

CHANGING THE NARRATIVE OF CHILD WELFARE
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OPENING

In 1987, Billy Calvin Jones was lucky to be living at Wynne State Prison Farm in the Texas Department of Corrections. The other option was Death Row a few miles away. Billy was 18 when he and a couple of friends robbed a pharmaceutical warehouse, looking for drugs to fuel their addictions. Billy killed the security guard. He was convicted of capital murder and sentenced to life in prison. The prosecutors called him “venomous” and “a threat to civilized society.”

According to the rock star, David Crosby, of Crosby, Stills, Nash & Young, Billy Calvin Jones represents safety, stability, and maturity. Crosby served a year in the mid-80s in a Texas prison for drug and gun offenses. By that time, Jones had served ten years. He knew his way around. In his autobiography, Crosby tells a different story about Billy Calvin Jones than that recounted by prosecutors at Billy’s trial. Crosby

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writes “Even though Billy Jones was younger than me, he was an older and wiser head. He taught me a lot about how to stay alive in prison.”

Rowena Kingston is a recovering crack addict who lost six children to the foster care system when she left them alone for days on end. I know her as the den mother to her entire neighborhood, housing and feeding kids and adults who have nowhere else to turn.

Roberto James was a teenager in foster care. He’d bounced in and out of a dozen or more schools and probably 30 placements, and was arrested ten times in a year. Roberto constantly was written up for absconding from his group home placements. The other side of the story, though, is that Roberto was the sole caretaker for his baby, and the social work agency wouldn’t let him bring his baby to his placement. So Roberto “absconded” to his mother’s house, or his mother-in-law’s house. Many who cared about him saw the most gentle parent they’d ever known; the caseworker and judge saw an absconder, a rulebreaker – they saw the quintessence of irresponsibility.

So what is this all about?

Well, in law school, I had a friend who often came to class unprepared, or missing a notebook, or rushed into class late, that sort of

thing. By way of excuse, he would say, and I quote, “I am a work-in-progress.”

I thought that was sort of silly then, but it turns out that I feel the same way about being a lawyer. Since entering this profession, I have been on a journey. This evening, I’d like to have a conversation about what lawyers do, what lawyers in child welfare CAN do, and how we can do it. My goals are to find a way to do more good than harm as a lawyer, and to feel fulfilled and sustained by doing it.

The short version of the story is that I’ve always thought that the very essence of a lawyer is to do SOMETHING. I sit up and take notice of lawyers who don’t merely watch and let the world take its course. Were I a client, I think I’d want a lawyer who *makes a difference*.

In child welfare, the difference we can make as lawyers for parents, children, and the state, and as judges, is to prevent children from entering foster care unnecessarily. And we can end a child’s stay in foster care as quickly as possible. To do that, we have to fight against a powerful narrative of child welfare and against the accepted “top-down” paradigm of legal services.

In the next 25 minutes, I want to suggest that we can achieve our goals of limiting entries to foster care and speeding exits from it by

looking for the strengths of the people involved in our cases, rather than their weaknesses. We can look for what they can do, rather than what they can't. We can focus on their abilities, not the shortcomings over which we often obsess – like drug addiction, impatience, illiteracy, poverty. We can start from a premise that families involved with child welfare are bundles of assets, rather than collections of problems. If we can do all this, we can help families build, rather than watch them fall.

THE PROBLEM

The problem is that we are imprisoned by a grand narrative of child welfare. That narrative is one of brutal, deviant, monstrous parents, and children who are fruit that doesn't fall far from the tree. These are, to use Edgar Cahn's phrase, "throwaway people."

To give you an idea of the relentlessness of the messages drummed into our heads, more than 90 percent of news stories about children are about violence by and against children, and more than 90 percent of those stories focus on a discrete incident, ignoring larger public policy questions. One researcher found that 70 to 95% of stories about child welfare are "horror stories." These are stories about gruesome, brutal injuries inflicted on children by unfathomably beastly parents. Psychological anthropologist Axel Aubrun and linguist Joseph

Grady confirmed that the most common child welfare media story frames depict murders or violent injuries by, in their words, “brutal,” “monstrous” parents. Finally, Dorothy Roberts and others have pointed out the inextricable link between stories of animalistic behavior and racial stereotyping.

So, what we think of when we think of children and foster care is brutality, savagery, deviance, and abuse. We think of horrible, heinous misdeeds perpetrated by monstrous felons. We think of murders that scream from the headlines, and the vile tragedy of family sexual abuse.

There is another story, however. In fact, more than 70% of the children in foster care are there because of allegations that they were neglected, not abused. According to Ruth White of the National Center for Housing and Child Welfare, for example, “Nearly a third of all children in foster care placement are separated from their families because their parents can’t afford safe, decent housing.” Other children live in foster care because they miss school without an adequate explanation, because they are left alone by their parents for excessive periods of time, or, according to researchers Lawrence, Carlson and Egeland, because of “death of a parent, parental incarceration, parental chemical addiction, or homelessness” without maltreatment.

But the grand narrative of rampant deviance and abuse, embedded again and again, has created a pernicious reality. The nuclear secret of child welfare is that most of the children in foster care should not be there. Most of the children in foster care are harmed more than they are helped by being taken from their families, and by being kept in foster care for too long.

According to Paul Chill, “more than 100,000 children who were removed in 2001 – more than one in three – were later found not to have been maltreated at all.” A 1997 study of infants born to substance-abusing mothers found that the language development of children placed in foster care was delayed in comparison to that of children who remained with their mothers. A 2006 study concluded that children in foster care developed more significant behavioral problems than similarly-maltreated children who remained at home. More recently, an MIT economist studied 15,000 kids and found that children taken from their families and placed in foster care fared worse in life than similarly-maltreated children who were simply left with their families.

More evidence comes from Florida. Florida housed 28,000 children in foster care in Fiscal Year 2006-07. Then Florida decided to spend more on family preservation and less on out-of home care. Two

years later, only 21,000 children were separated from their families, and safety improved. Among children who were placed in out-of-home care, reunification happened more quickly and more successfully.

Finally, in 60% of my students' cases at the University of the District of Columbia, the children were returned home from foster homes or group homes – and were never found to be abused or neglected. These are kids who were taken from their homes for a few days, or a few weeks, or three months – but it turned out they weren't abused or neglected, so they were returned.

One of the children in our cases was Kevin. Kevin was only seven months old at the time he was separated from his mother. He was born HIV-positive. The state took custody of Kevin because test results showed that his viral load was elevated. According to the agency, the doctor who treated Kevin said that the enormous elevation could only have been due to maladministration of the medication by Kevin's mother. The problem was that the test results were a month old, and Kevin's viral load actually was normal on the day he was taken. The other problem is that the doctor later signed a sworn affidavit stating she had never said that there could have been only one cause for the spike in Kevin's viral load. Kevin was returned to his mother's custody.

And James, who was taken from both his mother and his father – who did not live together – because his uncle came to school and beat him up for stealing a video game! The uncle didn't live with either parent or the child! James lived with strangers in foster care for a month and a half.

And finally, Isaac, who was apart from his mother for three months. The government alleged that Isaac's grandfather had beaten him across the legs and that Isaac's mother knew about it and failed to stop it. The government also alleged that Isaac was "educationally neglected" because he had missed seven days of school in the first two months of the term. Three months later, at trial, it turned out that the government couldn't even prove that Isaac had been hit, let alone by his grandfather. And the educational neglect? One of the days they said Isaac was absent was the day the social worker went to the school and took Isaac to foster care!

The judge sent Isaac back home after three months.

So, we have a foster care system full of children who should be at home. What does it look like? Well, things haven't improved since 1991, when the National Commission on Children wrote "If the nation had deliberately designed a system that would frustrate the

professionals who staff it, anger the public who finance it, and abandon the children who depend on it, it could not have done a better job than the present child-welfare system."

Children and youth in foster care experience multiple moves from home to home and high levels of abuse in foster homes and group homes. Former foster youth have sky-high rates of homelessness, unemployment, poverty, arrest and incarceration, teen pregnancy, dating violence victimization, and low educational achievement.

This is the child welfare system we create by telling only stories of "Rowena Kingston, the crack fiend," and "Roberto James, the bad kid." We need to tell new stories.

THE SOLUTION

We need to figure out what we can do. How can we be part of the solution? How can we disrupt the status quo, instead of perpetuating it? How can we fight the narrative?

Fortunately, to paraphrase Brendan Sullivan, Oliver North's lawyer, we are not potted plants. We can do something. We **MUST** do something, because we're standing here.

What I propose is a paradigm shift. The low-income people you'll meet in this line of work? Suspend disbelief for a moment, and convince

yourself they're rich. The crummy neighborhoods the children come from and broken-down communities you see all around you? Think of those as strong and healthful, instead of shabby and pathologized.

Here's how.

To challenge the narrative of child welfare, we will have to start by challenging our approach to legal services. Anti-poverty programs in general, and legal service providers in particular, see clients as the sum of their needs. Clients and litigants come to us with their problem. Indeed they only get our attention because they *have* a problem. And the first thing we ask is "What is your problem? What do you need? How can I help you?" And we try to solve the problem. We fill the hole, apply a bandaid, put a finger in the dike, whatever. You've heard the metaphors.

But what is the result? More poor people than ever, families being broken up, children bouncing around foster care.

Here is a different model. Instead of merely asking: "What is your problem? What is the disease, the defect that brought this mother – and by extension, her child – into my life," we can ask a different question. Not what is she lacking, but what does she have? Not only "what can I do?" but we can also ask a client or litigant "what can *you* do?" What are

her abilities, her strengths, her assets?

How can we re-envision her as rich, powerful, and capable?

Well, can the mother whose child is taken away braid hair? Can she cook a meal? Can she smile at an elderly person in a nursing home?

And let's think about that person in the nursing home. Can she watch a child recite a poem and clap for the child? Can she read a story? Can she share her own story about life "in the old days"? Does she know by heart, perhaps, a recipe for the best fried turkey you've ever eaten?

We can see with different eyes, and look for successes. Did the child's mother pull her neighbor's weeds last week? Or change a lightbulb? Or pick up litter? These are things she did, not things she didn't.

Can she shop for groceries? Can she throw a party, or drive a neighbor to the doctor? Can she paint a room or clean a house or walk a dog?

The answers will be yes, yes, and yes.

In Chicago, eighth-graders in special education tutor first-graders in math. In Washington, D.C., returned prisoners escort children to school.

In Washington, D.C., our Youth Court is run by kids we might call

juvenile delinquents. Youth Court gives us a chance to call them judges and jurors. It is a diversion program, in which the very youth who come through the court as defendants sit as jurors, reviewing infractions of other youth. They hear facts, deliberate, and impose sentences of community service, restitution, counseling, or an apology.

So it turns out that delinquent youth also are judges!

Our clients can do the things we professionals do. Research is clear, for example, that women in violent relationships are the very best judges of their own safety, better than the police, lawyers, case workers, or even judges. In Washington, D.C., when our highest court ruled that there was no statutory right to custody for non-parents, a swarm of low-income grandmothers descended on the city Council, submitting statements and testifying about the necessity that the law be amended. And it was. Currently, in Washington, D.C., a homeless homeless advocate is leading a campaign to restore funding for homeless services.

So our clients from Ward 8 in Washington, D.C., from the Bronx, New York, from a Chicago housing project, a Detroit slum, and a gang zone in Los Angeles can all DO SOMETHING. Sure in some respects, they CAN'T, but in others, they CAN.

Now, if the mother is a person with assets, wealth, power, and

strength, we see her differently. We learn from her, we admire her, we grow from knowing her.

It turns out we don't have all of the answers. We don't have a preordained stereotype into which we can fit her any more. She has busted through the narrative. We have to take her for who she is, the real person, the complicated three-dimensional, real person. She isn't a stick figure – the deviant, monstrous black hole of problems, needs, and pathologies.

And her strengths and powers and abilities unlock ours.

First, we can tell stories of competence: this is our client, and these are the many things she can do! Instead of defensively trying to explain away those problems and needs, we can tell a story of strength, power, and admirable qualities. Rather than begging the court and case worker for scraps – an extra hour of visitation, for example – we can proudly and confidently argue that separation is unnecessary, or that reunification should come quickly. This is my client! She can do it!

And second, working with this person inspires and challenges us in a way that working for a stick figure cannot possibly do. Our work is exciting, not depressing! We collaborate with rich, nuanced, textured peers, rather than resignedly imposing our will on the frightened losers

we are conditioned to see. We can spend our energies creating and problem-solving, rather than dampening hopes and delivering bad news.

In child welfare, family strengths animate the practice of the Center for Family Representation in New York City and the Detroit Center for Family Advocacy.

The Center for Family Representation represents parents whose children are at risk of entering foster care. With a lawyer, social worker, and parent peer advocate, CFR has kept 50% of the kids from ever entering foster care, and, for those who do enter, they return home in four months instead of the state average of three years. Similarly, Detroit's Center for Family Advocacy represents parents of children already found to be abused or neglected. In the last data of which I was aware, CFA had kept 59 kids out of 59 from entering foster care.

CALL TO ACTION

Lawyers.do.things. They don't stand and watch and think it's right because everyone else does it, because the courthouse culture has always done it this way, because the oldtimers do it this way, or even because a law professor tells them to do it this way. Lawyers don't stand idly by just because that's what a judge wants. And this –

reducing the scourge of unnecessary foster care placements and lengthy stays in foster care – is what there is to be done in child welfare. Every lawyer and judge involved in child welfare has the opportunity to do **this** – to keep children from unnecessary, devastating disruption, fear, and pain.

We *can* assume that every client and every litigant and every witness is different from every other one. We *can't* assume we've seen this one before, that we can spot this kind of case a mile away. We have to resist the tendency to say “Oh, yeah, sure, this is the FILL IN THE BLANKS kind of case.” This is the “mother who is a victim of domestic violence” case. This is the “untreatable manic-depressive” case. “This is the immature-father-still-sponging-off-his-mother” case.

Because if we know all the answers from the outset, we don't get to do any thinking. We don't get to get to know this particular client, this particular human being. We don't get to hear her story, because we don't have to. And we can just stand around and let the world take its course.

But that's not what lawyers do. We change the course of events. We add value. We make a difference.

So instead of knowing the answers, we can ask questions. A lawyer

can ask a parent or a child, “Who are you? What do you do? What do you know? Who do you love? What was your greatest success? What is your dream? What is your favorite food? What’s the most frivolous thing about you? What makes you laugh?”

As it happens, it’s much more fun to practice law as if your goal is to make a difference. If your goal is to make a difference, you’ll have to learn, instead of know. You’ll have to listen instead of tell. You can ask instead of declaim. You’ll get to know the dozens and hundreds of people you’ll come across, rather than spend your days interacting with the fleshly embodiment of your assumptions. You’ll hear real people, not a pathologized, stereotyped version of them created by your own preconceived notions. And instead of hanging out with people whom you despise or, at best for whom you have compassion, you get to be with a bunch of fascinating people from whom you’re learning and with whom you’re growing.

Conducting a job interview once, I had been having a bad time. My clients were all going through hard times, and I think I was looking for support from the poor interviewee! So I asked her, “Don’t you get depressed about these cases? All these bad things happening?” She answered, very thoughtfully, “I remember that my clients are more than

their sadness.” And David Chavkin writes that each of our clients, like each of us, has a unique “constellation of family, friends, experiences, goals, dreams, needs, problems, and other factors.” Assuming your client is a bundle of assets unlocks for you an opportunity to meet those fascinating people, and to represent them far more effectively.

You will go to court and you will see things that appall you. In a New Jersey case, a lawyer didn’t bother to meet with his client for the eight months preceding the client’s termination of parental rights trial. And the lawyer justified his actions by telling the Court “I can learn everything I need to from him in three minutes at counsel table.” That lawyer doesn’t need to meet with his clients because he thinks he already knows all the answers.

In one reported case, a lawyer told a judge that it was a “foregone conclusion” that his clients’ rights would be terminated. In another, a lawyer said his client’s rights “*should* be terminated.”

We can’t be that lawyer. We can’t be that person.

What can we do? Well, that’s the fun part. There is no limit, because the facts are always different and your imagination is boundless if you let it be. When the agency shrugs its shoulders and says four siblings will have to live with strangers, instead of with their

grandmother because the grandmother doesn't have enough beds for the children, you can pull out a credit card, as I saw a lawyer do. He told the judge that HE would buy the beds, and the judge ordered the agency to reimburse him. In a criminal case, a judge delayed sentencing for a man convicted of stealing classified documents, because the defendant's lawyer wrote a sentencing memorandum citing eight cases that the judge had never seen, and which supported a shorter sentence. A few months ago, ACLU lawyers may have stopped some executions, by uncovering emails indicating that states hadn't complied with an administrative requirement to register their purchases of a drug used in the death cocktail. That's plain, everyday lawyering, not Thurgood-Marshall-changed-the-world lawyering, and I think we can do it.

So, I have painted the world in black and white: either you passively sell your clients down the river by going along and getting along, or you stand valiantly in the breach, determinedly fighting for justice. I know that's not really the way the world works, of course, nor the way any of us humans can function. Some days we're on, some we're off, some we're funny and some sad. Sometimes we're energetic and other times we're slugs.

What you can do as a lawyer, however, is to be aware of yourself.

You can be reflective and self-conscious in the most constructive way.

What are the choices I am making here? Am I assuming weakness or am I looking for strengths? Am I seeing only disease, or am I finding health? Do I wallow in the worst of my client, or build on her best?

What is the story I tell myself about my client, and what, then, is the story I tell the Court? (If I am the judge, what stories am I listening for?)

What story am I conveying to the client herself? Am I, as Tennessee lawyer Jim Neal once said, ready to be “the only person by my client’s side, all the way to the electric chair”?

I’ll conclude by returning to Roberto, the teenager I mentioned at the opening of these remarks. He was constantly arrested AND very sweet, he fought with police AND was gentle. Tragically, Roberto was shot and killed. Fittingly, the scene had dual storylines. Roberto was killed by a 15-year old, angered that Roberto had been stealing the other child’s drug stashes. Roberto had been doing it to support his two children, but the boy with the gun knew only the wrongfulness, not the righteousness, of Roberto’s actions. Roberto’s funeral was a gruesome affair, with people screaming and wailing and crying, and the minister begging Roberto’s friends not to retaliate against the killer and his friends. It was scary and horrible and awful.

But the story has unfolded differently since then. There has been no retaliation. The two mothers of Roberto's two children, formerly rivals, now live together and raise their children as one family.

Roberto's sister had a child about a year ago. She named him Roberto, and I'm watching him grow up in Facebook posts and photos.

It is a truism that there are at least two sides to every story. In child welfare, we tend to listen for stories of sadness and failure, stories of disability and incapacity. Our power and our joy, however, are unleashed when we help children and families tell stories of happiness, success, strength and achievement. Wishing won't make drug dependency vanish, but an addict can be more to us than her illicit hunger.

Parenting coaches tells us that "what we focus on, grows." So accentuating the positive won't pay the rent or get rid of roaches or cure a mental illness, but embracing all parts of a family's reality, including the admirable parts, can deepen our investment in them and our commitment to them.

As I hear myself tell the story, I know the positives of Roberto's death don't outweigh the negatives. And I don't mean to be Pollyanna. I mean only to point out that plus and minus live together, that positives

and negatives come side-by-side, and that joy can be sorrow's companion, if we insist.

Being a lawyer is an incomparable gift. It can be a gateway to worlds of exploration and growth. What I hope for all of us is to see the best in others, to learn from everyone around us, and to find out, by examining our own choices, who we really are. If we refuse to be potted plants, if we seek and tell stories of strength, we can do more GOOD than harm as lawyers, and we ourselves can grow and grow and grow.