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IV. JUVENILE JUSTICE REFORM FORUM - "Prevention and Ethics" Panel Discussion

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IV. JUVENILE JUSTICE REFORM FORUM
"Prevention and Ethics" Panel Discussion

Even though the forum today is entitled Juvenile Justice Reform, it is often said that the children and families in the justice cases are the same children and families in the abuse and neglect cases. Therefore, as Presiding Judge of the Child Protection Division of the Circuit Court of Cook County, Illinois, USA, I will lift my introductory comments for prevention and ethics matters from systems usually associated with abuse and neglect cases.

Participants of this session will be exposed to work done in the USA, especially in Chicago, Illinois. The purpose of this session is to afford all, participants and speakers alike, the opportunity to recognize similar programs and interventions in their individual jurisdictions. By the end of our discussion today we will have identified common pillars necessary for effective prevention programs designed with an eye toward ethical considerations within our systems.

The collaborative work has resulted in this US Juvenile Justice Reform Forum, as part of the Annual German Congress on Crime Prevention (GCOCP), began many years ago. The collaboration was the brain child of and initiated by Petra Guder and Bernd Rudeger Sonnen, Hamburg University, Germany. In an effort to forge transatlantic opportunities for learning and for sharing insightful practices and interventions, I and fellow colleagues were approached. On behalf of the USA colleagues I am proud to say our interest has been great, however, without the unyielding and consistent commitment of Petra Guder and Bernd Sonnen, this collaboration and most importantly for today's Conference, this panel discussion would not be presented.

In addition to individual judges, researchers, policy makers some of our USA stakeholders are organizations that offer forums for discussion and debate about promising practices. Throughout the years countless meetings, conferences, white papers, have been produced with the support of organizations such as the Nation Council of Juvenile and Family Court Judges (NCJFCJ), the Pennsylvanian Juvenile Court Judges Commission (JCJC), the Cook County Juvenile Court, Chicago, Illinois, the Philadelphia Juvenile Court, and many other representatives. These organizations have developed a keen interest in the process of exchanging ideas via an international dialogue.

I had the good fortune to participate in the first Juvenile Justice Reform Forum 2014, Karlsruhe, Germany. Although I personally was not in attendance at the 2015 Juvenile Justice Reform Forums reading the program and papers it is clear that social ills facing children and families are coming into courts in the USA and EU at alarming rates. Our societies are looking to courts to curb the non-forming disruptions in our communities. The main principle that emerged is that the US and EU are facing similar concerns. We no longer can afford to work in silos when developing promising practices that are designed to improve the lives of our children and families in need of court intervention. It is imperative that we join forces and begin the process of learning from and sharing with each other. The early child develop work, childhood brain development field, educational needs, the importance of parental involvement, the need for parenting time, the desire to protect our communities are the same whether the child and family live in the US or in the EU. As stakeholders in the systems that impact our children and families the most, this is our opportunity to broaden our appreciation of existing global practices. The US has not perfected the practice of building stronger families and communities, nor has the EU. However, together the US and the EU can take advantage of opportunities like the transatlantic collaboration begun here.

As a US judge serving in the juvenile court I am embarrassed to admit that the United States has failed to ratify the Childs Rights Convention. Our country is often criticized for this failure, and rightfully so. However, it is important to understand how this unfortunate circumstance is viewed by me and my colleagues doing the work in the states. Judges, in particular, recognize that in our country the decision regarding ratification is political in nature. Many, if not most of us have voiced our concerns and strong opinions about the need to ratify. Our federal system is such that the decision remains steeped in politics, and as such we are not bound by the perceived limitations. Our collective position is that juvenile and family justice systems, education, welfare, mental and physical health and well-being of our families is not a political decision but a matter of great importance. The EU is further along in understanding the importance of ratification. One day in the very near future I hope to be able to join you and your countries in celebrating the US's ratification, but until that day, we have important work to do!

In an effort to utilize concrete examples and illustrations my remarks regarding prevention programs and the ethical concerns will be centered on US approaches in the child protection arena. The fact that I am using US examples is only to jump start the discussion. Again, the primary point of our conversation today is to share ideas and to learn from all the jurisdictions represented here.

Nationwide, and in the State of Illinois, the majority of child welfare cases coming to the attention of the court are allegations of neglect. We certainly have reports of physical and sexual abuse; however, in the past 25 years we have seen a decline in

those reports. During this same 25 year period we have experienced an increase in the reports of neglect and child poverty. Today roughly 75% of all substantiated reports and over 60% of all Child Protection Service (CPS) placements are based on neglect investigations. Roughly 1 in 5 children in the US live in families with income below the federal poverty line. This is important to understand especially since courts are prohibited from removing children based on poverty alone. Yet, it is clear from the cases populating the US systems that there is a relationship between poverty and neglect. Due to these circumstances, it is imperative that this intersection must be full explored.

One reason the difference between poverty and neglect is so important, is that depending on the trier of fact, the laws of a particular jurisdiction and/or the interpretation given by the investigator, similar fact patterns can result in very different outcomes. In addition to the factors listed above, the determination can also turn on issues such as the caregiver's substance abuse, community and family customs, self-medicating practices, and the like. Often times in the US neglect can directly affect the child's physical development, emotional and social well-being and academic performance.

To further illustrate my earlier point about the benefits of collaboration between our countries, in the US we often hear that our prevention programs and policies are considered 'too American' and thus ineffective for European purposes. It is in fact the case that in the US we are developing interventions and programs in conjunction with current research done in the field and at the federal level through grants offered by the Office of Juvenile Justice and Delinquency Prevention (OJJP). There is a push to make courts a place for assistance, effective intervention, while still providing protection to the community at large. Some refer to this approach as a more 'child friendly' juvenile justice reform. The most promising practices and programs are of little use if we cannot get customers to use them. Whatever your opinion of the approach, there are promising elements contain therein. No single approach is the answer; this is but one approach with some promise.

One of the best developments from this more child friendly approach to juvenile justice has been the insistence of working with the different partners/stakeholders in the system. The approach is based on bringing researchers and their findings to the courts and program providers, the juvenile prevention teams' work with the probation staff, social interventions are no longer pushed to the side but are main streamed, police and arresting agencies participate in enhancing out comes, medical and mental health partners come to the table as well as schools, media, employers and others. Often a critic of the child friendly approach question does any of this cooperation and working together eliminates the bias and discrimination often found in our systems? Does this approach require too many assessments? Does it focus too much attention on the child and family's risk factors rather than their demonstrated protective factors? Are these practices coming too close to looking like predictive analytics wherein risk factors are used to predict negative outcomes?

I suggest that these are reasons our transatlantic collaboration is so important. Our efforts are strengthened by critical analysis and the use of comparative practices. Again, no one approach is the answer. The answer lies in a combination of our ideas and thoughts. In turning to child protection systems the US has narrowed the courts goals for children and families. There are three primary outcomes that the federal government will base the state's evaluation. The federal government conducts reviews every five years, Federal State Reviews (FSR) to ensure the three goals: safety, permanency and well-being. In addition, the federal government provides a great deal of funding to the states for the investigation, placement and support of families. One of the main vehicles for federal funding is the Child Abuse Prevention and Treatment Act (CAPTA). CAPTA and other federal funding sources have restrictions and practice guidelines. Adherence to the guidelines, especially around investigations, can greatly impact future funding grants. To further illustrate this point, let's return to a topic discussed earlier, neglect.

As stated before, the bulk of new cases coming into the US child protection system are allegations of neglect. In the US there are different schools of thought about where the issue of neglect is most effectively addressed. The federal government through CAPTA, and other regulations, require the state to investigation allegations of neglect. In fact the law requires the state to develop service plans to afford the caregiver an opportunity to correct the neglectful circumstances that brought state intervention. Whereas, the American Bar Association, a lawyer membership organization, has issued policy papers suggesting that the state should limit their investigations in child maltreatment matters to physical, sexual abuse and serious physical or mental health issues. The US's problems with neglect do not end here at the investigation stage. Due to the fact that so many of our cases involve neglect it is necessary for us to understand how to treat the neglect and its affects.

Can we prevent neglectful parenting practices?

To aid our discussion there are two prevention programs designed to combat neglect that I would like to share; home visiting and prevention courts. Home visiting has a long history in the US. The program focuses on bringing services in the home to assist the caregiver in developing strong parenting skills. The home visitor offers the caregiver a model to emulate. This is particularly helpful in demonstrating developmentally appropriate expectations. In general the data about the success of these programs is very encouraging.If the program is implemented properly the results suggest enhanced emotional and academic well-being for the child.

Prevention courts, unlike home visiting, are in their infancy. The term 'court' is somewhat of a misnomer. The court is set up more like a mediation session. Rather than lawyers directing the proceedings, the worker and his assessment of the family's

needs dictate the course of the case.The focus is enriching the caregiver’s strengths and developing the caregiver’s weaknesses. Although the programs are separate and distinct, the opportunity to have the home visiting program as part of the prevention court is greatly encouraged.

Due to the fact that allegations of neglect are so prevalent and that the effects of neglect have long term consequences, parents with young children are of particular interest.Studies suggest that children under the age of five account for nearly half of all US neglect reports (Emily Putnam-Hornstein, California, USA, found that in California, five percent of all newborns born in 2006 and 2007 were reported to CPS before age one, virtually all because of neglect or the threat of neglect). Unfortunately, most received no services. The Putnam-Hornstein report goes on to state that the first one thousand days of life, 0-3, is a critical period for brain development. Thus, it is highly recommended to address the neglectful parenting practices during this essential developmental stage. This is the optimal time to offer parents the supports to minimize the poor outcomes that often present in neglect cases. Services such as Early Head Start (EHS) and Home Visiting (HV) with parenting couches going into the caregiver’s home are very effective.

The concept of prevention court is not new. What is new is the goal. Today we think of prevention courts designed to actually prevent neglect rather than react or attempt to correct the ill-gotten neglectful outcomes. Preventing neglect with the family intact and together, remove the threat of transferring guardianship to the state and strengthening the family as a unit is an admiral goal. The court voluntarily limits her power to remove children from parents while offering opportunities for the parents to raise healthy children. Prevention courts may in fact be a viable way to prevent child neglect, especially for the most developmentally vulnerable children, the children age 0-3.

I welcome each of you to this exciting discourse on prevention and ethical considerations in the area of juvenile justice. This is a wonderful opportunity to learn and share emerging and promising practices in the US and the EU.

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