

The Story of Roberta **By Atty. Michael H. Agranoff**

This has to rank as my favorite case. A major injustice was corrected, not with legal brilliance or courtroom tricks, but with old-fashioned getting to the facts and refusing to accept nonsense. For lawyers: the case shows that you don't have to be a genius to win. You don't need to be 4.0 from Harvard Law, you don't need to have Law Review articles published, you don't have to be able to understand Justice Rehnquist's opinions. But you do need a strong desire to get the facts yourself and work with them.

Roberta and Alex were a middle-class family. He had a very good job, she was a fine homemaker. Their kids were 16, 11, and 9. The youngest was Carrie; the two older ones were boys.

The older boy had problems, and one day he improperly touched Carrie. She got very scared and reported it to a teacher. The Police were called. Then Carrie said that no, her father Alex had touched her. The Police threatened to arrest Alex. Roberta had a fit. She knew that it wasn't true, and that Carrie had had problems which may have caused her to make a false report. Roberta made a lot of noise and did everything other than call a lawyer.

The upshot is that she herself was threatened with obstruction of justice. Now Alex got a lawyer, one of the top criminal lawyers in the State. But matters had gone too far.

If Alex protested his innocence, the prosecutor threatened a long prison term if the jury found him guilty. Also, Roberta would be prosecuted and possibly jailed herself. All the kids would be removed.

There was a simple solution, and you guessed it. Alex pleaded guilty to something he did not do, to spare his family further trauma. He received a lesser sentence, and at this writing is actually up for parole. No criminal charges were pressed against Roberta. The older son, by agreement, began to receive treatment.

What the criminal lawyer neglected to tell Roberta, because he wasn't aware of it, was that DCF would now get involved. Which it did.

Carrie was removed from the home and placed with a foster family. Fortunately, it was a decent family and reasonably nearby. The major reason for the removal was the usual: Roberta "minimized" the problem by not disbelieving her husband. Also, Roberta was an arguer, and DCF cannot stand that. The middle boy was allowed to stay in the home, provided that the older boy moved out, which he did.

NOTE TO LAWYERS: This is another example of why I am leery of excessive specialization. It is fine to specialize, as many doctors and lawyers do, but it is wrong to ignore other aspects of the profession. Legal elements (and medical/dental elements) are interrelated, as numerous examples show. A Juvenile Court lawyer still needs to know the basics of divorce, bankruptcy, criminal and other matters.

If you do specialize, then you at least have to keep up with professional reading to be informed of developments (cases; journals; occasional seminars). Sadly, many specialists don't have the time to do this. Lawyers, unlike doctors, have no tradition of referring people for second opinions; perhaps they should.

Roberta went to the phone book and hired a family law person. We shall call her Atty. Stentor. It seemed like a good fit. Atty. Stentor is a formidable woman who looks impressive and yells and screams and makes a lot of noise. She badgers and belittles opposing lawyers to their faces. She threatens, makes innumerable phone calls, and is generally a pest.

The problem is that she can't accomplish anything.

After 3-1/2 years of trying, Roberta had paid Attorney Stentor \$25,000.00, and was billed another \$35,000.00. Thus, total charges of \$60,000.00, and no results. She was no closer to getting her daughter home than when she started.

Roberta did not know how to handle it, but she knew that something was wrong. She called me, and I told her to bring all her paperwork to the office. Fortunately, Roberta was the type who saved everything, even in relatively chronological order. That, believe me, made it much easier to work with.

Roberta came to the office, and I reviewed the file. It was interesting. Among my findings:

1. Atty. Stentor had held numerous e-mail conferences with various service providers. In almost all cases, she presented some facts and asked them what they thought.

One thing you learn in bureaucratic life is never to ask other people what they think without telling them what you think. They are not going to do your work for you. They will recognize that you are not comfortable with your case and are fishing.

2. The child's therapist, an experienced psychologist, seemed to be suggesting that the child should start the reunification process.

Yet nothing was being done. There was no formal report from the psychologist.

3. The DCF permanency plan did call for reunification. Yet the DCF social worker was stalling, and criticizing Roberta at every step of the way. Roberta was adamant that, contrary to the permanency plan, the social worker told her that she would never revoke the commitment.

Atty. Stentor never filed a motion to revoke the commitment. In effect, she let DCF stay in control, for over three years, while billing Roberta for her e-mails and conferences.

4. The social worker was openly hostile to the Roberta. She even made outrageous statements in front of the Carrie.

Atty. Stentor did nothing.

5. Roberta had an individual therapist whom she saw regularly. She attended meetings at the Carrie's school. She also interacted well with the foster parents.

Atty. Stentor had none of this in her documentation. She was apparently not even aware of the school interaction.

6. Carrie had a court-appointed attorney and a court-appointed GAL (Guardian Ad Litem), also an attorney. They had never once seen Carrie, been to a conference, spoken to the school, or interviewed Roberta or the foster parents. Not once.

Atty. Stentor never even tried to get them involved.

It became clear that the entire basis for DCF's attitude was its belief that Roberta had "chosen" the father over the child. This is an integral part of DCF culture, no matter what the DCF Policy Manual says. If sexual abuse by one parent is alleged, and the other parent does not immediately throw him or her out the door, then DCF will never cooperate with the other parent.

I began writing to DCF, demanding to know what Roberta was not doing that she should be doing, or what she was doing that she should be doing. Incredibly, the social worker, apparently knowing that the jig was up, refused to respond to me. Stonewalling lawyers is an old bureaucratic trick, designed to frustrate them and make them go away. In this case, I wrote to the supervisor, and when that didn't work, I wrote to the DCF Ombudsman in Hartford. That was enough, and it was not necessary to go to the Commissioner directly. I have no idea if the worker and her supervisor were chastised, or had notes made in their personnel files; but I certainly hope so.

This is as good a time as any to note the obvious. The DCF social worker clearly believed in her heart that Roberta should not have Carrie back, and acted to the best of her ability on this good faith belief. It is similar to a police officer who is certain that an accused is guilty, and will plant evidence, or withhold exculpatory evidence, to ensure that "justice" is done, despite any "lawyer's tricks" that might be pulled. I have no malice toward this worker; but it does illustrate the need for due process and fair dealing. Almost no one starts off being a tyrant; everyone tries to do the right thing. But "right" is determined by law, not your own prejudices.

It's an awfully hard sell, especially to people not used to being questioned.

I called the psychologist and scheduled a visit at her office. The psychologist was very cooperative and repeated her agreement that unsupervised visits, and a definite reunification plan, should begin right away. However, she was reluctant to put that in writing, even though she had believed it for at least two years. I myself do not know exactly why she was reluctant, but I suspect that it was due to pressure from DCF.

Therefore, I drafted the letter for the psychologist, based on her own statements, and sent a copy to DCF and the other lawyers. This got her to move: she wrote her own letter two weeks later, and it was our smoking gun.

I also contacted the treatment school, where Carrie went twice a week, and obtained their treatment plan, which was very favorable. I contacted the foster parents and summarized their statements. Also, I got statements from the mother's individual therapist.

I pressured the lawyer and the GAL to visit Carrie. To anticipate their excuses, I gave them the address and phone number and e-mail of the foster parents. I secured the foster parents' agreement to cooperate. There was no way out, and they were forced to conduct a visit.

The foster parents were always invited to PPT's at Carrie's regular school. I made sure that Roberta went to the next PPT at that school, and I attended, to ensure that she would not be nervous and that her rights were protected. We made good contact with Carrie's special education supervisor. We were able to use that supervisor as a good reference also, especially to counter DCF's standard assertion that Roberta "minimized" Carrie's needs.

Then, the big day. A motion to revoke the commitment was drafted. It included a motion to order DCF to provide services, as I knew that DCF would never actually help Roberta without a formal court order listing absolutely specific steps.

The motion recited everything listed above, and included the psychologist's report. It included improper actions by the social worker. It included what lawyers call an "offer of proof", that is, what I expected witnesses to say at trial. It includes treatment plans from Carrie's school. It frankly and unashamedly confronted the issue of the alleged abuse. The motion text was 8 pages, with a dozen pages of attachments actually showing our evidence.

When we got to court, DCF suddenly dropped its opposition to revoking the commitment. It was apparent that the Assistant Attorney General, upon reviewing the motion, had a fit, called DCF, and advised them to cooperate.

And cooperate they did, albeit reluctantly. Three months later, the child was returned home under protective supervision. It was set to expire in a few months, meaning that DCF would be out of the case for good.

But DCF did not give up so easily.

The DCF social worker (the same one; she was never changed) started verbally harassing Roberta because she did not attend a class for "sexual abuse non-offenders" at a local clinic. DCF said that it had set this class up for Roberta, to help her "better understand the issues", but that Roberta had failed to attend, despite numerous warnings. DCF was threatening to extend the protective supervision, or even revoke the commitment.

DCF had not had the decency to advise me of this problem, but Roberta did. I wrote to the clinic, which confirmed Roberta's story: the class was to be held at the discretion of the clinic, and they simply did not have the enrollment yet to justify holding the class. So, no class; but they would let us know.

I sent this to the social worker in an e-mail. No response; but she continued to harass Roberta. I sent it to the supervisor, who called me and claimed she would "check into it." I told her that was not enough; she would have to change the worker. At that, we got into a dreaded telephone argument. I wrote to the Area Director, who was useless. Then I wrote to the Ombudsman, who by now must have been wondering what was going on in this case.

Finally, DCF relented, and agreed that protective supervision could end as scheduled.

During this episode, I had again asked Carrie's lawyer and GAL to get involved. They declined to do so. They were very polite; they just wouldn't act.

Carrie is now doing fine at home. She is also making satisfactory progress at her new school. She continues to see her therapist, and there are family therapy sessions also. A few score hours of hard work overcame 3-1/2 years of inaction within a matter of 7 months.

I continue to work with Alex's criminal lawyer. We will face dealing with his release one day. Of course, innocent or not, he can have no contact with Carrie until she turns 18, and then only if she so chooses. The older brother remains in treatment.

Roberta's e-mails to me make me happy to be a lawyer. I am sorry for what she and her family went through. And, of course, it's no one's fault; that's the system.

And Atty. Stentor is still busy practicing law. There is no redress. Legal malpractice is almost impossible to establish in a field like DCF/Juvenile Law, which is very new. Very few judges and

juries would know how to handle it. A grievance would take years to pursue and only end up frustrating the participants.

One bit of good news. She wrote to Roberta and asked for her \$35,000.00. Roberta gave the letter to me and I wrote to her. I asked for a copy of the Fee Agreement, as I had found none in the files. I also asked for an explanation of the reasonableness of a bill for \$60,000.00 for accomplishing nothing in over three years.

Atty. Stentor did not reply. I have of course lost a friend, but I'll have to live with that. It is far better to have gained the trust of a deserving person.

To repeat the moral: If you have a DCF problem, call an experienced DCF defense lawyer early on.

RICARDO AND EMILY

Ricardo and Emily are successful American professional persons. However, they were born and raised in a different country that has, shall we say, less liberal ideas about how to raise children. When their three children started to rebel, and the parents acted sternly, the children knew from their friends to complain to their teachers, who called DCF.

DCF visited and the parents let them in. They knew nothing of lawyers and rights. They were, however, incredibly indignant that the discipline that they had been taught all their lives was now being questioned by the State. They were hostile and arrogant to the social worker, and an unfortunate tone was set. DCF retaliated by filing a petition and hauling them into Juvenile Court. Then they called me.

There was really very little to the case, but DCF persisted. An assistant attorney general who was particularly hostile to the parents was assigned to the case. She insisted that they have separate lawyers, on the grounds of "domestic violence", even though the parents themselves viewed events as only a minor spat. The Judge agreed.

Ricardo simply could not conceal his disdain for DCF, despite my admonitions. That only prolonged the case. Finally, we got DCF to agree to drop its plans to have the children committed, and instead to settle for protective supervision.

When the term of protective supervision was up, DCF moved to extend it on a number of trivial grounds. We objected. And two wonderful things happened.

First, the children were appointed one of the best lawyers in the system. It was good luck. She studied the case, visited the kids, spoke to the parents, reviewed the records, and made it clear that she thought DCF was now doing more harm than good. Whether their intervention was initially justified or not, it was now time to move on.

Second, the judge normally hearing the case was out that day, and a different judge presided. He had happened to serve in the military, and was stationed in Ricardo and Emily's country of origin for several years. He knew the culture and respected it. He quickly recognized that this was not a neglect or abuse case; just a matter of American culture shock.

Protective supervision ended, DCF was out of the family's lives, and the allegedly abused child is now happy and successful in college. The other kids are fine.

DCF has a serious and important mission. That mission is compromised by vendettas against persons who are not deferential enough to it. Normal discipline is not child abuse; and yet these kids could have been taken away and permanently scarred over a cultural misunderstanding.

Where, one wonders, is the diversity?

ALICE AND PETER

When the entire world tells you that you're wrong, it's a good bet that you are. But a good bet is not necessarily a sure thing.

I got a call from Alice and Peter in early May, 2005. DCF had taken their kids and wanted to terminate their parental rights (TPR). They were on their third lawyer, privately-paid, and that lawyer was just agreeing with the State. He would not help them, and they were desperate. Would I meet with them?

I did. They paid a nice retainer, I went to the Court, filed my in-lieu appearance to replace their current lawyer, and reviewed the file. It looked like an encyclopedia, with documents going back about six years. But the gist of it was this:

1. Alice had a long-standing drinking problem, minimized it, and refused to cooperate with treatment.
2. Peter was violent towards Alice, and the kids (Hank and Sharon) witnessed that.
3. Both parents refused to properly supervise the kids. Hank, age 10, was traumatized. Sharon, age 14, was parentified. Both were afraid of their parents.
4. The kids had been removed before, the family straightened up a bit, and the kids were returned. Then they relapsed and the kids were taken.
5. The kids were placed with Alice's mother, whom Alice positively hated, thus making the situation even worse. Alice said her mother had been abusive to her as a child; the mother said that Alice was just difficult; and of course there was no agreement.
6. The parents had not had 3 lawyers; they had had 5 prior lawyers. So I was the sixth one on the list. [As **every** law office management manual will tell you, this is a no-brainer sign to not take the case].
7. The court had already found that further efforts to reunify the children with the parents were not appropriate. Even their daughter, Sharon, had been allowed to testify against them at a prior hearing; and really gave them what-for.
8. Alice was an unrelenting arguer. No matter what service was offered to her, she argued and debated with the providers, driving them to despair. No one would work with her. Peter was lower-key, and could not control her.

And that was just the court file. At a case status conference, I got worse of an earful:

1. According to the AAG (Assistant Attorney General) representing DCF, TPR was a virtual certainty.

2. Hank and Sharon had separate lawyers. Sharon's lawyer positively hated Alice with a passion, and had little use for Peter. She would do everything that she could to end parental rights. Later on, when we discussed keeping Sharon with her grandmother and simply transferring guardianship, the lawyer was still not placated. She stated that TPR was necessary, to "stabilize" Sharon, and ensure that Alice could never even ask for guardianship back. It was totally vindictive, but illustrated how the legal community was allied against these parents.

3. Hank had both a lawyer and a Guardian Ad Litem (GAL). Both hardly ever saw Hank, but were satisfied that DCF was doing the right thing.

4. The kids had the same therapist, whom we will call Ms. Smoothie. She insisted that the kids had told her that they wanted TPR from both parents.

That is what I walked into.

The latest case document in the file was a "Social Study Addendum" dated April 11, 2005. It was 22 single-spaced typewritten pages. I read the document, which apparently the prior lawyer had not done, and found two possible smoking guns:

1. On pages 4-5 of the document were a few paragraphs stating that Alice was meeting with a psychologist, whom we will call Dr. Jung. Dr. Jung said that he was working with Alice to manage her emotional problems and had made great progress. He also worked with Peter. Dr. Jung believed that their prognosis was good, and that family reunification might be possible.

The document went on to list other doctors who allegedly said that the couple was hopeless. What is strange is that Dr. Jung's observations were mentioned, but then not considered in the document summary or recommendations.

2. On pages 20-21 of the document was the incredible admission that Ms. Smoothie had actually discussed TPR with both kids, that the kids agreed, and that she thought it was the right thing to do.

Lay persons might need an explanation. TPR is considered an "adult issue", and it is normally forbidden to discuss adult issues with kids in the Juvenile Court system. Parents who do so run the risk of severe sanctions. Yet this therapist not only did so, but trumpeted the fact. She pursued legal issues that she barely understood, and that a 10-year-old boy certainly did not comprehend. Further, even though TPR is an "ultimate issue" to be decided by a judge, DCF tried to pressure the judge into accepting this expert's opinion in a supposedly objective document.

Armed with these meager weapons against a battalion of experts, lawyers, and social workers, I actually spoke to Dr. Jung. I obtained and read the DCF "narratives" and other reports. It turned out that Hank actually wanted to be with his parents, but was being talked out of it by Sharon and his grandmother, and then by Ms. Smoothie. I will say this for the DCF social worker: she herself made a brave attempt to at least appear neutral, although she had to print what her management ordered her to print.

I fought the matter in court, filing motion after motion. I insisted that Hank not be brainwashed, and be allowed better visitation with his parents. I got Dr. Jung's additional written opinions to the court and to the other lawyers; DCF had simply ignored him, claiming that they could not reach him; and the parents' lawyer had done nothing. I insisted that Hank's lawyers actually visit him. Instead of accepting the contention between Alice and her mother, I tried to mediate the action and not make it worse.

I asked for and got a hearing on better visitation. Dr. Jung was subpoenaed. When DCF saw him in the hallway, waiting to testify, they dropped their opposition. It was small, but a start.

I got DCF to stop harassing Alice and Peter and to go through me if they needed anything. That included conferences, visits, and signing releases. This had been a major stumbling block in the past. Most of all, I forced DCF to admit that their **two major arguments no longer applied**:

1. Alice had been substance-free for three years.
2. The couple had had no incidents of domestic violence in 3-1/2 years.

DCF knew both of those facts, but had ignored them. And the kids' lawyers cared not a whit.

The jig was almost up. It was obvious that DCF favored TPR, and was pressuring the kids to tell the therapist that, so that she could testify that it was in their best interest. But Matthew refused to do so, despite enormous pressure brought on him. And DCF could not any longer deny the great progress that the couple had made.

DCF, actually being most reasonable, decided in early 2006 to drop TPR. (This social worker really was patient and excellent, and I guess her management had had enough of me.) We all agreed that Sharon should remain with her grandmother, and that Hank should be gradually reunified with his parents. Meanwhile, Alice got pregnant, and was terrified that DCF would move on the new baby. (Fortunately, through active intervention, we assured that that did not happen).

But, as previously mentioned, DCF's decision did not placate Sharon's lawyer. She forced DCF to reinstate the TPR for Sharon.

You might wonder how she could "force" this. Very simply, when DCF announced at a case conference that it was not pursuing TPR, the lawyer said that if they dropped it for Sharon, she would file it on her own. In my opinion, it was an idle threat, and I don't think she would have won without DCF support.

However, this lawyer had her own smoking gun. Sharon had asked that Alice return a teddy bear that was hers as a child. Alice did not want to return it, fearing that it would look as if she were "giving in", and insisting that it was not Sharon's anyway. Unbelievably, Sharon's lawyer took the matter to court, and a Superior Court Judge ordered that Alice return the teddy bear to this 14-year-old girl.

Alice, against my advice, did not return the teddy bear. (I told you she was argumentative). She was duly brought back to court on a contempt charge. At the hearing, Alice said that the dog ate the teddy bear. The Judge said that she did not believe her and found her in contempt of court, but did not assess a fine.

That contempt finding was enough to convince DCF to give in to Sharon's lawyer. A TPR trial for Sharon only (not Hank) was scheduled. The TPR Judge was, of course, not the same Judge who had issued the contempt finding.

And so TPR went forward over a teddy bear for a teenage girl. And the taxpayers of Connecticut have no idea how their money is being wasted.

To be fair and balanced: the contempt judge chastised me from the Bench for not taking the teddy bear incident seriously. She looked at it as both Alice's disrespect to the court, and intentional aggravation of a vulnerable teenage girl. And this Judge is smarter than I am and may be right. However, having been raised in the 1950's, when parental authority meant something, I looked at it differently; but was forced to keep my opinion to myself.

And thus Sharon's TPR trial was scheduled.

At the TPR trial for Sharon, we produced several experts who stated that TPR was not a good idea, especially as reunification for Hank was progressing. **Even Alice's mother, Sharon's custodian of several years, stated that she would be happy with a simple transfer of guardianship!** Even Ms. Smoothie was equivocal on the subject. But Sharon herself was again allowed to testify, and asked for TPR; although it was clear, at least to me, that the girl was immature and had no idea what she was talking about.

Unbelievably, the Judge granted TPR. I think he just wanted to end that chapter and move forward. And I can understand that, even if I disagree with his decision on legal grounds. This is a very fair and well-respected Judge, who had to have heard the experts; so I must assume that he made the "practical" decision.

On October 27, 2006, some 17-1/2 months after I was hired, Hank was returned to his parents. He and his new baby brother are happy. He still gets to see his sister Sharon, and he goes to therapy. DCF still has commitment, as of this writing, but we are winding down to protective supervision. Eventually DCF will be out of their lives.

At the last court hearing on Hank, the Judge (different from the above judges) openly commended the parents for their progress. Alice was visibly gratified. I could have cried for joy.

To repeat what was said above: even when it is almost certain that you will lose, you might still prevail. A good soldier, as Napoleon said, needs two qualities: courage and perseverance.

I hope that, in years to come, Sharon will realize that kicking her parents when they were down did not accomplish anything positive. I pointed out at trial summation that when Sharon grows up and has kids of her own, and there are the inevitable problems, her part in the TPR of her own parents might negatively affect her ability to handle the situation. No one knows.

It also need hardly be added: five ineffective lawyers did not help Alice and Peter. If you have a DCF problem, get a DCF defense lawyer.

Alice and Peter are imperfect people to be sure. That is beyond doubt. But Hank would have been slaughtered if his TPR went forward. That is something that social workers should remember when they pressure parents who don't have adequate legal representation.

As of this writing, DCF is virtually beyond the power of the Constitution. All the more reason to have someone on your side when dealing with that agency.