

Changing the narrative of child welfare

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Full Text:

Roberto James was a teenager in foster care. He bounced in and out of many schools and placements, and was arrested 10 times in a year. Roberto constantly was written up for leaving his group home placements.

The other side of the story 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. The caseworker and judge saw an absconder, a rule breaker--they saw the quintessence of irresponsibility. But many who cared about him saw the gentlest parent they'd ever known.

Telling New Stories

Professor Richard Delgado wrote that "We decide what is and, almost simultaneously, what ought to be." We create the world as we describe it. We can create success by telling new stories. This, then, is a story about lawyers' power to make a difference by telling stories.

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. We can also end children's stays 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.

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. 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.

Being Part of the Solution

How can we be part of the solution? How can we disrupt the status quo, instead of perpetuating it? Fortunately, to paraphrase Brendan Sullivan, Oliver North's lawyer, we are not potted plants. We can do something. We MUST do something.

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 them as strong and healthful, instead of shabby and pathologized.

To challenge the narrative of child welfare, we will have to start by challenging our approach to legal services. Antipoverty 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 band-aid, put a finger in the dike, whatever. You've heard the metaphors.

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 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, and 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 light bulb? 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, caseworkers, or even judges.

In Washington, D.C., when our highest court ruled that there was no statutory right to custody for nonparents, a swarm of low-income grandmothers descended on the city council, submitting statements and testifying about the need to amend the law. And it was. In Washington, D.C., a homeless advocate led 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. 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 caseworker 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.

Call to Action

Lawyers 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 old timers 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 every client, litigant, and 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 client, this 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.

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?"

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. You'll hear real people, not a pathologized, stereotyped version created by

your own preconceived notions. Instead of hanging out with people whom you despise or, at best, for whom you have compassion, you get to be with 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 eight months preceding the client's termination of parental rights trial. 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 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.

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, or the way any of us 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 selfconscious 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"?

Conclusion

I'll conclude by returning to Roberto. 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, who was angered that Roberto had been stealing his 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 awful.

But the story has unfolded differently, with no retaliation. The 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 tell 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.

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.

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[check] Do something

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