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Remarks Delivered on April 13, 2012 to the Brooklyn Law School Symposium on Reforming Child Protection Law: A Public Health Approach

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**REMARKS DELIVERED APRIL 13, 2012 TO
THE BROOKLYN LAW SCHOOL
SYMPOSIUM ON REFORMING CHILD
PROTECTION LAW: A PUBLIC HEALTH
APPROACH**

*Hon. Edwina G. Richardson-Mendelson**

In the year 2011, across the five boroughs of New York City, the Family Court received 9,862 original petitions alleging child neglect or abuse.¹ There has been, or will be, a finding of neglect or abuse in the majority of those cases. In almost all instances, the findings will trigger services ranging anywhere from a simple parenting skills class to extensive psychotherapy. In about two-thirds of the pending cases, a child will be removed from his or her home and placed in foster care until the court finds that it is safe for the child to return home or until the child is adopted or taken off the Family Court calendar by way of another permanency planning option.

Family Court judges see firsthand that a wide variety of background conditions set the scene for child maltreatment. The breakdown of an intimate relationship leading to violent confrontation followed by maltreatment of the child is an all too

* Administrative Judge, New York City Family Courts. J.D., City University of New York School of Law; M.Phil. and Ph.D. in Criminal Justice, City University of New York Graduate Center. I wish to thank Brooklyn Law School and Dean Michael Gerber for your hospitality and for hosting this event. I'd also like to thank Professors Marsha Garrison and Cynthia Godsoe for their gracious invitation. And I'd like to thank the Center for Health, Science and Public Policy and the *Journal of Law and Policy* for sponsoring this symposium, which I am sure will spur additional work on the very important and quite thorny question of how to reduce the incidence of child maltreatment.

¹ New York City Family Court data (on file with author).

typical scenario in Family Court. The stress of not having enough money to feed the family and to meet its other basic needs can lead to despondency and, in a moment of weakness and despair, a physical assault on a child—perhaps prompted by the child’s slightest misbehavior—can result. Escape into drugs and alcohol can induce behavior harmful to the family and result in a Family Court proceeding. I could go on and on.

After a decade in Family Court practice representing parents, children, and other family members, and an equal number of years as a jurist on the Family Court bench, it is not hard for me to see some common circumstances from which our child protective respondents come. They come from lives filled with poverty and stress. They come from homes where there is low or no formal education. They come from single-parent homes where usually single mothers strive to make it through life with inadequate social and financial support systems. They come from violent neighborhoods, filled with drug- and gang-related violence.

Saddest of all the frequent patterns we witness in Family Court are the adults who appear in our courts who are accused of neglecting and abusing their children and who were, themselves, subject children in our courts in years past, attesting to the stranglehold these circumstances can have on the culture of a family, and the difficulty of escaping them. We are talking about conditions way beyond the average person’s ability to cope.

Despite the best efforts of well-meaning professionals, child maltreatment remains a pressing issue of huge proportion. The clients I have represented in Family Court over the years were not “bad people.” They were people with challenges and life struggles beyond my comprehension and too often beyond my capacity to help. Some did ultimately succeed and maintain their parental rights and ties with their children. Far too many did not.

A lot has been written of late regarding the long-term effects of childhood trauma. We are learning about “adverse childhood experiences” and the impact of child neglect, physical abuse, and sexual abuse on the health of adults in our society. It is no real surprise to those of us who work in child welfare and the

Family Courts that children exposed to chronic stress and maltreatment suffer from higher rates of teen pregnancy, substance abuse, depression, and other mental health disturbances.² We intuitively think of these things as natural social outcomes. But research also definitively shows us that there are many physical results as well, including liver disease, chronic obstructive pulmonary disease, coronary artery disease, and most shocking of all to me, permanent changes in brain and stress hormone function.³ Trauma, neglect, and abuse experienced by children have long-term impacts that we sometimes never consider or truly address, even after our children are “rescued” by our system.⁴

A recent study released by Safe Horizon and Yale University Childhood Violent Trauma Center indicates that abused and neglected children are fifty-nine percent more likely than those who were not victimized to be arrested as juveniles, twenty-eight percent more likely to be arrested as adults, and thirty percent more likely to commit a violent crime.⁵ They also face higher teen pregnancy rates and are more likely to abuse or neglect their own children.⁶ These facts alone make a good case for true prevention with a public health framework as a strategy to combat child maltreatment.

Throughout our country, our child welfare system and our family and juvenile courts address cases involving the poorest people in our population. We are ill-equipped as a system to address the broader social and economic roots of child

² Vincent J. Palusci & Michael L. Haney, *Strategies to Prevent Child Maltreatment and Integration into Practice*, APSAC ADVISOR, Winter 2010, at 8; *Adverse Child Experiences Study*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/ace/findings.htm> (last updated Sept. 20, 2010).

³ Palusci & Haney, *supra* note 2, at 8; *Adverse Child Experiences Study*, *supra* note 2.

⁴ See Palusci & Haney, *supra* note 2, at 8; see also *Adverse Child Experiences Study*, *supra* note 2.

⁵ Jane E. Brody, *A Brief Therapy Heals Trauma in Children*, NYTIMES.COM (Apr. 2, 2012), <http://well.blogs.nytimes.com/2012/04/02/a-brief-therapy-helps-heal-trauma-in-children/>.

⁶ *Id.*

maltreatment. The ongoing study being conducted by Emily Putnam-Hornstein, Daniel Webster, Barbara Needell and Joseph Magruder at the University of California at Berkeley, in conjunction with the California Department of Social Services, shows that among low-income families there is more than three times the incidence of substantiated child maltreatment than among higher income families.⁷ We see a similar pattern in New York City.

Since I have lived in the Bronx my entire life, I'd like to use my own home county as an example. In Bronx County, the poverty level is higher than in any other county in New York City⁸ and the ratio of children in foster care or other out-of-home placement to all children is also higher in Bronx County than in any other county in New York City.⁹

In Bronx County, forty percent of all children under age eighteen live below the poverty level.¹⁰ According to 2010 census data and a disturbing but useful analysis done by the Citizens' Committee for Children ("CCC"), in a report they issued in April 2012, Bronx County has an overall poverty rate of 30.2%¹¹ and has more people living in extreme poverty areas than all the other boroughs of New York City combined.¹² 24.1% of all Bronx residents lived in extreme poverty areas in

⁷ Emily Putnam-Hornstein et al., *A Public Health Approach to Child Maltreatment Surveillance: Evidence from a Data Linkage Project in the United States*, 20 CHILD ABUSE REV. 256, 266 tbl.2 (2011); *Overview of Medi-Cal for Long Term Care*, CAL. ADVOCATES FOR NURSING HOME REFORM, http://www.canhr.org/factsheets/medi-cal_fs/html/fs_medcal_overview.htm (last updated May 8, 2012).

⁸ Courtney Wolf, *Concentrated Poverty in New York City: An Analysis of the Changing Geographic Patterns of Poverty*, CITIZENS' COMM. FOR CHILDREN OF N.Y., INC., app. A (April 2012), http://www.cccnewyork.org/publications/CCC_Concentrated_Poverty_2012-04.pdf.

⁹ HON. EDWINA RICHARDSON-MENDELSON, N.Y.C. FAMILY COURT, 2010 ANNUAL REPORT 13–14 (2011), available at <http://www.nycourts.gov/courts/nyc/family/2010%20Annual%20Report%20NYC%20Family%20Court.pdf>.

¹⁰ Wolf, *supra* note 8, at app. A.

¹¹ *Id.*

¹² *See id.* at 3 (noting that, of all City residents living in extreme poverty, Bronx residents represented more than half from 2006–2010).

the period from 2006 to 2010.¹³ In the Bronx, the ratio of children in foster care to the general child population is more than double that in Brooklyn,¹⁴ whose overall poverty rate was 23.0%¹⁵ according to the CCC study, suggesting that poverty may be contributing to child maltreatment. The difference is even more dramatic when Bronx County is compared to Richmond, Queens, and New York Counties.

The California study I spoke of earlier indicates that among mothers with a high school diploma or less education, the incidence of a substantiated allegation of child maltreatment is more than three times the incidence of a substantiated child maltreatment allegation against mothers with some college or a college degree.¹⁶ Accepting that these suggested correlations, and others, exist and have a causal relationship to child maltreatment (and most members of the court and child protective community will say quite strongly, albeit anecdotally, that they do), it would seem helpful to try to address the problem of child maltreatment by addressing, as early as possible, these causal conditions.

I am here, of course, as a judge and not as a public health expert. I don't pretend to have any particular expertise in this area, and I will not opine on the particulars of how a public health approach—which I assume would involve a focus on preventive strategies at the broadest population levels—would work as an agent of change in our system. I am glad, however, to be part of this discussion, because the Family Court lives at the critical intersection of the law and social services. Among other obligations, the family and juvenile courts play an interactive and an oversight role with child protective agencies and with direct providers of social services.

The Family Court, however, is a due process-driven court of law. And, while we by definition address social service issues in

¹³ *Id.*

¹⁴ RICHARDSON-MENDELSON, *supra* note 9, at 13; *see also* CHILDREN'S DEFENSE FUND-NEW YORK, *The Call for Youth Justice*, 1, 12-13 (Mar. 2012), <http://www.cdfny.org/research-library/documents/call-for-youth-justice.pdf> (mapping the percentage of children in foster care across the five boroughs).

¹⁵ Wolf, *supra* note 8, at app. A.

¹⁶ Putnam-Hornstein et al., *supra* note 7, at 266 tbl.2.

Family Court, we must remain ever aware that we are appropriately limited to our constitutional role as a court of law. We want to find solid solutions for the families who appear in our courts. But although we rely upon judges to make these decisions, judges are not medical doctors or psychologists or social workers. We are jurists who must fairly, expeditiously, and appropriately address the legal issues appearing before us.

I'd like to talk a bit more about the role of the court in child welfare cases. What *can* courts do and what *do* courts do? A court cannot, of course, and should not act until a petition is before it. But the reality is that by the time a petition is filed, bringing a family to the court's attention, it is quite late in the game. Prior to an adjudication of neglectful or abusive behavior, the court does not have the power to require a parent to enter services but does have the power to temporarily remove the child from his or her home upon a finding that there is imminent danger to the child if he or she is left in the home. The court also has the power to decide that the child may temporarily remain at home only on the condition that certain services are in place.

The child welfare agency may exercise its statutory authority to remove a child from the home without court order on an emergency basis, but the court must rule on the appropriateness of the removal within a short period of time after the removal.

In New York City, after an adjudication that a child has been neglected or abused, the Family Court issues orders that require the New York City Administration for Children's Services to provide particular service referrals to a family. At this point, the court can also order respondents to enter into services that will help them to be better parents.

Let's pause and consider how extremely difficult it is for a judge to make a decision regarding removal of a child from his or her home before trial. The decision is made very early in the case—usually at the first appearance. The evidence hasn't been fully developed. The facts are often limited and unclear, but a decision must be made, and the child's life may be at risk.

I hope to make the challenges we face in Family Court real to you by giving some personal examples. As a Family Court judge, I have authorized removal of children from their

allegedly abusive homes for what I believed was their own safety, only to later learn that the children I had placed in foster care were further abused or neglected. In one horrific case which comes to mind (and I can see that child's face in my mind every time I speak of it), a child I placed in foster care was killed while in the care of her temporary caretakers. And of course, I have also experienced the opposite scenario. There were cases in which I permitted children to either remain in their homes at the beginning of court intervention or to return to their homes after completion of services only for the children to be harmed again in their own homes.

Two separate cases come to mind in which I authorized children to return home on the consent of all the parties and after the respondent parents completed an array of services, only for the children to be killed once returned to the care of their parents. These children's faces remain clear in my mind as well. I tell these experiences at forums like this so we can remain aware that the stakes are truly high. When a Family Court judge tells you we are dealing with issues of life and death, trust me, it is no exaggeration.

However, parents have a constitutional right to parent without government intrusion. When child-protective judges act, they deeply intrude on the lives of people. Such intrusion is either constitutional or not constitutional, depending on whether a child's life or health is at imminent risk. Making court determinations of neglect or abuse after a hearing or upon consent of the parties permits the judge to legally continue this intrusion into the lives of the parents and children by placing the child in foster care and by ordering respondents to attend rehabilitative services, or submit to drug testing, or stay away from one another. These intrusions into a family's private life would not normally be tolerated but for the need to protect a child.

Consider also that the Family Court's role in child protective cases goes beyond the traditional adjudicatory role of "guilty" or "not guilty." All courts addressing child welfare issues in our nation are now governed by the Adoption and Safe Families Act ("ASFA"), which requires the court to consider the "well-being" of the children. This is a relatively new mandate adopted

in New York in Family Court Act section 1089(c)(2). It requires the child welfare agency to include, in every permanency hearing report, a description of the child's health and well-being and an update on the child's "educational and other progress" It requires the court to determine the level of efforts made to address the needs of the family.

How much leeway does the "well-being" requirement give the court for ordering services intended to fix a perceived underlying problem in the family dynamic? How much evidence of this perceived underlying problem is sufficient? Does the "well-being" requirement permit the court to order preventive services when it appears there *might* be a *future* problem that could be prevented? How much court action is permitted before the court steps over the line into unconstitutional intrusion into a family's private life? Family Court judges grapple with these issues daily, and whatever the answers to these questions, it is still the case that no action can be taken by the court until a petition is filed.

It seems obvious, however, that much of the aberrant behavior that harms children results from deep-seated social dysfunction, lack of education, and/or other hard-to-reach causes that pre-date an acute incident and that are not susceptible to rapid repair by way of a few months, or even years, of court-ordered services after-the-fact. Family Court judges are often frustrated because a problematic family situation cannot be repaired at the late stage when it comes to court. We continue to address these issues in a way that leaves us disappointed. The courts and our society will surely welcome any effective methods of preventing child maltreatment. Looking at these issues in the way public health concerns are viewed is a novel and exciting approach. I would personally welcome a paradigm shift away from our current approach of intervening only after damage has been long and often irreparably done. A preventive approach that does not unfairly target individuals or families but applies educational and other supportive services to at-risk communities would be appreciated by the Family Court.

We in the Family Court would also welcome the results of the research that a public health approach would provide to the causes of child maltreatment and effective means of preventing

or treating it. This would not just benefit the child welfare agencies and the court, but would of course directly benefit the children, youth, and families we are charged with serving.

In urban centers like New York City, we expect an array of social service programs to exist. The courts rely upon these to assist the affected family to overcome the issues that resulted in child maltreatment and led to court intervention. In our current system, we issue dispositional orders from a standard and limited menu of services—most frequently parenting skills, mental health assessment and counseling services, and substance abuse treatment programs—without a true understanding of which interventions work for which of the families we serve and why. As a system, we don't look often enough at outcomes to determine whether the interventions we are currently using are making a positive difference in the lives of the people we serve. In the situations where we do assess and learn what works, how can we make those programs more widely available to the communities in need? Even assuming we learn what works and why, there is a clear gap in the availability of professionally run, culturally competent, evidence-informed, social service programs that address the many issues presented in our cases.

While we experience a lack of services in New York City, I often hear from my colleagues in counties in our state outside of New York City that the availability of community services is minimal. And I would be remiss were I to fail to mention the complete absence of available services for the large undocumented communities we are called upon to serve. The utter lack of available services in our communities must be considered as we address these issues in the manner of a public health program.

As we explore these issues, another area of personal interest is the many child protective cases pending in our courts where children are not removed from their homes of origin. These are cases filed by the Administration for Children's Services ("ACS") in which no removal of the subject child is requested. The child is at home and ACS monitors the home. We call these "court-ordered supervision" cases. In New York City Family Court, roughly forty percent of the currently pending child protective caseload consists of "court-ordered supervision"

cases.¹⁷ Many argue that these cases do not require court intervention at all. The Family Court must accept all filings and allow the adjudication process to proceed, but I dream of a day when an appropriate response before or after a report is made to child welfare authorities will provide a way for ACS to refrain from filing these cases, freeing up a substantial amount of the court's time, and leaving the courts free to direct our limited resources to cases where children cannot be safely kept at home.

I know my remarks today raise many questions and answer none. I am grateful for this opportunity to speak with you and learn from you today. I mention all these issues because if we are prepared to reconsider how we prevent child maltreatment, and consider these issues from a public health perspective, I see this as an opportunity to provide a "view from the bench" and let you know of my own personal "wish list" of additional areas to explore in this uncharted territory. In many ways, and in our own way, the New York City Family Court is already engaged in innovative efforts that can be fairly labeled preventive measures. In addition to our traditional role of adjudicating cases, I'd like to discuss a few of our other efforts with you today.

With the full cooperation and participation of ACS, the New York City private foster care system, and the child and adult legal advocacy community, the New York City Family Court implemented a comprehensive Child Protective Plan in New York City Family Court. The overarching goal is to better address the children and families who appear in our courts, and to focus seriously on "front-loading" appropriate therapeutic services to these families early in the court process. The court provides pre-fact finding comprehensive mental health evaluations which are not directed at proving the neglect or abuse but provide all with a framework upon which reunification services can be implemented as early in the process as possible. We have established protocols and taken a hard look at the internal sources of delay in our process. Our focus is on compelling compliance with court orders, targeted case management and assessing data throughout the work we do.

¹⁷ New York City Family Court data (on file with author).

No honest discussion of poverty and its impact on child welfare would be complete without mention of the thorny but critical topic of race and ethnicity and their impact on the child welfare and court systems. The New York City Family Court has taken on the critical issue of reducing disproportionate minority representation in the child welfare system under the spectacular leadership of Bronx Family Court Judge Gayle Roberts, who is working with a large interdisciplinary workgroup. We recognize that at every point of contact in the child welfare system there is over-representation of children and families of color. Judges in our Court have been utilizing the “Courts Catalyzing Change” bench card developed by the National Council of Juvenile and Family Court Judges, which prompts the judge to consider numerous factors that may indicate implicit bias in the handling of these cases and to ensure that decisions made by everyone involved in the case, from the child protective case worker to the judge, are racially neutral. The code word for our work in this area is WATCCH, which stands for, “when are the children coming home?” There is a reminder at every court appearance of the need to ask that question and honestly determine true barriers to reunification.

I’m also quite proud of the work of our Adolescent Transition Planning Part. In the New York City Family Court, we have one court part located in Manhattan Family Court that addresses all the cases of adolescent youth in New York City who have been voluntarily placed in foster care by their parents or caretakers. We have over 1,000 youth in that court part. Many of our children who have been subject to family court intervention grow up in our systems and then “age out” into lives disproportionately filled with poverty, homelessness, unemployment, substance addiction, and involvement with the criminal justice system. In a collaborative effort spearheaded by Lawyers for Children, which is the institutional attorney provider for most of these children, we have created a court part that we hope will serve as a national model. This transition planning part closely monitors the progress of children who are about to age out of foster care and attempts to ensure that they are prepared for independence when they leave the system. Frequent detailed benchmark hearings are conducted. The

children are in court for their court appearances and are fully involved with planning for their future. We are committed that when they leave us they will have the tools and resources to be able to truly succeed in life.

The Juvenile Justice and Child Welfare leadership of New York City have begun exciting work with Georgetown University to better serve the needs of the cross-over youth population of children who have contact with both the juvenile justice and child welfare systems. We recognize that we need to coordinate our efforts in this area. These are the same children coming to our attention through different doors of the court, and we need an approach that will ensure the best outcomes possible for them. In addition to its role as a constitutional court of law, the Family Courts located in each of the boroughs of New York City also serve as important and involved community institutions. The lobbies in many of our courts contain information booths where parents can apply for medical insurance for themselves and their children. Family Courts host "Teen Days" which provide opportunities for adolescents in foster care to learn about and take advantage of social services and community services.

I'm very excited about our upcoming Healthy Children and Families Fair, which is an annual program open to the general public and held in Bronx County Family Court in recognition of April as Child Abuse Prevention Month. At the Healthy Children and Families Fair, in addition to the numerous healthcare and social service organizations who provide information to the public, major cultural institutions such as the Bronx Zoo, New York Botanical Garden, and various museums hand out free admission tickets. And this year we will present an art display and performance by "Artistic Noise," a program that provides an alternative to detention for kids in the juvenile justice system, many of whom also have had contact with the child welfare system. Artistic Noise gives children an opportunity to create art that we are proud to exhibit in our courthouses throughout the city.

Aside from hopeful events like the Healthy Children and Families Fair, the topics we are talking about today are depressing. Since I am a glass-half-full person, allow me to end

my remarks by reading to you an e-mail communication I received from one of our Family Court judges late last evening. The subject was “End of Day thoughts.”

You know how you have some days where you wonder what we are doing here and what we are accomplishing? Well, today was one of those days. And then, my last case of the day was a Special Immigrant Juvenile Status (“SIJS”) application for a seventeen-year-old in foster care—a young woman from Mexico. Her mother abandoned her. She told me how she works with the “Possibility Project” putting on plays about foster care, has done a . . . presentation at Riverside Church about her life, is applying to college, and is going to start a drama program in her charter school so other kids can learn to take difficult moments in life and make them opportunities for growth.

Our judge ended the e-mail saying, “Such a lovely way to end my day . . . lucky me.”

This young lady clearly has a lot to teach all of us. All is indeed not lost. There are stories of incredible resilience that not only keep us going but should inform the important work we do. Every child in this world is born with the potential for a bright future, and the potential to be a full and vibrant member of our society. Too often, life circumstances interfere with that great potential.

As a society, we are obligated to protect our children and allow them to grow to be the fully functioning productive adult members of our community that they were made to be. I’m excited by this exploration of a new approach to child protection work and I’m pleased that I can be a part of the discussion that may revolutionize the child protective world.