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## My Name Is Not 'Respondent Mother': The Need for Procedural Justice in Child Welfare Cases

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Vivek Sankaran

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## **A Parent’s Day in Court**

You are a parent whose children are in foster care. Your court hearing is today, after which you hope your children will return home. Upon leaving the bus, you wait in line to enter the court. At the metal detectors you’re told you can’t bring your cell phone inside. With no storage options, you hide your phone in the bushes, hoping it will be there when you return.

You get past security, nervously looking at your watch. The hearing starts at 8:30 a.m. The courtroom is packed – with other parents, caseworkers, lawyers, foster parents, relatives – all ready for their cases to be heard.

Time passes slowly. You sit alone. While you see other people on your case talking to each other, no one approaches you, not even your lawyer. You have many questions about this hearing but don’t know who can answer them. The longer you wait, the more anxious and afraid you become. The nerves start kicking in. You just want your children home.

The clock reads 9:30 a.m. Abruptly, the judge walks in, everyone rises, and the proceedings begin. No one apologizes for the delay. Next, a flurry of activity, none of which you understand. Lawyers move around the courtroom, parents are crying, papers are distributed, hearings conclude. A new case is called. This pattern repeats until the clerk says your children’s names. You nervously move forward.

The professionals on your case introduce themselves. The person beside you – whom you’ve only spoken to briefly – introduces himself as your lawyer. You discover another person – whom

you've never met or spoken to – represents the best interests of your children. You have so much you want to share and understand. Why is this all happening?

After the professionals introduce themselves, the judge – without looking up – asks: "Will the Respondent Mother introduce herself?" Those words sting: "Respondent Mother." You feel like a criminal. Your identity is reduced to a label, to something other than a person. You raised your children. You have a name, but no one uses it.

Suddenly, the hearing is over. The foster care worker and the children's lawyer recite the bad things cited in the petition – things that don't completely reveal the truth – but neglect to tell the judge what was going well for your family. Your lawyer mutters a few words but says little because he doesn't know the case and has never spoken with you outside court.

You want to speak but your lawyer tells you to be quiet. You have so much to share: you read to your children every night, got them to school every day by yourself, took them to their grandparents' house to play with their cousins. Now you can't do these things. Now you're just a "Respondent Mother" who no one wants to hear from.

After the professionals speak, the judge quickly says the children will remain in foster care and sets a court hearing months later, without asking about your schedule. Everyone hurries from the courtroom. The clerk hands you a court order, which your lawyer says lays out everything you need to do. He then hurries off.

You look at the paper, a pre-printed form with boxes checked and legal jargon you don't understand. Confused, you look around for your lawyer. He's working on another case, one of many he is assigned to that morning. You leave feeling dejected, hopeless, and angry: What happens now? When will you get your children back? Will your cell phone be under the bushes? You *never* want to go to court again.

## **How Many Parents Experience Court: Myths and Realities**

Over the past 15 years, I've represented hundreds of parents and children in the child welfare system. During that time, the practice has become more professionalized, with more qualified practitioners wanting to enter the field. New interventions to better support families have emerged and innovative laws to improve outcomes for families have been introduced.

While courts have focused on *what* they should do, they've paid far less attention on *how* they should do it, particularly as it relates to how parents experience the child welfare process. As a result,

parents frequently feel left out of the process, feeling even more hopeless about their prospects of getting their children back after the court process begins. One parent's description typifies the feelings of many:

When I arrived at court that morning, I was told this is my lawyer. My lawyer sat down with me for five minutes, asked me a couple of things, and told me to admit my drug addiction. I didn't know anything about a fact-finding hearing. I wasn't told what my rights were. I wasn't told the procedure of the court. I didn't have any idea what was happening, and I was very much afraid, because the important thing in my life had just been lost.

This sentiment, felt by parents experiencing the child welfare system all over the country, makes me wonder whether the court process is by design. Maybe it makes sense for three reasons: 1) to punish parents who have done horrific things to children; 2) to motivate parents to address their deficiencies through harsh treatment; or 3) to allow children to live in a foster care system that better meets their needs. Yet, when we explore each of these possibilities, the evidence clearly calls for a different approach.

### **Most child welfare cases involve parental neglect not horrific acts.**

Contrary to public perception, most child welfare cases do not involve parents who have committed horrific acts against children. In 2016, roughly 75% of maltreated children suffered from neglect, not physical or sexual abuse.<sup>1</sup> Neglect includes a broad array of conduct, much of which is influenced by a family's poverty, including a lack of food or clothing, homelessness, or parental substance abuse. In contrast, just 11.1 % of cases involved physical abuse, and even less – 6.6% - involved sexual abuse.<sup>2</sup>

Recent studies documenting the link between poverty, neglect, and the role of supportive services support these data. For example:

- One study found that children – substantiated as being neglected – who were involved with a Head Start program were 93% less likely to enter foster care.<sup>3</sup>
- Another study discovered that increasing the minimum wage by \$1 would reduce the number of neglect referrals to Child Protective Services by 10%.<sup>4</sup>
- National data indicates that 10% of all children in foster care go home within weeks of their initial removal, most within days.<sup>5</sup>

Unsurprisingly, given the close relationship between poverty and neglect, studies have also shown that two determinants of how quickly a parent can regain custody of their children are whether 1) they have housing, and 2) whether the system forces them to pay

the costs of their child's stay in foster care.<sup>6</sup> These studies and data rebut the notion that most parents in the child welfare system are "monsters" who should never get their children back.

Further complicating the prevailing narrative of parents in the child welfare system is that most parents have themselves suffered immense trauma in their lives. The National Child Traumatic Stress Network reports that while "judges and attorneys who work in the child welfare system are well aware that many of the children in the system have experienced trauma, less well recognized is that the birth parents of these children often have their own histories of childhood and adult trauma."<sup>7</sup> Parents are often victims of domestic violence or human trafficking, youth who aged out of foster care, or individuals who suffer from disabilities, including untreated mental illnesses.

While much work in recent years has focused on the trauma children in foster care experience, little has been done to identify and treat the trauma histories of birth parents. Even in many of the most serious child abuse cases, close investigation often reveals the parent himself was severely maltreated as a child. In short, very few child welfare cases involve parents who have done such monstrous acts that they deserve a court system that strips them of their dignity.

## **Court compliance is higher when parents are treated fairly.**

Perhaps our systems employ harsh tactics to motivate parents to comply with court orders and quickly address their needs to get their children back. Again, research does not support this logic.

Numerous studies show that when courts employ procedural justice – a system that treats litigants fairly – litigants are far more likely to respect the process and abide by the court's orders.<sup>8</sup> Surprisingly, although an individual's willingness to accept a court decision is shaped somewhat by whether he or she agrees with the outcome, research also shows that agreeing with the outcome is not the major factor shaping a litigant's acceptance of the decision or satisfaction with the process. Instead, both trust in the motives of authorities, and judgments about the fairness of the process they use are stronger influences on acceptance and satisfaction than achieving a particular outcome in a case.<sup>9</sup>

In assessing what procedures are "fair," litigants look to four key factors: voice, respect, neutrality, and understanding. Procedures that permit individuals to present arguments and to exert control over the process are deemed just whereas those that silence litigants heighten feelings of mistrust. Central to these findings is a person's need to have his story told, regardless of whether the telling will ultimately impact the case outcome. Fairness is also enhanced by adequate legal representation and confidence that the

decision maker is neutral and unbiased. Additionally, courts that reaffirm one's self-respect and treat people politely while respecting their rights earn the trust of those before them, regardless of the substance of the orders they issue.

As noted above, the satisfaction of litigants is crucial because research shows greater satisfaction in the process significantly increases the likelihood that litigants will comply with the mandates of authorities, even when those authorities are taking actions that may harm the interests of those individuals. This result is particularly salient in child welfare cases in which a finding of neglect only represents the beginning of the case. Ultimately, the outcome depends largely on the willingness of the parent to work with the stakeholders, including the court. Parents must comply with case service plans and court orders to secure the child's return home. Satisfaction with the process helps child welfare authorities work with parents to accomplish the objectives in the treatment plan. In other words, creating a court system that is impersonal and treats parents poorly only undermines the goal of getting kids home quickly.

## **Children have better outcomes when raised by family.**

Even if a harsh, impersonal court system undermines getting kids home faster, perhaps we can accept that result if foster care is an acceptable substitute that adequately meets children's needs. Research shows otherwise.

Upon their initial removal from their parents, children are immediately traumatized by the foster care system. Research shows the removal process itself threatens the well-being of children by creating painful and unresolved ambiguity in many aspects of their lives, including where they will live, when they will see their families, and what the future holds for them.<sup>10</sup> The pain created by this ambiguity is exacerbated by the realities of the foster care system, in which children are routinely moved between homes, forced to change schools, and see their siblings or parents infrequently. Unsurprisingly, children raised by the foster care system, who eventually age out when they reach adulthood, face a high risk of unemployment, incarceration, young parenthood, homelessness, or death.

Studies consistently find better outcomes for similarly situated children living at home than those entering foster care --

- One study found language development of children in foster care was delayed compared to that of children who remained with their mothers.<sup>11</sup>
- Another study found children in foster care developed more significant behavioral problems than similarly maltreated children who remained at home.<sup>12</sup>

- A comprehensive study by an MIT economist – looking at outcome data for 15,000 kids – concluded 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.<sup>13</sup>

Given these realities, child welfare advocates must think of foster care as a potent medicine with incredibly dangerous side effects. That is, foster care is a toxic intervention that should only be used to treat the most serious cases. Think of it as chemotherapy for a cancer patient.

## **Building a Court Process that Support Parents**

Considering the evidence that parents are far more likely to commit neglect than horrific acts, they are motivated by fair treatment, and their children have better outcomes when raised by family, how do we construct a court process that builds on this knowledge?

Consider these three examples to understand how courts might function differently:

- A judge in Washington State, before hearing from any professional, begins each court hearing by asking the parent how she is doing and how things are going.
- A judge in Nevada inquires whether the court date he wants to set works for the parent, and encourages that parent to inform the court if the parent later learns that the date does not work.
- A judge in Michigan requires prison officers to unshackle incarcerated parents, in prison for nonviolent crimes, during court hearings.

In each of these examples, jurists, taking small steps, send a powerful message that what parents say matters, that their appearance in court is vital, and that their dignity will never be taken from them.

## **Action steps**

What follows is a list of actions you can take to start building a new child welfare court process, one that seeks to connect with parents by giving them a voice, ensuring their understanding of decisions, reaffirming their confidence in the process and preserving their dignity.

- Allow litigants to bring phones into the courthouse or provide free storage areas.
- Create a welcoming courthouse/courtroom environment (e.g., family-friendly waiting room).
- Clearly state the court's rules in a respectful and transparent manner.
- Display artwork to make courtroom more family-friendly.

- Start court hearings on time. Provide an estimate of wait times.
- Apologize for lengthy delays.
- Introduce yourself by name.
- Address parents by name (not “mom,” “mother,” or “respondent”).
- Personalize interactions – make eye contact.
- Use open-ended questions and listen to answers.
- Ask parents and youth to repeat back their understanding of key decisions.
- Write information, such as the requirements of a treatment plan, on visible dry erase boards in addition to stating them out loud.
- Provide an opportunity for parents and youth to address the court directly.
- Consider allowing parents and youth to speak first at hearings, before the professionals report on the family’s progress.
- Explain how *and why* decisions are made (e.g., why can’t a child return home).
- Avoid the appearance of favoritism.
- Acknowledge unfairness.
- Situate the judge’s bench at eye level.
- Create courtrooms where the parties, judge, and professionals are seated in a circle.
- Seek regular feedback from families about the court processes.
- Schedule court hearings at times convenient for families.
- Provide parents with a written copy of the court order after each hearing. Ensure orders are written in a manner that conveys the key pieces of information to the parent, including the requirements of the treatment plan.
- Minimize *ex parte* removal orders.
- Conduct robust removal hearings before a child’s removal.
- Forge relationships between foster and birth parents.
- Involve birth parents when children are in foster care.



- Preserve positive relationships between children and their parents whenever possible and terminate parental rights only when absolutely necessary.

If your jurisdiction has taken other steps, please share them with me at [vss@umich.edu](mailto:vss@umich.edu). Together we can construct a child welfare system that supports parents, heals and not hurts families, and ensures that children can safely remain at home.

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## Endnotes

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9. See *Trust in the Law*, *supra* note 8, at 90.

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11. See Fridl Ross, Melanie. "To Have and To Hold: University of Florida Shows Cocaine-Exposed Infants Fare Better With Their Biological Mothers." *Science Daily*, May 5, 1998. <>

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