

**“Intake to Impact”
TIG Conference – Austin
January 31, 2008**

The following hypothetical case involves medical and educational issues faced by a disabled child in a small rural community. This session will not focus on the substantive legal issues raised in the hypothetical, but will use these facts and issues as a framework to discuss how quality intake systems and technology support for litigation or other extended advocacy can empower programs to more effectively identify and respond to complex client problems.

Andy Johnson is a staff attorney in a 2-attorney office for an LSC-funded legal aid program in East Ruralville, population 15,000. Andy graduated from law school about a year ago, and has spent the past 6 months handling divorce cases and domestic violence protection orders in the East Ruralville Domestic Relations Court. He also has co-counseled a couple of eviction cases with his managing attorney, Abby Lincoln. Abby has been practicing in East Ruralville for about 10 years, and specializes in housing and public benefits cases.

The East Ruralville office is one of eight offices established by Big State Legal Services. All but one of the offices are in rural areas, with only 2 or 3 staff attorneys in each office. The program’s main office, which is staffed by 20 attorneys, is in Big City, about 275 miles from East Ruralville. Big City is the capital of Big State, and has a well regarded law school on the local campus of Big State U. Big City also has about a dozen private law firms with 20 or more attorneys each. Each of the law firms participates in a pro bono program run by the state bar association, which is headquartered in Big City.

Yesterday, Abby asked Andy to interview a new client who had just been served with divorce papers. The client, Mary Todd, has a 12-year-old son, Jeffrey Davis. The main issue in the divorce case will be who gets custody of Jeffrey. Jeffrey’s father claims that Mary is “too easy” with Jeffrey and insists that Mary’s inability to provide effective discipline is the reason Jeffrey is failing at school.

Mary tells Andy she is at the end of her rope with Jeffrey, who has just been suspended from his 6th grade class at Union Elementary for the third time this year. Jeffrey was diagnosed 2 years ago as suffering from Attention Deficit Hyperactivity Disorder. The school then developed an Individual Education Plan for Jeffrey. The main feature of the plan is that the school gives Jeffrey 2 hours of extra tutoring a week from graduate students who serve as externs in rural communities through the Big State University School of Education. Despite the extra help, Jeffrey’s grades have been dropping and he has been falling further and further behind.

Things came to a head last week, when Jeffrey’s teacher told Jeffrey that he had failed the first semester math exam and would likely have to repeat the 6th grade again next year. Jeffrey became so upset that he hit the teacher in his jaw. The school immediately suspended Jeffrey for the remainder of the school year.

Mary went to the school to discuss the situation and became angry when the principal would not agree to give Jeffrey more help. Mary slammed the door to the principal's office so hard on her way out that the glass window in the door shattered. Mary is now facing criminal charges for destruction of school property. She has been told that if she enters the school grounds again, she will be arrested for trespassing.

After the incident with the principal's door, Mary also received an anonymous phone call from someone who claimed they worked in the school office, and that they didn't think the school was doing enough to help kids like Jeffrey. The caller told Mary that e-mails exchanged between the principal and the school board president as Jeffrey's IEP was being developed last year expressed great concern over the expenses that Jeffrey might cause for the school's budget. Mary says the caller told her there have been at least four other parents whose kids have had these kinds of difficulties at the school during the past three years. "All the principal cares about is keeping the school board president happy with the budget," the caller said.

Andy asks Mary why she didn't call the legal aid office for help sooner, when Jeffrey was first having trouble with school suspensions. Mary looks down at the floor and said "I thought all that legal aid could do was help with divorces and evictions."

Mary begs Andy to help her keep custody of Jeffrey. Jeffrey's father regularly beat Jeffrey with a belt when the family was still living together. Mary never called the police because she was afraid of what Jeffrey's father might do to her. Jeffrey's father filed for divorce last month, after he left Mary to move in with another woman who works nights at a local factory where Jeffrey's father has a temporary services job.

Mary gave a box full of papers to Andy. The box includes Jeffrey's Individual Education Plan, and Jeffrey's school records dating back to the 1st grade. The box also includes a stack of Jeffrey's medical records. Andy notes that a local doctor last year suspected Jeffrey may be suffering from a rare genetic blood disorder. The disorder is not life threatening but could cause mood swings and problems with concentration that could explain some of Jeffrey's behavior at school. The nearest medical center with adequate expertise to diagnose and treat the disease is in Big City. The estimated cost of testing and therapy could exceed \$80,000, not including travel costs. Follow-up medications could easily cost \$10,000 per year. The Medicaid case manager at the local Big State Department of Family Assistance denied Mary's request to pay for the treatment, saying that it did not meet the Department's rules for "medical necessity."

Andy is now in Abby's office to figure out what to do. Abby tells Andy: "It looks pretty iffy for winning this custody battle unless we can solve what's going on with Jeffrey and his school. I went to a conference a few years ago and sat through a session about disabled children and IEP plans, but I've never had any other training and I've never handled one of these cases. It sounded like pretty complicated stuff to me. As for the medical treatment, we would probably have to litigate the Medicaid denial and that could take a couple of hundred hours in attorney time. There are only the two of us here, and my caseload is too heavy as it is. We may have to tell Ms. Todd that we don't have any attorneys available who can handle this case."

As luck would have it, you happen to walk in just as Abby and Andy's conversation is ending. You are the program's litigation director from Big City, making your once per quarter visits to the rural offices. Abby and Andy both look at you expectantly – "Well," Abby says, "should we deny this case?"

For further reading regarding educational needs of disabled children in rural communities, and rural issues posed by the No Child Left Behind Act (2001) and the Individuals with Disabilities Improvement Act (as amended in 2004):

<http://www.wrightslaw.com/idea/art/iep.roadmap.htm>

<http://www.nichcy.org/pubs/newsdig/nd21txt.htm>

<http://www.nichcy.org/training/contents.asp>

<http://www.nichcy.org/resources/nclb.asp>

<http://www.ed.gov/parents/needs/speced/iepguide/index.html>

