CHAPTER 11

Reflections on QIC Empirical Findings

Abstract

What do these findings mean in the context of this study? What are the lessons learned going forward? What insights do the data provide for the practitioner? What further questions do the data raise for future research and policy development?

11.1 QIC Field Experiment Limitations

There are a couple of other things to keep in mind in discussing the QIC data. First, the QIC intervention changed no other part of the child welfare system, except for encouraging the lawyers to adopt the Six Core Skills. The child welfare agency practices, the local services available and the functioning of the court all remained unchanged. Participation of the lawyers themselves was voluntary. Even though the QIC lawyers were paid a modest stipend for data reporting, the amount and manner of compensation for representing a child was not changed. The only element of the local child welfare system that was changed in this field experiment is the training and encouragement received by the QIC attorneys.

Second, attorney behavior measures are based on attorney self-reports and limited to aspects of behavior that could be quantified based on survey questions. Not everything that counts can be counted. That is, there could be QIC effects that are not detected. We cannot measure the specific ways in which attorneys interacted with children. Nor can we measure if a child feels more engaged or respected because of his or her attorney's attentiveness or if a child feels less anxious because of the lawyer's counseling and

attention. A child comfortable and safe in the relationship with the lawyer may disclose personal history, feelings and wishes more clearly and candidly, thus enhancing the attorney's legal advocacy.

In addition, our data does not measure quality of the behaviors that are counted. There may be the same number of contacts with other case participants, but the QIC lawyers are more focused and qualitatively better. QIC attorneys may have contacted the child just as many times as they would prior to our intervention but are doing it better as a result of the intervention.

Similarly, the statistical models analyze average impact of the QIC intervention so that the fact that an average difference is not found does not mean that some *individual* QIC attorneys within a jurisdiction did not change their practice in ways that benefitted their clients as a result of the QIC intervention. Maybe there were other qualitative benefits realized by children because of the robust level of attorney engagement that could not be measured.

With respect to child welfare outcomes, these data only report what is available through existing administrative data, which were limited to permanency and other substitute care outcomes. There are other outcomes affected by the QIC attorneys that we cannot measure. For instance, the data revealed that for both experimental and control groups the advocacy of children's lawyers was usually in agreement with the recommendations of the public child welfare agency.

Is that because all the lawyers are simply compliant and generally go along with the agency recommendations without question? Or is it because a high level of agreement was a product of more effective negotiation and problem solving initiated by the child's lawyer upstream of the dispositional hearing. Our data would not detect those qualitative dynamics.

11.2 Procedural Justice as an Outcome

Children's legal interests are seriously implicated in child protection proceedings. A child may be at risk of harm from their parent or other caregiver and depending upon effective government intervention to protect them. On the other hand, children face an invasion of their personal liberty under the supervision of the state or when physically in state custody. Children's legal interests, including fundamental constitutional rights, remain at risk and require and deserve procedural justice as part of due process fairness.

Due process requires that their interests and wishes be presented and advocated before the court. When adults face a significant challenge to liberty from the government, they get a lawyer to represent them and protect their interests. Adults facing loss of liberty generally get counsel whether or not the lawyer affects the ultimate outcome. Lawyers representing persons accused of crime are not evaluated on the basis of whether their legal advocacy actually achieves the outcomes their client wants. And the lawyers are certainly not evaluated on whether their representation achieves the

interests of the state or saves the state money. Due process and procedural justice is considered a value in and of itself.

There is something troubling about evaluating lawyers based on outcomes desired by the state. Protecting a child's liberty interest should be a value in and of itself. Perhaps outcomes like permanency, placement stability and placement with kin are not the appropriate criteria for evaluating effective representation of children?

Nonetheless the QIC hypotheses are that improved representation of children would benefit not only the children's experience with the legal process but also the ability of the system to deliver desirable outcomes for each child. We hypothesize that lawyers practicing according to the QIC Best Practice Model will indeed result in more carefully calibrated interventions into the family and more efficient handling of cases thus saving the government money enough to justify enhancing legal representation.

The benefits of good representation of the child exist regardless of whether it saves money or otherwise benefits the state. The child at risk of being separated from his or her family by the government certainly deserves and requires a competent lawyer to protect his or her interests. Legal representation is required as a matter of principle and as a matter of law—any benefits to the system are bonus points.

11.3 Lawyers Implemented the QIC Six Core Skills

Does the QIC Best Practice Model, as distilled into the Six Core Skills improve the *process* of legal representation and the *outcomes* for children? The answer is a qualified "yes." The approach worked to change practice and to some modest extent the approach affected outcomes. Importantly, it appears that, among other things, the model resulted in greater contact with the child and increased communications with the other players, which has important implications for procedural justice, i.e., being heard and being treated fairly. Improved communication with others also suggests more careful and deliberate collective decision-making. The QIC lawyers in both states were also more actively involved in conflict resolution and negotiation activities and showed a commitment to moving the case forward.

11.3.1 Enter the Child's World

A principal hypothesis of the QIC study is that attorneys trained in the Six Core Skills would be more attentive to the child client, listen more carefully and frame their advocacy more in keeping with the child's needs and wishes. The consequences of "entering the child world" are relevant not only to possible outcome improvements, but also to the important procedural justice aspects. Any litigant faced with a liberty deprivation at the hands of the state has a due process interest in having their voice and interests fully advocated. We anticipated that "entering the child's world" would lead both the client-directed lawyer and best interests lawyer to better accommodate the child wishes and enhance procedural justice for the child. The data support this expectation.

By significant margins, Georgia QIC lawyers spoke to, emailed and texted their child client more than the control and met more often in person with the child throughout the court process. The Georgia QIC lawyers were also more likely to meet the child outside of the court. (Chapter 10, Table 8) When the Georgia lawyers assessed the effect and importance of their relationship with the child on their advocacy, all measures were in the hypothesized direction. That is, the Georgia QIC lawyers were more likely to have engaged with the child.

On the other hand, the Georgia data does not reflect that the Georgia QIC lawyers advocated for the *child's wishes* any more than the Georgia control attorneys did. Our hypothesis that QIC lawyers would defer more to the child's wishes, even in a mostly best interests state as Georgia was at the time of the study, was not borne out. The lack of difference could be attributed to the fact that the child clients in Georgia were very young, average age is 6. Or perhaps the best interest culture was so ingrained it was not changed? This is interesting because Georgia QIC lawyers changed their behaviors in other domains.

Washington QIC lawyers engagement with the child was only slightly stronger than the control group, and not significantly so. We expected trained lawyers would be more likely to understand, appreciate, and advocate for the child's wishes. There may have been qualitative improvements, but we found no measurable differences in that direction.

Many factors could explain the relative lack of difference in child engagement in Washington despite the emphasis of child engagement in the QIC training. Primary is that Washington is a client-directed state and all attorneys are likely accustomed to taking direction from the child client—as they would from an adult. Since the over-all Washington practice culture was client-directed, the community culture likely reflects and supports that position already. Also the Washington children were older (average age 11, versus 6 in Georgia) so that both treatment and control lawyers might also have an easier time engaging with each child.

In fact, not only did the Washington State QIC lawyers not advocate more for the child's wishes, our findings show that the trained Washington lawyers were actually *less* likely to advocate for the child's wishes than the control group. Two related Washington findings are somewhat surprising on this point.

When asked what the attorney's level of understanding of the child's goals and objectives of the case were, the QIC experimental attorneys rated their understanding lower than the control attorneys, though the result was not statistically significant. (Chapter 10, Table 8) Similarly in response to the question: "To what extent has your advocacy in court on behalf of this child agreed with this child's expressed interests?" Washington QIC attorneys reported their advocacy was *less likely to agree with the child's wishes* than the control group. By a significant margin (meaning that the training in Six Core

Skills was a causal factor) attorneys in this client-directed state were less likely to be client-directed. This is unexpected. What would make the QIC attorneys less likely to advocate for the child's expressed interests in this client directed state?

Perhaps as a result of the QIC training, lawyers "entering the child's world" were more likely to understand the varied cognitive and emotional capacity of children at different ages and stages of maturity and the effects of trauma on intellectual functioning and judgment. An attorney more knowledgeable in child psychology may be less likely to overlook signs of trauma and impact on judgment. A properly trained lawyer might be better able to appraise the competence of the child client accurately and less likely to overrate the child's understanding of the situation. Thus the trained lawyers may be less willing to adopt without questioning a child's stated wishes.

Another possible explanation is that because the QIC attorneys better understood the complexity of these situations, perhaps the QIC lawyers counseled the child to a different position than the one the child started out with. Our data would not pick up the extent to which a lawyer faced a child's stated desire, but counseled them to a somewhat different formal position for purposes of the litigation.

Another explanation might be that the data would not discern the extent to which control lawyers might have modified the advocacy goals on their own? Maybe the control lawyers interpreted the client-directed responsibility rather flexibly so that "robotic allegiance" to the child's stated wishes is not actually required. The QIC lawyers, being better trained in child development, may be more familiar with the developmental limitations of children, more mindful that they are accommodating to those limitations, and more willing to report it on their surveys.

11.3.2 Service Advocacy

QIC attorneys were urged to pay attention to services for the child *and* the child's family. We expected a boost in advocating for services for the child as well as the family, something that is generally in the child's interests but not always recognized by child's lawyers. Georgia QIC lawyers meet that expectation. (Chapter 10, Table 8) They were significantly more likely to advocate for services for the child *and* services for the family. But Washington lawyers scored no significant differences on either of these measures, although the findings trend in the expected direction. (Chapter 10, Table 8) Perhaps *all* Washington lawyers, in a relatively unambiguous client-directed role with older youth able to communicate their needs and wishes, are already paying close attention to services for their child client? Thus there might not be "room to grow" on this measure. Also, perhaps because Washington lawyers were more likely to enter a case mid-stream, that is, after the initial intervention because of a child reaching age 12, the assessment and case plan were already set and there was less opportunity to affect it at that stage?

11.3.3 Improved Communication with All Players

The QIC trained lawyers *communicated significantly more* with various players, most notably with foster parents and other caregivers and other attorneys in the review stage. Each of the Six Core Skills requires more communication and more contacts with more players. The Six Core Skills training encouraged QIC lawyers to understand the child's developmental needs and consider the effects of child trauma.

We asked them to advocate for a thorough safety assessment to prevent unnecessary or unnecessarily long placement, assess the family carefully, then advocate for services needed by the child and family, and that they develop a cogent theory of the case. The data show that QIC attorneys in both states did as we asked. The data support a conclusion that the QIC model and training worked to increase the amount of interaction among the principal players. This finding supports the goal of procedural justice in that the active lawyer is more likely to communicate (and realize) the needs and interests of the child.

Is an increase in communication a positive thing by itself? Most people would say so and would expect that increased communication would improve the handling of the child welfare case, even irrespective of whether the increased communication is linked to the state's preferred case outcomes. Communication with other players may reflect a more careful investigation and assessment of the case, more focus on problem-solving and conflict resolution, more engagement between lawyer and child, and more exchange of views among the principles - the attorneys, caseworkers, parents and other caregivers. An increase in communication may reflect a more careful decision-making in the child welfare process—an overall goal of the whole system. It also reflects attention to the due process interests of the child.

11.3.4 Time Spent

The QIC lawyers spent their time differently from the control group at significant levels doing tasks that reflect the Six Core Skills training. The Georgia lawyers really responded strongly. They spent more time influencing the case plan, developing a theory of the case, negotiating with other parties, and conducting interviews or reviewing notes. (Table 5) Similarly, at quite robust statistical levels, Washington State QIC lawyers were more likely to spend time developing a theory of the case and time reassessing child's safety in the current placement. These are very important to the progress of a child's case and to the due process goal of treating a child fairly when personal liberty rights are at stake.

The differences in time spent are also notable because the trained QIC lawyers did not receive additional compensation or additional hours. They simply chose to spend what time they had in these ways.

11.3.5 Promoting Case Resolution

Both Washington and Georgia experimental (QIC) attorneys participated more in family team meetings. There are also significant differences in pre-trial hearing/settlement conferences for Georgia and motion hearings in Washington. In Washington QIC attorneys are more likely to initiate non-adversarial case resolution (NACR) processes. The QIC lawyers seem to be pressing for movement on cases and seem more likely to seek non-adversarial problem-solving approaches.

11.4 Child Outcomes

Our study revealed differences in rates of achieving permanency between the experimental and control groups. That is, children represented by the trained QIC attorneys tended to exit care sooner that the controls. In both states the experimental effects were in the hypothesized direction—that is tending toward quicker exits from care by children represented by the QIC lawyers. (Table 11) Note the *statistically significant* outcome finding:

Children represented by treatment attorneys in Washington State were 40% more likely to experience permanency within six months of placement than children represented by control attorneys. Even though QIC attorneys achieved quicker permanency at the beginning of a case, there was no QIC advantage discernable once the placement extended beyond six months. Similarly, where a lawyer was appointed for a child who had been in care for some period of time prior to the lawyer appointment there is no detectable advantage to the QIC attorneys. Thus the big impact of the QIC trained lawyers appears to be at the beginning of the case, rather than at the beginning of the lawyer appointment.

In Georgia, the likelihood of permanency was also greater for the treatment group, +17% from entry to 3 years (+20% for the within 6 months of placement period.) Although the permanency effect was positive in Georgia, it did not reach statistical significance.

What explains the QIC lawyer impact early in a case and not later? It could be that an attorney performing well in the role (versus one performing less well) can reduce the time in placement for children whose family issues can be resolved *relatively quickly*, but for more complicated situations associated with longer placements, the influence of the well-trained attorney on outcomes is not detectable.

There are so many independent variables and independent players in these cases that the attorney's ability to influence the actual case outcome on longer term cases may be limited. Once a case is assessed and once the "easy wins" are identified and addressed, the longer-term cases require sustained attention from many other professionals and the court itself. Some cases may fall into a pattern where is hard to accelerate the rehabilitative or long term planning process—for example, substance abuse treatment, mental health diagnosis and treatment, or sexual abuse cases.

The inter-agency and bureaucratic complexity of the longer case may make it harder for a single player to affect the outcome. Once the child is safe and a proper assessment and case plan is in place, the attorney's ability to influence the result may be limited—even when he or she practices according to a Best Practice Model. It may be that when we compare QIC-trained attorneys to business-as-usual attorneys there is not a huge incremental difference in longer-term case outcome because so many other professionals and the court itself are engaged and working toward a similar outcome.

11.5 Community of Practice

Formal and informal "learning communities" offer one approach to building and enhancing a sophisticated child representation workforce. Children's lawyers are often independent and somewhat isolated from one another. The QIC attorneys expressed an appetite for learning from experts and from each other about child representation. There are some lessons learned from the QIC experience that may be helpful to states interested in encouraging a community of practice among their child welfare lawyers or for researchers who wish to replicate a study such as this one. The QIC data also found an impressive willingness of attorneys to assist others in their child representation. Despite the fact that most attorneys were solo practitioners, more than 80% said that individuals were often or almost always available to discuss cases with them.

Participation rates by the QIC lawyers demonstrate that when offered the opportunity to receive more specialized training and participate in a community of child lawyers, they did so. There seems to be an appetite among the lawyers for gaining more skills and improving their practice. They were receptive to learning new methods and adopted new approaches even where there was no increase in compensation or time available and even when their approaches might be inconsistent with the general way cases might be handled in their jurisdiction. They seem to be saying: "Tell me what good child representation is and I will do it." The hunger and receptiveness of the attorneys has lessons for those training and recruiting child's attorneys. The latent motivation among attorneys may be a force to build on and harness for future efforts.

In the QIC experience there are some interesting state-to-state variations in participation. Nearly all the treatment attorneys from both states attended the two-day QIC Best Practice Model training and rated it highly. But even though attorneys from both Georgia and Washington State participated reasonably well in the follow-up pod and coaching sessions, there was still considerable differences between the two states. Pods and coaching were implemented with greater fidelity to the Six Core Skills model in Washington State than in Georgia. All Washington pod meetings were done in person and coaching sessions in Washington followed a consistent format focused on the Six Core Skills. More than three-quarters of the Washington State lawyers participated in full, which is a high level of commitment for such a complicated and long lasting project. The Washington State pods meetings were all live; they decided not to use the

option of a virtual meeting. As reported above, not only was the attendance quite robust but the participant reviews were very positive.

On the other hand, while Georgia lawyers engagement with the pod meetings and coaching was considerably less. After a disappointing attendance in the first pod meeting it was decided to use a virtual alternative for the remaining sessions. It turns out that the best-attended session was the very first, in-person session. One explanation for the difference in attorney engagement may be the fact that the Georgia sessions were virtual, not live, and so lacked some of the camaraderie and community building that might result from regular in person meetings.

Another explanation for the difference in engagement may lie in how the lawyers were recruited into the project. Maybe lawyers just like to be asked? Each Washington attorney was personally enrolled and signed an individual agreement whereas Georgia judges pledged that the attorneys from their jurisdiction would participate and the lawyers were never asked individually. Georgia lawyers never complained about the way they were "delivered" into the project and, as we discuss below, they embraced the Six Core Skills approach quite impressively. The data show that the GA attorney participation was in fact voluntary. There was no forced participation or any consequences for failing to participate. There is no evidence that judges ever compelled an attorney to participate. So the dynamic at work may not be that the Georgia approach was particularly *negative* but rather that obtaining a personal and individual commitment from each Washington lawyer was a *positive*, resulting in greater commitment to the project. In Washington State there were 118 separate conversations (one with each participating lawyer) about the possible state and national benefits of the study and how each lawyer's involvement was critical. The approach showed respect and elicited their personal commitment. In retrospect, that might have been a better approach in Georgia, even though it would have taken more time and energy.

Maybe lawyers found the coaching and pods unrewarding because the sessions were overly directive and did not allow them enough time to talk and discuss? Attorneys like to talk; they also like to hear from their peers and discuss matters. In adult learning there is an ethic—"less teacher, more student." Although the lawyers doing the coaching in both states were very experienced and respected, the facilitative approach recommended in our coaching and pod protocol is not an approach with which all lawyers and potential coaches are comfortable. Matching the skill set to the need is an important element of a project such as this.

The Washington coach, like his Georgia counterparts, was an experienced lawyer with much trial experience, a former supervisor and well known and liked throughout the state. But in addition, he possessed an MSW degree and was personally comfortable with the facilitative, non-dogmatic, non-authoritarian and less directive approach anticipated in the QIC Protocol. In the pod meetings there was an emphasis on being supportive to one another and on professional growth from meeting to meeting.

Targets and goals were set for each participant, helping them to build a "reflective practice." This framework seemed very popular with the attorneys.

But even though popular among the Washington attorneys, was consistent participation in the coaching and pod meetings actually necessary to achieve the QIC goals? There were an impressive number of significant differences in how the Georgia lawyers handled their cases—even more so than in Washington. Our research design assumed the need for constant refreshment and encouragement to get the lawyers to actually use the QIC approach, but perhaps change can be accomplished without as much of the "community of practice" follow-up?

On the other hand, even though Georgia attorney participation in pods and coaching was less, the Six Core Skills of the QIC experiment were constantly brought to their attention in other ways. Lawyers were asked to provide data monthly and received an impressive amount of communications from our Georgia partners by email, phone and personal contacts in the courthouse. Those repeated contacts probably insured that the original Six Core Skills training was never too far from their mind. Repetition, refreshment and reminders seem necessary to seed a significant change in behavior, however it is done.

11.6 Implications for Practice and Policy

There is a wealth of information in the QIC policy and empirical research. Chapter 13 draws on some of that with recommendations for practice and policy, but we do not think we have exhausted the lessons available in these data. We hope that others will review and study this material and draw further lessons from this experience.