

The Story of Nicole

By Atty. Michael H. Agranoff

IMPORTANT NOTE:

All proper names in this article have been changed. Everything else is true to the best of my knowledge and belief. I have not made up facts, combined facts for emphasis, intentionally omitted material facts, or the like.

However, different persons and different attorneys will of course interpret the facts differently and draw different conclusions. Since DCF cases are by law private, it is almost impossible at present to have a full public investigation of any juvenile case, unless the State legislature gets involved. Thus far, it has not been inclined to do so. Neither has the media.

In any event, I pledge that the facts and conclusions in this article are true to the best of my knowledge and belief, and that I have not altered or omitted material facts for the purpose of misleading readers.

For your information, the DCF web site is: <http://www.state.ct.us/dcf>. DCF will not comment on specific items in this article, as it is against DCF policy to publicize persons and events that might be negative or embarrassing. Several DCF workers have, at the risk of their jobs, actually referred clients to me and told me of agency problems. I thank these unsung men and women.

NICOLE

Nicole was sexually abused as a child. Sexual abuse is the crime that never ends; even imprisonment of the offender does little good for the victim. Nicole grew up with psychological and drug and alcohol problems, and associated with violent men.

She had a baby. When the baby was 2-1/2 years old, in October, 1999, Nicole got drunk at a party and left the baby unattended in his carriage in a parking lot. Nicole's mother fortunately found the baby and called the police, who called DCF. The baby was seized, and Nicole was given a court-appointed lawyer.

The court-appointed lawyer refused to communicate with Nicole. He would not return her phone calls, never wrote to her, and seldom attended court hearings. He sent a substitute instead, and there is no evidence that he acted on the substitute's findings. He never attended treatment plan reviews at DCF. He never contacted potential witnesses or service providers. He refused to help Nicole in getting more visitation with her son or in obtaining better treatment. The year 2000 was a very difficult one for Nicole.

In 2001, Nicole turned her life around. Events had apparently given her a wake-up call. She became more cooperative with service providers, stopped her substance abuse, improved her appearance, got a decent job which she retains to this day, and improved her choice of boy friends. She had good visits with her son. Nicole was well on the road to rehabilitation.

The court-appointed psychologist actually wrote an evaluation report in 2000, making rehabilitation recommendations, and stating that Nicole should be given clear feedback on those recommendations. **That feedback simply did not happen. DCF did not communicate with her, and her court-appointed lawyer could not be bothered, if he had indeed read the evaluation.**

Nicole had been taking parenting training from Carla. In October, 2001, DCF filed a "Permanency Plan" recommending TPR (termination of parental rights). The judge found that plan outrageous, denied it, and ordered DCF to offer Nicole specialized training in how to parent the child, who by this time had been acting out considerably and was very difficult to handle. The "specialized training" referred, among other things, to the fact that Nicole and Carla simply did not get along. More on Carla later.

In spite of the Judge's order, Nicole got no specialized training and was again sent to Carla, despite DCF's knowledge of their mutual antagonism. DCF did put in writing that it would

“explore the possibility of individualized parenting sessions”. Incredibly, DCF actually did nothing; and even more incredibly, the court-appointed lawyer did nothing, although a letter or motion might have solved the problem at that stage. Truly a horrific performance; worthy of a “60 Minutes” expose.

The best news is that Nicole actually had a great social worker, Joe. Joe really advocated for Nicole. He tried to get her more visits, but his management balked. Joe even called Nicole’s lawyer several times, asking him to help Nicole! Nothing worked.

Meanwhile, DCF remained committed, on paper, to reunifying Nicole and her child. Nicole’s individual counseling therapist wrote a letter to Joe, specifically noting Nicole’s progress and change in life style, and stating that in his opinion reunification was a certainty. However, like a Watergate shredding, this letter simply disappeared from the DCF files, as we discovered when the case came to trial and we subpoenaed the therapist. In my opinion, Joe, a great person, was ordered to lose it by his superiors, and complied when he realized where his bread was buttered; this is the reason that I personally will never work in a bureaucracy again. I would rather be on welfare.

But things progressed, and in March, 2002, DCF put in writing that Nicole and her child would be reunified by the end of May, 2002, if the good progress continued.

However, Carla did not see things that way. Carla complained that Nicole had gotten into an argument with her son during one visit (as what family hasn’t?), and therefore Nicole should be denied unsupervised visits.

It developed at trial that Carla’s agency had made a great deal of money in handling problem kids for DCF. It also developed that Carla had placed the child with a foster parent who was a friend of hers, and that that foster parent was making the incredible sum of \$2,000.00 per month, tax free, for caring for the child, who had been formally classified as requiring special attention. Again, another possible scandal worthy of attention.

Despite this, on May 20, 2002, DCF wrote that Nicole had been cooperative.

However, on May 30, 2002, the planned reunification between Nicole and her child simply did not happen. And Nicole’s court-appointed said nothing and did nothing.

Throughout the remainder of 2002, Nicole and her child continued to have excellent visits, and Nicole continued to lead a good life, employed, out of trouble, well-groomed, and seeing her therapist.

In November, 2002, Joe hinted to Nicole that DCF was planning to file TPR. Quite obviously, Joe had been told this by his management and, feeling guilty, tipped Nicole off, hoping that it would be a further wake-up call.

Nicole’s lawyer continued to do nothing. Nicole remained frustrated, knowing that Carla was sabotaging her, and knowing that she could do nothing about it.

Nicole had followed all of her “specific steps”, which are court-ordered expectations for persons who want to get their children back. There was only one problem. In June, 2003, Nicole was arrested for breach of peace. What happened is that her former boyfriend had harassed and assaulted her, and she struck back in self-defense. On television, women are applauded for this. But in real life, she was threatened with jail if she didn’t plead out to the charges. Like most

persons without money, she took the plea to avoid the threat of jail. Nevertheless, it was a misdemeanor conviction, and was the only excuse that DCF needed.

In August, 2003, DCF filed the TPR petition. Nicole by now was beside herself with grief. She was complaining to officials in the court house, and one excellent State Marshal heard her, took pity, and gave her my name. With her mother's help, Nicole scraped the money together and hired me. We prepared for the TPR trial, scheduled for March, 2004.

Trial preparation is always overlooked on TV and in the movies. Lay persons sometimes think that it "just happens". In reality, it is the most difficult part of lawyering, especially when the facts are scattered in dozens of different documents and are often in dispute. This is not the time for all those details, but suffice it to say that Nicole and I went into the case prepared.

Trial was held over four different days in March, 2004. Post-trial briefs were filed at the end of April, 2004. The Judge was a distinguished and respected jurist with a patrician bearing.

DCF's major argument was that Nicole had "failed to rehabilitate." Nicole agreed that she had a major problem initially, and she fully owned up to her mistakes. However, she had overcome her past, we argued, and there was no reason to deny reunification.

A summary of the evidence follows:

1. Nicole met her specific steps, with minor and explainable exceptions.
2. Visitations with her child were generally good to excellent.
3. Nicole's individual therapist, who had worked with her since she was a teenage victim of child abuse, testified that he would continue to work with her, and with the child's therapist, and that she should be able to be an effective parent.
4. A hospital therapist testified that Nicole was easy to work with, and cooperative.
5. Carla's supervisor testified that Nicole has problems when the child is misbehaving. Yet we discovered a document written recently by Carla, which stated that the child had been continually misbehaving, even when with the foster parent. When asked, neither Carla nor her supervisor could explain the reason; but the implication that Nicole caused or fostered the problem was not credible.
6. The foster mother testified that the child was "worse" after visits with Nicole. When asked repeatedly by me in what ways he was worse, she pointedly could not answer. This, despite obvious preparation and coaching by Carla and her staff. The foster mother agreed that the child had been misbehaving recently, but admitted that she sought no extra clinical visits or additional medications. (We were to use the fact later as evidence that, whatever Nicole's problems, the child was no better off with the foster mother).
7. A local respected child visitation agency testified that Nicole was easy to work with, and was very patient most times with the child's difficult behavior.
8. Carla took the stand, in one of the most incredible performances of all time. Highlights of her testimony:
 - a. She had written in a report that the child "displayed severe symptoms of reactive attachment disorder", or RAD. She repeated that he still has those symptoms. Yet when asked by me to define RAD, she could not do so. She admitted that, when she first wrote those words, the child had not been so diagnosed by a licensed clinical psychologist.
 - b. She said that Nicole was "not receptive to training", although other testimony showed that Nicole was receptive. This was merely a personality problem between two people that ended up costing one of them her child.
 - c. She was smug and arrogant on the stand, as if she were above cross-examination by a lawyer.

d. She blamed DCF for choosing certain psychologists and psychiatrists to examine the child, yet DCF later testified unambiguously that Carla had made those choices herself.

e. She admitted that the child was not now in therapy, although he had been acting out recently, and had no explanation for that.

9. A psychiatrist testified that the child had RAD. Upon cross-examination, he admitted that his "examination" of the child consisted of a 45-minute face-to-face meeting, and a review of the report of a psychologist (see below), plus discussions with Carla and her staff. Never did he speak to the mother or her attorney. He admitted that the RAD diagnosis requires accurate knowledge of the history of the case, and admitted that he could not be certain that the history supplied by Carla's staff was accurate.

10. A psychologist testified that RAD requires a showing of severe early childhood abuse or neglect, which ordinarily does not come from one isolated incident. He said that the child "appeared to have RAD criteria", but admitted that his history information came from Carla's staff and the foster mother. He had not spoken to Nicole, her lawyer, or her individual therapist.

11. The real zinger was the court-appointed psychologist, Dr. Jones. He submitted three separate evaluations that said that the child had RAD, and that Nicole had "borderline personality disorder" (BPD). He testified in support of those evaluation reports. Highlights of his cross-examination:

a. Dr. Jones admitted that he gathered history information from Carla and the foster mother, but nothing from Nicole's lawyer, her individual therapist, or anyone else who had known or treated her.

b. Dr. Jones frequently opined that Nicole "minimized problems." When asked, he was unable to give concrete examples of what that meant, or how it disqualified someone from being a parent. When told of Nicole's current employment and other progress, he shrugged these off.

c. Dr. Jones said that he took Nicole's June, 2003 arrest into account, but never asked for or heard the circumstances of the arrest. When told, he was also unmoved.

d. Dr. Jones had diagnosed Nicole with alcohol abuse in his 2002 report. He had omitted that diagnosis in his 2003 report. When asked if that showed progress, he again shrugged it off.

e. When confronted with books and articles by authorities in psychiatry, regarding BPD, Dr. Jones admitted that his diagnosis could not be sustained by the accepted criteria. After a lunch break, in which he reviewed his own notes and other materials, he changed his diagnosis to "mixed personality disorder". Nowhere did he explain why he had in three reports misdiagnosed this woman, even though the books and articles discovered by me must have been known to him for decades.

f. When confronted with books and articles by authorities regarding RAD, Dr. Jones testified that his understanding of historical facts were derived from the foster mother, DCF, and Carla. He admitted that he neither sought nor received information from Nicole's lawyer, her family, her individual therapist, or any other persons. He admitted unawareness of DCF's very narratives that stated that Nicole and the child had many good visits together. When asked if other facts could change his diagnosis, he was noncommittal.

g. Dr. Jones also diagnosed the child as having "conduct disorder". When asked if the child should be getting psychiatric treatment, he responded that Carla's supervisor was a psychiatrist. This statement turned out to be untrue. When told of this, Dr. Jones was

unmoved. He never seemed to appreciate the lack of communication, and miscommunication, upon which his testimony was based.

h. Dr. Jones was asked directly, by me, if Carla had told him to say that the child had RAD and that Nicole had BPD. Instead of saying "No", Dr. Jones said directly, "I do not recall that." Anyone familiar with Watergate may draw their own conclusions. In my opinion, Nicole received a royal zinger from many experts, with absolutely no help from her court-appointed lawyer.

And that is only "failure to rehabilitate." DCF is also required to prove that it made "reasonable efforts to reunify parent and child." The prior discussion shows that DCF did not do so. Nicole was given a parenting counselor who was hostile at best, and biased in favor of the foster mother at worst. She had no meaningful legal help. Her positive aspects were intentionally ignored. Reunification efforts?

As to Nicole's court-appointed lawyer, it is true that "ineffective assistance of counsel" can get you a new trial in a criminal case, but not in a TPR case. However, I tried, arguing that at minimum, Nicole deserved another chance. The former court-appointed lawyer was subpoenaed, and a subpoena also issued for his files in this case.

He showed up in court, arrogant, argumentative, smirking, and then had the audacity to say that he had "lost the files." He never explained why he hadn't told me, in the two months since the subpoena was issued, that the files had indeed been lost.

This man is still actually practicing law.

When the case had concluded, and post-trial briefs submitted, I was confident that we had won. We desired, not the end of DCF involvement, but the child returned to Nicole under strict protective supervision for 9 months, with DCF required to communicate with me, and frequent in-court reviews to assess progress and to ensure that DCF was not retaliating against Nicole.

Today, I am still confident that we should have won. However, the verdict went against us. Nicole did not have the tens of thousands of dollars to pursue an appeal, first in Connecticut, and then possibly up to the U.S. Supreme Court. She lost her child, permanently.

I hope to heaven that when the child grows up, he will seek out his mother and learn the truth. The moral is clear: Get a qualified lawyer on board **early**.

There are no guarantees, but I believe that this case could have been won in 3Q 2002, or early 2003 at worst. It might have been won even earlier, had I been the lawyer and able to get rid of Carla.

The interesting thing about this case is that Nicole had three different DCF social workers, all of whom are personally known to me to be excellent. She was actually victimized by a venal and biased counselor, a well-meaning but ignorant psychiatrist, an arrogant and corporate power-crazed psychologist, and an incompetent lawyer. Truly a group effort.

JASPER

Jasper is a young man who, like many others in our society, became romantically involved with a young woman too early. They had a child together before either was ready. There was a history of domestic violence, and the mother had serious mental health issues. DCF filed a neglect

petition, quite properly. When it appeared that the family was still not cooperating, DCF removed the child under an OTC.

DCF filed a status report on Jasper and his mother, who had sought to get temporary custody, and the report was totally inaccurate. DCF refused to revise the report, and Jasper's court-appointed lawyer refused to provide any help. Jasper and his mother then hired me.

The matter was investigated thoroughly. Jasper had had trouble getting visitation with his son, and a few faxes changed that situation. Jasper also had trouble getting appointments with service providers, which was corrected. Several errors in the DCF status report were corrected. A physician was contacted to verify that DCF's assertion that Jasper was an uncaring father was simply untrue. Errors in Jasper's criminal record were corrected. A statement that Jasper was unemployed, which was untrue, was corrected.

Jasper's mother was considered by DCF to be a mentally-unstable pariah. We were able to obtain statements from a clinician and a psychiatrist which ended this incorrect notion forever.

All this was a simple matter of legwork: file review, interviews, follow-up. There was no magic. An agreement was made in February, 2004 that there would be a case status conference in April, and that DCF would have reviewed a psychological evaluation and be prepared to discuss reunification of Jasper with his son.

The April case status conference was a disaster. DCF claimed to be unaware of the psychological evaluation. One of its lawyers had mysteriously "buried" the report, and then tried to say that she had not done so. Coincidentally, the report had noted a strong father/son bond, and had recommended reunification. DCF further had not received the corrections to its prior erroneous status report; again, it was buried by the DCF lawyer.

The matter was soon straightened out. DCF's embarrassment at this case became obvious. A new and top-flight social worker was assigned, and a different DCF lawyer took the case and proceeded. The bond between Jasper and his son became well-known.

Jasper and his son were reunited in July, 2004; longer than it should have taken, but at least it happened. Today the child is happy and is prospering, by DCF's very admission.

The difference from Nicole? Getting qualified legal help early on.

ADRIANNE

Adrienne's daughter has mild mental retardation and is autistic. Adrienne, a single mother, did not know how to deal with this condition, and would hit her daughter to get her attention. The teachers noticed marks on the daughter, now a teenager, called DCF, and the child was taken. DCF placed the child in a group home with other problem children. The child was taught various life-skills in a manner that she could understand. DCF encouraged Adrienne to work with the group home staff, to go to autistic support groups, and to visit frequently. Reunification was planned, and DCF fully cooperated with me from the beginning.

Adrienne was initially resistant to working with others, believing that she understood best how to deal with her daughter. I explained to her that every expert disagreed and that the evidence was overwhelming. Further, I secured additional treatment plan meetings, and attended mother/child conferences at the group home.

Adrienne, however, remained resistant; in fact, her opposition increased. She refused to let other family members intervene. I was unable to effect reunification, despite being in the case from the beginning, and despite working with a truly excellent DCF staff.

The lesson? No lawyer can help if you don't want to help yourself. It is perfectly understandable to be angry, but your lawyer is on your side. If you don't cooperate with the lawyer, you may as well not have one.

LUTHER

At the age of 3, Luther tried to have sex with his mother. The psychologists state that such aberrations are not inborn, but are learned through being a victim of abuse. Needless to say, no one would own up to being the abuser.

Later on, Luther was taken from his home by DCF and placed in various state homes, which tried their best, but were simply not equipped to help him. Finally, an excellent facility for treating adolescent sex offenders was located in Massachusetts. I pushed DCF to place him there. No one seriously objected. However, these facilities are very expensive, and DCF dragged its feet.

I kept pushing. DCF finally agreed. A social worker called me and said that everything would be completed in two weeks. I was ecstatic.

Three weeks went by, I had heard nothing, so I called the worker. "It's all done", she said. "So where he is placed and who do I communicate with?" I asked. "Oh, he's still here", she replied. "I meant that I finished my paperwork, and now it's on the next person's desk." As to when that would be done, and the child actually placed, she couldn't say.

I wrote a blistering letter to the Commissioner, threatening to go to the Governor and the newspapers. Two weeks later, the child was placed in the facility. Needless to say, I was pleased, but I learned a lesson: when bureaucrats say something is "done", they may mean that "their portion is done." However, the client's goal is to achieve the final objective.

I am pleased to say that the child was eventually released from treatment and returned home. He is now a young adult and is prospering. I was pleased to have helped him.

The lesson is an easy one: follow-up is part of the job. It's not taught in law school, but it is mandatory. And sometimes one small follow-up makes all the difference in the world to a needy person.

In Nicole's case, follow-up at any of several early stages might have prevented the loss of her child.

As an aside, DCF has done a very good job placing children in out-of-state facilities, when suitable facilities do not exist in Connecticut. Some newspaper columnists criticize this, but those persons are completely off-base in my opinion.

MARTINA

Martina is a pleasant young woman who is borderline retarded. Her companion is a thoroughly decent young man, hard-working and honest, but uneducated. They had a baby. Martina's sister, Shirley, had a DCF history. Shirley's children had been removed a few times (but are now reunified and doing well). This combination was enough for DCF to seize Martina's baby, and a Judge sustained the removal.

But things looked good. Martina had a good DCF social worker, she went to parenting classes, and she kept her home neat. Her companion was cooperative also. DCF decided to return the child in a month, and all appeared well. A success story in the making.

Then suddenly, the DCF social worker changed. It was a standard office reassignment; common enough in a bureaucracy, and legal, but not thoroughly fair to the client. The new social worker was reasonable, not great, but her supervisor was a coward, afraid to take any chances. And his supervisor, the p.s. (program supervisor) was known as the "TPR Queen" of the office.

The supervisor and p.s. panicked. They decided to reverse the prior decision and not return the child. Further, they decided not to tell me, knowing what would happen. They stonewalled and stonewalled. Finally I filed a motion in court to compel DCF to cooperate.

In court, the social worker actually produced a "letter" that she said she had mailed to me, which "explained" everything. I was dumbfounded. I never got any letter, we are very careful in this office, and the worker never explained why she had failed to respond to numerous follow-ups for information.

The worker had actually lied openly to the Judge. The Judge, by her expression, knew it, as did the Asst. Attorney General. But nothing could be done. I admit that I was unprepared for this contingency; not that it would have mattered.

The worker was so stupid that she actually produced her "copy" as an original on DCF letterhead. She hadn't even bothered to print the "letter" and then run off a copy to conceal her chicanery. Probably she was in the middle of a coffee break and didn't have the time. The Judge asked why the original, and not her file copy. She mumbled something about wanting to be authentic; it was sickening, worse than Communist Russia.

Three months later, after constant agitation, the child was returned. The couple took the hint and moved out of state with the child. I know from other sources that they are now doing well. This perjury has stuck in my craw. I realized that nothing could or would be done about it. I realized that the worker lied because she was ordered to lie. From that moment on, I have looked at bureaucracy in a different light.

Fortunately, for the record, 95% of social workers would not do this. But this woman apparently believes that she did nothing wrong; and if she becomes a manager some day, she will doubtless expect others to cover up for her also.

Anyone who thinks that professionals with suits and ties cannot be crooks had better think again. Nixon's men had nothing on this crew. I shudder to imagine what would have happened had we not pushed DCF: probably an eventual TPR of the child "in his best interests".

HELEN AND CRYSTAL

DCF got involved with these two middle-school sisters because of reports that their house was filthy. I read the social worker affidavit, and it made the house sound like it was out of *Oliver Twist*.

It was another story when I visited. In actual fact, the social worker was offended because the mother had a lot of cats, and they had an odor. The house may have been dirty by suburban standards, but it was perfectly fine by rural standards. In fact, the mother was a fine person, and the kids were happy and healthy; far more than many wealthier kids.

We straightened it out, and DCF was soon out of the case. It was not a big deal, but it shows how time can be wasted by overzealous workers. It happens more than you think.

JEREMY

Jeremy was sexually abused by his mother's boy friend. The mother did not participate in the abuse, but did nothing to stop it. Sadly, this is all too common.

Jeremy was eventually removed from the house. By this time, he was severely maladjusted, emotionally and sexually. His uncle and grandmother tried to help him. They wanted visitation and even custody. However, DCF, believing that they were part of the problem, refused to help. (I have no idea if these beliefs were true or not).

DCF made visitation difficult and custody impossible. However, DCF did not tell the relatives that I was Jeremy's lawyer, and DCF did not tell me of the interest of the relatives. The child did not tell me either, except many years later. As a result, we knew nothing of each other. For several years, the child moved from facility to facility. He had many good workers, but no one could solve the puzzle.

Jeremy got a break later on, and was assigned a great social worker. She saw to it that the relatives and I were put in touch. She took a personal interest in Jeremy's treatment. She freely admitted DCF's botching of the case to all concerned; that she kept her job was a miracle. Again, had DCF taken the child's lawyer seriously from the start, this might have been avoided.

At age 15, Jeremy went to a residential facility which was decent, but which again did not (or could not) fully address his needs. He was still severely maladjusted, and unsuited for release to the adult world without supervision. The relatives, by this time, were so fed up that they refused to cooperate with the authorities or even with me. There was no hope of Jeremy's release to one of them. It is hard to place blame; there was so much to go around. I even tried to find the original perpetrator of child abuse and bring him to justice, but no one seemed to know where he might be.

When Jeremy turned 17, I wondered what would happen when he turned 18. I was scared sick that he would be released to the adult world, and either killed or end up in prison. No one seemed to know what to do. Finally, after consulting an expert at his facility, I filed a motion for a neuropsychiatric evaluation, which was granted. But DCF stalled, because no one wanted to pay for it, and DCF and the residential facility pleaded "communication problems". Finally, after another court filing, the evaluation was done, and it was agreed that Jeremy could continue in State care with assistance from DMR (Dept. of Mental Retardation). In other words, the State could find a way to atone for its previous errors and continue to care for this needy person.

But no one wanted to pay for all that. Finally, I filed an emergency motion with the court. The Judge could not directly order the State to take action as Jeremy would be over 18; but miraculously, a few days later, the State did act. Today Jeremy, although a young adult, is receiving State-paid care, and has a chance to succeed in life. This young man, who would have been released to a world in which he could not cope, through no fault of his own, is now receiving a measure of care at State expense.

I have no proof of what finally moved the State to act, but I suspect two things. First, DCF feared that I, or the relatives, would go to the newspapers with this matter; and for once, the papers might have printed something. Secondly, the Judge, I believe, having heard enough, pressured the right people on his own. All's well that ends well, but there has never been a case better illustrating the need for follow-up than this one.

DCF is filled with good people. It is also filled with some poor ones. And the lawyer must have the wisdom to tell the difference and the fortitude to take action when needed, despite the enemies that may be made.