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Measuring the Next 30 Years

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The last thirty years have seen many changes in the field of child protection, as child welfare law and policy have been undergoing nearly constant change. Those changes, however, have rarely been supported by data or scientific research; rather, they seem to have been largely driven by individual perception of events and gut instincts resulting in what has become essentially a folklore-based system. By focusing on data and scientific research, we hope for better outcomes, but short of that, we at least hope to know whether, and why, outcomes change. The move towards data collection and analysis has begun, but many scholars and practitioners appear to overlook the question we keep failing to answer—"Has this change benefited children?" Knowledge creates context for better decision-making. This assertion is an essential part of why so many national organizations are turning toward the use of data collection and analysis. The overwhelming needs of the children and families in our child welfare system are overshadowing the question of whether our responses are effective. This can no longer continue. Measuring process is not enough; we must measure outcomes. It is the right thing to do.

INTRODUCTION

"Thirty years [after the University of Michigan launched the Child Advocacy Law Clinic] the system is vastly different." So reads the material advertising this thirtieth anniversary symposium. The same material claims an increase in the regard for and sophistication of children's law but then asks, "Has this change benefited children?" Unfortunately, the answer to that question is we just don't know. That inability to answer the question is itself a major problem that must be addressed. These last thirty years have indeed seen many changes in the field of child welfare law, as child welfare law and policy undergo nearly constant change. Those changes, however,

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^{1.} E.g., 42 U.S.C. § 5101 (2000 & Supp. 2003) (revealing amendments to the Child Abuse Prevention and Treatment Act, Pub. L. No. 93–247, 88 Stat. 4, in 1975, 1978, 1984, 1986, 1988, 1996, and 2003); Admin. for Children & Families, U.S. Dep't of Health & Human Servs., Child Welfare Policy Manual Updates, http://www.acf.hhs.gov/j2ee/

are rarely supported by data or scientific research; rather, they seem to be largely driven by individual perception of events and gut instincts resulting in what has become essentially a folklorebased system. For example, for many years the regularly heard adage with regard to placing children with relatives was "the apple doesn't fall far from the tree;" this suggested that a child removed from his or her mother should not be placed with the grandmother, because the grandmother must be just as "bad" as her daughter. Over time, that view softened as we saw some grandparents serving as excellent caregivers but also as the system faced placement shortages and relatives became the only available option. Now "the rapid development of kinship care ... has raised questions about over-reliance on extended families that may not have the resources to adequately protect some children."² Another example comes in how child welfare law has confronted drugrelated issues. For years, an addiction to crack was seen as nearly impossible to overcome and the "crack babies" were written off as hopelessly damaged. Today methamphetamine is the scourge of child welfare. The examples of the constantly changing state of child welfare practice can go on and on. By turning to data and scientific research, we hope for better outcomes, but short of that, we hope at least to know whether, and why, outcomes change. That knowledge would be a large, substantive improvement over the past thirty years.

The move towards data collection and analysis has begun, but many scholars and practitioners appear to overlook the question we keep failing to answer: "has this change benefited children?" Given the choice between measuring an outcome that ties directly to a clear benefit for children and measuring the efficiency of a court process, would we not first measure the outcome? It is a false dilemma, since we possess the capability to measure both outcome and efficiency, but the question still assists in setting priorities. If our judicial and legal processes aim to keep children safe from maltreatment, then measuring our success in that mission should be our priority. Ensuring federal and state timelines are met while leaving a child in harm's way clearly misses the point. Relying on a belief or assumption that efficient processes lead to better out-

programs/cb/laws_policies/laws/cwpm/updates_update.jsp (last visited Sept. 16, 2007); Admin. for Children & Families, U.S. Dep't of Health & Human Servs., Withdrawn Child Welfare Policies, http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/withdrawn.jsp (last visited Sept. 16, 2007).

^{2.} Nico Trocmé, Keynote Address at the Ottawa National Outcomes Symposium: The Importance of Process in Developing Outcome Measures (Feb. 20, 2003), http://www.cecwcepb.ca/files/file/en/OutcomesSymposiumTrocme.pdf.

comes is no longer enough when we have the science and the data to measure the outcomes.

I. HISTORY

For many years, little to no national data were kept regarding the child abuse and neglect system.3 Eventually, the Adoption and Foster Care Analysis and Reporting System ("AFCARS") was created by the federal government through a requirement attached to Title IV-E of the Social Security Act, and states began collecting data in 1994.4 Still, these data are rarely used for research purposes. Despite many "reforms" that have been instituted across the country over the last decade, AFCARS data show little change in outcomes.⁵ The reasons for this are undoubtedly complex, but one reason is certainly that we were unable to measure real changes that were happening deep in the data. Unfortunately, this makes the case that our "reforms" have lacked meaningful focus, coordination, and a basis in research to differentiate the effective from the ineffective. Some states and counties have truly made radical changes in their outcome statistics over the last decade, but those changes have remained at a local level, not leading to universal adoption of practices that can affect substantive changes in outcomes nationwide.6

Fortunately, there is growing evidence that indicates that the field is headed in the direction of regular measurement and data usage. In 2004, the American Bar Association Center on Children and the Law, the National Center for State Courts, and the National Council of Juvenile and Family Court Judges joined

^{3.} NAT'L RES. CTR. FOR CHILD WELFARE DATA & TECH., AFCARS TOOLKIT 1, http://nrccwdt.org/ta/ttt/notebook/ttt_notebook1.html (last visited Sept. 16, 2007).

^{4.} It was only in 1986 that Congress added Section 479 to Title IV-E of the Social Security Act, requiring the federal government to devise a system for collecting foster care data. See 42 U.S.C. § 679 (2000). The federal regulations implementing this requirement, known as the "AFCARS regulations," did not become effective until 1994. See 45 C.F.R. § 1355.40 (2006).

^{5.} Children Welfare Info. Gateway, Foster Care, NUMBERS & TRENDS, July 2005, at 3, 5, http://www.childwelfare.gov/pubs/factsheets/foster.pdf ("Placement type as of September 30 remained relatively unchanged between FY 1998 and FY 2003.... Overall, the percentage of children exiting foster care to a permanent family ... remained about the same between [FY 1998 and FY 2003].... The time children spent in foster care changed little between FY 1998 and FY 2003.").

^{6.} For example, consider Illinois, where the number of children placed in substitute care has declined by more than sixty percent from a peak of 15,254 placements in 1995 to a low of 5700 planned for state FY 2003. ILL. DEP'T OF CHILDREN & FAMILY SERVS., SIGNS OF PROGRESS IN CHILD WELFARE REFORM 1, 10 (2003), http://www.state.il.us/DCFS/docs/SignsJan03.pdf.

together to publish Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases.⁷ That same group has since formed the National Child Welfare Collaborative, which is now acting on the Building a Better Court work plus additional knowledge gained from the Strengthening Abuse and Neglect Courts in America ("SANCA") grant to publish a Toolkit for Court Performance Measurement in Child Abuse and Neglect Cases, expected out in 2007. Similarly in 2004, after a year of study, the Pew Commission on Children in Foster Care released a report entitled Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care.8 One of the primary recommendations of that body was for the "[a]doption of court performance measures by every dependency court to ensure that they can track and analyze their caseloads, increase accountability for improved outcomes for children, and inform decisions about the allocation of court resources." Finally, in 2006, at a time of great frugality in domestic spending, the federal government nearly tripled the budget for the Court Improvement Project ("CIP") grants with explicit instructions that half of the new money be spent on data collection and analysis.¹⁰ State CIP directors across the country are now engaged in strategic planning to determine the best way to use these new dollars.

II. PROCESS VERSUS OUTCOME BASED MEASUREMENT

The problem, however, is that the move toward measurement is thus far, primarily a move toward *process* measurement. Not surprisingly, process measures focus on the process of child welfare, particularly issues of timeliness and due process. One of the hallmark features of child welfare cases is their frequent court involvement. Unlike many other types of court matters, these cases return to court over and over again. An average case is likely to have a probable cause hearing, an adjudicatory hearing, a disposi-

^{7.} CTR. ON CHILDREN & THE LAW, AM. BAR ASS'N, ET AL., BUILDING A BETTER COURT: MEASURING AND IMPROVING COURT PERFORMANCE AND JUDICIAL WORKLOAD IN CHILD ABUSE AND NEGLECT CASES (2004), available at http://www.ncsconline.org/WC/Publications/Res_CtPerS_TCPS_PackGde4-04Pub.pdf.

^{8.} THE PEW COMM'N ON CHILDREN IN FOSTER CARE, FOSTERING THE FUTURE: SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE (2004), available at http://pewfostercare.org/research/docs/FinalReport.pdf.

^{9.} Id. at 35

^{10.} See Admin. for Children & Families, U.S. Dep't of Health & Human Servs., Instructions for State Courts Applying for New Court Improvement Program Funds for Fiscal Years (FYs) 2006–2010 (June 15, 2006), http://www.acf.dhhs.gov/programs/cb/laws_policies/policy/pi/2006/pi0605.htm.

tional hearing, review hearings at least every six months, a permanency hearing before the twelve month mark, possibly a termination of parental rights hearing, and if so, then hopefully, an adoption hearing as well. This lengthy course of action only describes the court process. On the social services side there can be case staffings, home visits, family team meetings, multidisciplinary team meetings, visitation with parents, visitation with siblings, therapy appointments, medical appointments, educational meetings, parenting classes, and many more appointments to keep. These are all potential parts of the child welfare process. We can measure many things about this process: whether the parents attend each of the steps in the process; the length of time between court hearings or between visits; whether the parents were given notice of each event; whether there was a single judge overseeing the court process; whether there was a single case manager overseeing the social services side of the process; etc. The problem is that the answer to any of these questions only tells us more about the process. It tells us little about how the children and families are doing after making it through the process. That is why a shift is needed from process measurement to outcome measurement. The move from process measures to outcome measures is a shift from focusing on activities to focusing on results.

Unfortunately, in today's child welfare world, far less emphasis is being placed on the key outcome measures of safety, permanency, and well-being. An outcome measure is a measure of the end result of a system, relative to the aim, and measures the true success of a system. Outcomes are specific, desirable results for the population being served. In the child welfare context, this means things like, was the child maintained safely at home? Or, did the child achieve permanency within twelve months? In a project collaboration by The Urban Institute and the Independent Sector, an attempt was made to distinguish between process and outcome measures for nonprofits. Nonprofit organizations are most familiar with collecting administrative data such as the number of clients served, the activities provided, or the number of volunteer hours contributed. "These are important data, but they do not help nonprofit managers or constituents understand how well they are helping their clients; that is, such statistics provide administrative information about programs, but not about the program's results." Process measurement is: did

^{11.} ELAINE MORLEY ET AL., INDEP. SECTOR & URBAN INST., OUTCOME MEASUREMENT IN NONPROFIT ORGANIZATIONS: CURRENT PRACTICES AND RECOMMENDATIONS 5 (2001), http://www.independentsector.org/programs/research/outcomes.pdf.

you follow the procedure? Outcome measurement is: did you deliver the results you wanted?

As mentioned above, one of the groups helping to move child welfare towards regular data collection and analysis is the National Child Welfare Collaborative. 12 They have done much to draw attention to the issue and to encourage states to move in this direction. As mentioned before, the Collaborative has a major publication planned for release later this year that will propose thirty measures recommended for collection by courts. In advance of that publication, however, the Collaborative has already identified what they consider the "nine core performance measures, for which every court should strive to gather data." The nine are:

- 1. Safety: Percentage of children who were victims of child abuse or neglect while under the court's jurisdiction;
- 2. Safety: Percentage of children who were victims of child abuse or neglect within 12 months after the court's jurisdiction ends;
- Permanency: Percentage of children who reach legal permanency by reunification, adoption or guardianship;
- 4. Due Process: Percentage of cases in which both parents receive written service of process on the original petition;
- 5. Due Process: Percentage of cases in which all hearings were heard by one judicial officer;
- 6. Timeliness: Time to Permanency (average or median time from filing of the original petition to permanency);
- 7. Timeliness: Time to Adjudication (average or median time from filing of the original petition to adjudication);
- 8. Timeliness: Time to First Permanency Hearing (average or median time from filing of the original petition to the first permanency hearing); and

^{12.} See supra text accompanying note 7.

^{13.} What You Count Counts: National Measures of Performance to Monitor Effectiveness in Child Abuse and Neglect Cases, Handout from the National Court and Child Welfare Collaborative Conference for Court Improvement Programs in Baltimore, Maryland (November 2006) (on-file with author). For information on the Collaborative, see National Council of Juvenile and Family Court Judges, Collaborative to Work for Improved Outcomes for Children, http://www.ncjfcj.org/content/view/915/347/.

9. Timeliness: Time to Termination of Parental Rights (average or median time from the filing of the original petition to termination of parental rights).

First, it is important to note that the Collaborative uses the term "performance measures," a broad term likely meant to capture both process and outcome measures. In a field with infinite resources and time, as well as a comfort with and commitment to data use, collecting as much data as possible would be a laudable goal. But, in a field where "measurement is seen with suspicion as inherently reductionistic, where the concept of paperwork becomes a means of trivializing written assessments and treatment plans, and where evaluation is often reduced to self-serving reports aimed at securing funding," it is crucial that we start first with outcome measures and not confuse the two.

Still, these core measures provide a concrete way to explore the difference between outcome and process measures. The first three measures address safety and permanency—two of the three (along with well-being) key child welfare outcomes. If a court is provided with data on measure number one (percentage of children who were victims of child abuse or neglect while under the court's jurisdiction), then that court will know if children are better protected in their jurisdiction. If a higher percentage of children are victims of child abuse or neglect while under the court's jurisdiction, then we know those children are worse off. Likewise, if a lower percentage of children are victims of child abuse or neglect while under the court's jurisdiction, then we know those children are better off. Contrast this hypothesis with performance measure number four, the first of the process measures. If a higher percentage of parents receive written service of process on the original petition, we know we have protected more parents' constitutional rights, but we have no idea if children are better off. Maybe yeshypothetically, the notice could lead to increased parental presence in court which could lead to better understanding of the gravity of the situation and a more serious commitment to the case plan which could help get the children reunified more quickly (permanency). But, maybe no—hypothetically, the parent may never do enough to achieve reunification, but the notice could lead the parent to show up in court even though they are putting little or no effort into working their case plan; the result being a delay in termination of parental rights and children lingering in care (delayed or even no permanency). The court is left without

^{14.} Trocmé, supra note 2, at 1.

any direction as to how its children are faring. If the mission or goal of the child welfare system were superb court process, this would be a great measure, but that is not the mission. The child welfare system, at its core, is about ensuring child safety, permanency, and well-being, so that is what we must measure first and foremost.¹⁵ Currently, there is shockingly little evidence that the services we provide in the child welfare system result in better outcomes for children.¹⁶

It is a huge and inappropriate leap to say that improving process measures will lead to better outcomes for children. At best, improving process measures gives us hope that outcomes are also improving, if we have faith in our system's design. If better outcomes are what we want, better outcomes are what we must measure. Accountability and measurement are crucial for improvement, but our focus must be on outcome measures: are children safe, do children find permanent homes, and is the child welfare system ensuring their well-being? Only a measurement system focused on these elements will result in the information that courts and other child welfare system stakeholders need to ensure that they are improving the lives of children in our foster care system.

This concept is particularly difficult for attorneys and judges to accept. Our natural inclination is to focus on due process, the essential core of our legal system. We are taught to pay attention to many technical issues that can be cause for appeal. For instance, attorneys and judges may focus on whether the notice of a hearing was legally sufficient; or if a child or parent waived the right to counsel, whether that waiver was knowing and voluntary. In our system, these things are incredibly important, and we would never want to see basic legal rights jeopardized. The problem perhaps is one of not seeing the forest for the trees. If a system ensures every party is always provided with notice, qualified counsel, and a meaningful right to be heard, but children are still regularly being harmed, has that system accomplished the goals of the child welfare system? We think the clear answer is no.

III. NEW DIRECTIONS

Knowledge creates context for better decision-making. This assertion is an essential part of why so many national organizations

^{15.} Fred Wulczyn, Monitoring Child Welfare Programs: Performance Improvement in a CQI Context 1 (Chapin Hall Ctr. for Children, Working Paper, 2007), available at http://www.chapinhall.org/content_director.aspx?arid=1448&afid=339&dt=1.

^{16.} Trocmé, supra note 2, at 2.

are turning toward data collection and analysis. The overwhelming needs of the children and families in our child welfare system are overshadowing the question of whether our responses are effective.¹⁷ This can no longer continue. Measuring outcomes is the right thing to do, but it is also being demanded by more and more of the people and entities providing funding, including major non-profits and the federal government.¹⁸ In addition to collecting outcome measures, we need to make sure that information is funneled to the people most able to use it. There are, no doubt, many ways to share this information. As an example, Georgia's current approach is explained below.

IV. GROUND TRUTH

Several years ago, the state of Georgia was selected as a pilot site for the Strengthening Abuse and Neglect Courts in America ("SANCA") grant. Georgia's Court Improvement Program ("CIP") 19 jumped in with both feet but soon began to rethink the large number of data measures being tracked by the grant. Despite both the involvement of a court interested in and committed to the project, and the trial of an assortment of different methods for gathering data, it soon became apparent that in a field filled with overworked professionals, getting them to increase data collection is a Herculean task.

The Georgia team also began to discuss the difference between process and outcome measures. Most of the SANCA measures were

^{17.} Id.

^{18.} See Pew Comm'n on Children in Foster Care, supra note 8, at 12, 28–30; see also United Way of Am., Outcome Measurement: What and Why? (2002), http://www.unitedway.org/Outcomes/Resources/What/OM_What.cfm.

^{19.} The National Child Welfare Resource Center's Court Improvement Fact Sheet states that:

All 50 states, the District of Columbia and Puerto Rico participate in the federal Court Improvement Program administered by the Children's Bureau of the US Department of Health and Human Services. The grant program was established in 1994 as a response to the dramatic increase in child abuse and neglect cases and the expanded role of courts in achieving stable, permanent homes for children in foster care. The Safe and Stable Families Amendments of 2001 extended the court improvement program through federal fiscal year 2006. Under the grants, which are awarded to the highest court of each participating state, recipients complete a detailed self-assessment, develop recommendations to improve the court system and implement the recommended reforms.

process measures, leaving questions about the end results for children unanswered. In a search for simpler ways to measure outcomes, the Georgia project turned to the Adoption and Foster Care Analysis and Reporting System ("AFCARS") data. These data are already being collected by every state in the nation. The AFCARS data provided a wealth of information with quality data going back to 1998, allowing for a look at outcomes over time.²⁰ If the sole goal was to help researchers, the project could have stopped there, but the Georgia CIP along with the national sponsors of the grant wanted to get the information to the juvenile court judges and stakeholders who make decisions that have direct effects on outcomes for children every day.

Knowing that many people are leery about data—concerned about both its validity and its understandability—the data were put in a format designed to make them easily digestible by juvenile court stakeholders. A process was designed to share the data in the context of county stakeholder meetings with a Georgia CIP person present to walk everyone through the data to ensure an educated interpretation, and more importantly, to discover where data conflicted with stakeholders' perceptions. Courts need to know if they are effectively serving the families that walk through their doors, but through these meetings, it quickly became apparent that at least in Georgia, the people on the ground really had no idea how they were doing compared to neighboring counties or to the state as a whole. For measures where a county stood out from the rest, a discussion began with the stakeholders to brainstorm possible reasons for the difference.

One example being explored in Georgia is that of removal rate. How many children per 10,000 in the population does a county remove? This measure was selected for many reasons, not the least of which is that it is easy to measure—either a child is removed or not. Additionally, the decision to remove a child is one of momentous importance, inflicting trauma on children and families, meriting much due process protection, and starting a costly process for the state. This fundamental outcome also provides critical context for all of the "downstream" permanency measures.

At the beginning of the Georgia work, counties varied by a factor of around twenty on removal rate; meaning if you lived in the county with the highest removal rate, you were more than twenty

^{20.} Admin. for Children & Families, U.S. Dep't of Health & Human Servs., Statistics & Research, http://www.acf.hhs.gov/programs/cb/stats_research/index.htm.

^{21.} For a sample of how the data is presented, see Statistics for Clayton County, http://www.fosteringcourtimprovement.org/ga/County/Clayton (last visited Sept. 16, 2007).

times as likely to have your child taken away and placed in the child welfare system as if you lived in the county with the lowest removal rate. No one suggested, as one might with a process measure, that there was such a thing as the "right" removal rate, yet it seemed problematic that practice varied so dramatically within a single state. Shouldn't a family involved with the child welfare system be able to expect similar treatment irrespective of their zip code? Over time the Georgia CIP investigated this issue, visiting courts and talking with judges, attorneys, case managers, law enforcement, court personnel, volunteers, and others.

There are not yet any certain answers, but the process is in its infancy. There are now some strong hypotheses that will hopefully be tested over time. When the research is done, variables are controlled, and outcomes are carefully measured, we can begin to learn what might work best for children, and that knowledge can shape our child welfare system for many years to come.

As the work in Georgia continues to develop, the AFCARS data have been moved to an unrestricted website where anyone can access it at anytime.²³ We know that at least a few judges regularly consult the site. The county stakeholder meetings where the data are presented have evolved into full-day summits that add substantive training and action planning for the counties. The Court Improvement Initiative, a group of courts volunteering to work towards model practice in their jurisdiction, has embraced the data project and made it a core part of their work. Finally, a national organization, known as Fostering Court Improvement, is working with other states to help them find ways to best use their own AFCARS data.²⁴

^{22.} For example, during the first quarter of 2005, the approximate time when AFCARS data was first shared with the courts, Rabun County had a removal rate of 24.6 children per 10,000 in the population. Rabun County Removals, Summary Statistics, October 1998 Through September 2005, http://fosteringcourtimprovement.org/ga_ffy2005/County/Rabun/removals_charts.html (last visited Sept. 16, 2007). By comparison Hall County had a removal rate of 1.2 children per 10,000 in the population. Hall County Removals, Summary Statistics, October 1998 Through September 2005, http://fosteringcourtimprovement.org/ga_ffy2005/County/Hall/removals_charts.html (last visited Sept. 16, 2007). This works out to a ratio of 20.5 to 1. Today, those same two counties have a ratio of 5.1 to 1. AFCARS data is available from the U.S. Department of Health and Human Services, Administration for Children and Families (http://www.acf.hhs.gov) or Fostering Court Improvement (http://www.fosteringcourtimprovement.org).

^{23.} Admin. for Children & Families, U.S. Dep't of Health & Human Servs., Statistics & Research, http://www.acf.hhs.gov/programs/cb/stats_research/index.htm.

^{24.} Fostering Court Improvement ("FCI") is a non-profit collaborative effort between Fostering Results (http://www.fosteringresults.org), the American Bar Association Center on Children and the Law's National Child Welfare Resource Center on Legal and Judicial Issues (http://www.abanet.org/child/rclji/courtimp.html), and the Barton Child Law and

Conclusion

While we talk about six months or one year being an eternity in the life of a child, when it comes to a legal system, thirty years is not much time at all. The child welfare field is still in its infancy. Through the hard work of many, certainly including the University of Michigan Child Advocacy Law Clinic, great strides have been made; more attention, more money, and more talent are all flowing into the system. Now it is time to take the next step: to measure and account for our actions. We have spent the last thirty years focusing on the need for help; let's spend the next thirty focusing on the efficacy of our help.

Policy Clinic (http://www.childwelfare.net). FCI has been set up to ensure the data available to the Georgia courts are also available to courts across the country.