a more qualitative element than mere longevity or endurance. Families can still be agitated, disorganized, and unhappy without there being a reported threatening event, or even after such an event has passed. Said differently, the conventional use of the term *stable* indicates a higher standard than the meaning used in the research, which is "the absence of the negative event threatening disruption."

With those caveats, the following statistics are interesting: over 73% of the sample children had no recorded incidents threatening disruption; 17% had at least one threatening incident but were currently considered to be stable; two (3%) had guardianship terminated due to age, and 4 (6.25%) had events severe enough to warrant physical removal. Of the latter, the lengths of the time the guardianship endured ranged from 2 months to 5 years. All four were over 11 years old.

Upon closer review, one of the four disruptions was caused not by any problems with the child, but rather was the reaction of the caretaker upon being informed there had been an overpayment of AFDC-FC which he was expected to repay. Rather than repaying, he had the child removed and placed in a foster home. The other three had

significant problems with which, despite sometimes heroic efforts, the guardians were unable to endure any longer.

Pursuing the question of disruptions further, the San Bernardino authors surveyed child welfare workers (N = 60, representing a 29% response rate) with both intake and continuing caseloads to inquire if they had any children who had come from guardianship placements which disrupted during a given 12-month period. Twenty-nine such children were reported (the total caseload of the 60 responding workers was not reported). Eight different reasons were provided for the disruptions: death of guardian, abuse by guardian, marital problems, inability to cope with the child's problems (the single largest reported cause), lifestyle change, personal problems, neglect by guardian, and rejection by the guardian. Of the children who disrupted, 10 were White, 10 were African American, 4 were Hispanic, 4 were of mixed ethnicity, and 1 was unknown. Thirteen were male and 16 were female. Of the 29, 20 had their guardianship orders dismissed.

The final part of the San Bernardino study was an ambitious 50-state survey on guardianship policy. The authors found that 20⁴ states do not recognize guardianship as a permanency planning option and have no process in place for establishing guardianships for their court dependents. The remaining states offer it as an option for either relative caretakers, foster parents, or both, although of these, another seven states reported utilizing the guardianship option only rarely. Only nine⁵ states offer any

⁴ The text of the paper reports only 19 states without a legal guardianship program, but the accompanying table indicates 20.

⁵ Schwartz (1993), in the footnote of her Appendix A, notes that 10 states currently subsidize

kind of financial support (i.e., foster care funds) continuing beyond the appointment of the guardian. Of the nine, some offer the incentive only to non-kin providers, while others offer it to both kin and non-kin guardians; and only five also provide post-appointment social services in addition to financial assistance. Table 4 illustrates this information.

Table 4. Guardianship Policy of States With Subsidies

State	Guardianship option available to	AFDC-FC paid to whom?	Services available in addition to money?
Alaska	non-kin only	based on need	no
California	both	non-kin only	yes
Colorado	both	both, but to non-kin only if the agency retains joint custody	yes, but the Juvenile Court retains Jurisdiction
Hawaii	both	both	yes
Massachusetts	both	both	no
South Dakota	both	non-kin only, based on need	no
Utah	both	non-kin only, based on need	no
Vermont	both	non-kin only, with special circumstances	no
Washington	both	both, but need based for non-kin and the Court retains jurisdiction	yes

Adapted from Miller et al. (1994)

Issues in the Current Usage of Legal Guardianship

A number of issues about the use of legal guardianship have given rise to speculation and assumptions, but little empirical research. As the guardianship option becomes increasingly used, both policy and practice needs will dictate a firmer

guardianship. However, her list, which names only those seven states which provided her with information, includes Illinois and New Mexico, neither of which was identified by Miller et al. (1994) as having a subsidized guardianship program.

knowledge base about legal guardianship. The following discussion proposes a research agenda to help establish that foundation.

Which Caretakers Participate in Legal Guardianship?

Who are the caretakers who select legal guardianship as the option for the children in their home rather than adoption or long-term foster care? In what ways are they different from caretakers who select the other options? The conventional wisdom (what little there is) typically places guardianship within the discussion of kinship foster care (see Williams, 1991) suggesting that kinship care providers are the primary users of guardianship. Intuitively that makes sense. Families can use legal guardianship to secure legal grounding for the status of the child in their home, affording the child whatever protective needs he or she may have, while maintaining the integrity of the extended family. Conversely, unrelated caretakers who do not have the kin relationship to protect may not have the same incentives to use guardianship if they are not going to adopt. There may be little difference for them between legal guardianship and long-term foster care. That would be especially true in those states that have a subsidized guardianship program. However, in Massachusetts, the caretakers for over 63% of the children referred for guardianship were unrelated foster parents. Should we be looking at guardianship as an extension of kinship care, or is it generally more widely used than that?

Is Guardianship Utilized at Different Rates by Members of Different Ethnic Groups? If So, Why?

We know that African American families tend to provide kinship care at greater rates than do other ethnic and racial groups (Child Welfare League of America, 1994).

Therefore, whatever impact the social and fiscal dynamics of that relationship may have on the use of guardianship (see previous subsection) should also be reflected in the utilization rates by African American families.

The concept of *family* tends to be more broadly defined among communities of color than it is by the Caucasian population (Schwartz, 1993; Williams, 1991). Given the precarious legal standing these fictive kin have, one might expect guardianship to be utilized to obtain some formal status for their relationship with the child. This incentive should be different for unrelated caretakers who did not have a prior relationship with the child. Perhaps people of color are disinclined to use the formal system to provide approval for a situation which is already endorsed by their informal systems. This formal system includes coming to court, an event frequently *not* associated with receiving help or achieving desired outcomes. Obtaining legal guardianship also requires the endorsement of an agency social worker. Uncomfortable with the trappings of bureaucracy to begin with, they may find themselves investigated by a social worker whose lifestyle standards differ significantly from their own. Any of these factors and more may affect the utilization rates by members of ethnic minority groups.

Who Are the Children for Whom Guardianship Is Sought?

Likewise, we need to know more about the children themselves who are referred for guardianship action rather than adoption or long-term foster care. How do they differ from children for whom other plans are selected? Do they have different paths into the foster care system or different experiences while in the systems?

Does the Racial Composition of Those Children Being Referred for Guardianship Generally Reflect the Foster Care Population?

How old are the children who are being referred? If guardianship is truly to be an alternative to foster care for those children for whom adoption is not an option, children of all ages should be referred. If, as in Massachusetts, only children older than 12 are referred, a large group of children will be missing an early opportunity to establish permanence and exit foster care.

Why Do Caretakers Accept Guardianship Over the Other Options?

Why would someone elect to become a child's legal guardian rather than an adoptive parent? Certainly there are reasons *not* to choose guardianship. Adoption is a more permanent (and arguably more secure) option, while long-term foster care provides the opportunity for easy removal of a child if the caretaker should desire that. Guardianship offers neither benefit. Adoptive parents may be eligible for some financial assistance through the Adoptions Assistance Program, while foster care providers are guaranteed financial support for the children in their care. Guardians are eligible for financial assistance for their wards in only a few jurisdictions and only under selected circumstances (Miller et al., 1994; Schwartz, 1993).

However, there are many reasons why one might select guardianship over the other options. First, although an adoption can technically be reversed or set aside (see California Family Code §9100 et seq.), doing so is much more difficult than rescinding the appointment of a legal guardian. Thus, those caretakers who are unsure of the strength of their commitment to the child might choose guardianship rather than adoption to give themselves an easier way to change their minds. Caretakers who are

related to the child may feel they already have a kinship bond with the child that is sufficient to make the child feel secure; likewise, they may not wish to disturb the formal relationship their relative has with the child. Legal guardianship affords the relative sufficient legal authority to protect the child and maintain the familial bond while not impinging upon the relative's nominal parental status. Also, given the current peculiarities of the eligibility standards for SSI and the instability of the Adoption Assistance Program (AAP), some caretakers may feel obtaining legal guardianship and preserving the child's eligibility for SSI is the more fiscally prudent decision to make.

Other possible reasons for caretakers' selecting guardianship might include: (a) they wish to offer the child a sense of permanence that long-term foster care does not provide; (b) they wish to exercise more control over certain elements of the child's life currently regulated by the agency (e.g., visitation with the birth parents, other adult relatives, and siblings); (c) they wish to reduce the intrusion offered by the presence of the supervising caseworker; (d) they want to put the child on their insurance to make medical care less complicated; (e) they experience pressure from the Juvenile Court judge to accept guardianship; and (f) they feel similar pressure from the social worker.

No discussion of incentives would be complete without including the role of financial subsidies. As noted earlier, Schwartz (1993) believes the lack of financial subsidies is limiting the expansion of the guardianship option. Would more children find permanent placements with guardians if ongoing financial support were readily available? That concept was fundamental to the creation of adoption subsidies in P.L. 96-272, and would be worth exploring.

At another level, however, the provision of subsidies would redress a glaring inconsistency in guardianship law. As noted earlier, a guardian is typically charged with providing the child with care, custody, control, and education (State of California Judicial Council, 1989). A guardian is not required to use his or her own funds to do this. For those states that do not provide financial assistance to guardians with needy wards, the only remaining option is AFDC, assuming unrelated guardians are eligible to apply. Is that the desired public policy?

There is another element in the adoption vs. legal guardianship question. Consider the following scenario: the reunification period is expiring and a recommendation for a permanent plan must be made. The child has been in the home for a substantial amount of time and has developed a significant relationship with the caretakers. The family has not violated any laws or regulations to warrant removal of the child, so the child will remain with them. Yet, for any number of reasons, the caretakers are deemed unapprovable by the county adoption staff (i.e., the adoption staff are unwilling to study the family based on a preliminary review of their circumstances or have already denied an application to adopt). Anecdotal evidence suggests that frequently such families are offered legal guardianship as a compromise to keep the child in the home without requiring the adoption staff to give its seal of approval.

Does the Child Feel More Secure With Guardianship Status Than Long-Term Foster Care Status? Is the Caretaker More Attached?

One assumption underlying permanency planning is that a child will feel more secure in a permanent placement than he or she would in foster care. Is that true? Once legal guardianship is granted, does the caretaker-guardian view the child any

differently, or is he/she still seen as a *foster child*? Is the degree of commitment any greater to this child than to other children placed in the home on a foster care basis? How do the children view the differences?

Proch (1982) conducted a study analyzing the different perceptions of parents and children whose original foster care relationship was later recast into an adoptive relationship. Only 28% of the children saw any difference between adoption and foster care; 82% of the adopting parents identified differences. In families with legal guardianship, a less distinct status than adoption, the percentages of both children and adults seeing no difference can be expected to be much higher. What role does a subsidy (in those states that offer subsidies) play in this regard? Does the continuing monthly support check and periodic visit from a social worker reinforce the idea that the child's status is unchanged? If the child's *psychological* status is unchanged, does that make it easier for the guardianship to disrupt when things become difficult, like any foster care placement, as opposed to an adoptive placement where the family is more likely to work things out?

Do the Outcomes for Children Who Go Into Guardianship Differ From Those Who Have Another Permanent Plan?

How do children in legal guardianship fare, compared to those who are adopted and those who remain in long-term foster care? Are their placements more stable? What are the dynamics behind the disruption of the guardian/ward relationship? How do wards compare on such criteria as physical health, mental health, educational success, and avoidance of the juvenile justice system when compared to children with other permanent plans?

What Preparation Do Caretakers Receive for Their Role as the Child's Guardian?

Foster parents in most jurisdictions are required to have some pre-service training; many also require additional training hours each year. Adoptive parents (many of whom also go through the foster parent training) have their own orientation and training sessions. What kind of preparation is provided to those caretakers preparing to assume the responsibilities of guardianship? Do they understand their rights, their role, and the role (if any) of the agency? Do they understand the presumption of permanence behind the granting of guardianship?

What Is the Role of the Social Worker Vis-a-Vis Legal Guardianship?

Foster care workers have an enormous amount of influence in the selection of the children's permanent plans. How much do social workers know about legal guardianship? What are their views of it? Is it seen as a legitimate alternative to adoption or long-term foster care? What kinds of information and perspectives do they share with the caretaker/prospective guardian? What kinds of preparation do they provide to the caretaker who has opted for guardianship? Do they receive encouragement from their supervisors and/or managers to consider and utilize the guardianship option? Are they pressured to use it when they might feel another goal is more appropriate (for example, if their managers see legal guardianship as a means to reduce the caseload of overburdened social workers)?

What Is the Role of Lawyers and Judges Vis-a-Vis Legal Guardianship?

The lawyers representing the child, the parents, the caretakers, and the County all have significant input into the selection of the permanency plan. Each of them brings not only a personal perspective and opinion about the legitimacy and usefulness of

legal guardianship as an option, but also their own agenda of pursuing the outcome most favorable to their clients. Judges have the ultimate authority in the selection and implementation of the permanent plan for a child. How do they view legal guardianship? Is it seen as a worthy option in itself, or is it a compromise position? How much background do juvenile court judges have in P.L. 96-272 and its philosophy? What effect does the legal system itself and the confrontational nature of the process have on the selection of the legal guardianship option?

Should There Be Personal Standards for Legal Guardians?

Many legal guardians are appointed merely on the basis of having served as the child's foster parent, or perhaps because he or she is somehow related to the child. Is that sufficient? Most, if not all, of the former (in California, and both groups in some other states) have at least undergone licensing as foster parents, but is that sufficient? Should there be some minimum standards to which candidates for legal guardianship should be held? Certainly the state is interested in the kinds of people being nominated as guardians (see California Probate Code §1513 and California Welfare and Institutions Code §366.25(e); see also *In re Lisa D.* (1991)). As candidates applying for approval as adoptive parents must go through a significant home study, perhaps so too should candidates for guardianship.

Is the Question of Transracial Guardianship Placements Problematic? Should It Be?

Much has been written about transracial placement in adoption literature. Counties are mandated to seek same-racial/ethnic foster care placements before placing across lines. Are the issues the same in legal guardianship? Should they be?

Why Are More States Not Pursuing Guardianships for Their Children in Long-Term Foster Care?

Legal guardianship is defined as a permanent placement goal in P.L. 96-272. Miller et al. (1994) have documented that as many as 20 states are not utilizing this option. Why not? Are the differences between guardianship and long-term foster care not perceived to be significant enough to make the effort? Is the lack of a subsidy stifling its use?

CAPITALIZING ON THE POTENTIAL OF LEGAL GUARDIANSHIP

Legal guardianship does not enjoy the same regard afforded adoption. This is easily understood and probably justifiable: adoption is far more in the limelight than guardianship and is far better understood both by the public and by child welfare social workers. Legal guardianship does not imply the same degree of commitment as does adoption and is therefore deemed a lesser state than adoption. This lack of consideration for guardianship has, however, served to obscure the advantages it avails to some children and their caretakers. If legal guardianship's potential were properly maximized, as yet unrealized benefits could be reaped by children (both those already in the system and those not presently being served) and by public child welfare agencies. Taking full advantage of this resource will require a change in the mindset of social workers and caretakers. Suggestions for how guardianship's position might be improved are discussed on the following pages with some advantages and disadvantages associated with each.

1. Assist caretakers who want legal guardianship for the children in their care as a routine public child welfare service.

PRO

1. Children frequently enter the child welfare system unnecessarily when a caretaker seeks additional legal authority so that the children will not have to return to a parent who is currently absent from their life, typically because of incarceration or abandonment. Guardianship would provide this protection, and the family would not have to go through a year of usually pointless reunification services.
2. Frequently these relatives are without the means to secure private counsel to obtain guardianship and legal aid societies do not routinely offer this service.
3. Child welfare workers have the technical knowledge needed both to assess the child's situation for the appropriateness of guardianship and to initiate the legal action necessary to accomplish it.
4. Providing legal guardianship services need not be limited to relatives. Children living with fictive kin or other significant people could also be protected in this manner without the need to impose the foster home licensing requirements.
5. Providing for the guardianship of children in this manner is consistent with historic considerations for both legal guardianship and for the provision of public child welfare services.
6. Some of the money needed to implement this will be recovered by cost avoidance from the reduction of the number of children in foster care. Some relatives will also be able to pay part of the costs and should do so.

CON

1. Typically these family situations also involve issues of protection beyond the child's current living arrangements. The intervention of the Juvenile Court and ongoing dependency are frequently required to afford the child the degree of protection needed.
2. If guardianship were granted under such circumstances with no ongoing supervision by the Juvenile Court, how would parents work to reunify with their children? They too would have to retain counsel in order to obtain a court hearing in order to protect their parental rights.
3. Licensing standards are in place to protect children. Allowing children to live with non-related caretakers who cannot meet licensing standards while the process proceeds is to place the child at risk and subjects the worker and agency to liability should anything happen to the child.
4. Current child welfare allocations do not support presently mandated child welfare services. Child welfare workers' caseloads are already too high without adding this additional work. Services provided to current clients will be reduced in order to meet this new obligation.
5. Child welfare workers processing dependency cases into guardianship have the advantage of history: the child welfare agency knows the child and the prospective caretakers. In the proposed service, workers will not know history, relationships, hidden agendas, etc. Regulations allowing for sufficient time to conduct an adequate assessment will be needed. However, this may not allow the issues to be resolved as quickly as the relative would like. Dependency would provide the needed time.
6. The worker might be liable for damages if the placement is recommended and subsequently the child is harmed.
7. Social workers will be open to charges of practicing law without a license.

2. Prospective guardians should undergo a home study process comparable to that required of prospective adoptive parents.

PRO

1. Children in theory could remain in the care of a guardian just as long as he or she might with an adoptive parent. The children should have the right to expect the same degree of investigation into the background of their long-term caretakers regardless of the particular permanent plan selected for them.
2. Raising the standards for all potential long-term providers (regardless of the permanence option selected) will eliminate the current conundrum of caretakers being deemed appropriate for caring for the child during the reunification phase but not passing muster for consideration for the permanent care of the child.

CON

1. Most people who assume legal guardianship of a child have either been foster parents of the child or are related by blood. Those who have been foster parents have been assessed during the foster home licensing process and deemed safe for children.
2. We accept a lower standard of care for kin at the time of initial placement and would be able to remove the child from home only under conditions that were dangerous to the child even if the relatives did not meet some other standard.
3. Some kinship care providers would be unable to meet current home study standards and would therefore be eliminated from consideration as prospective guardians, even if they have a significant tie with the child. This might prevent the child from moving into a more permanent arrangement.

3. Legal guardianship offers a means for reducing the burgeoning numbers of children in long-term foster care (especially those with relatives) for whom there are no longer any protective issues.

PRO

1. While the number of children entering foster care is decreasing, so too is the number of children leaving foster care. Many of these children remain in care long after the issues of protection have been addressed. Many relatives care for their young kin without the supervision of the juvenile court. There is no reason why these children should remain court dependents.

2. A California appellate court has ruled there is no statutory authority simply to terminate the dependency on kinship long-term foster care cases. Termination of dependency is allowed with legal guardianship and offers the child the advantage of moving into a more permanent arrangement.

3. Removing these children from the foster care caseloads frees up resources for those children who truly need the protection of the court and the ongoing intervention of a social worker.

CON

1. Many of these children are receiving support payments under Miller v. Youakim. Terminating dependency would mean they would have to apply for AFDC and if eligible, receive lower payments. Organizational expedience does not justify reducing the standard of living for these children.

4. California should eliminate the requirement for ongoing case work supervision in its legal guardianship subsidy cases.

PRO

1. Ongoing supervision of these cases by a social worker only reinforces the child's and caretaker's image that the ward is still "only" a foster child and that her/his status in the home did not change when guardianship was awarded.
2. A.P. regulations do not require semi-annual contact by a social worker with children who have been adopted. Neither should this requirement be in place for children in a guardianship setting.
3. Providing the child with a new legal guardian provides the child with that protection which was missing in the home of his/her birth family. Casework resources are better utilized with children who are not in permanent settings and who are still in need of the Court's protection.

CON

1. Frequently, protective matters are still at issue even if guardianship has been granted. The presence of the worker can be a factor in ensuring the child's safety in the home.
2. The child may have service needs other than protection which do not disappear with the granting of guardianship. A worker can assist the guardian with referrals and advocacy to see that the needs are addressed.
3. Guardianship is sometime selected as a compromise plan, especially when relatives are involved. Having a worker assigned means the Department will still be able to monitor situations which may be unstable or in which there may be continuing birth parent involvement.

5. Federal and state statutes should be revised to grant legal guardianship by kinship care providers the same status as adoption.

PRO

1. Kin are disinclined to adopt for a variety of reasons, yet are willing to provide their young relatives a home for as long as one is needed. The child is already with his or her family, one of the goals of the permanency planning philosophy. California's law as presently written can be construed so as to require the removal of a child who is otherwise adoptable from the home of relatives who may not wish to adopt and place him or her with unrelated people who are willing to adopt. This defeats the original rationale behind the permanency planning philosophy.

2. If need be, state inheritance laws could be changed so as to assure the ward's rights to inherit from the guardian as well as from the birth parent.

CON

1. Adoption offers a child far more rights and a surer sense of belonging and permanence than does legal guardianship. People who are willing to commit to provide the child a permanent home should commit fully and adopt the child or else yield the child to a family who will make that commitment the child needs.

2. Adoption and legal guardianship are two very different notions and ought not be blurred. The parents' support obligations are not terminated when guardianship is granted and neither are the child's inheritance rights to the parents' estate. Changing the inheritance rules would undermine the parents' responsibility to support their child.

6. The issue of supporting the ward once legal guardianship is granted must be brought to a clearer resolution. Paid guardianship subsidies should be provided to all children for whom guardianship is granted, assuming they qualify under a means test.

PRO

1. The present two-tiered system of providing subsidies for children whose guardian is unrelated while requiring children with related guardians to rely on lower AFDC payments is discriminatory.
2. Child support payments collected from the ward's parents could be used to offset the subsidies paid to the guardian on the ward's behalf.
3. Offering such subsidies would eliminate the current ambiguity regarding requiring the guardian to care for the child without requiring him/her to support the child.

CON

1. Providing universal subsidies undermines the parents' obligation to support their child.
2. Kin should share in the responsibility of providing for their young relatives. Lots of kin now care for their grandchildren, and nieces and nephews without legal guardianship status and without any financial support from the state.
3. The ambiguity could easily be rectified by making it clear that guardians are obligated to *support* their wards as well as care for them.

CONCLUSION

Congress clearly intended that legal guardianship should be an option for children who, once removed involuntarily from their families, are unable to return to those families and for whom adoption is not a feasible plan. Guardianship offers a true alternative with observable benefits for some children and is not merely a substitution for long-term foster care. Thirty states have elected to utilize this alternative means for children to exit from foster care, in some form or another. While two fifths of the states are not using it, clearly there is significant interest in this choice as opposed to long-term foster care. Perhaps the remaining jurisdictions would take a greater interest in this alternative if they knew more about it and the experiences of the other states.

Clearly, the many lessons about legal guardianship policy and practice as implemented in the child welfare service system have yet to be learned. No effort has been made to gather and disseminate the knowledge gained from the experiences of those states that have opted to add guardianship to their permanency planning scheme. The potential knowledge base is enormous, and measurable benefits to the states and their children can be had from exploring it. There is no reason why child welfare legal guardianships should continue to be permanency planning's obscure option.

MODULE II

IMPLEMENTING LEGAL GUARDIANSHIP IN PERMANENCY PLANNING: A VIEW FROM THE FIELD

MODULE II

IMPLEMENTING LEGAL GUARDIANSHIP IN PERMANENCY PLANNING: A VIEW FROM THE FIELD

INSTRUCTIONAL GUIDE

The following paper reports on research conducted in focus groups with child welfare workers throughout the state of California. Workers candidly share the ways day-to-day practice differs from stated policy and discuss their views of how and why guardianship operates in the child welfare arena.

This paper, like the first, can serve as either background for the instructor or as assigned reading for the students. For practice classes, it might serve better as an assigned reading, giving students a flavor for what life is like as a child welfare worker.

INTRODUCTION

In some form or another, legal guardianship as a tool for protecting children and their interests has existed in the western world for centuries (see the discussion of the history of legal guardianship in Module I). The use of guardianship as a way to exit foster care for those children unable to return home is relatively recent and unstudied.

Many scholars in the field of policy implementation have described the important role of line-level workers. One author has noted that how the social worker or police officer presents a given policy to the citizen he or she is meeting is *de facto* the policy for that member of the public (Lipsky, 1980). Similarly, given their charge to implement public policy, line workers are in an excellent position to identify conceptual difficulties and other barriers to achieving the policy goal.

To learn more about how child welfare policies surrounding legal guardianship are actually unfolding, we turned to child welfare workers responsible for making permanency planning decisions for children in out-of-home care. Focus groups were conducted with more than 300 child welfare staff across the state to hear their thinking about legal guardianship and to learn from their experiences and efforts to make guardianship a reality for children for whom neither a return home nor adoption is a realistic alternative. This paper reports our findings from these groups.

Methods

Focus groups were conducted with child welfare personnel in 10 California counties (Alameda, Butte, Fresno, Los Angeles, Riverside, San Diego, San Mateo, Santa Clara, Solano, and Stanislaus). Counties were selected purposively to include those with comparatively high, medium, and low rates of using the guardianship option. We were able to obtain some geographic diversity as well, with one northern county, four in the Bay Area, two in the central valley, and three in the southern part of the state. Most have fairly large urban areas, but two (Butte and Stanislaus) are rural and two (Fresno and Riverside) have mixed rural and urban populations. We hoped that this would enable us to capture the full range of experiences encountered by workers. The groups were small, ranging from 3-15 members. Discussions were based on broad, open-ended questions and were essentially informal. Staff from UC Berkeley's Child Welfare Research Center moderated the groups and attempted to establish an ambience in which workers would be comfortable enough to describe their work candidly. Only first names were used.

Over 28% of the participants worked in an initial investigative capacity (including court intake workers). Another 33% identified themselves as family reunification, family maintenance, or continuing services workers. Twelve percent worked in either adoptions or a foster-adopt program, with the remainder coming from long-term foster care, licensing, guardianship, and family preservation caseloads. Ninety-three percent of those attending were line workers, with 5% in supervision and 2% in management. The participants tended to be very experienced, with a mean length of service in child welfare of about 7 years. Most (59%) had worked in some other child welfare capacity prior to their present assignment.

Most (75%) of the focus group participants were women. The majority were Caucasian (55%), with 19% identifying themselves as African American, 18% as Hispanic/Latino, and the remainder as Asian/Pacific Islander, or other. The mean age of the participants was 41 years. Most (57%) had earned a master's degree (MA, MS, or MSW), with another 41% having completed a bachelor's degree.

ISSUES IN LEGAL GUARDIANSHIP

Legal Guardianship With Related Caretakers

Legal guardianship is frequently the plan of choice for kinship care providers, who, as a group, tend not to adopt. Workers were nearly unanimous in their explanation of this dynamic. Relatives maintain that children placed with them are already with family, countering any perceived need to create a new one. More than that, kinship care providers who might otherwise consider adoption are frequently reluctant to acquiesce to the termination of the birth parent's rights. This is typically prompted by the caretaker's hopes that the parent might rehabilitate him- or herself and be able to

resume parenting responsibilities. Others wish to avoid being seen on the county's side in the dispute with their relative.

County social service departments seem to accept the kin's position on guardianship vis-a-vis adoption. Workers (with the exception of one county) confirmed that there is no pressure on kinship care providers to adopt. In many jurisdictions, the struggle is instead between guardianship and long-term foster care. Many relatives are inclined to refuse guardianship if there will be a reduction in the amount of money they receive from the county for the child's support (see *Impediments and Disincentives to Guardianship* section below). Relatives caring for children are eligible to receive more generous foster care benefits if they meet the criteria of the Youakim v. Miller decision. In California, if they elect to assume guardianship, they would lose these benefits as neither the state nor the federal government has opted to subsidize guardianship placements with relatives. However, in some counties, kinship care providers are being offered the option of maintaining the child's court dependency status after the guardianship has been granted, thus maintaining the child's eligibility for the higher benefits. (Counties also retain the option of dismissing dependency and paying the higher rate using only local funds. There are significant fiscal disincentives for choosing this option, which may explain its lack of popularity.)

Workers reported that juvenile court judges are likewise reluctant to force the issue of adoption if the child is placed with relatives. Workers believed that judges have the same view as the relatives: the child is already with family and compelling them to adopt is pointless. While the position is defensible from a humanistic perspective, it appears to conflict with California's permanency planning statute (Welfare and

Institutions Code §366.26). The law requires the Court to make a finding that the child is adoptable and to terminate parental rights if the child meets certain criteria. The law provides some exceptions to that requirement, including one regarding placement with relatives. However, the law requires the Court to find that the relative "is unable or unwilling to adopt the minor *because of exceptional circumstances...and* the removal of the minor from the physical custody of the relative...would be detrimental to the emotional well-being of the minor" (emphasis added). Neither judges nor social workers appear to be overly concerned with the requirement to find "exceptional circumstances" (the phrase was never mentioned in the focus groups). Rather, workers (and, by their report, judges) seem to focus solely on the second part of the required finding. Is practice ahead of policy on this issue, or vice-versa? Some remedy, whether it be administrative or legislative, is in order.

Unrelated Caretakers Accepting Legal Guardianship

Why non-kin caretakers pursue legal guardianship with children placed in their home is not as clear as it might seem. Workers reported that most unrelated caretakers opt to continue receiving a financial subsidy from the county after the guardianship has been granted. As a condition of eligibility for these funds, the family must also see a social worker at least once every 6 months, more often if the worker deems it necessary. These are essentially the same conditions under which a child would remain in the home under long-term foster care, the major exception being the continuing, routine judicial supervision of the child remaining in foster care. Some workers expressed the opinion that there is very little, if any, difference between legal

guardianship and long-term foster care and opined that in reality, legal guardianship serves very little purpose.

Other workers saw positive reasons for unrelated caretakers to assume guardianship. Many stressed the relationship that had formed between the child and the caretakers and that accepting guardianship was a means for the family to formalize that bond. Many families recognize the child's desire for a family, for a permanent living situation, and want to fill that need. Other workers suggested far more pragmatic reasons: the guardians can get the child on their medical plan (which in many situations they cannot do with a foster child); they have more say in the child's life; they can relocate more easily; they have more authority with the child than under dependency; and they will have less involvement with the Social Services Department and the Juvenile Court. One African American worker noted that African American families tend to shy away from adoptions and that guardianship provides them with the mechanism they need to regularize the child's position in their home.

Some workers suggested another line of thinking: guardianship is far easier to reverse than adoption, which is an important consideration for some caretakers. Many times difficulties arise, especially during adolescence, that undermine the family's commitment to the child. In some situations, these families ask the Department to resume responsibility for the child. If families fear this eventuality or if their commitment to the child is weak initially, guardianship provides a safe enough environment for the child while enabling the family to extricate themselves should they find themselves wanting to do so. This inevitably raises the question: Should legal guardianship be harder to undo? Some workers thought so; others were in disagreement, believing that

one could not force the guardian to keep the child if the situation had been irreparably damaged.

At least one worker offered the alternative that guardianship should be harder to obtain. While this would reduce the number of guardianships actually approved, those that were granted would be more secure, the placements would arguably be of a higher quality, and guardianship itself would be held in higher regard.

Selecting Legal Guardianship Instead of Adoption or Long-Term Foster Care

Many of the reasons some caretakers choose legal guardianship instead of adoption or long-term foster care are discussed in the previous section. Workers suggested other motivations as well.

One repeated theme was the uncertainty of the Adoption Assistance Program (AAP). AAP is a program which provides financial and/or medical assistance for special needs children after the adoption is finalized. Typically this assistance is provided in the form of a cash grant and a Medi-Cal card. In California, AAP was revised twice in 2 years, creating doubts regarding the stability of the program and the state's commitment to continued support for its hard-to-place children. Both foster care and legal guardianship (for unrelated caretakers) assure the care providers that the state will continue to maintain the child in the home. Guardianship is viewed as more permanent than long-term foster care and gives the caretaker more control of the decisions to be made in the child's life and therefore is the preferred option of the two. As noted above, should the state decide to revoke its subsidy program for children under guardianship, guardians could ask to have the guardianship orders rescinded, have the child return to dependency status, but keep the child placed in their home, supported by foster care

funds. In that way, the caretaker could effectively offer the child a permanent home while forcing the state to assume the bulk of the cost of the child's care.

For a variety of reasons, older children tend not to be adopted. For example, children over age 12 have the right to refuse to be adopted. Some workers reported that their counties have opted as an informal policy not to expend resources trying to locate adoptive homes for older children. In the experience of other workers, older children tend to have more emotional and/or behavioral problems than younger children. Whatever the reason, guardianship provides them an opportunity for permanence that might otherwise escape them.

In one county in particular, several workers reported that procedural difficulties internal to the organization discouraged them from referring a child to the adoption program. One worker commented, "If you can get out of dealing with adoptions, you go for it." Workers suggested they recommend guardianship as the child's permanent plan rather than subject themselves and their clients to the uncertainties and difficulties of the adoption process.

We asked whether guardianship was sometimes selected as a compromise between the attorneys, a plan which would offer the child some degree of permanence without the dramatic step of terminating parental rights. Some workers had experienced this while others had not. In at least one county, workers are not allowed to speak with outside counsel, a function left to the County Counsel. Workers believe it is County Counsel's obligation to assert the worker's recommendation, although some agreed that does not always happen. Some workers have had to argue with their own County Counsel in order to avoid having an alternative proposal brought before the court.

Impediments and Disincentives to Guardianship

We asked staff to describe the reasons why they would not recommend guardianship as the child's permanent plan. For kinship care providers, far and away the most common issue is the lack of ongoing financial support for the child once guardianship is granted. This creates something of a dilemma, as relatives also are very unlikely to adopt and therefore would logically be prime candidates for the guardianship program. Nevertheless, for kinship care providers who are unable to afford to support the child on their own or for whom the size of the AFDC grant is insufficient to provide for the child, long-term foster care appears to be the only remaining option. (Some counties have circumvented this problem by granting guardianship and maintaining the child's status as a dependent child of the court. This allows those caretakers who were receiving the more generous foster care benefits to continue to do so.)

For those relatives for whom the AFDC would be adequate, another problem was presented. Workers in several counties described the process involved in obtaining and maintaining AFDC benefits as onerous and degrading. Even providing the income maintenance staff with written verification that the caretaker is applying on behalf of a child who is their ward exiting foster care seems to carry no weight. At least one worker pointed out that the systems seem to be at cross-purposes: the income maintenance staff see their job as "trying to weed people out, to make them ineligible" while the social services staff is "trying to get them in."

Another problem for kin and non-kin alike is the potential loss of services once guardianship is granted. In many jurisdictions, counties contract with various service providers to ensure that the needs of their court dependents are met. Once

guardianship is granted (again assuming dependency is terminated), the children are no longer able to receive services under these contracts.

Mindset Shift on the Part of the Guardians

There has been some anecdotal evidence that many caretakers assuming guardianship do not see any difference between guardianship and foster care. That is, that there is no change in how the child is perceived or how the child perceives him- or herself fitting in the family. We asked workers about the child's integration into the family of the guardian. Workers' experiences were quite varied. Many thought that both the families and the children navigate the change well. Some said they thought the children "are more part of the family" and "are more integrated into the family." Some had families even go back to court and petition for a legal name change so the ward can share the family surname.

Others thought not. "The child is still treated like a foster child," said one worker. Many thought the caretakers who assumed guardianship were not any more committed to the child than those who provide only long-term foster care.

Some thought that age was the determining factor: a younger child integrates into a family far more easily. Others said that issuing letters of guardianship should not make any difference in the family's commitment to the child. To the contrary, guardianship should be the product of the change in the family's mindset, not the catalyst for the change. If the child has not integrated into the home by the time the guardianship is approved, granting the guardianship will not make any difference.

The Impact of Demographic and Other Variables

We asked the workers about the impact of a variety of demographic and

historical variables on their decision to recommend guardianship. Age, health history, and placement history were cited as factors in the decision to recommend guardianship over adoption. As noted, older children are not adopted as frequently as younger children, a fact which frequently guided the workers' thinking toward guardianship. Likewise, the number of previous foster home placements a child has had and the history of group care placement tend to be indicators of the kinds of problems which make a child less likely to be a successful candidate for adoption, leading to serious consideration of guardianship. Health history is typically tied to AAP concerns discussed earlier. Other factors, such as the child's gender, reason for coming into care, and ethnicity have no bearing on the recommendation for the child's permanent plan.

Disruptions

We asked the workers to discuss their experiences with guardianship disruptions. Most agreed that disruptions involved problems of adolescence: the child gets rebellious and begins acting out and the guardian asks the Department to resume responsibility for the care of the child. Some contrasted that with the experience of adoptive parents who typically do not come to the Department and ask for the adoption to be set aside; instead, these families typically confront and resolve their problems, sometimes with the assistance of post-adoptive services. Many workers thought caretakers assuming guardianship should demonstrate the same effort.

One worker commented that a stronger commitment on the guardian's side would cause him or her to respond in the same way as an adoptive parent. One opined that rescinding guardianship is too easy. Another countered that guardianship should not be made harder to rescind, arguing that if the caretaker was at his or her limit with

the child, the Department should accept responsibility for the child. Some did not like the implied threat in those situations, but they generally agreed that this was the reality.

We asked what could be done to prevent guardianship disruptions. Some counties allow families in guardianship to have an FM worker if the situation warrants it. Those families with an ongoing subsidy have a worker to whom they can turn for help and referrals. In situations where it is appropriate to do so, some counties remove the child, file a new Welfare and Institutions Code §300 petition against the guardian, and allow them to work toward reunification. Most thought that by the time issues that were threatening the stability of the guardianship placement came to their attention, things had already deteriorated beyond the point where there was much the worker could do. One worker suggested completing a formal assessment on each guardianship disruption to attempt to learn what had gone wrong and to discover ways to prevent the same things from happening with other families in the future.

Some thought better preparation of the guardians for their role would be useful. Counties have a wide disparity of practices regarding who actually prepares the caretakers for their role. Most thought that not enough caretaker preparation is conducted, regardless if it is a worker or an attorney who is actually supposed to train them. There was also substantial disagreement among workers about their own expertise on guardianship matters and thus their own ability to prepare caretakers. Some felt well versed in guardianship while others felt quite inadequate.

DISCUSSION

Consistent with the literature on public policy implementation (Bardach, 1977; Pressman & Wildavsky, 1984), the members of our focus groups defined problems in

the areas of construct conceptualization, organizational impediments, and policies with cross-purposes. Conceptually, legal guardianship is offered as an alternative plan for a child's permanence, but many workers do not view guardianship as being particularly permanent. When examining the ease with which *permanent* placements are terminated, guardianship is by far closer on the continuum to long-term foster care than it is to adoption. As noted, some workers see little distinction between the latter two choices. *Ease of termination* does not necessarily translate into rates of termination, and no one suggested that guardianship placements disrupt at the same rate that long-term foster care placements change. Nevertheless, efforts should be made to reinforce the *permanent* nature of the guardianship decision. Perhaps, as one worker proposed, guardianship should be made more difficult to obtain. Associated with workers' thinking about guardianship is their training related to it. Workers as a group were inconsistent in their knowledge of the philosophy behind guardianship and the practical issues associated with the powers and responsibilities of the guardian. Clearly, child welfare agencies need to ensure their staff is sufficiently equipped with the knowledge both to inform their own decision-making and to assist caretakers with their decision-making regarding permanency for children.

Besides providing appropriate training for staff, agencies have the responsibility to ensure that their internal structures and procedures encourage rather than inhibit the selection of the proper permanent plan. In at least one county, this is not the case. Workers are placed in an ethical bind when they believe adoption is the most appropriate plan for a child but organizational obstacles are such that they are forced to select another option in order to help the child achieve some sense of permanence in a

reasonable amount of time. Conflicts between child welfare staff and income maintenance staff, typically employees of the same agency, represent another example of an agency-created barrier, one which could be eliminated with clearly stated goals and clear communication channels.

Such conflicts also represent opposing goals of existing public policies. The worker who observed the differences in thinking between the groups did so with understated insight. The income maintenance worker trying to minimize the number of people receiving assistance is operationalizing an approach to welfare considered highly desirable by many in this country, albeit at the expense of reaching another public policy goal of supporting children exiting the foster care system. The confusion regarding the Adoption Assistance Program and the provision of enhanced financial support for only a select group of children going into guardianship also suggest the need for policy clarifications.

In 1966, legal guardianship was proposed as a means for children to exit foster care (Taylor, 1966). Thirty years later, we are trying to understand how that proposal translates into practice. Public policy makers and agency administrators would benefit if they listened to the wisdom of those they have charged with implementing child welfare's legal guardianship policy.

MODULE III

THE PATH TO LEGAL GUARDIANSHIP: A STATEWIDE SURVEY OF CHILD WELFARE STAFF

MODULE III

THE PATH TO LEGAL GUARDIANSHIP: A STATEWIDE SURVEY OF CHILD WELFARE STAFF

INSTRUCTIONAL GUIDE

This paper reports the results of a survey of county child welfare staff regarding guardianship practice throughout California. The topics covered here expand upon some topics discussed in the focus groups and address other topics, including transracial placements, emancipation outcomes, and the details of the process in which the decision to recommend guardianship is made. Distinctions are made in many of the responses between children living with relatives and those living in traditional foster care arrangements.

The paper can be used by the classroom instructor as background material or it can be distributed to all students as a reading assignment.

INTRODUCTION

The Child Welfare and Adoptions Assistance Act required each state to create a central computerized database for the purposes of identifying the current placement of each child in foster care. This has created a rich supply of data about the children and their careers in foster care, a resource which researchers have only recently begun to explore. As useful as they are, however, these administrative data only reveal part of the story. Also needed are data on the dynamic processes which go into the decision to recommend adoption, legal guardianship, or long-term foster care as the permanent plan for a child. Regarding guardianship specifically, we do not know the weights given certain elements in the decision equation, the timing of the decision to recommend

guardianship, and how a guardian is selected, which are only a few of the unknowns.

To address these questions, another abundant source of information was identified: the child welfare professionals in the field. To tap this knowledge base, we enlisted the assistance of workers and supervisors in 10 California counties. The counties were selected on the basis of their rates of use of guardianship as a means for exiting children from foster care (some had relatively high while others relatively low rates). We conducted a series of focus groups with workers in a variety of child welfare programs in which we asked a series of structured questions designed to elicit the experience of these workers in the area of legal guardianship. (Information from the focus groups is detailed in Module II.)

We also sent 1,091 questionnaires to child welfare supervisors to be given to staff in each of these counties. A total of 294 questionnaires were returned, representing a 27% return rate. The low return rate imposes obvious limits to our ability generalize the findings. However, the consistency of the responses, regardless of how the respondents were categorized, adds support to the validity of our results. Table 5 illustrates the response rate for the respective counties.

Table 5. Surveys Distributed and Returned by Participating County

County	# Surveys distributed	# Surveys returned	Response rate (%)
Alameda	72	27	37.5
Butte	27	14	51.9
Fresno	76	62	81.6
Los Angeles	300	46	15.3
Riverside	150	35	23.3
San Diego	145	49	33.8
San Mateo	74	5	0.7
Santa Clara	200	41	20.5
Solano	24	2	0.8
Stanislaus	23	11	47.8
TOTAL	1,091	292	27

Approximately 8% of the respondents were in the Emergency Response, with another 8% in adoptions. The remainder were primarily in the Family Reunification and Permanent Placement programs. Almost 97% of the respondents were line workers, the remainder being supervisors and managers. Most had been in their present assignment at least 1 year (median: 18 months; mean: over 29 months). Their overall child welfare experience was substantial (median: 52.5 months; mean: 70.8 months). Most (62.4%) had a graduate education (MSW, MA, MS, PhD, or DSW). The respondents were mostly female (75.6%). Sixty-two percent were Caucasian, 17.7% Hispanic, and 11% African American, with the remainder identifying themselves as Asian/Pacific Islander, Native American, or other. The average age of the respondents was 39 years old (mean: 39.6; median, 39.0). Analysis of the responses suggests these demographic data are of only incidental interest. With one very minor exception (noted in the text),

none of the tests analyzing the differences in the responses reached the level of significance.

The following discussion is based primarily on the responses to the questionnaires.

WHO PARTICIPATES AND WHEN

Workers were asked about the timing of the decision to recommend to the court that guardianship should be the child's permanent plan. The choices given the respondents were structured around the adoptability assessment which state statute requires prior to a court hearing to select and implement a permanent plan. As seen in Table 6, 42% of those responding indicated the decision was made as a result of that assessment. Slightly less than a quarter reported that the decision was made prior to the completion of the formal adoptability assessment.

Table 6. Timing of Decision to Recommend Legal Guardianship

Reunification phase	% Responding
Prior to the adoptability assessment	23.5
As a result of the adoptability assessment	42.0
At the selection and implementation hearing (Welfare and Institutions Code 366.26)	17.4
Other	17.0

Some workers clarified their ratings with comments, some of which indicated that practice is not bound by the structure of hearing timelines. Some said their planning (including discussions with the child's caretaker) begins whenever it is clear that reunification is not working or is unlikely to be achieved. One said "anytime it appears

appropriate." Of interest, some thought that the child should be in the home "for an extended period of time," which one worker defined as "a few years" before guardianship should be recommended to the court. One worker with a caseload of mostly older children reported pursuing guardianship only "when an adult steps forward offering to do so."

One controversial issue in contemporary child welfare is the question of how soon during the family reunification process a worker should begin considering permanent arrangements other than a return to the child's own home. Sometimes referred to as "concurrent planning," proponents suggest that, should reunification efforts be unsuccessful, the worker needs to be prepared to present a well-thought-out alternative to the Juvenile Court. Good faith reunification efforts continue in full force, and if successful, render the alternative plan moot. One variation on this idea is that the worker would initiate concurrent planning only when it becomes apparent that a return home is unlikely. Opponents argue that concurrent planning calls into question the worker's commitment to achieving reunification, suggesting that it is unfair to the worker and to the family to have the worker's efforts diverging along such separate paths.

While the debate typically focuses on adoption, we wondered how early a worker might approach the child's caretaker with the idea of assuming guardianship. We asked the workers to assume that the reunification process was going very poorly and that an extension of services to 18 months was not going to happen. Recognizing the different dynamics involved with kinship care placements, we asked workers to tell us in both situations how soon after the child's first placement they would approach the caretaker regarding the possibility of accepting a transfer of guardianship. Results are in Table 7.

Table 7. Mean Time (in Months) Between Placement and Discussion With Caretaker Regarding Assuming Guardianship

Placement type	Mean score (in months)	Range (in months)
Non-kin placement	9	2-36
Kinship care placement	8	0-36

On the average, workers report discussing the guardianship option approximately 1 month earlier with relatives providing care than they do with non-relatives. The respondents were not unfamiliar with the issues underlying the debate. In their comments, workers raised the possibility of the caretakers sabotaging the reunification efforts and their reluctance (perhaps imposed by agency policy) to engage in early planning. A few even said they would not raise the issue until after reunification efforts had been terminated by the Juvenile Court. Several also mentioned that, with non-kin placements, adoption would be considered before guardianship. One worker reported having several court reports rejected for having recommended guardianship with an unrelated caretaker, even when she thought this was the more appropriate plan. Several also commented that *all* the possible options for permanency are discussed with the birth parents *and* the caretakers very early in the reunification process so that nothing comes as a surprise when the topic is raised again later.

In contrast to the workers we spoke with in the focus groups, none of the workers mentioned problems the court or attorneys might have in raising this question prior to the 12-month review hearing. This may be due to the condition imposed on our written

question (i.e., that the reunification efforts had clearly been unsuccessful and that there would be no extension of services).

Who actually participates in the selection of the permanency plan to be recommended to the court? Workers were given a list of possible participants. Table 8 displays the percentage of workers responding that the person indicated typically did participate in the selection of the plan goal.

Table 8. Social Workers' Reports of Participation in the Selection of the Permanent Plan

Potential participant in plan selection	% Workers indicting typical participation
Child's worker	84.6
Child's current caretaker	60.9
Attorneys assigned to case	40.5
County counsel	38.4
Child's birth parent	32.6

*Respondents could select more than one category

The responses in Table 8 raise some interesting questions, particularly regarding who is *not* participating in the decision to recommend a permanent plant for the child. For example, 85% of the responders indicate the worker typically participates in the selection of the plan, meaning that 15% of them believe that most of the time the worker is not a significant player in the decision-making process. From a policy perspective, the validity of plans created without benefit of the input of such a pivotal person as the child welfare worker, the one individual who has the total picture of the child and the family's situation, becomes questionable. Workers in at least one county reported having an "Assessment Unit" to which cases were transferred during the time

the adoptability assessment is being completed. If this process or others like it minimize the input of the case-carrying worker, this decision-making structure should be reviewed with a skeptical eye.

Similarly, about two fifths of the respondents indicated that the child's current caretaker was not routinely involved in the selection of the case plan. Much of the time, the child's caretakers are the source of a great deal of the worker's knowledge about the child, the quality of the child's visits with his or her parents, and the child's overall well-being. They are also prime candidates for providing the child a permanent home if reunification is not possible. Their participation in the selection of the permanency plan at the very least is an issue of good casework practice, but is also an issue of equity to the people in whose home the child may be living for many years to come. Even for those not offering a permanent home to the child, inclusion of caretakers in the plan formulation conveys their importance in the child welfare process and creates a good working relationship which will serve the worker well in the future.

Table 8 also reveals the perception of about a third of the respondents that the child's birth parents usually participated in the selection of the permanent plan. From the perspective that parents should be empowered to make decisions for themselves and their children, one might want to see this figure even higher. However, more involvement by the parents is probably not realistic given the contentious atmosphere in which the worker/parent relationship finds itself at this point of the permanency planning process.

Many of the respondents suggested others who were routinely involved in the selection of the permanent plan. Most of these additions were other child welfare

services staff members (e.g., the adoption supervisor, a case consultation team, or permanency planning staff). Others included relatives and therapists. About one fifth of those offering comments said the child also routinely participates in the selection of the plan, assuming he or she is old enough to do so meaningfully.

PRACTICE POINTS

(1) Organizational structures, processes, and other potential impediments should be reviewed so as to enhance the likelihood of the best information reaching the Juvenile Court Judge when she/he selects a permanent plan for the child. Case-carrying workers should always be in a position to offer their recommendations into the formulation of the plan.

(2) In most situations, the child's caretaker will know more about the child than the worker. Those formulating the recommendation for a permanent plan should incorporate the caretaker's information into the proposed plan. If the caretaker is to play a significant role in the implementation of that plan, her/his desires must always be considered.

(3) If the child is mature enough to participate in a meaningful way, the child should also be included in the process of selecting the permanent plan to be recommended to the Court.

(4) As early as the first interview with the birth parents after family reunification has been ordered, birth parents should receive a full explanation of the reunification process. This should include a discussion of the possible outcomes should their efforts to reunify be unsuccessful.

(5) When placing a child into a home, either kinship foster care or non-kinship foster care, the worker should explain to the child's caretaker the goals of the reunification process and secure the caretaker's commitment to cooperate in that process. The caretakers should also understand the possible permanency alternatives if efforts to reunify the family are unsuccessful.

(6) Concurrent planning should be initiated as soon as possible, given local custom and practice. The worker must sincerely provide services to reunify the family, remembering that should those efforts prove unsuccessful, they will strengthen the basis for the court to establish a permanent plan.

THE IMPACT OF AGE ON THE SELECTION OF GUARDIANSHIP AS THE CHILD'S PERMANENT PLAN

The common wisdom is that workers select adoption for very young children over guardianship and long-term foster care, with the latter two gaining wider acceptability as

the child gets older. We wanted to know if the child's age plays any significant part in the workers' consideration of guardianship as the plan for the child. The respondents were asked to estimate for what percentage of children in each group legal guardianship was typically discussed. The mean response for each age group is presented in Table 9.

Table 9. Workers' Estimates of Percentage of Children in Each Age Range for Whom Guardianship Is Typically Discussed

Age in years	Mean percentage
0-3	50
4-6	58
7-12	66
13-15	65
16-18	54

Regardless of the child's age, the workers estimated that guardianship is given active consideration for at least half of the children. As expected, it is lowest for the youngest age group. The figure for these children seems quite high as adoption is given a higher priority for children at such a young age. However, these numbers might reflect kinship care placements, where adoptions tend to be lower. Also as expected, interest in guardianship rises as the children get older, but only to a certain point. The workers perceive that interest in guardianship drops off with older adolescents, suggesting that workers may be more content to allow this group of children to simply emancipate from foster care rather than seeking more permanent settings for them.

The respondents' written comments added some additional insights. Some clarified that, while guardianship might be considered for the younger children, adoption

is certainly preferable. Some suggested that guardianship was considered on all cases, the idea being the worker did not want to miss any possible permanent placement for a child. A few workers gave contradictory comments about the impact of a kinship placement (apparently regardless of the child's age). One worker said that "legal guardianship is *never* typically discussed with relatives" due to the decrease in financial support in going from AFDC-FC to AFDC-FG (emphasis in original). Another worker said, "(I)n this county, legal guardianship is discussed in *all* cases in which the child is placed with a close relative" (emphasis added).

PRACTICE POINT

Legal guardianship might be the appropriate permanent plan for a child in kinship care, regardless of age, depending upon other circumstances. Adoption should be given the most serious consideration for very young children. Older adolescents remain candidates for permanent placements despite their age, and opportunities for guardianship placements should be pursued.

VISITS

The issue of parent-child visits following the transfer of guardianship from a parent to another adult raises interesting questions. For example, in some cases guardianship is selected as the child's permanent plan on the basis of an ongoing relationship between the child and the birth parent and a ruling from the Juvenile Court that the child would benefit from maintaining that relationship. There has also been speculation that ongoing contact with the child's birth family is associated with the disruption of guardianship placements. What hasn't been clear is how often post-transfer visits are actually ordered by the Court.

Respondents were asked to estimate the percentage of cases in which the Court ordered the guardian to facilitate visits with the birth parents following the transfer of guardianship. Responses ranged from *no cases* to *all of the cases*, with a mean response of 43%.

At least one respondent described the issue as a matter of parental rights: in the transfer of guardianship, parents do not lose their rights and therefore have the right to see the child. Others noted that routine orders put visitation at the "discretion of the guardian" while the experience of others was that some vague order ("reasonable visits") is routinely issued unless the worker can prove such visits would be detrimental to the child. No one described problems regarding visitation issues vis-a-vis kinship/foster care providers who subsequently assume guardianship.

PRACTICE POINT

Workers should consider post-transfer visitation unless such visits would be detrimental to the child and/or the long-term stability of the placement.

PRIORITY AMONG PERMANENCY OPTIONS

The Child Welfare and Adoptions Assistance Act of 1980 clarifies that when children cannot be returned home after a stay in foster care, adoption is the preferred alternative, followed by legal guardianship, and long-term foster care. California's implementing legislation has established the same priority scheme in state statute. We wondered how this was implemented in the field. We assumed if an adoptable child was not going home and was placed with appropriate caretakers who wanted to adopt or with those who wanted to see the child adopted by someone else, that adoption would

be selected as the child's permanent plan. We asked workers what happened when different scenarios unfolded, again dividing the question between children placed with kin and those placed with non-kin.

We first asked workers to assume that an adoptable child was placed with caretakers who did not want to adopt the child but were willing to have the child grow up in their home on a guardianship basis. We asked them to assume that the child had been placed in the home with this caretaker during the entire reunification period. Their responses are noted in Table 10.

Table 10. Workers' Responses to Caretakers Willing to Provide Guardianship but Not Adopt an Adoptable Child

Worker's response	% Responding when child placed with non-kin	% Responding when child placed with kin
Try to convince the caretaker to adopt	19.4	12.9
Recommend guardianship with this caretaker	32.4	82.1
Locate an appropriate adoptive home	48.2	4.9

We then asked workers what they would do if an adoptable child were placed with caretakers who did not want to adopt or become the child's guardians, but were willing to provide the child a permanent home on a foster care basis. Their responses are recorded in Table 11.

Table 11. Workers' Responses to Caretakers Willing to Provide Long-Term Foster Care but Not Be Guardians for nor Adopt an Adoptable Child

Worker's response	% Responding when child placed with non-kin	% Responding when child placed with kin
Try to convince the caretaker to adopt	7.4	11.7
Try to convince the caretaker to assume guardianship	7.0	28.3
Locate an appropriate adoptive home	75.0	19.8
Recommend long-term foster care as the permanent plan	10.7	40.1

For children placed in traditional foster care, the majority of workers clearly were opting for adoption as the permanent plan. They are very willing to move a child out of his or her current home if it means finding a more permanent setting for the child. Said differently, most, but not all child welfare workers were clearly wary of long-term foster care as being a permanent setting for a child and questioned the appropriateness of placing a child identified as adoptable in anything but an adoptive home. About one fifth of the respondents were also willing to move a child from relatives if the kin were unwilling to adopt a child who was clearly adoptable. The plurality was clearly in favor, however, of leaving the child with the relatives, even if that meant under conditions least likely to offer the child a strong sense of permanence.

It is interesting to compare the previous two tables. When unrelated caretakers were willing to accept guardianship of their adoptable foster child, about half the workers would still look for an adoptive home. However, this proportion jumps to 75% when the caretakers are only interested in keeping the child in their home on a foster

care basis. With children in kinship care placements, about 5% of the workers would look for an appropriate adoptive home in those situations in which the caretaker wanted to pursue legal guardianship of their adoptable relative. This jumps to almost 20% when the relative wishes to keep the child only on a foster care basis. This suggests that workers are clearly doubtful about the commitment of those caretakers who are willing to offer the child a home on merely a foster care basis. When an option which reflects even less of a commitment than legal guardianship is introduced, the workers are far more willing to consider removing the child from this home and locating a new family for the child.

POST GUARDIANSHIP SERVICES

Most states do not provide any kind of financial subsidy for the child's support once guardianship has been granted and dependency dismissed.⁶ In California, only unrelated caretakers who assume guardianship are eligible to receive a subsidy, and only then if they also agree to accept the services of a social worker. We have heard anecdotes that such services are minimal, even nominal at best, and that the only purpose served is maintaining the child's eligibility for financial support. Some have even offered the hypothesis that these services serve only to reinforce the image of the child as a *foster child* and undermine his/her role as a permanent member of the family.

⁶ There is no common lexicon throughout the country to use in describing children who have status with the Juvenile Court. California uses the terms *dependent* and *dependency* to refer to children who have been placed under the Court's supervision because of their parents' behavior and *ward* and *wardship* to refer to juveniles with court status because they have committed a crime. Expect workers in other states to use different terminology.

We asked our respondents what they thought about the child welfare services provided to guardians and their wards. Their responses are in Table 12.

Table 12. Workers' Perceptions of the Value of Post-Guardianship Services

Workers' responses	% Responding
Sufficient to meet family's needs	60.9
Insufficient to meet family's needs	13.3
Unnecessary	23.0
Harmful to the long-term stability of the placement	2.7

Clearly a majority of social workers see post-guardianship services as sufficient to meet the needs of the guardian and the ward. However, almost 25% of respondents believe the services are unnecessary. Very few held the opinion that they were actually detrimental to the well-being of the placement.

Only a few of the workers added any comments regarding post-guardianship services. Two commented on the potential for abuse of the subsidy money by the guardian. One worker identified a function of the after-guardianship visits with the family as checking to ensure the "funds are used for the child genuinely and not to remodel their home." Another worker identified with the possible damaging effect ongoing case monitoring might have, observing that the child "still feels like a 'foster child' and parents think they have an easier 'out' if the minor starts 'acting out.'"

PRACTICE POINTS

(1) Workers providing services to guardians and wards after guardianship has been established need to ensure that their efforts go to strengthening, not undermining, the child's position as a full member of the family.

(2) Workers can use the opportunity of their contacts with the family to ensure that the child's basic needs are being met and that the money provided for the child's support is being spent appropriately.

ASSESSING GUARDIANSHIP IN KINSHIP CARE PLACEMENTS

The use of relatives to provide out-of-home placement for children coming into care has been on the rise in recent years, so much that about one half of all California foster children are now placed with their kin. When it comes to selecting permanent plans, however, kin are less likely than non-kin caretakers to adopt. Some kin are also reluctant to assume legal guardianship if it means a reduction in the financial support they receive for caring for their young relatives. With that background, we asked about the assessment practices and assumptions workers use when preparing their recommendations for a permanent plan. Respondents were given seven possible practices and asked whether they were typical of the practice in their agency. Suspecting that workers will assess younger children differently than older children, workers were first asked to assess the practices for children ages 0-7, then again for children ages 8-17. Their responses are in Table 13.

Table 13. Percent of Workers Indicating Assessment Practices Are Typical in Their Agency for Children Ages 0-7 and 8-17

	% Workers indicating agency practice*	
Assessment practice	Children age 0-7	Children age 8-17
Assume that relatives are not typically interested in adoption and recommend guardianship	13.8 (6)	22.4 (6)
Assess for adoption, but only if relatives initiate	16.4 (5)	22.8 (5)
Assess for the appropriateness of both adoption and guardianship	96.3 (1)	94.8 (1)
Discourage kin from continuing in long-term foster care	52.2 (2)	36.5 (3)
Offer kin long-term foster care as an alternative to adoption and guardianship in all situations	29.3 (3)	69.8 (2)
Offer long-term foster care as an option only to financially needy kin	26.4 (4)	25.9 (4)
Remove adoptable children from kin who are unwilling to adopt	11.4 (7)	4.5 (7)

*Ranks per age group are in parentheses

About 11% of the respondents report their agency's policy is to remove adoptable young children from their kin who are unwilling to adopt. Yet, about 20% of the workers said they would look for an adoptive home in such situations, leading one to wonder if workers feel more strongly about placing children in adoptable homes than their agency policies permit them to actually carry out.

PRACTICE POINTS

- (1) As a general rule, avoid making assumptions about what kinship care providers think or what they might want to do regarding providing a permanent home for their young relative. All possible options should be explored.
- (2) Consistent with local policy and practice, workers should encourage kinship care providers to consider the option which will afford their young relative the strongest sense of permanence.
- (3) Workers should be sensitive to the family's financial issues which may have an impact on their selection of a permanency option.

TRANSRACIAL GUARDIANSHIPS

There may be no issue more controversial in child welfare than transracial adoption. Since legal guardianship was established by the Child Welfare and Adoptions Assistance Act as the second in the list of preferred permanent plans for children, we wondered if the issue of transracial guardianship evoked the same kinds of responses as transracial adoption. As can be seen in Table 14, while no one thought transracial guardianships were more controversial than transracial adoptions, they were relatively evenly split on whether the two were equally contentious, with slightly more indicating the two are equally controversial.

Table 14. Workers' View of Transracial Guardianship

Opinion of transracial guardianship	% Agreeing
Equally as controversial as transracial adoption	53.7
Less controversial than transracial adoption	46.3
More controversial than transracial adoption	0

How did this translate into practice? We asked the workers how often transracial guardianship placements are actually made. Table 15 illustrates their responses.

Table 15. Frequency of Transracial Placements

Frequency of transracial guardianship placements	% Responding
Placements are sometimes made	56.5
Placements are rarely made	35.9
Placements are frequently made	7.6

Workers are clearly ambivalent about transracial guardianship placements. Over one third believe such placements are only rarely made, while a majority indicate such placements are made only sometimes. Only a small group indicated their impression that transracial guardianship placements are made with any kind of regularity.

PRACTICE POINT

The role race and ethnicity should play in the selection of adoptive parents for children in care is the topic of much controversy and recent federal legislation (the Metzenbaum Multiethnic Placement Act). There is a strong sense that placing children in prospective adoptive homes should not be significantly delayed in order to locate adoptive parents matching the child's race or ethnicity. In guardianship, the selection issues and processes are very different. Most frequently the proposed guardian is either a relative or the child's current caretaker. In neither case does the proposed guardian necessarily share the child's race/ethnicity. If guardianship placements are consistent with the new adoptions law, if an appropriate guardian is being proposed for the child who is not of the child's race or ethnicity, the worker should proceed with this placement and not delay securing the child's permanent placement in the hopes that a racial or ethnic match can be made.

CHOOSING A GUARDIAN

When adoption is proposed as the child's permanent plan, the child's current caretakers frequently become the adoptive parents, but this is not necessarily so.

Although it is a practice with some notoriety, many times the birth parent's rights to the child are terminated without the County knowing specifically who will adopt the child. The child is assessed to be adoptable and the worker determines that even though a specific family is not yet identified, there will be no problem in finding an appropriate adoptive family.

We asked the workers what happens in legal guardianship. We wanted to know how often guardianship is identified as the appropriate plan for the child before a specific proposed guardian is identified. For those cases in which guardianship is selected as the permanent plan, we asked how often someone other than the child's current caretaker is identified as the prospective guardian. Their mean responses are reflected in Table 16.

Table 16. Mean Percentage Responses Indicating Frequency of Guardianship Cases Having an Identified Prospective Guardian and Cases When That Person Is the Current Caretaker

Condition under which guardianship is selected	Mean percentage response
Prospective guardian is identified	83.0
Prospective guardian is not the child's current caretaker	13.3

Guardianship is almost always awarded to the adult who is presently caring for the child. Since a routine goal of most caseworkers is to reduce the number of placement changes a child must experience, this is a positive indicator. The child is able to remain in the home in which she or he has already established connections with the other family members and to secure those connections in a permanent setting.

The child welfare workers estimated that the guardian is identified in about 83% of the cases in which guardianship is proposed as the plan. What is unclear is why this number is not higher. Why are workers proposing guardianship as the plan without knowing who the guardian will be in 17% of the cases? Perhaps there are multiple candidates and the worker is conducting an assessment to determine their relative appropriateness. It seems unlikely that guardianship, in contrast to adoption, is such a highly desirable state that the worker will select it in the hopes of finding a guardian for the child at some later time. Unfortunately, the respondents did not make any comments which would clarify this issue.

PRACTICE POINT

If the child is unable to return home at the end of the reunification period and adoption is not an available option, the worker should pursue the guardianship option with the current caretaker rather than looking elsewhere for a suitable candidate.

GUARDIANSHIP HELP FOR CHILD WELFARE WORKERS

How does a child welfare worker know when guardianship is the appropriate plan to recommend instead of adoption or long-term foster care? Do workers feel adequately prepared to address the questions about guardianship that caretakers ask of them? We asked our respondents about what assistance they get in the area of guardianship that helps them do their job better. Specifically, we inquired about the availability of guidelines for workers to use in assessing a child and his caretakers for guardianship and about the level of technical training they received on guardianship. Their responses are in Tables 17 and 18.

Table 17. Workers' Perceptions of Availability of Guardianship Guidelines

Perception of availability of guidelines	% Responding
No guidelines are provided	2.0
Only informal, unwritten guidelines are provided	26.4
Informal, written guidelines are provided	15.4
Formal written guidelines are provided	56.1

Table 18. Workers' Perceptions of the Level of Training Received on Guardianship

Perception of training	% Responding
Received little or no training	18.1
Received some training, but insufficient to respond to caretakers' questions	32.7
Received training sufficient enough to be able to respond to caretakers' questions	49.1

Over half of the workers indicated they had formal written guidelines to use when assessing a potential guardianship situation. However, a sizable minority (almost 43%) rely on some informal tools when conducting their assessments. Likewise, about half the respondents indicated they had received enough training to respond to the questions posed to them by the children's caretakers; half did not. Some of those making comments indicated they simply send out written material to the caretakers, apparently on the belief this will be sufficient. Others indicated they supplemented the formal training provided by their department with information obtained from other sources.

We found, as one would suspect, a significant relationship between workers' length of experience in child welfare and their assessment that their training had been

adequate. Those with 2 or more years tended to be more satisfied with their level of training on legal guardianship.

PRACTICE POINT

Workers need to be adequately prepared for responding to questions from foster care and kinship care providers regarding guardianship, especially as it compares to the other permanency planning options. While it seems likely that over time workers will receive this training, those who feel inadequately prepared should make their needs known to their supervisor or other appropriate staff.

GUARDIANSHIPS COMING TO AN END

Once an adoption is finalized, the parent and child have a formal, legal relationship that continues throughout their lives (barring any set-asides). That is not so with legal guardianship. Relieving oneself of the status and obligations of guardianship is far easier to do than setting aside an adoption. Indeed many caretakers, especially foster care providers, choose guardianship over adoption with the knowledge that they can change their minds if the arrangement proves unworkable. Additionally, by definition, guardianship ends when the minor reaches the age of majority. While the personal relationship can and hopefully does continue, any legal obligation the guardian had to the ward is terminated. As with any young person reaching age 18, the former ward now has a series of choices to make regarding his or her future.

We wanted to know more about why guardianships disrupt prior to the child reaching the age of majority. We gave the workers a series of reasons which might explain the premature termination of guardianship and asked the workers to estimate the percentage of disruptions in which this was a problem. To get some sense of the

extent of the problem, we also asked the workers to estimate how many guardianships end with emancipation.

Unfortunately, the respondents' total estimate of each reason for termination exceeded 100%, making interpretation very difficult. Given the choices provided to them, the workers did estimate that the guardian's unwillingness to continue to be responsible for the child was the most common reason for guardianship terminations, followed by emancipation, disruption at the child's initiation, and lastly to return the child to a rehabilitated parent. The latter reason is worthy of comment. Disruption of a guardianship in order to return a child to a rehabilitated parent, to the extent that it happens in some significant number of cases, would appear to undermine the philosophical basis for permanency planning.

In theory, the child's location in a permanent home is to be interrupted only during the reunification period (and, should that be unsuccessful, perhaps for an additional brief period of time while a permanent home is located). Maas and Engler (1959) were highly critical of a system in which the parents were able to come in and out of the child's life, effectively thwarting whatever sense of belonging the child might have in his or her current placement. Guardianship is intended to provide the child a sense of permanence, uninterrupted by the parents (regardless of how positive the changes in the parent's life might be). If the parents are able to come back and petition the court to disrupt the child's permanent placement even after their reunification time has expired, it would appear the system has not advanced far beyond its state in the 1950s when Maas and Engler conducted their study.

One might argue (with some legitimacy) that if the guardianship is granted to a

relative and the parent maintained contact with the child while continuing her or his efforts to rehabilitate, the child's sense of connectedness to the parent was never broken and that a return to a rehabilitated parent would not be particularly disruptive. However, at least one respondent was suspicious of such situations. This worker had experienced situations in which the guardian claimed the parent had rehabilitated when in fact he or she had not. The worker was highly critical of the court for taking the kin's word for the parent's accomplishments and for not seeking independent confirmation of the claim.

The workers estimated that the primary reason guardianships disrupt is because the guardian is no longer willing to be responsible for the child. There are, of course, countless reasons why a guardian might have a change of heart. Our respondents offered several suggestions: the guardian's unwillingness to address the child's behavioral or emotional problems (especially when the child enters adolescence), pressure from the birth parents to surrender the guardianship or from other relatives who want to assume the guardianship, simply desiring to have the child out of the home, moving to a new home and not wanting to take the child with them, the guardian's own health or personal problems (e.g., divorce), and a lack of financial support and/or social services.

Fundamental to the question is the issue of commitment to the child. Indeed, several of the workers commented that the lack of commitment on the guardian's part was underpinning the request to have the child moved: had the guardian made more of an initial commitment to the child, she or he would have found a way to resolve the other problems. This was comparable to a comment made in the focus groups: one

does not usually give back a child that has been adopted, so why should they give back their ward? Many policy and practice issues arise from this finding.

The respondents estimated that approximately one third of the disruptions are initiated by the child. This estimate seems rather high. Unfortunately, the workers' supplemental comments do not offer much insight regarding this. They do suggest that abuse of the minor by the guardian is a frequent reason for disruption, so perhaps the child is reporting abuse as a means to call attention to an intolerable situation and secure his or her removal from the home. Abuse, of course, could be reported by someone other than the minor and, even if reported, may not lead the child to want another placement, much as abused birth children frequently do not wish to be removed from their homes. This requires further clarification.

Workers were given the opportunity to propose additional reasons for guardianship disruption. Most were variations or clarifications of those itemized in the previous paragraphs. Only one worker suggested that the guardianship might be terminated as a result of the guardian's decision to adopt. Death of the guardian was suggested more often and raises a variety of issues, one of which is the naming of a *successor in interest*. A successor in interest is one who assumes the guardianship of the child in the event of the guardian's death. Such a successor can be named at the time the original guardianship papers are issued by the Juvenile Court or at any subsequent date, including at the time of the guardian's death.

We were also curious about what steps a guardian would have to go through in order to have a guardianship rescinded if that is the decision he or she has reached.

We conditioned the question with the assumption that the guardian did not desire to work toward reunification. The workers' responses are in the following table.

Table 19. Steps for Guardian to Have Ward Removed and Guardianship Vacated

Course of action	% Responding
Worker petitions the court to vacate the guardianship order and reinstate the prior dependency	49.8
ER/Court worker files a new petition under Welfare and Institutions Code §300 against the guardian	29.0
Child's attorney petitions the court to vacate the guardianship order and reinstate the prior dependency	7.4
Other	13.9

In most jurisdictions, it appears that all the guardian need do is contact the worker and ask to have the child removed and the guardianship orders vacated. Half the workers report that rather than filing a new dependency action, they simply petition the court to reinstate the child's prior status as a court dependent. Another 29% indicate that they will file a new action in Juvenile Court, naming the guardians in the petition to declare the child a court dependent. Their comments may modify this slightly, as some suggest that this is done only when the guardian is alleged to have abused or neglected the ward. Others suggested that it depends upon whether or not the child's dependency was dismissed at the time the guardianship was granted. If it was not, the practice in some counties is for the worker to file the petition. However, if dependency was dismissed, then the burden falls on the guardian to bring the matter back before the court. Other workers indicated that in their county it is always the case that a guardian must retain an attorney who files the petition to vacate the guardianship order and

reinstate the prior dependency. Only a few workers report that the task of bringing the case back to court falls to the child's attorney.

PRACTICE POINTS

(1) Workers should prepare guardians for the types of issues they are likely to encounter once guardianship has been ordered. Certainly these include the normal challenges that come with living with adolescents, but also potential problems with educational, health, and relative and/or birth parent involvement.

(2) Workers should assess carefully the potential guardian's level of commitment to the child. Guardianship must not be viewed as merely another form of foster care, but as a change reflecting the integration of the child into the family.

(3) Workers providing post-guardianship supervision will typically only see the family once every 6 months. These opportunities should be used to assess problems which pose a potential threat to the placement in their initial stages so that they can be addressed before actually threatening the stability of the placement.

(4) Workers must discuss with kin their responsibility to the ward and his or her protection, pointing out the likely conflicts that will come from their loyalty to the child's parent.

PREVENTING GUARDIANSHIP DISRUPTIONS

We were curious what efforts the county made to assist guardians and their wards when problems arose which threatened the stability of the placement. We broke the problems into two types, those involving abuse and neglect allegations, and any other kind. The responses to the protective services situations are in Table 20.

Table 20. Casework Options When Guardians and Wards Experience CPS Problems

Casework options	% Responding
Child welfare worker carrying the case continues to serve the family	61.2
Other	30.4
Case is transferred to a Family Maintenance worker	8.4

Most workers indicate that the legal guardianship worker would continue to provide services to the family during this crisis. From the comments, the sizable "Other" response appears to reflect the practice in many jurisdictions to have an Emergency Response worker assume responsibility for assessing the child's continuing safety in the home. In some places, the legal guardianship worker continues to have some ongoing responsibility for the case while the CPS assessment takes place, while in others, the ER worker assumes sole responsibility.

The workers' responses to those situations in which the presenting problem is something other than concern about abuse or neglect are presented in Table 21.

Table 21. Casework Options When Guardians and Wards Experience Other Than CPS Problems

Casework options	% Responding
Assigned worker makes appropriate referrals and increases his/her contact with the family or transfers case to another worker who will	53.1
Assigned worker makes appropriate referrals but otherwise has no additional contact with the family	30.7
Other	14.5
Case is transferred to a Family Maintenance or Family Preservation worker	1.7

Just over half the workers indicate they or someone else would increase their support for the family during the time of crisis. Somewhat surprising were comments from the workers that essentially, these families are on their own. This opinion was expressed especially for families for which the ward's dependency had been dismissed (since dependency is dismissed in most cases, this is interpreted to mean those guardianship cases in which no ongoing services have been provided after the letters of

guardianship were issued). From a policy perspective, given the investment already made by the agency in securing a home for the child, it would seem well worth the effort to expend a few more resources in order to preserve the placement.

PRACTICE POINTS

(1) Social workers can help to prevent guardianship disruptions during the semi-annual contacts with the family. Use of basic social work assessment skills to detect problems in their formative stages and appropriate early intervention will reduce the amount of trauma the family can expect later without the worker's early intercession.

(2) The expenditure of additional resources to preserve a child's guardianship placement should be viewed in light of the resources already expended to obtain that placement and those likely to be expended should this placement fail. Workers should intervene promptly and fully when a family calls for assistance.

EMANCIPATION ISSUES

As noted earlier, once the child reaches age 18, the guardian's legal obligations cease. We wondered what happens to the young adult once he or she no longer has that legal tie to the guardian. We asked the workers to estimate the percentage of wards who experience each of a series of outcomes immediately after emancipation.

Once again, the sum of the respondents' estimates exceeds 100%, making interpretation difficult. Clearly the respondents sense that about the same number of wards stay with their guardians as go into some kind of independent living situation. If the proportion of those remaining with their guardian is at all accurate, it speaks well for the level of commitment and family integration experienced by those children, that is, that their relationship with their guardian was more than merely legal.

Likewise, the respondents estimated that approximately the same number of wards return to their birth parent's home as locate another relative with whom to reside.

This issue of return to the family of origin remains a fascinating one. One wonders about the extent of contact the ward had with his or her relatives during the time guardianship was awarded to the nonparent, and whether the type of placement (either kin or non-kin) has any effect on the choice the young adult makes.

PRACTICE POINTS

(1) Those wards placed with unrelated guardians should be encouraged to participate in the Independent Living Program offered by the county.

(2) Wards placed with related guardians may be eligible for services through the Independent Living Program. Workers should explore this option and other community services available to help adolescents prepare for living on their own.

CONCLUSION

The dynamics of the decision to select legal guardianship as a foster child's permanent plan are complex. Many interested parties can participate and many factors must be taken into consideration. This paper has attempted to clarify that complexity and provide lessons from the common wisdom of those in the field. Suggestions for practice based on that wisdom are provided to assist the new child welfare worker in fulfilling his or her role in the decision-making process.

HANDOUTS

HANDOUTS

INSTRUCTIONAL GUIDE

This section of the curriculum is designed as an instructional aid for the classroom instructor. Materials are provided as handouts for students (instructors have permission to copy and distribute) or can be made into transparencies or viewed with a computer projector so that the instructor can choose the medium that best suits his or her needs.

We review some of the major factors with which child welfare staff working in legal guardianship need to be conversant. These materials have been developed to indicate best practice standards for child welfare workers. They are based upon a review of the literature in addition to our focus groups with child welfare workers from across the state.

10 IMPORTANT POINTS REGARDING LEGAL GUARDIANSHIP

1. **All children have a legal guardian.** For most children, their birth parent(s) fulfill(s) this responsibility. For those children whose parents are deceased or who are otherwise incapable of performing the duties of the guardian, another person should be selected. In such situations, the adult is referred to as the *guardian* and the child as the *ward*. All references to *guardians* and *guardianship* in this document are to appointed guardians, not to parents.
2. **Legal guardianship** was first conceptualized in the mid 1960s as a way by which foster children who could not return home could **exit foster care**, but was not routinely used this way until the passage of P.L.96-272 (The Child Welfare and Adoption Assistance Act of 1980). While not as permanent a setting as **adoption** and lacking many of the benefits of adoption, **legal guardianship** offers a child a more secure placement and commitment on the part of his or her caretakers than **long-term foster care**.
3. Unlike adoptions, **legal guardianship does not result in the termination of parental rights**. Rather, parental rights are held in abeyance while the named guardian assumes the typical parental functions. In some jurisdictions, the Juvenile Court will establish a visitation schedule for the birth parents at the time guardianship is being granted. Similarly, **parental obligations are not terminated** either: a parent is still financially responsible for the well-being of his or her child.
4. Guardianship can be granted for the **person** of the child, the **estate** of the child, or both. In routine legal guardianships emanating from the child welfare system, only guardianship of the person is granted. If, however, the child has some substantial real or personal property or other assets, a guardian of the estate might also be named. The same person can be named to serve in both capacities, but it can be (and frequently is) more than one person.
5. The legal guardian has the **right** to determine where in California the child will live, choose the child's school and educational program, and consent to medical care in most situations, to an underage marriage, to the child's enlistment into the armed forces, and to the child's obtaining a driver's license. Other states have different rules regarding guardianship. Typically guardianships must be re-established if the family moves to a new state.

6. A guardian is generally liable for harm resulting from the child's willful misconduct and in some situations can be responsible for the child's negligent misconduct. The legal guardian is typically **responsible** for any civil damage resulting from the child's driving if the guardian has consented to the child obtaining a license (this consent can be revoked at any time). The guardian is not usually responsible for the child's support, although many voluntarily accept this responsibility. Additionally, the judge may impose other responsibilities on the guardian at the time guardianship is granted.
7. Most states do not offer any **financial subsidy** to caretakers assuming legal guardianship of a child. California as of this writing offers **unrelated caretakers** a subsidy up to and including the full amount of the foster care grant, Medi-Cal, and the services of a child welfare worker. Related caretakers who become guardians may apply for AFDC, but the child must meet the standard eligibility criteria. Medi-Cal comes with the AFDC grant, but supportive services from a child welfare worker are not provided.
8. However, some counties in California are offering **financial subsidies** to some **related caretakers** who assumed guardianship of their young kin by maintaining the child's dependency status with the Juvenile Court after guardianship has been granted. This enables the child who was already eligible for AFDC-FC benefits under **Miller vs. Youakim** to continue to receive support payments at the higher level. The child placed with relatives and not eligible for benefits under the Youakim decision would continue to receive the smaller amounts under the AFDC-FG payment schedule (assuming continuing eligibility).
9. Legal guardianship is not the same thing as the **guardian ad litem**, another term heard frequently in and around Juvenile Court. A guardian *ad litem* is appointed to represent the child and his or her interests in a given Juvenile Court matter and has no duties or responsibilities to the child outside this arena. The appointed legal guardian assumes the ongoing, daily care, fulfilling the responsibilities of the child's parent.
10. Legal guardianship **terminates** automatically when the child turns 18. Prior to that time, either the guardian or the ward (if age 14 or older) can ask the Juvenile Court to vacate the guardianship orders. Vacating guardianship orders is far less complicated than setting aside an adoption decree, but more difficult than having a child removed from the home who was placed there under a long-term foster care arrangement.

ASSESSING FOR LEGAL GUARDIANSHIP

General Questions for the Child

- 1. Is this an okay place for you?**
- 2. Do you want to stay here?**
- 3. What is an average day like?**
- 4. What scares you?**
- 5. What are your wishes? What are your dreams?**
- 6. What makes you happy? What makes you feel good?**

ASSESSING FOR LEGAL GUARDIANSHIP

Assessing the Child's Integration Into the Family

- 1. What does the child call his/her caretakers?**
- 2. What do the other family members call the child (i.e., is he/she still "the foster child"?)**
- 3. Are the child's fundamental needs (e.g., dental, medical, educational, emotional/psychological, moral) being met?**
- 4. What happens when the child gets in trouble? How is he/she disciplined?**
- 5. In what activities is the child involved?**
- 6. What does the family do on the child's birthday?**
- 7. Does the child want to live here forever?**
- 8. Is the child part of the family's social and religious activities?**
- 9. Are pictures of the child present with the family pictures?**
- 10. Does the child have his/her own special things?**

ASSESSING FOR LEGAL GUARDIANSHIP

Questions for and About the Caretaker(s)

- 1. Why does the caretaker want guardianship? (Looking for "I love them," "I don't want them to get moved around," "I want to provide a stable home for them.")**
- 2. What does the potential guardian think will be different after guardianship is granted from the present arrangement?**
- 3. How will the potential guardian handle parental visits (especially if no worker is to be assigned in the post-guardianship phase)?**
- 4. Do the caretakers participate in the child's school activities?**
- 5. How emotionally stable is the family?**
- 6. What are the caretakers' child-raising skills?**
- 7. In the case of kinship care providers, do they have any agendas vis-a-vis the child's parent(s)?**
- 8. Does the proposed guardian have a criminal or child abuse background?**

ASSESSING FOR LEGAL GUARDIANSHIP

Preparing the Child for Guardianship

- 1. If the child is older, ask him or her to explain what he or she thinks guardianship is.**
- 2. Advise the child he or she is going to stay with this family until he or she becomes an adult; the caretakers will assume the major parental responsibilities.**
- 3. Some children need to know that their parents will not be able to just come and take them.**
- 4. If child has a history of placement changes, the child needs to know there will not be any more moves.**
- 5. If appropriate, explain that the parents do not lose their rights.**
- 6. If appropriate, explain the guardian's rights and responsibilities.**
- 7. Explain role of social worker (if any).**

ASSESSING FOR LEGAL GUARDIANSHIP

Preparing the Caretaker for the Role of Guardian

- 1. Provide the prospective guardian with any information sheets such as the "Rights and Responsibilities of Legal Guardianship" handout that most counties have. Especially with kin, emphasize the changing legal nature of the relationship.**
- 2. Discuss the changes that pre-adolescents will go through during puberty. Talk about some of the conflicts they should anticipate and how they will handle them.**
- 3. Try to get the caretakers to assume a family systems perspective so that when problems arise, the family system will respond, thereby avoiding projecting blame onto the child.**
- 4. Provide caretakers with lists of resources the family can draw upon when difficulties do arise. Encourage them not to wait until the problems get serious before asking for assistance.**
- 5. Make sure kinship care providers understand about the change in the financial arrangement (assuming dependency will be terminated); advise them of the process for applying for AFDC if appropriate.**
- 6. Advise unrelated caretakers of the process for continuing their financial support from the county.**

ASSESSING FOR LEGAL GUARDIANSHIP

Tips

- 1. Take advantage of time. Start the assessment 6 months before the change is to occur. Get to know the child and the family before you have to make the recommendation.**
- 2. Be honest with the child and the caretakers. Legal guardianship is not a panacea for whatever problems the family may have been facing, especially in kinship care situations.**

REIMBURSEMENT FOR PARENTS AND CARETAKERS IN FOSTER CARE, LEGAL GUARDIANSHIP, AND ADOPTIONS

	Foster care			Legal guardianship			Adoption
	Kin		Non-Kin	Kin		Non-Kin	Kin or non-kin
Assistance type	AFDC-FG	AFDC-FC ⁷	AFDC-FC	AFDC-FG ⁸	AFDC-FC ⁹	AFDC-FC	AAP
Source	Title IV-A	Title IV-E	Title IV-E	Title IV-A	Title IV-E	Title IV-E	Title IV-E
Eligibility	Means test/ personal property limits (child)	Miller v. Youakim	Child's status as a dependent of the Court	Means test/ personal property limits (child)	Child's status as a dependent of the Court	Universal (including guardianships granted under the Probate Code)	Must meet definition of "hard to place," tied to needs of child
Amount	Varies with number of children in eligible family budget unit	Varies with age of child, increasing as child ages	Varies with age of child, increasing as child ages	Varies with number of children in eligible family budget unit	Varies with age of child, increasing as child ages	Varies with age of child, increasing as child ages	Varies with needs of child and resources of parent(s) ¹⁰
Redetermination	Annual while in out-of-home care	Annual while in out-of-home care	Annual while in out-of-home care	Annual while guardianship remains intact and other eligibility factors are met	Annual while guardianship remains intact	Annual while guardianship remains intact	Annual until the child reaches age 18

⁷ AFDC-FC is available to those kinship care providers whose related child was removed from his/her home as a result of a court decision, the child was receiving or was eligible to receive AFDC prior to placement, and the application for AFDC-FC was made by or for the birth parents within 6 months after placement of the child (the Miller v. Youakim decision). The kinship care provider can also get AFDC-FG if he or she is needy.

⁸ Assumes dependency status with the Juvenile Court is terminated.

⁹ Assumes dependency status with the Juvenile Court is maintained after guardianship is granted.

¹⁰ Nominally, AAP is not means tested in California. However, parents with incomes higher than the statewide median are considered less eligible for the basic subsidy rate (i.e., the AFDC-FC rate for a child that age). Eligibility for special needs payments is not affected by the income of the parents(s).

COMPARING THE THREE PERMANENT PLACEMENT OPTIONS

	Adoption	Legal guardianship	Long-term foster care
Termination of parental rights?	Yes	No	No
Gives child's caregiver authority to make decisions regarding the child?	Yes	Yes	No
Ongoing contact with child's birth parents?	No (unless open adoption)	Possible (depending upon court orders)	Usually
Provides child with strong sense of integration into family and security of placement (assuming non-kinship placement)?	Yes	Yes (less than adoption, more than long-term foster care)	Rarely
Routine monitoring of child by the Juvenile Court?	No	No (but true for some kinship cases)	Yes
Continuing financial support from county?	Possible	Possible	Yes
Continuing social service support from county?	Post-adoptive services	For non-kin guardians and children maintaining Juvenile Court dependency status	Yes

SUMMARY OF CALIFORNIA APPELLATE COURT DECISIONS REGARDING LEGAL GUARDIANSHIP

In re Lisa D. (1991; 227 Cal.App.3d 613)

The Welfare and Institutions Code requires that a social study of a proposed guardian contain specific items (e.g., information regarding a search of criminal and child abuse records for the name of the proposed guardian and a statement of the proposed guardian's understanding of the financial responsibilities involved in legal guardianship). In the case of Lisa D., the social study did not contain this information and the parent appealed the order appointing a guardian for Lisa. The Court of Appeals sided with the parent. The Court held that the information was needed by the Court in order to make an informed decision regarding the appropriateness of this placement for the child.

In re Autumn H. (1994; 27Cal.AppAth 567)

Autumn's parents appealed the termination of parental rights order, arguing that the statute (Welfare and Institutions Code §366.26) was unconstitutionally vague. The Appeals Court upheld the order terminating parental rights. In so doing, it said, "adoption, where possible, is the permanent plan preferred by the Legislature." It also said, "only if adoption is not possible, or if there are countervailing circumstances, or if it is not in the child's best interest, can less permanent plans such as guardianship and long-term foster care be considered."

In re Beatrice M. (1994; 29 Cal.AppAth 1411)

The law (Welfare and Institutions Code §366.26) provides certain exceptions to the requirement that the Court order adoption as the child's permanent plan after finding that the child is adoptable. One of these exceptions is that the child would "benefit from continuing the relationship" with the birth parent. In the case of Beatrice M., the child's birth mother appealed the order terminating her parental rights, arguing that she and Beatrice and Beatrice's siblings had "frequent and loving" contact. The mother felt that this should establish the exception, and that the Court should have ordered legal guardianship as the children's permanent plan instead of adoption.

The Appeals Court upheld the termination of parental rights. The Court said that no matter how frequent and loving the mother's contact with her daughters, she had not "occupied a parental role in relation to them at any time during their lives." Further, the Court said, "guardianship is only the best possible permanent plan for children in circumstances where the exceptions to terminating parental rights in §366.26(c)(1) apply."

In re Cody W. (1994; 31 Cal.AppAth 221)

Conflict is frequently perceived between the "best interests of the child" standard and the requirement for finding the "least detrimental alternative." Many lawyers have interpreted the latter to mean long-term foster care and legal guardianship, plans less detrimental to the status of the parent-child relationship than adoption, should take precedence over adoption.

Clearly impatient with this kind of rationale, the Appeals Court held that the "least detrimental alternative concept" has never meant that the Juvenile Court, at the selection and implementation hearing (i.e., the Welfare and Institutions Code §366.26 hearing) must first consider long-term foster care or guardianship before adoption. It said, "legal guardianship and long-term foster care are not considered by the court until adoption and termination of parental rights have been rejected."

In re Jacqueline L. (1995) 33 Cal.App.4th 325)*

In this case, the Juvenile Court ordered that legal guardianship should be the permanent plan goal for Jacqueline, a Native American child covered by the provisions of the Indian Child Welfare Act. This order was appealed. The Court of Appeals reversed the guardianship order and sent the case back to the Juvenile Court with directions to change the goal to adoption and to terminate parental rights. The Court said, "We hold that increased opportunities to learn more about an ethnic or national culture associated with one's parents or ancestors is legally insufficient under any part of §366.26 to justify the selection of guardianship over adoption as the permanent plan for dependent children who are likely to be adopted....There is a big difference between being adopted and having only a legal guardian. Adoptions are permanent. For better or worse, the parties are stuck with each other. Not so with guardianships, which can be ended with a court hearing. Thus it is only common sense that for children who cannot be returned to their natural parents, the law favors adoption."

*Note: this opinion has been depublished, meaning that it cannot be cited as precedent in other cases. It apparently remains the decision for Jacqueline.

VIGNETTES (Instructor's Version)

#1 Twelve-year old Johnny has been placed with the Cooper family since he was removed from his mother 18 months ago. Johnny's mother has visited Johnny regularly since he became a court dependent, but has not fulfilled any of the other requirements of the reunification plan. She continues to be alcohol dependent. The Coopers are committed to Johnny and would like to offer him a home until he becomes 18. They have also indicated their willingness to help him through college if that is what he chooses to do.

Questions:

(A) *What else do you need to know about this case in order to recommend an appropriate permanent plan?*

1. Beware the assumption that regular visits are necessarily positive visits. Have the visits gone well? What is the relationship between Johnny and his mother? Should visits continue after the selection and implementation of a permanent plan? How do the Coopers feel about that?
2. What is the nature of the relationship between Johnny and his father? Is he out of the picture? What are his desires for his son, and what weight should those desires be given?
3. What does Johnny want to do? At age 12, his wishes will be given some deference in most courtrooms.

(B) *Assuming that adoption will not be selected as the permanent plan, what is the better of the remaining options and why?*

1. Legal guardianship is preferred, as it will provide the greater sense of stability and reflects a deeper commitment. The worker needs to ensure that Johnny understands what legal guardianship is and is not, and that this is in accordance with his wishes.

(C) *What, if any, additional preparation would you offer the Coopers before moving into a permanent plan with them?*

1. Guardianships become very vulnerable when the wards reach adolescence. This may be especially true here, given the relatively late age at which Johnny came into care. The Coopers should be prepared to address any threat to the placement brought on by

Johnny's struggling with both normal adolescent issues and any additional ones brought on by the separation from his birth family. As noted above, if visits with the birth mother will be an ongoing factor, they may need help dealing with both the practical issues of arranging the visits (including any necessary supervision) and dealing with any negative consequences related to the visits

#2 Fifteen-year-old Keisha and 11-year-old Steven have been living with their aunt for 2 years. Neither parent was successful in completing the reunification plan, despite a court-ordered extension of the reunification period. The aunt is willing to continue caring for the children and has the support of many extended family members.

Question:

(A) *What permanent plan will you recommend and why? What, if any, financial issues will you take into consideration in making this decision?*

1. As in all situations, adoption should be considered. However, as a group, kin tend not to adopt their young relatives, nor typically do adolescents desire to be adopted. If this proves to be so in this situation and the family was receiving either AFDC-FG benefits or no support from the county, legal guardianship should be recommended. If the family was receiving AFDC-FC benefits to support the children and can afford the cut in financial support OR if the county will continue court dependency following the transfer of guardianship, then guardianship should also be the plan of choice. Long-term foster care should be considered here only as a last option.

#3 Four-year-old Maria is living with her 59-year-old grandmother and has done so off and on since birth. Her father has never been a significant figure in her life. Maria's 20-year-old mother would like to be part of Maria's upbringing but has serious issues of her own, which she is attempting to address. The end of the reunification period is approaching.

Questions:

(A) *Should adoption be considered? Why or why not?*

1. Adoption should almost always be considered for a 4-year-old. Workers should avoid jumping to the conclusion that just because this is a kinship care placement that adoption is not a realistic plan. If the grandmother is unwilling or unable, perhaps there will be another family member who will.

2. Some will argue that at age 20, this young mother still has a lot of time to rehabilitate herself and therefore should not lose her daughter. While this is certainly possible, at the end of the reunification period, the focus of the Juvenile Court process is on selecting a *permanent* home for the child, not on the mother's potential for rehabilitation. The worker should proceed with finding the placement for the child that will afford her the highest degree of permanence.

(B) What impact will the selection of the permanent plan have on Maria's mother's desire to have a role in rearing her child?

1. Assuming that allowing Maria's mother some ongoing role in Maria's life is desirable, adoption need not be excluded. If Maria can be adopted by a relative, an open adoption of some kind is a very real possibility. Issues regarding the exact role Maria's mother will play will need to be addressed. Adoption by a non-relative may make an open adoption less likely but certainly not impossible.
2. A plan for legal guardianship offers Maria the opportunity for a permanent placement with her relative AND the opportunity for an ongoing relationship with her mother. Again some structure may need to be placed on the role Maria's mother plays in the rearing of her daughter.
3. Long-term foster care affords all the parties the opportunity to maintain the relationship they presently have. It affords Maria the least amount of permanence.

(C) What key piece of information do you still need to make your recommendation?

1. We still do not know what role Maria's grandmother wants to play in Maria's life following the reunification period.

#4 Two-year-old Richard was born drug exposed. He experienced withdrawal and displays signs of having some developmental disabilities. The Juvenile Court extended the FR period to 24 months in the hope that Richard's parents might be able to effect a return, but they have been unable to resolve the concerns of the worker and the judge. After his first placement in a foster home trained to deal with drug-exposed infants, Richard was moved to the Roth foster family, with whom he remains. The Roths are clearly committed to Richard and would like to provide him a permanent home, but are afraid of future medical expenses and the uncertainty of the Adoption Assistance Program (AAP).

*Questions:**(A) How do you approach permanency planning for this child?*

1. Adoption should always be considered for any 2-year old. If Richard successfully bonded with the Roths, he should be able to transfer that bond. In kinship care placements, if relatives are unwilling to adopt, the worker faces the issue of disrupting an existing family bond if a move should be necessary. This is not the case here. Nevertheless, the Roths do have a significant psychological bond with Richard. They would be the ideal candidates to be Richard's adoptive family. Therefore, the first step the worker should take is to ensure the family has all the relevant information available concerning Richard's health and medical condition. Secondly, the worker should provide the family with as much information as possible regarding AAP to allay their fears to the extent possible. If the Roths are unwilling or unable to adopt, steps should be taken to locate an adoptive home. If Richard's medical and health conditions are such that no adoptive home can be located, the Roths should be approached regarding assuming his guardianship. Under existing California law, they could continue to receive AFDC-FC benefits until he reaches his 18th birthday and would also have a social worker available to assist them in locating needed resources.

(B) What role, if any, should Richard's relationship with his birth parents play in making the decision regarding Richard's permanent plan?

1. It is not at all clear that it should play any role at all. One can assume if the Court was willing to extend the reunification period beyond the statutory limit that the parents were visiting with Richard on a regular basis and that this was seen as a positive event in Richard's life. This might provide the basis for the Court to order guardianship instead of adoption. However, one should not dismiss the possibility of an open adoption.

VIGNETTES (Student Version)

#1 Twelve-year old Johnny has been placed with the Cooper family since he was removed from his mother 18 months ago. Johnny's mother has visited Johnny regularly since he became a court dependent, but has not fulfilled any of the other requirements of the reunification plan. She continues to be alcohol dependent. The Coopers are committed to Johnny and would like to offer him a home until he becomes 18. They have also indicated their willingness to help him through college if that is what he chooses to do.

Questions:

- (A) *What else do you need to know about this case in order to recommend an appropriate permanent plan?*
- (B) *Assuming that adoption will not be selected as the permanent plan, what is the better of the remaining options and why?*
- (C) *What, if any, additional preparation would you offer the Coopers before moving into a permanent plan with them?*

#2 Fifteen-year old Keisha and eleven-year old Steven have been living with their aunt for 2 years. Neither parent was successful in completing the reunification plan, despite a court-ordered extension of the reunification period. The aunt is willing to continue caring for the children and has the support of many extended family members.

Question:

- (A) *What permanent plan will you recommend and why? What, if any, financial issues will you take into consideration in making this decision?*

#3 Four-year old Maria is living with her 59-year-old grandmother and has done so off and on since birth. Her father has never been a significant figure in her life. Maria's 20-year-old mother would like to be part of Maria's upbringing but has serious issues of her own which she is attempting to address. The end of the reunification period is approaching.

Questions:

- (A) *Should adoption be considered? Why or why not?*

- (B) *What impact will the selection of the permanent plan have on Maria's mother's desire to have a role in rearing her child?*
- (C) *What key piece of information do you still need to make your recommendation?*

#4 Two-year old Richard was born drug exposed. He experienced withdrawal and displays signs of having some developmental disabilities. The Juvenile Court extended the FR period to 24 months in the hope that Richard's parents might be able to effect a return, but they have been unable to resolve the concerns of the worker and the judge. After his first placement in a foster home trained to deal with drug-exposed infants, Richard was moved to the Roth foster family, with whom he remains. The Roths are clearly committed to Richard and would like to provide him a permanent home, but are afraid of future medical expenses and the uncertainty of the Adoption Assistance Program (AAP).

Questions:

- (A) *How do you approach permanency planning for this child?*
- (B) *What role, if any, should Richard's relationship with his birth parents play in making the decision regarding Richard's permanent plan?*

PRACTICE POINTS FOR LEGAL GUARDIANSHIP CASEWORK

WHO DECIDES AND WHEN

Organizational structures, processes, and other potential impediments should be addressed so as to enhance the likelihood of the best information reaching the Juvenile Court Judge when she/he selects a permanent plan for the child. Case-carrying workers should always be in a position to offer their recommendations into the formulation of the plan.

In most situations, the child's care provider will know more about the child than will the worker. Those formulating the recommendation for a permanent plan should incorporate the care provider's information into the proposed plan. If the care provider is to play a significant role in the implementation of that plan, her/his desires must always be considered.

If the child is mature enough to participate in a meaningful way, the child should also be included in the process of selecting the permanent plan to be recommended to the Court.

AGE

Legal guardianship might be the appropriate permanent plan for a child in kinship care, regardless of age, depending upon other circumstances. Adoption should be given the most serious consideration for very young children. Older adolescents remain candidates for permanent placements despite their age, and opportunities for guardianship placements should be pursued.

VISITS

Workers should consider post-transfer visitation unless such visits would be detrimental to the child and/or the long-term stability of the placement.

EARLY PLANNING

As early as the first interview with the birth parents after Family Reunification has been ordered, the worker should provide them with a full explanation of the reunification process. This should include a discussion of the possible outcomes should their efforts to reunify be unsuccessful.

When placing a child into a home, either kinship care or foster care, the worker should explain to the child's care provider the goals of the reunification process and secure the care provider's commitment to cooperate in that process. The care providers should also understand the possible permanency alternatives if efforts to reunify the family are unsuccessful.

Concurrent planning should be initiated as soon as possible, given local custom and practice. The worker must sincerely provide services to reunify the family, remembering that should those efforts prove unsuccessful, they will strengthen the basis for the court to move on to establishing a permanent plan.

POST GUARDIANSHIP SERVICES

Workers providing services to guardians and wards after guardianship has been established need to ensure that their efforts go to strengthening, not undermining, the child's position as a full member of the family.

Workers can use the opportunity of their contacts with the family to ensure that the child's basic needs are being met and that the money provided for his/her support is being spent appropriately.

ASSESSING GUARDIANSHIP IN KINSHIP CARE PLACEMENTS

As a general rule, avoid making assumptions about what kinship care providers think or what they might want to do regarding providing a permanent home for their young relative. All possible options should be explored.

Consistent with local policy and practice, workers should encourage kinship care providers to consider the option which will afford their young relative the strongest sense of permanence.

Workers should be sensitive to the family's financial issues which may have an impact on their selection of a permanency option.

TRANSRACIAL GUARDIANSHIPS

The role that race and ethnicity should play in the selection of adoptive parents for children in care is the topic of much controversy and recent federal legislation (the Metzenbaum Multiethnic Placement Act). There is a strong sense that placing children in prospective adoptive homes should not be significantly delayed in order to locate adoptive parents matching the child's race or ethnicity. In guardianship, the selection issues and processes are very different. Most frequently the proposed guardian is either a relative or the child's current care provider. In neither case does the proposed guardian necessarily share the child's race/ethnicity. Consistent with the thinking behind the adoptions law, if an appropriate guardian is being proposed for the child who is not of the child's race or ethnicity, the worker should proceed with this placement and not delay securing the child's permanent placement in the hopes that a racial or ethnic match can be made.

CHOOSING A GUARDIAN

If the child is unable to return home at the end of the reunification period and adoption is not an available option, the worker should pursue the guardianship option with the current care provider, before looking elsewhere for a suitable candidate.

GUARDIANSHIP HELP FOR WORKERS

Workers need to be adequately prepared for responding to questions from foster care and kinship carer providers regarding guardianship, especially as it compares to the other permanency planning options. While it seems likely that over time workers will receive this training, those who feel inadequately prepared should make their needs known to their supervisor or other appropriate staff.

GUARDIANSHIP DISRUPTIONS

The best technique to prevent a guardianship disruption is careful selection of the guardian early in the process. Workers should assess carefully the potential guardian's level of commitment to the child. Guardianship must not be viewed as merely another form of foster care, but as an expression of the child's integration into the family.

Workers should prepare guardians for the types of issues they are likely to encounter once guardianship has been ordered. Certainly these include the normal challenges that come with living with adolescents, but also potential problems with educational, health, and relative and/or birth parent involvement.

Workers must discuss with kin their responsibility to the ward and his or her protection, pointing out the likely conflicts that will come from their loyalty to the child's parent.

The social worker can do good prevention work during the semi-annual contacts with the family (assuming a case with ongoing agency responsibility). Use of basic social work assessment skills to detect problems in their formative stages and appropriate early intervention will reduce the amount of trauma the family would have experienced without the worker's early intercession.

The expenditure of additional resources to preserve a child's guardianship placement should be viewed in light of the resources already expended to obtain that placement and those likely to be expended should this placement fail. Workers should intervene promptly and intensely when a family calls for assistance.

Should a disruption actually occur under negative circumstances, the worker should expect the child to react in a manner consistent with feelings of rejection and abandonment. Prompt therapeutic intervention should be obtained.

The disruption may also have an impact on the guardian. The worker should be prepared to help him or her address grief or other issues related to the child's departure from the home.

EMANCIPATION ISSUES

Those wards placed with unrelated guardians should be encouraged to participate in the Independent Living Program offered by the county.

Wards placed with related guardians may be eligible for services through the Independent Living Program. Workers should explore this option and other community services available to help adolescents prepare for living on their own.

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