Why has meaningful change in child welfare eluded us and what can we do as a community to move the agenda forward?

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Introduction by Vivek Sankaran, University of Michigan Law School Child Advocacy Law Clinic

Notes by: Laura Page

- Avoidable injuries and mental health, basic pro-social behaviors  
- Academic attainment leads to self-sufficiency-adequate income  
- Economic and social mobility  
- 27% of children enter the foster care system at 6-12 years old; these children have behavioral and mental health needs, but we are using CPS to provide services that should be available through other agencies  
- 10% of African American children end up in foster care by age 12  
- West Virginia consistently has the highest percentage of children in the foster care system – poverty is the indicator here  
- Blame the framework for the problem – it must be parent-friendly but able to sell politically (blaming the system re: racism, systemic issues)  
- Predictive analytics is helpful in the worst cases, ie fatalities
Keynote Address- Beyond CPS: Developing an Effective System for Helping Children in Neglectful Families

Michael Wald, Stanford Law School  
(View Professor Wald's presentation slides here.)  
Introduction by David Chambers, University of Michigan Law School  
Notes by: Kristi Erickson, Lauren Gleason, and Eboni James  

Notes by: Kristi Erickson  

This is a critical time for rethinking child protection.  
• The debate now centers around equality  
• We’re not dealing with the achievement gap. We’re dealing with survival. If we were dealing with just the achievement gap, we’d be in a much better place.  
• Change without resources is impossible.  

Let’s look at foster care in the greater context of child protection.  
We’re struggling at the implementation phase.  
We’re dealing with the same questions we were dealing with 50 years ago. We need new ideas, we need to go beyond CPS.  

Goals for Children (we need to be thinking in terms of realistic outcomes)  
• Safety, mental health, pro-social behaviors, academic attainment, economic and social mobility.  
• It’s going to take a different set of outcomes to help the families in child welfare. The universal changes happening now will help the children at risk, but we aren’t doing enough for the child in child welfare – the children in the system are severely at risk and need different interventions.  

We rejected ABA standards for dependency and neglect  
→ Judges wanted a great deal of discretion. People are always going to do what they want to do regardless of rules, procedures, and policies.  

Substantiated Maltreatment:  
• Decline in physical & sexual abuse  
• Neglect has remained flat  

Maltreatment Reports  
• D&N maltreatment finding vary by race.  
• African American children are still the greatest confirmed population suffering from maltreatment.  

Case Management Services  
• Many cases are screened out  
• May informal cases, 1/3 never see a judge  
• Many families have no services  

New Reports Infants Left at Home  
• More infants reported  
• More repeat calls
• 20% of infants in foster care, 45,000 children

Rates of Children in Foster Care
• We have 3 (if not 4) foster care systems in the US.
• 47% 5 and under
• 27% 6 – 12
• 26% 13-17
• The rules and procedures for each of these age groups need to look differently – different needs and different presenting issues

50,000 kids reenter the system!!
• Could this have been avoided?
• 10% of African American Children end up in foster care before age 10. CONCERNING.
• This is a race issue.
• This is a poverty issue.

Limits of Child Welfare Approach
• Never going to be able to address all of the issue these families are dealing with

Quality of staff in the system in critical – you need the resources and programming couples with good staff & teachers, etc. People want to go where they’re paid.

Potential Reforms
• Implement solid legislation rather than lobbying for new laws – read the statutes

Public Health Model
• It is very hard to change parental behavior

Be realistic
• Work off the existing universal structures that are already in place

Lawyers
• Develop a detailed sense about what our system actual looks like
• We need a system that can be implemented
  o Money
• Coalitions – can’t do this alone in the legal system – judges take the lead role in this
• Set priorities
  o Most impact with limited dollars

No-blame Framework
• Obstacle: captures parents & sells politically
• We need parents reaching other parents, in positive communities. Who is going to do the outreach? Capture the parental voice.
• Plant parents, like children, in relationships!!!

We should limit predictive analytics to the strongest and the worse and most dangerous situations. Start with safety and then use predictive analytics to help with services.
Notes by: Lauren Gleason

- This is a critical time for rethinking CPS b/c debates about children and poor children are on the national agenda but these are debates about inequality and closing the achievement gap. These are important debates but don’t address the worst-off children.
- We work with children facing basic survival. We need to put these children on the political agenda.
- How do we change the system without resources?
- We often talk about changing foster care in the context of CPS but we need to remember that foster care is the end of the CPS system.
- We also need to think about how many of these same issues have been on the table for 30 years and debated much in the same form for a long time. How can we move on?
- What are the outcomes that we want?
  - Safety from avoidable injuries
  - Mental health
  - Develop basic functioning (executive functioning)
  - Basis academic skills necessary for self-sufficiency
  - Economic and social mobility
- Rules vs. discretion is an issue we must consider
  - Even when rules are passed people often do what they think is best
  - ABA juvenile justice standards not adopted because they limited judicial discretion and judges thought they knew best
  - Congress does not want to tell states what to do

Data
- Enormous decline in physical and sexual abuse from 1990 to today
- But the number of children having proceedings is never higher and disproportionately based on race.
- Great majority of cases are weeded out
- And of substantiated cases most don’t get services
- Lots of voluntary care from family members to avoid court proceedings
- However, the same rules/regulations should not apply to all
  - Infant and older teens are in need of different services
  - Must design rules that accommodate both
  - The reasons children come in change by age
  - Reunification/adoption look different with a ge
- We use CPS to compensate for a lack of services that should be in other places.
• State systems are highly variable. This is not because underlying parent behavior is different by state but has to do with how states label and what they do.

• Removal rates vary by race.
  ○ However this is a race and poverty issue. For a long time one of the highest states was West Virginia.

Limits of Child Welfare Approach
• CPS is not now and never going to be able to help most families.
• CPS is too late.
• After the fact harm is caused.
• Parents hesitate to get involved with stigmatizing blaming system.
• Almost half of all states are now budgeting for universal preschool which is expensive and increasingly budgeting for early head start.
• For most poor children high quality child care is important and expensive.
• Home visitor service is also proposed but to get this for all the kids who need it would be expensive.
• These movements create challenges to recruit good people for CPS against these competing systems.

Changing Parental Behavior
• Very hard to change parental behavior.
• At core:
  ○ Complexity of behaviors
  ○ Beliefs and trusts
  ○ Cultural and parental understanding
  ○ Parenting as adaptive—it’s constantly changing.
• Current programs are successful with voluntary parent participants but most parents don’t want to be in programs.
• Current programs are most successful under specialized conditions (highly trained professionals, college campus etc.
• Not easy to move to a public health model.
• Best bet we have is to work off of universal systems that we have in place b/c of the money, support, infrastructure and trust in the community but will still take work to get them going.
• Programs that work with WIC have worked well but they have only been small scale. We need to find ways to expand without undermining how effective these programs are.
• If we are going to a more universal system as lawyers our starting conversation is:
  ○ Detailed sense of what existing services look like
  ○ Put in place system that is implementable and has money.
This will be done in coalitions
Judges take a back role and parents take bigger role
Evidence based practices so we create a system that keeps improving
We need to frame needs without blame
  - We need to find a way to frame the system that is acceptable to parents but will sell politically

**Question:** when parents don’t take advantage of voluntary services what should we do?

- Incentives! Data in NYC testing showed that cash incentives were not great. It got parents to enroll but not to say
- Diapers got a lot of parents into WIC but we need to think about who we are trying to reach and how
  - In SF, they paid mothers to walk truant kids to school so school attendance improved. We need to think creatively!

**Question:** predictive analytics?

- These can be used effectively
- They can pick blocks where fatalities occurred.
- These are strongest with the most dangerous situations.

**Notes by: Eboni James**

- Give some experience thinking and current thinking

This is a critical time for rethinking child protective services

1. Debates about children are on the national agenda but most of them are inequality and closing the achievement gap
   - Debates that does not address the worse off children
   - We are not dealing with the gap, but basic necessities
   - Focus on the worse off children, instead
2. In order to do so----how are we using resource
3. Doing change without resources is very challenging
4. Need to have a vision for how resources are being used and why they are being spent on
5. Not focusing on FC, but looks at it in the entire context of child welfare
6. FC is what happens at the end. He does not believe we can change the FC without changing the entire system
7. Implementation is a critical issue (Just because you pass a law that does not mean it's going to be implemented
8. Think deeply that many of these issues have been on the table for 30-40 years. (i.e. quality services, overtaking and undertakings
9. Thus, how can we move beyond that debate
   - Let's not say the same thing that we have been saying the last 40 years for the next 40 years

**Things Necessary**

1. What are the outcomes that we want for these families?
   - Be realistic about what can be achieved
   - 5 major outcomes that we need to get for all children
2. Roles of the child welfare system
   a. Safety
      i. Emotional
      ii. Physical
3. Develop basic kind of functioning (executive functionality, self-regulating)
4. Attain basic academic skills necessary for self sufficiency
   a. Bar that has been raised a great deal
   b. 40 years ago making sure no one dropped out of high school
5. Economic and Social Mobility
   a. Less interested in this point
10% of children will suffer from ALL of these situations, and we need to focus on them.
Why did they deny juvenile justice policy? Because it limited judicial discretion
   Rules v. Discretion
   Limits and rules

10% of AA ends up in Care by age 12, not counting kinship
We have state systems which are highly variable.

1. Limits of Child Welfare Approach
   a. CPS is never going to be able to work with this
   b. The harm is done and it's much harder
   c. Parents will not get involved in a system when they do not feel in control or as if they will be consistently blamed
   d. ½ of state budgets go to public education
   e. Need early head start
      i. Takes a lot of dollars
   f. Quality of staffing
   g. Limited outcomes
   h. NOT A SYSTEM
      i. Time limits
2. Potential Reforms
   a. How much of this will make a difference
   b. Showed a ton of statutes and policies that are not sound
3. Facilitating Better Parenting
4. Family Issues
5. Challenges Changing parents
   a. Beliefs and trust
   b. Cultural competence
   c. Adaptive
6. Limits of Current Programs
   a. Involving fathers
   b. Parents necessary = capacity to utilize
7. Systems/Approach to Supporting and Strengthening Parenting
8. We are not going to have magic through evidence based practice.
   a. The next step is that all agencies should implement step based system
9. Who to frame the needs of the kids and the parents as well as races that will sell politically
   We are far from this. We can’t sell the system on bad parenting but by helping to make parents better may work

Audience Question: Expand more on financially incentivizing parents (i.e. visitation model). There is data that those who do not take advantage of these are more at risk.

Answer: NY has experience with conditional cash transfers. The data is not great in cash incentives. The research actually finds that it gets parents enrolled but not to stay. The dropout rates are high. In poor communities, the parents need to be reached on the ground by other parents to get them to see it as positive. Small incentives go a long way. Give them diapers (actually big expense), who is doing the outreach? Who are we getting on the ground to help these families? There are no easy answers.
High rate of absenteeism. The principal said "can't you get the juvenile system to file neglect on all of these children?" He told them to "let's try something else." Come back next week with a list of your best attendees. He would bet them that those parents walked their students to school. That was, in fact, the case. Thus, he asked those parents if they could pick up the other kids on the way. Parents became support group for one another. Putting the kids in the system is not always the way to go.

Questions: Thoughts on predictive analytics on which families would receive which services and referrals.

Answer: He went to a conference and has been a little involved and he does think we can use data much more effectively. Using PA, was able to predict the child's fatalities. It's the strongest in the most dangerous situations. I would start it with safety first. He looks at the geographical route rather than the individual family route.
**What role should Child Protective Services play in helping at-risk children?**

Moderator: **Don Duquette**, University of Michigan Law School  
Panelists:  
**Clare Huntington**, Fordham University School of Law  
**Susan Kelly**, Casey Family Programs (retired)  
**Elizabeth Bartholet**, Harvard Law School  

Notes by: Eboni James, Laura Page and Katie Joh

**Notes by: Eboni James**

**Clare Huntington**

Paradigm shift within a case  

Court Intervention Cases

- Too focused on Rights of the parents and children  
- The problem is based entirely on rights. Thus, we cannot deliver what we need as children and parents  
- Rights lead to basis in terms of race and class  
- Rights obscure the role of poverty  
- Right to v. right from  
- Fosters conflict instead of collaboration  
- Focus on problem solving instead of rights  
- Families should do what they need and then the state may step in after that  
- Mutual dependency  
- Family need the state, but economically stable families need it as well  
- State needs family to do this critical ground work while the child is young and this is what is lost  
- Independency: Economically Stable families fail to see that they, too, rely on the government  
- "Ways to talk purple"

**Susan Kelly**

1. Opened with a story: 20 years ago neighbors shared what they would do and their 11 year old child snuck out and someone told her. The parent said "why did you do that, don’t you know that the state lives next door to you?"

2. I have a bias: I believe that our role in cps is safely helping children stay home, go home and of not safely helping them find a home.  
   This is a mindset.  
   Work with families and not against them  
   Not just short term compliance  
   It’s about respect and belief in the family’s potential

3. Every parent wants to be the captain of their own ship  
   Help when they need it and hope for the future is what’s needed.

1. Reinterpretation of reasonable efforts  
   a. Original intent was to assess agencies were taking reasonable efforts and not parents  
2. Quality Assessments by workers  
   a. Frontline work is critical. If we do not have good assessment, we will miss the mark.
b. Engage with families, not judge them
c. Build trust

3. Good legal representation for EVERY parent
   a. Have a right to have someone to explain to them their rights

4. Funding
   a. How we fund the services to families
   b. At least as much as foster care parents
   c. Reuse money that we use to institutionalize children to invest in them

5. Family support via partners
   a. Walk the walk with them
   b. For example, New York

6. Plans done with family taking the lead

7. Family preservation
   a. Research supports this idea. 80% families got a visit within 24 hours of the visit

Time was cut, but ends with, we have an obligation.

**Elizabeth Barholet**

We need to talk about the things we disagree on

Things she agrees with:
Poverty is the heart of the issue

Things she disagrees with:
The importance of where we see that we are at today
What is the primary function of the CPS?

She believes that CPS is more protective than harmful
We need a war on poverty
The nature of the neglect problem

It's not a good idea to focus on safety
Kids are suffering from profound neglect.

• This has to do with good research that will help guide policy makers.
• Let's not "assess" but "prove"
• Assessments are misleading

Parenting is a privilege and NOT a right

**Notes by: Laura Page**

CH: Rights obscure poverty and foster conflict over collaboration; should focus on problem solving

- Look to the New Zealand model of family group counseling vs. its implementation in the SU; recast the family-State relationship as one of mutual dependency (See Submerged State)
SK: Help children stay home, go home, find home; we should move away from short-term solutions

- Reinterpret “reasonable efforts” – the focus should be on thee agency, not the family to make reasonable efforts

- There is a need to reform assessment in CPS regarding good judgment and critical thinking that is contextual – need training and supervision for social workers to achieve this

- The system should ensure birth families have the same support as foster families

- Look to NYC and Detroit parent partner programs for guidance

EB: We should be guided by facts and social science research; right now, advocacy research is influential but problematic – the three big reform movements today are rooted in policy research (biased)
- We need neutral sources of funding to support new research
SK: If we want kids to grow up and learn how to be in families, they have to have the chance to actually be in families: black and brown children are more likely to in institutional care & have poorer outcomes

- There are theoretical tensions at play: is parenting a right or a privilege; when is someone entitled to another’s child; what should foster parent training entail

- Look to the parent partner program in Seattle – big issue with case worker burnout

- The practical reality of CPS is one of power dynamics and enforcement; it is adversary to a family collaborative model because it is inherently scary to families

- New Zealand family group conferencing sans-professionals emphasizes the role of a supportive community
  o Emphasize creative problem-solving that is more nuclear-family focused; the role of the State is only to effectuate the plan
  o Big question is do we trust families to the experts of their own situations

- Look at the role of coercive pressure and future monitoring
  o But why do so many families refuse voluntary (and effective) programs? Could be in the way they are offered

Notes by: Katie Joh

Clare Huntington
Need for a paradigm shift:
- Within actual cases (i.e., court intervention)
  o Right now, too much focus on rights (parent’s, child’s, shared rights) that we can’t deliver on. The rights-based system isn’t implemented well, but even if it were implemented properly, it would be inadequate. It obscures poverty, fosters conflict, and always operates as a “rearguard action”
  o Instead, we should use a model of problem-solving – reference to New Zealand’s model of family conferencing
- In the bigger picture
  o Need to create relationships of mutual dependency between families and the state. Families need the state, and the state needs families: achievement gaps set in by age 3, but up to that point kids are in the home
  o Need to stop demonizing dependency. Susan Mettler’s thesis on “the submerged state”: stable families don’t think they rely on the state (even though they do) whereas for poor families, the state is very visible. This leads us to ask, how do we deliver services in a way that is either visible for all, or submerged for all?
    ▪ Examples of states like Oklahoma, Kansas, with conservative governments that still sell early intervention really well

Susan Kelly

“I believe our role should be helping children safely stay home, safely go home, safely find home.”

Importance of a mindset of respect for families – aligning ourselves with families; “help when they need it, and hope for the future.”

Suggestions:
1. Re-interpreting “reasonable efforts”
2. Quality assessments – need the ability to think critically, otherwise we will continue to miss things. This also requires a need for trust.
3. Good legal representation for every parent
4. Funding – birth families should receive as much as foster families and group homes
5. Thinking about parents as partners

Elizabeth Bartholet

Emphasis on the importance of thinking about where we are now: the system is more protective than harmful, and the programs happening now won’t address the real problems – need to address profound neglect.

Need for good research – critical of “so-called movements” like intensive family preservation, racial disproportionality, differential response

Panel Discussion

SK: on Intensive Family Preservation: families in a study in Michigan did benefit from IFP – 85% of families were networked to other programs through IFP; also studies have shown that IFP was an effective placement to out-of-home placements (interest in getting this research from Susan Kelly – she says she will send link later on).

On racial disproportionality: out of 700 kids in Ohio who spent approximately 10 years out of home in institutional care, 79% were Black, none had contact with their siblings, none had contact with their parents → supports the conclusion that the people being punished by the system are people of color.

EB: later research also shows that IFP doesn’t make sense because it doesn’t make sense to keep kids at home just to keep kids at home.

Also, reflecting on own experience with the home study process as an adoptive parent: “parenting is a privilege and should be thought of as such, not as a right.”

CH: (responding to EB’s last point) There is no “license” required for well-off parents – imposing one on poor parents only is a problem

SK: Fundamental question of whether someone has a right to someone else’s child – the importance of the IFP movement was to focus on the potential in families. “Do we fundamentally set up families to think they have a right to their kids if we haven’t give them systems of support?”

Q&A Responses

Proposed solutions:

EB: addressing mutual dependency – need to focus on deep causal factors, but also immediate risk

SK: changing caseworker attitudes

CH: incorporating people who know the families and the issues into crafting solutions

EB: (responding to CH’s point) research says social workers end up agreeing with the family conference decisions

SK: raises the issue of who has the power – do we trust families?

EB: there is evidence that parents offered voluntary services don’t take it – evidence that some coercive pressure works better than none.

SK: Why do 30-50% of people reject programs? Maybe it’s because of the way programs are offered.
**How should legal standards be articulated in the child welfare proceedings?**

Moderator: Joshua Kay, University of Michigan Law School

Panelists:
- Christopher Church, University of South Carolina School of Law
- Clare Huntington, Fordham University School of Law
- Joshua Gupta Kagan, University of South Carolina School of Law
- Casey Trupin, Raikes Foundation

**Notes by: Elaine Saly**

How should legal standards be articulated in child welfare proceedings?

Clare Huntington
- Skeptical about using standards to bring about meaningful reform
  — problem is too many kids entering care when they don’t clearly need to be in care, staying too long because no clear standard for when to send home, and incentives to maintain system status quo
- prescription is greater determinacy (physical health in immediate danger, tighter front end standard, time limit for how long CPS should work with family based on individualized needs - AACWA (resulted in more kids coming into care, did move kids more quickly out of care but came at cost of family reunification (before reunification at 60%, after 52%) but also not finding homes (aging out goes from 7% to 11%)
  - standard is one tool to achieve reform, but can’t be the only
  - ASFA rule on termination of parental rights - why do we have the same rule for kids of all ages?
  - what standard would families come up with if they were asked?

Christopher Church
- try to minimize unintended consequences of rules
- cautionary tale in judicial leadership article
- role of lawyers in addressing exceptional cases
- standards need to be aligned with our values and we are bad at articulating goals
- predictive analytics might be the closest we’ll get to a silver bullet
- is it ethical to experiment on families with unproven approaches?
- critical incidents are the needle in the haystack; not a victory if sweeping up all of the hay and needles are in there
- justice implications of subjecting families to the scariest experience of their lives

Joshua Gupta Kagan
- Courts should be involved in system reform, shouldn’t be driven only by the agency
- We need more study and data on differences in legal standards and how those differences affect outcomes
- 29 states and DC define in utero exposure is abuse. NJ court asked was there harm?
- Crux of the issue: is this parent able to safely care for this child? Is appropriate treatment being provided?

- Reasonable efforts should mean something: if mother can bring her baby into treatment with her, treatment is more effective

- Kinship should have a real place in the law: judge should be required to create record of reasons why the child was not placed with kin/efforts made to place with kin

Casey Trupin

- three issues to blame: 1) state legislative process - legal rights alone are not going to get us where we need to get, but we need to empower lawyers and judges to participate in crafting laws that work well in the court room b/c otherwise we get unworkable results; 2) appeal process - not set up for dependencies b/c need to show purpose for further proceedings, probable error, so far departs from usual practice that it requires review - we are waiting for harm to happen because we foreclose meaningful review and enforcement of rights; 3) disincentives to enforce rights of clients

- Three things we need to do: 1) have to make appeals more accessible, 2) need to empower child welfare attorneys to make appeals, and 3) empower judges and child welfare attorneys to participate in legislative reform.

- need to bring racial disparities work into legislative reform

- when creating new rights, must make sure they are enforceable

Discussion

- federal government requires collection of a lot of data, but don’t require connection to legal standards

- need to ask how do we justify court intervention? Should there be a nationalized standard?

- attorneys need to be involved in out of court work and this is partly because attorneys are connected with clients who can tell their stories

- how do we get foundations to understand the importance of the role of attorneys and to fund parent representation?
How should legal services be delivered to children, parents, and the state?

Moderator: Kendall Marlowe, National Association of Counsel for Children
Panelists:
Don Duquette, University of Michigan Law School
Kara Finck, University of Pennsylvania Law School
Leslie Heimov, Children's Law Center of Los Angeles
Scott Hollander, KidsVoice
Robbin Pott, Detroit Center for Family Advocacy & University of Michigan Law School

Notes by: Diamond Conley

Don Duquette:
We can learn to relate to families and people as lawyers and serve the important role that attorneys have as a child attorney.

-Lawyers focus well on facts and are better able to make decisions because of this, but they should also make sure that they prepare for cases, and collaborate with others such as family members of their client and social service workers.

Lawyers should take a transactional approach and remember that children have a liberty interest at stake and should be given representation, they’re entitled to it.

Robbin Pott: Flint MTD Study: Study included 2 social workers and 5 attorneys

The cases were divided into intervention cases and control cases. The cases were randomly assigned to control groups and the results showed that when attorneys and social workers worked together:

1. there were quicker resolutions to some cases, more cases resolved, with 1/3 of the cases received being resolved quicker
2. together lawyers and social workers were better at preserving family ties and they were also more likely to place children with relatives and family members that were involved, and were less likely to be put in foster care
3. there were also fewer removals once there were interventions set in place

This study worked for three reasons:

1. Attorneys had respect for the social workers’ skill set
2. both closely collaborated with the child welfare agency and bridged a trust group with families
3. the teams got to cases earlier and this made it easier to fix things

The problems for this study included:

1. tensions between lawyers and social workers
2. social workers felt that might have been able to do more without directly working with the attorneys
3. due process issues
Robbin Pott stated that she would like to see a system where once a family is "court involved", social workers also become involved to help the families and the agency give services to the family.

**Kara Finck**: Counsel for parents and providing legal services to parents is critical.

Suggests following a Hollistic Interdisciplinary Model: says when clients enter the system they have a host of issues that need attention.

Therefore you need attorneys, social workers, and families working together.

We want parents to believe in the child welfare/ foster care process, and the way to do that is to start providing them with representation.

When her clinic provided lawyers and social worker collaboration to families, her clinic became trusted by the community.

Says we need institutions that provide adequate representation for parents, and lawyers need to be there to help people and families before they get into crisis mode.

Says there is a need to invest more in law school clinics, who could provide representation for parents in an affordable way.

**Scott Hollander**: Kids Voice: Represents 3000 in abuse and neglect cases, provides collaboration between attorneys and social workers.

The program provides advocacy for children on different levels and even provide educational advocacy: such as going to IEP Meetings, taking on due process issues, and transitioning youth to allow lawyers @ Kid Voice to continue representing their child clients until they are 25 years old.

Five components critical to providing competent legal representation to children and parents:

1. define the tasks and time needed to represent your client and be clear about the task and the time needed for your case so that you can be realistic about the advocacy you can provide
2. training
3. supervision and accountability for lawyers working on the cases
4. extending representation to meet the client’s needs
5. use of technology to better communicate and data gathering: it is not just about what you can do at your office, but look at what the data and statistics show that you still need in your jurisdiction

*Once you figure out the needs of your jurisdiction, then you can provide what you can provide what you can based on your resources.

But at least you can be aware of the gaps and the strengths and weaknesses of the system in your jurisdiction.

Extra Comments: With lawyers and social workers, you can have cross learning.

However, you might also have a triage model set up with your lawyers and social workers, so that cases are assigned based on need.

Lawyers might work on some cases in court while social workers are providing other families with services.
**How should we make decisions for children in foster care?**

**Moderator:** Kara Finck, University of Pennsylvania Law School  
**Panelists:**  
Timothy Connors, Washtenaw County Circuit Court  
Jane Spinak, Columbia Law School  
William Thorne, Utah Court of Appeals (retired)  

**Notes by: Laura Page**

- The court’s role: making decision or validating the decisions made outside  
- Lawyers’ roles: should not be defense, but as transactional deal-makers  
- Judges as skeptical consumers, as if it were her children or grandchildren  
  - Avoid coercive family decisions that then don’t warrant review  
- The fact that there is a child in need of protection does not equal a license to take over the family  
  - The role should be only to assist, empower, engage – not coerce beyond safety  
- We force families into parenting contracts (of adhesion) regardless of the reason for their appearance in court  
- We should incorporate youth-led teams to make decisions for their wellbeing  
- Individual goals for the family/child should determine the decisions – the goals could be safety, wellbeing or good parenting, but should be tailored to meet the child’s needs
Rebuilding the Child Welfare System

David Sanders, Casey Family Programs

Notes by: Amber Star Leal and Nareene Karakashian

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1. Contents
   • System is not "broken" because it never worked in the first place and was designed to fail
   • Why do we require abuse before bringing children into the system to provide safety?
   • "License to Abuse": aunts and uncles being given family members (children to care for) when they are abusing their own kids

2. Experiences
   • Massive problem with firing/hiring directors all the time – this would never happen in a private setting or in the military
   • Another massive problem with screening calls out and not responding

3. Key Decision Points
   • System of checks and balances
     o Distinguish Child Protective Services from Child Welfare System

4. Potential Opportunities
   • In regards to screening:
     o Highest level of risk reports: children less than 5 years old = 40% of screened out
       ▪ We leave families resentful
       ▪ Solution: "widen the net" – even if it isn’t necessarily someone from CPS we need to send someone to investigate
     • Social workers have limited expertise and we need to team them with mental health professionals more.
     • We need a risk-based approach – not evidence based (same concept Dr. Henry was pushing for. i.e. trauma-informed care for parentified child when the child isn’t necessarily exhibiting negative behaviors and is mostly internalizing)
     • The system assumed the government is a “good parent”
     • We need to limit the ability to remove children
       o Why don’t we remove the perpetrator from the home instead? This way children can maintain their lives in their homes and with their connections
     • An 18-month time frame for permanency is unconscionable – we are leaving children in limbo
       o We need to have more frequent hearings to ensure timely permanency
     • Need strong – and balanced – representation for children, parents, and the agencies.

Major Take-Aways
  ➢ Critical needs fall under public health issues
  ➢ Use predictive analytics
  ➢ Look at risk vs. evidence

Notes by: Nareene Karakashian

4 points:
2. Experiences
3. Key decisions
4. Potential Opportunities.

“The Child Welfare System is broken” – to be broken it must’ve worked at some point. The system is designed to fail.

The core goal of safety is bizarre. It is bizarre to say that children have to be abused to enter the system. We can make an impact before the abuse happens.

In the “triage” approach we don’t address the needs of young children. We are not thinking in ways that is designed to succeed.

When he first came to Los Angeles County, he was the 10th director in 18 years. What is the likelihood the system will be run efficiently?

How would you know if an agency is successful?
- A Child protection agency would be successful if children were placed in safe homes.

Federal Agencies
- Vulnerability of young kids.
- We don’t know what will work (evidence –based)
- Screening out calls- screened 10% of calls in Los Angeles
  o Although screening calls is still high risk.
- Kids keep dying.

Need a system of checks and balances from the first call. The agency has all the power; rents and kids have no power and no representation.

Need to distinguish the Child Welfare System from the Child Welfare Agency; shouldn’t be synonymous.

During the screening and investigation process, the lack of balance creates a problem throughout the entire process.

What is the response when you get a call?
- Need to re-think what it looks like when someone calls.
  o 40% of the time nothing happens; the rest of the calls get an investigation.
- Need to widen the net.
  o We should go out anytime there is a call.

Need to learn from brain development especially in the context of the initial investigation and decision. Criteria and assessment should be based on age; particularly infants and young children.

Need to recognize that social workers have minimal expertise. Need expertise in child development and medical expertise, which is why there needs o be a functional assessment with all of these experts present in the first hearing.

The current system is a “check the box” system.

The Child welfare system should be a risk-based approach instead of an evidence based approach. We shouldn’t require evidence of an event that occurs when we know that the child will have an injury or event down the line.

25% of kids in out-of-home placement have been there for 2 years, we can’t say that any of the 33 thousand children in out-of-home placement were safe.

There needs to be limits on the ability to remove a child.
When there is a parent/child conflict or behavioral problems we remove the child instead of the abusive parent.

The 18-month timeline is unconscionable; especially for infants. We need to think about a shorter timeline. We need to be careful of the initial placement decision; should we actually remove the child? Currently, we leave kids in limbo while the parents are healing.

We need to move children to permanency but there are hearing every 6 months and even then the child is seen often the day before the hearing. There needs to be stronger representation of children and parents.

We can’t eliminate child abuse/neglect fatalities.

- need to move to a public health approach
- narrow CPS’s role
- Help peace officers in understanding the issues.

Predictive analytics is not a solution but should be in the future. We need to look at risks and Place-based approaches.

QUESTIONS AND ANSWERS

1. Amy Harfeld: What are some steps we can take to advance the commission’s work?

   - Dr. Sanders: Need to speak up for what is best for children. Looking at how we can create supports. In the first hearing there needs to be good representation with good information.

2. Don Duquette: Can you speak to Foster Care Funding Issues/CAPTA funding. Are there any ways forward in Congress?

   - Dr. Sanders: The Families First Act and CAPTA both have the capacity to help.


   - The role of CPS should be narrowed. Need to find how mental health behavioral health and others can be incorporated into the system without losing the ability to investigate.

4. Frank C: How do we respond to the fear of narrowing/broadening of the system?

   - Dr. Sanders: Workers bring kids to court to be protected and knowing they would be supported 90-95% of the time. If it was 40-45% of the time because of good representation, we would have a different system.

   Need stronger checks and to see what child welfare really is.

5. Mr. Wald: One recommendation is better screening. In a public health model, there needs to be more attention paid to WIC and pre-natal; better investigations are necessary. Also need to elevate the Children’s Bureau in HHS to a direct report. The Children’s Bureau serves a targeted population; won’t change much. Need to look at the role of NIH, WIC and how we elevate a system of services but not a bureau.

   - Dr. Sanders: Need to look at who is served. Screening is short-term. Public health is important and necessary versus a stronger role of CPS. The Children’s Bureau’s belief was that the Bureau reported to the president to serve as a diminution of transparency; it was a statement that something needs to happen to elevate children’s issues.

6. Mr. Marlowe: A better system would emerge by reducing the number of kids in the system. We can’t give up on federal legislation. Child protection does have to be a part of that system; legislation needs to incorporate and address how we will deal with the serious issues. We need to have state legislation and a network of state work. We also need training models of attorneys.