
FOREWORD: CHILD WELFARE AND OUR YOUNGEST CHILDREN: A SERIES ON IMPROVING OUTCOMES FOR FAMILIES WITH BABIES AND TODDLERS

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I. INTRODUCTION

Over the last decade or so, much has been learned about the best ways to serve families with infants and toddlers in the child welfare system. Iowa has been on the leading edge of this learning and change because Des Moines, Iowa was chosen as one of the first Safe Babies Court Teams established by the National Center for Infants, Toddlers, and Families.¹ Led by Judge Constance Cohen, who is now retired, the Des Moines Safe Babies Court Team has pioneered a family centered, multidisciplinary approach to

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1. ZERO TO THREE: NATIONAL CENTER FOR INFANTS AND TODDLERS, AND FAMILIES, *THE SAFE BABIES COURT TEAMS APPROACH: CHAMPIONING CHILDREN, ENCOURAGING PARENTS, ENGAGING COMMUNITIES* 4 (2014), <http://www.zerotothree.org/maltreatment/safe-babies-court-team/sbct-in-continuum-v5-jml-1.pdf> [hereinafter *THE SAFE BABIES COURT TEAM APPROACH*]. Zero to Three—a project of the National Center for Infants, Toddlers, and Families—formed Safe Babies Court Teams in partnership with local courts, child welfare agencies, private service providers, philanthropists, and attorneys “committed to improving the community’s response to child abuse and neglect.” *Id.* at 1.

these cases.² The goal of this *Discourse* series, *Child Welfare and Our Youngest Children: A Series on Improving Outcomes for Families with Babies and Toddlers*, is to consider some of the lessons learned from Safe Babies Court Teams and to discuss how these lessons can inform positive changes in how the legal system serves families in Iowa and beyond.

This foreword aims to introduce the topic and the authors, as well as set the table for the discussion. In light of the fact that the Author teaches a legal clinic for law students who represent children, and sometimes parents, in child welfare cases,³ this opening essay will also discuss the important role lawyers for children and parents play in these cases and some of the special challenges they face.

The authors in *Child Welfare and Our Youngest Children* include Judge Constance Cohen, whose leadership, wisdom, and passion for these cases has helped change child welfare practice for the better. She will reflect on her years of leading the Safe Babies Court Team in Des Moines, and what judges can do to improve child welfare services for the youngest children. Dr. Rizwan Shah, also a leader in the Safe Babies Court Team in Des Moines, will give a pediatrician's perspective on child welfare services for infants and toddlers. Lastly, Mike McInroy, a Social Work Administrator from Des Moines, will give a social work and public policy perspective on lessons learned from Safe Babies Court Teams.

II. INFANTS AND TODDLERS IN THE CHILD WELFARE SYSTEM

No one would disagree that serving the youngest and most vulnerable children in our child welfare system is critically important. But statistics regarding entry, length of stay, and permanency outcomes for infants and toddlers tell a troubling story. Infants and toddlers represent a disproportionately large number of court-involved children; Children from birth to five represent 46 percent of new admissions to the child welfare

2. *Hearing Before the Subcomm. on Human Resources of the H. Comm. On Ways and Means*, 109th Cong. 20–28 (2006) (statement of the Hon. Constance Cohen on behalf of Zero to Three).

3. *Brent Pattison Profile*, DRAKE U. L. SCH., <http://www.law.drake.edu/faculty/?profileID=pattisonBrent> (last visited Jan. 11, 2016); *Middleton Center for Children's Rights*, DRAKE U. L. SCH., <http://www.law.drake.edu/clinicsCenters/middleton/> (last visited Jan. 11, 2016).

system.⁴ Seventeen percent are below the age of one.⁵ The primary reason for admission into the system is maternal drug and alcohol abuse.⁶ Infants and toddlers are also disproportionately children of color.⁷ After they have been removed from their parents, infants and toddlers comprise a disproportionate share of the total number of children in foster care, and their parents are more likely to have their rights terminated.⁸ While children who enter care before their first birthday have a greater chance of being adopted, their chances of reunification are significantly lower.⁹ In addition, one third of infants who are discharged from the child welfare system reenter again later.¹⁰

Infants and toddlers “are at a critical point developmentally.”¹¹ Early childhood experiences “play a critical role in a child’s ability to grow up healthy and ready to learn.”¹² This is partly because important brain development is occurring in early childhood. By age three, a child’s brain has developed to 90 percent of its adult size, and creates “the majority of systems and structures . . . responsible for all future emotional, behavioral, social, and physiological functioning.”¹³ This brain development is facilitated when

4. U.S. DEPT OF HEALTH & HUMAN SERVS., THE AFCARS REPORT: PRELIMINARY FY 2014 ESTIMATES AS OF JULY 2015, 2 (2015) [hereinafter AFCARS REPORT], <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf>.

5. *Id.* Thirty percent of the children waiting to be adopted in 2014 were three or younger. *Id.* at 4.

6. CANDICE MAZE, ABA CENTER ON CHILDREN & THE LAW, ADVOCATING FOR VERY YOUNG CHILDREN IN DEPENDENCY PROCEEDINGS: THE HALLMARKS OF EFFECTIVE, ETHICAL REPRESENTATION 2 (2010).

7. *Id.* “African American children make up only 15% of the U.S. population of children,” but “represent approximately 37% of the children in the system.” *Id.* (citing FRED WULCZYN & BRIDGETTE LERY, RACIAL DISPARITY IN FOSTER CARE ADMISSIONS 4 (2007)).

8. *Id.* at 3.

9. *Id.* Forty-nine percent of the children who were awaiting adoption in 2014 entered foster care when they were three or under. *See* AFCARS REPORT, *supra* note 4, at 4.

10. MAZE, *supra* note 6, at 3.

11. Shari Shink & Diane Baird, *Fighting the Odds: Speaking for Infants and Toddlers in the Child Welfare System*, in CHANGING LIVES: LAWYERS FIGHTING FOR CHILDREN 1, 7 (2014).

12. Donald Duquette, *Looking Ahead to the Next 30 Years of Child Advocacy Symposium: A Personal Vision of the Future of Child Welfare Law*, 41 U. MICH. J.L. REFORM 317, 324 (2007).

13. Jennifer R. Meiselman Titus, Note, *Adding Insult to Injury: California’s Cruel Indifference to the Developmental Needs of Abused and Neglected Children from Birth to Three*, 39 CAL. W. L. REV. 115, 126 (2002) (quoting Bruce D. Perry, *Bonding &*

children have their basic needs met, including healthy attachment to parents and other caregivers.¹⁴ When our youngest children experience abuse and neglect, they may lose the foundation they need for becoming healthy adults.¹⁵

Fortunately, however, early problems can be addressed. Research indicates that timely interventions in the early years of a child's life can have a huge impact.¹⁶ Infants and toddlers have "flexible" brains which can change in response to "consistent positive experiences" that "rewire the brain and reduce the negative impacts on future learning."¹⁷ Timely and effective interventions for our youngest children have the potential to not only to keep families together, but also increase the chances that children grow up into healthy, productive citizens.¹⁸

III. SAFE BABIES COURT TEAMS: A RESPONSE TO THE CRITICAL NEEDS OF FAMILIES WITH VERY YOUNG CHILDREN

In 2004, Zero to Three established Safe Babies Court Teams in eight locations around the country to focus attention on the needs of families with the youngest children in the child welfare system.¹⁹ Key elements of Safe Babies Court Teams include more frequent hearings; an emphasis on increased interactions between parents and infants and toddlers who are in care; developmental screenings to ensure appropriate physical and mental development; and appropriate interventions when children are not on target developmentally.²⁰ The teams also pioneered a multidisciplinary approach to child welfare with judges, lawyers, social workers, and family members working alongside child development specialists, educators, and pediatricians.²¹

Safe Babies Court Teams demonstrated that focusing attention on

Attachment in Maltreated Children: Consequences of Emotional Neglect in Childhood: Part One, 19 CAPITOL COMMENTS 5, 6 (2000).

14. See Meiselman Titus, *supra* note 13, at 128.

15. See *id.*

16. Shink & Baird, *supra* note 11, at 8.

17. Meiselman Titus, *supra* note 13, at 117; see Bruce D. Perry & John Marcellus, *The Impact of Child Abuse and Neglect on the Developing Brain*, http://teacher.scholastic.com/professional/bruceperry/abuse_neglect.htm (last visited Dec. 28, 2015).

18. See Shink & Baird, *supra* note 11, at 8.

19. Jean L. Johnson, Christine Kuriyama & Mary Anne Magnier, *Access to Justice for Those Without Voice, Words, or Language*, 18 HAW. B.J. 4, 7 (2014).

20. *Id.*

21. See *id.*

families with young children can improve outcomes. Safe Babies Court Teams help families reach permanency more quickly.²² They also increase the chances of reunification.²³ In one study, reunification with a parent was the most common result for Court Team children.²⁴ When factoring in placements in kinship care, 63 percent of Court Team children ended up with family members compared to 37 percent of a comparison group.²⁵

What are these Court Teams doing that is working so well? This series's authors will go into more detail answering this question, but the bottom line is that the Court Teams encourage parents, engage communities, and focus important attention on the most vulnerable kids and families.²⁶ While it may not be possible to have Safe Babies Court Teams in every jurisdiction, it is critical that juvenile courts across the country learn from the success of these teams and implement the promising practices they have developed. Judge Cohen, Dr. Shah, and other authors in this series will discuss the lessons learned by Safe Babies Court Teams, and how juvenile courts can shift practices to get better results for families with very young children.

IV. CHALLENGES FOR LAWYERS IN CASES INVOLVING INFANTS AND TODDLERS

Cases involving families with very young children present unique challenges for the lawyers representing parents and children. Parent advocates may have to defend the parent against a petition to terminate parental rights in just six months from the date of removal.²⁷ When a parent has long-term substance abuse problems, it can be incredibly difficult to address those issues within that time frame.²⁸ Lawyers for children, on the other hand, have preverbal clients who cannot form typical attorney-client relationships.²⁹ Lawyering for parents and children in these cases requires

22. Kimberly L. McCombs-Thornton & E. Michael Foster, *The Effect of Zero to Three Court Teams Initiatives on Types of Exits from the Foster Care System—A Competing Risks Analysis*, 34 CHILD. & YOUTH SERVS. REV. 169, 177 (2012).

23. *Id.* at 174.

24. *Id.*

25. *Id.* at 174–75.

26. See Johnson, Kuriyama & Magnier, *supra* note 19.

27. See, e.g., IOWA CODE § 232.116(h)(3) (2015).

28. MAZE, *supra* note 6, at 3.

29. How to represent the preverbal child client is the subject of much debate and some excellent law review articles. See, e.g., Jean Koh Peters, *The Role and Content of Best Interests in Client Directed Lawyering for Children in Child Protective Proceedings*, 64 FORD. L. REV. 1505, 1522 (1996); Martin Guggenheim, *A Paradigm for Determining the Role of Counsel for Children*, 64 FORDHAM L. REV. 1399 (1996). In some states,

attorneys to be competent in much more than legal strategy.³⁰ Lawyers must understand child development; substance abuse; the array of services needed in these cases; and keep up to date with best practices informed by research.³¹ They must also work collaboratively with multidisciplinary teams, while simultaneously zealously advocating for their client.³² A lawyer's competency in these areas can make a big difference for the parent or child the lawyer represents.³³

A. Understanding Child Development

One of the major lessons from Safe Babies Court Teams is that understanding child development is incredibly important when serving families with very young children.³⁴ But most lawyers are not trained in this area in law school, and may struggle at first to understand its importance to successful outcomes in child welfare.³⁵ For example, understanding attachment and bonding principles can be the key to unlocking meaningful visitation for parents.³⁶ Research indicates that infants need frequent, consistent visitation with parents to develop and maintain secure attachment.³⁷ When attorneys for parents support their requests for increased visitation with this premise in mind, it makes the client's request more powerful. It also presents an opportunity for an alliance with the young child's lawyer. The lawyer for the child will also usually want frequent, consistent visitation at the outset of the case because, even if the family is

children are appointed lawyers who solely represent the "legal interests" of the child. *See, e.g.,* CAL. WELF. & INST. CODE § 317(c) (West 2015); *see also* CHILD WELFARE INFORMATION GATEWAY, REPRESENTATION OF CHILDREN IN CHILD ABUSE AND NEGLECT PROCEEDINGS 2 (2014) [hereinafter REPRESENTATION OF CHILDREN], <https://www.childwelfare.gov/pubPDFs/represent.pdf>; MAZE, *supra* note 6, at 5. In others, a guardian ad litem (GAL) is appointed to not only protect the child's legal interests, but also make recommendations the GAL believes to be in the best interests of the child. *See, e.g.,* IOWA CODE § 232.71C(3) (2015); *see also* REPRESENTATION OF CHILDREN, *supra*; MAZE, *supra* note 6, at 5.

30. *See* REPRESENTATION OF CHILDREN, *supra* note 29, at 3–4.

31. STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE & NEGLECT CASES §§ I-2, I-3 (1996); MAZE, *supra* note 6, at 26.

32. *See* STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE, *supra* note 31, AT § I-2(6); MAZE, *supra* note 6, at 30.

33. *See* MAZE, *supra* note 6, at 26.

34. *See id.*

35. *See* John Haney & Lisa Kay, *Making Reasonable Efforts in Iowa Foster Care Cases: An Empirical Analysis*, 81 IOWA L. REV. 1629, 1652–53 (1996).

36. Shink & Baird, *supra* note 11, at 10.

37. *Id.* at 10–11.

not ultimately reunified, the contact the child has with the parent is important for child's development of future secure attachments.³⁸

Lawyers for infants and toddlers must be especially knowledgeable about child development because it is one of the most important ways they get to know their clients and identify areas of needed advocacy.³⁹ Understanding basic developmental milestones, like when a toddler should be starting to walk, can help the lawyer identify whether delays should be assessed.⁴⁰ A disproportionate number of young children involved with juvenile court have developmental delays, and may be entitled to early intervention services.⁴¹ Addressing these delays not only helps the child, but can also help the parent understand the child's needs better while reunification is being pursued.⁴²

Understanding a child's developmental needs can change the direction of a case and keep the lawyer's advocacy child-centered. In a Drake Legal Clinic case, the client was a toddler who was exhibiting very challenging behavior after visits with his mother. There were concerns about whether visits should be reduced, or whether additional supervision was needed to help improve interactions during the visits. Then the clinic students discovered the mother's visits interrupted the child's naptime at daycare, and his behavior was probably attributable to lack of sleep, rather than problems with parent-child interactions. Once the visits were scheduled to accommodate a full nap for the child, the child's behavior was significantly better after visits. Ensuring that the visitation schedule took into consideration the child's need for a nap probably should have been obvious, but without an advocate who was tuned in to the child's needs, incorrect assumptions about the parent-child interactions could have derailed the visits.

38. *See id.*

39. *See* MAZE, *supra* note 6, at 28–29. The Child Abuse Prevention and Treatment Act requires that states assure that representatives for children are trained in early childhood development. 42 U.S.C. § 5106a(b)(2)(B)(xiii) (2012).

40. *See* MAZE, *supra* note 6, at 26–27.

41. One study indicated that over 40 percent of children aged 1–5 subject to a maltreatment investigation had developmental delays that entitled them to early intervention services. CHILD WELFARE INFORMATION GATEWAY, ADDRESSING THE NEEDS OF YOUNG CHILDREN IN CHILD WELFARE: PART C—EARLY INTERVENTION SERVICES 2 (2013) [hereinafter EARLY INTERVENTION SERVICES], <https://www.childwelfare.gov/pubPDFs/partc.pdf>.

42. *Id.* at 2, 6.

B. *Expediting Permanency*

Another important lesson from Safe Babies Court Teams is that achieving permanency quickly for very young children is especially critical.⁴³ This creates special challenges for lawyers. For parents' lawyers, expediting permanency can be a struggle because they want their clients to have all the time they need to address the issues that led to removal, but for child advocates, the challenge is to make sure the sense of urgency surrounding the case does not reduce after important, early hearings are completed.⁴⁴

In addition, advocates for children must ensure that the state agency is planning adequately for the possibility that reunification cannot happen.⁴⁵ If good concurrent planning is not happening, permanency can be delayed, and the infant or toddler may have damaging changes in placement.⁴⁶ Parents' attorneys also have a role in concurrent planning. They are uniquely positioned to help identify family members who can support reunification, but also be a custodial option if reunification is not an option.⁴⁷ This helps ensure that young children are able to achieve permanency quickly with relatives when their parents cannot regain custody.⁴⁸

C. *Taking a Collaborative Approach*

Both parent and child advocates must collaborate with pediatricians, therapists, substance abuse treatment providers, social workers, as well as court-involved families.⁴⁹ Part of being an effective advocate in a child welfare case, particularly in cases involving infants and toddlers, is consulting with experts and the other professionals working with the child. Preparing for court hearings alone is not enough; lawyers for parents and children must participate in staffings and family team meetings in between hearings to advance progress toward permanency.⁵⁰ This collaboration pays off even

43. See MAZE, *supra* note 6, at 37; see also Johnson, Kuriyama & Magnier, *supra* note 19, at 7.

44. MAZE, *supra* note 6, at 37.

45. See *id.* at 37–38.

46. See *id.*

47. See AM. BAR ASS., THE ROLE OF THE COURT AND ATTORNEYS IN CONCURRENT PLANNING 1, <http://www.nrcpfc.org/cpt/docs/concurrentplannincourtrole05.10.pdf> (last visited Jan. 11, 2016).

48. See *id.*

49. See MAZE, *supra* note 6, at 30.

50. Safe Babies Court Teams use monthly case review meetings to bring multidisciplinary teams together to better serve the family. See Johnson, Kuriyama & Magnier, *supra* note 19, at 9.

when the case becomes adversarial. In a termination of parental-rights case in which the Drake Legal Clinic represented a toddler, the student lawyer's working relationship with an attachment specialist not only helped the student see the case in a different way, but also make a compelling argument against termination when the State had run out of patience with the parents.

D. Thinking Outside the Box

Child and parent advocates should be knowledgeable about not only their state child welfare code, but also state and federal programs that serve infants and toddlers.⁵¹ The Child Abuse Prevention and Treatment Act, for example, requires that states refer abused and neglected children under the age of three for early intervention screenings funded by Part C of the Individuals with Disabilities Education Act.⁵² Under early and periodic screening, diagnosis and treatment provisions of Medicaid, children are entitled to a broader set of services than adults.⁵³ Children need advocates who hold the state agency accountable for ensuring the state provides children with the full range of services to which they are entitled.

When requesting services, parent and child advocates must do more than request the standard services the state offers to families.⁵⁴ Service requests should be tailored to the specific needs of the child and family.⁵⁵ In one case in the Drake Legal Clinic, the Clinic helped avoid a change of placement for a toddler by helping a relative access financial support to address a safety issue related to the home. Advocates must also ensure that parents and children are offered services that have been demonstrated to be effective. For example, referring a family to an evidence-based program, like Parents as Teachers,⁵⁶ is better than simply having the parent sign up for a parenting class with no evidence supporting its effectiveness.

V. CONCLUSION

Safe Babies Court Teams have pioneered a successful, multidisciplinary approach to serving families with infants and toddlers in

51. See MAZE, *supra* note 6, at 30–31.

52. EARLY INTERVENTION SERVICES, *supra* note 41, at 2–3.

53. MAZE, *supra* note 6, at 31.

54. See *id.* at 30.

55. See *id.*

56. For more information about Parents as Teachers, see PARENTS AS TEACHERS, parentsasteachers.org (last visited Jan. 28, 2016).

the child welfare system.⁵⁷ What lessons have been learned from these “community laboratories” about serving families with very young children?⁵⁸ How can practitioners change practice in juvenile courts around the country to capitalize on what has been learned? This series, *Child Welfare and Our Youngest Children*, aims to spark a conversation regarding these questions in Iowa, with the hope that it might improve child welfare practices in other places as well.

Lawyers have an important role to play in improving child welfare practices.⁵⁹ Cases involving young children demand high quality representation because the challenges are significant, and the stakes are high for families. In addition, the best lawyering requires more than being a good courtroom advocate. Understanding early childhood development and best practices in substance abuse treatment may sometimes be more helpful than understanding cross-examination and evidentiary objections.⁶⁰

Finally, the Author would like to thank *Discourse* for creating the opportunity for this important series. *Discourse* provides a perfect forum for a multidisciplinary approach to a complex problem. This Author looks forward to the upcoming essays, as well as responses to the essays as they are published.

57. See Johnson, Kuriyama & Magnier, *supra* note 19; McCombs-Thornton & Foster, *supra* note 22, at 176–77.

58. THE SAFE BABIES COURT TEAMS APPROACH, *supra* note 1, at 6.

59. See MAZE, *supra* note 6, at 1.

60. See *id.* at 26–29.