

David Kelly: [00:00:05](#) Welcome everyone. My name is David Kelly and I'm quite pleased to welcome you to this session on behalf of the Children's Bureau. It's session that we are very excited about and it's a session that we are holding unapologetically to advance something that we think is critical. And that's that all children and all parents involved with the Child Welfare System should have high-quality legal representation at all times. We believe so critically in this that we recently changed policy that will, for the first time ever, make funding available to help with the costs.

I'm incredibly honored to share the stage with four child welfare leaders. They're leaders in their localities. They're leaders in their states. And they're leaders nationally. They're here because we unanimously agree that if we're serious about addressing some of the most difficult challenges that leave families vulnerable for involvement in the Child Welfare System and if we're serious about improving the experiences for parents, children, and youth who are involved in that system we must have high quality legal representation for everyone.

We're going to talk about why. We're going to talk about what that looks like. But we're going to begin by getting to know the folks that I'm so honored to share the stage with. So, I'm going to ask everyone to introduce themselves. I'd like to begin here at the end.

Vivek Sankaran: [00:01:57](#) Great. So my name is Vivek Sankaran. I direct the Child Advocacy Law Clinic at the University of Michigan Law School where my students and I represent both children and parents in the foster care system. I started my career here in Washington DC representing children in foster care, then transitioned back to Michigan where now much of my work focuses on really strengthening protections and procedures for all families, kids and parents involved in the Child Welfare System with the hope of promoting better outcomes in the system.

Shrounda S.: [00:02:31](#) And I am Shrounda Selivanoff and I am contracted with the Washington State Office of Public Defense as a Social Service Federalist. Sounds like there's some Washingtonians out there. And I also do a lot of work with birth parents on advocacy on a state, national, and local level and I'm on several committees all around preserving birth parents' rights and elevating the voice of our families that want to be reunited and together.

David Kelly: [00:03:03](#) Thank you.

Edwina R. M.: [00:03:06](#) Good afternoon. I'm Edwina Richardson-Mendelson. I'm a grandmother, a mother, a daughter, a spouse, a colleague, hopefully a friend. I was a lawyer representing parents and children in Child Welfare dependency cases in New York City. I was a judge presiding over those same types of cases involving Child Welfare proceedings in New York City. I was the judge in charge of the Family Courts in New York City and now I'm the state-wide coordinator overseeing justice initiatives for the state of New York.

Marc Cherna: [00:03:44](#) All right, so I'm Marc Cherna and I'm everything that Judge Mendelson was in her opening plus I am the Director of Allegheny County's Department of Human Services. We're an integrated department. I've been there 23 years. I've been Pennsylvania's State Supervised [inaudible 00:04:02]. But before that I was in New Jersey as an Assistant Director [inaudible 00:04:08] system for over 13 years. So, I've had quite a bit of experience in doing this kind of work and what I've seen over and over again, a strong functioning Child Welfare System is only strong if you have really strong representation for everybody. For the child. For the parent. And for the agency. And it's so important for people to talk about that more.

David Kelly: [00:04:32](#) Thank you everyone. I want to be incredibly transparent here and say that our clear purpose and intent is to have everyone who views this see legal representation as a moral and ethical imperative, to ensure that the voices of parents and youth are heard at all times, to help with engagement, and to make sure that everyone experiences a system in a way that feels just, fair, accessible. One that's designed to truly help make sure they get what they need to thrive.

So question number one, begin here in order again and then mix it up a little bit. Vivek, in five words or less ... How important is legal representation for parents and children?

Vivek Sankaran: [00:05:28](#) So my five words would be-

David Kelly: [00:05:30](#) I think you just used them.

Vivek Sankaran: [00:05:32](#) I just used them. Essential for dignity, outcomes, and justice.

David Kelly: [00:05:39](#) Essential for dignity, outcomes, and justice.

Vivek Sankaran: [00:05:42](#) That's five words.

David Kelly: [00:05:43](#) Five words.

Shrounda?

- Shrounda S.: [00:05:46](#) My five words are justice, equality, support, guidance, and accountability.
- David Kelly: [00:05:54](#) Judge Mendelson?
- Edwina R. M.: [00:05:56](#) I've got one word and it's a word that I'm going to use like the young people use it these days and that's everything.
- Shrounda S.: [00:06:04](#) Oh.
- David Kelly: [00:06:06](#) Marc?
- Marc Cherna: [00:06:07](#) Five words is a challenge so I would just say it's critical to have checks and balances in our system and strong representation on all sides to keep those checks and balances.
- David Kelly: [00:06:20](#) Thank you.
- I'm curious to hear on a personal level from each one of you. What made you realize that the parent representation in particular is so important? Let's start with Marc.
- Marc Cherna: [00:06:41](#) Okay.
- Well when I was a young worker, I really didn't think too much of parents. I really kind of blamed them for the problems that kids had and really was pretty punitive, which I think a lot of our workers and systems tend to be. As I got older and more experiences, as I had children of my own, I came to realize ... and as I spoke to parents, I came to realize that a vast majority of our parents love their kids. They really want to do what's right for their kids. They may have stressors like disease of addiction or mental illness or poverty-related stressors that get in the way but if you give them an opportunity it really does make an impact.
- And I've found by really giving strong representation to parents, it empowers them, it engages them, and it really helps the system to help them get their children, keep their children first and foremost, get their children back with appropriate services so they can do that and get the permanency.
- David Kelly: [00:07:45](#) Judge Mendelson, what made you realize the importance of parent representation?

Edwina R. M.: [00:07:49](#) So I have had the luxury of working in a jurisdiction where parent representation in child welfare cases is a mandate and it's provided and it's assumed. So, the idea of parental representation in these most important cases is not something that is a place where I had to arrive. However, I don't take for granted high quality parental representation. We cannot assume that just providing an attorney to parents and to children who were involved in the Child Welfare System is a fix for the woes that that family may be experiencing in our system. High quality representation is different than merely providing representation.

David Kelly: [00:08:43](#) Couldn't agree more and we'll spend some time talking about what quality means.

Shrounda, what made you realize the significance, the importance of parent representation?

Shrounda S.: [00:08:56](#) Well for myself, I've had kind of a twofold experience. I've had the consumer experience and then the professional experience and I have to tell you, on the professional side from the preview of working with distressed parents, I have firsthand watched the power of really good legal representation and how it really moves a case so that parents actually feel empowered. They feel guided. They are instructed and informed.

And so, you know I'm in this work for personal motivations, particularly because I know that parents deserve the ability and the possibilities to arrive at the rightful place as mom and dad. And so as I've been able to witness the power of what legal representation actually holds, parents really thrive with having that. So personally, it has really empowered me to know the power of what it looks like to have that level of support.

Parents come into the legal system or into the child welfare system with an understanding of what a legal representation looks like and that's probably do due to prior exposure and I have to tell you, that's not the type of legal representation that they're encountering. They're encountering attorneys that are very invested in their family's and their outcomes and they constantly display that. Whether that be in the courtroom or whether that be in departmental meetings or one on one, it is foundational. So I am a huge supporter of that. And to be honest with you, I'm somewhat baffled with the idea that that is not occurring and when I was told I was somewhat appalled.

David Kelly: [00:10:40](#) Yeah. As we sit here today, there are parents who may have been separated from their children last night, maybe even

during this conversation who are confused, scared, overwhelmed, and about to be involved with a complex, highly complex, legal proceeding without an attorney.

Vivek, what was the moment that made you realize the significance of legal representation for parents in particular? I know you work and care deeply about both.

Vivek Sankaran:

[00:11:16](#)

So I think what's interesting about the framing that you just gave about sort of the reality that parents are about to experience this moment is how frequently young professionals in the field don't get that perspective and I was one of those. When I started working at the Children's Law Center here in Washington DC back in 2001, I entered this field to help kids. I didn't think about parents. I had assumed that they had done something so bad that I really didn't need to engage with them.

And then I had this moment in 2004 and a phrase that I've recently sort of clung to is this phrase "moments of obligation". Right? These rare moments in your life where something happens after which you feel such a sense of injustice that your life dramatically changes course in a direction that you would never have predicted before you saw that injustice. And for me that was having the opportunity to represent a parent in Juvenile Court.

So, I had spent three years in DC representing children. I was, I think, well liked in front of my judges, was always treated with respect and dignity by all the parties involved and then one day, one of my clients in a private custody case found out that child protective services had filed a petition against her because she had left her 13 year old in charge of caring for her younger children while she went and did laundry out in her Section 8 housing community. Total bogus case.

I thought very naively that I could just go to court, explain this to a judge, and get this easily dismissed. And I could still feel to this day, and it's been almost 15 years, how I felt in court that morning and the look of my client and the fear and the isolation, the embarrassment, the humiliation and I, as a lawyer, how alienated I felt by just being someone to stand up for this parent. I had never seen the child welfare system through that lens before. And so for me at that moment in time, I realized that we will continue to fail as a field until we invest in this.

We can keep doing the same things we've been doing over the years, keep having the same conferences, same presentations, and same panels talking about the same issues but we're

missing the civil rights issue that no one's talking about. And so from there, you know I feel like I'm often on repeat mode trying to just get audiences to feel what I felt that day, that morning, and I continue to feel sort of that sense of outrage.

You know, we talk about engagement, empowerment, all of these great concepts but yet we rarely link it to the one person who has the unequivocal relationship with the parent, which is their lawyer and until we invest in that mechanism, we will continue to struggle with a lot of the things that we're hoping our system will achieve.

David Kelly: [00:14:14](#)

Thank you.

Judge Mendelson, I have a two-part question for you. The first is, is there judicial consensus that high quality legal representation in child welfare proceedings is important?

Vivek Sankaran: [00:14:31](#)

And I have a two part answer. And the answer to that first part of the questions is yes. I am fortunate to be a member of a number of judicial associations. The National Council of Juvenile and Family Court Judges, the National Association of Women Judges, the International Association of Women Judges, and other judicial associations. So I have met judges from all over the country and all over the world and I can say with strength and power that there is consensus among judges who are leaders in their communities that our court system deserves and the people who our court systems serves deserves quality legal representation, both parents and children.

David Kelly: [00:15:20](#)

Excellent. Part two is really why. And what benefit is there to the judicial communities, to those on the bench to there being high quality legal representation for parents and children?

Vivek Sankaran: [00:15:38](#)

So I actually have a two-part answer to that. Let me start by saying, part of my role as Deputy Chief Administrative Judge for Justice Initiatives for the State Court System is to lead our court systems Access to Justice program where we are trying to provide a fair court system for all court users, regardless of income, regardless of background, regardless of special need. And as a system leader, I know that the idea of having a court process involving the essentials of like a child welfare proceeding in the absence of legal representation for everyone who is involved in that court case, that's not access to justice. So, it's a justice issue for me and I think that it's a justice issue for society.

But in terms of the practical impact as a court leader, the court process is a better process when everyone has a lawyer. Court cases that involve unrepresented consumers or litigants who come to our courts, those cases take longer. You have to explain things over and over and as a society cost, a court process that's complicated where you don't have every person in the court providing information to the judge so the judge can make the most informed decision possible, it's just not a good process. So it benefits the court system and society as a whole to make sure everyone has a lawyer.

David Kelly: [00:17:11](#)

Marc, I'm curious. You're a Child Welfare Director, an agency director. Why would an agency director want parents to have high quality legal representation? Isn't that a threat to you in your position?

Marc Cherna: [00:17:28](#)

Well, a lot of folks look at it that way and if they ever did it, they would see it's not a threat but it's actually a real benefit to do that. When I first came to Allegheny County, the solicitors were kind of in charge, the count's lawyers and we had very weak representation for parents and for children. And we had 3300 kids in care and they stayed forever and when you finally went to terminate parental rights, parents never appealed because we beat them down. We just got rid of them that way and it's really a dysfunctional system.

So I'm the one who's in charge of funding. Pennsylvania's kind of weird that I actually fund the [inaudible 00:18:09] and the parent representatives as well as the solicitors and I made the decision, I am going to get good quality representation. So I started really increasing their funding and what they asked for and what they need is to be professions, full-time lawyers who actually worked on this thing and actually got caseworkers with them to help manage those cases. So they had equal representation to our solicitors and our caseworkers and there was a ton of pushback and I had to really fight some wars with the elected officials and everything else.

But we got a win and my thing is, you don't get more money for winning. We win when children and parents are well represented, and they get what's right here. So we changed that focus and as a consequence, we have two-thirds less kids in care. We move things much quicker. Parents are engaged and they have equal standing. And as Judge Mendelson said, we have the same in my courts. The judges really appreciate having strong, competent representation on all fronts.

You know, it's three legs to that stool and you can't have it being unbalanced. You've got to have everybody and then the judge can make the best call because they're getting really good information and move kids quicker to permanency. You get kids quicker at home. Parents are engaged. I mean it really does work. So I would say to my colleagues, try it. It really does work well and it'll save you money. If you're worried about the expenditure, that early expense will actually save you money in reductions in placements.

- David Kelly: [00:19:48](#) So you not only don't see it as a threat, it's something you actively sought to create.
- Marc Cherna: [00:19:54](#) Right.
- David Kelly: [00:19:56](#) You did it long before IV-E funding was even available.
- Marc Cherna: [00:20:00](#) Yeah. 23 years ago.
- David Kelly: [00:20:02](#) 23 years ago and you see it directly linked to reducing numbers of kids that come into care, length of time they stay in care, etc.
- Marc Cherna: [00:20:13](#) Yeah. And keeping parents involved and trying to help them. And then the flip side is if parent cannot get it together, you get the diligent efforts pretty quickly.
- David Kelly: [00:20:22](#) Yeah.
- Marc Cherna: [00:20:22](#) You know with parents, in spite of having good representation and all the resources and if they can't manage that, you know we run the time limits and you get that documentation quicker if that's the case. But very often than not, you're helping the parents. The parents are getting their self together to get their kids back.
- David Kelly: [00:20:40](#) So value added no matter what their course.
- Marc Cherna: [00:20:42](#) Absolutely. Absolutely.
- David Kelly: [00:20:45](#) Vivek, you've represented and still do both children and parents. I want to ask a question in a slightly different frame. How does high quality legal representation for parents benefit children?
- Marc Cherna: [00:21:03](#) So I will say the number one thing that my child clients want if they have to be removed is to go home. That, regardless of what has happened that led to the removal, consistently their

top priority is, "Can I see my parents? When can I go home?" And I can say there is no better tool that I can think of in the child welfare system to help a family quickly get back together again than getting that parent an advocate who could help guide them through that process. Especially at that initial stage after removal where the parent is hopeless. That's when the system kind of comes baring down on that family, that they need somebody who can help them navigate that process.

I just think the simple test that we all need to start applying when we think about this issue, is what would we want if our own family or our neighbors or our relatives were involved in the system. And none of them would sit here.

I want to share a quick story.

David Kelly: [00:22:03](#)

Please do.

Marc Cherna: [00:22:03](#)

A colleague of mine at the law school, who showed up about a year ago to find a child protective service business card on his door and it just said, "Call. Emergency. We need to talk." What is the first thing he did? Right, he picked up the phone and called a lawyer to ask, "What is this about? Give me information." And so he called me and I got him to take a deep breath and to call the worker to back to ask the right questions.

We have to start applying these same tests to our families in the system because I think our ambivalence towards legal representation reflects in some way a disconnect that between us and the families that we serve and that we're not affording those families that we serve the same sort of rights that we would want if we ourselves were in our system. And so I think we have to bridge that gap. I mean for me, the simple test is, if my children were in the system, I was in the system, my brother was in the system I wouldn't tolerate a enterprise that didn't give them a high quality lawyer to help guide them through that process.

David Kelly: [00:23:16](#)

So question for everyone on the panel and you can compete to see who answers it first. What's the most powerful example you can call to mind of how high quality legal representation changed the trajectory of a family's life?

Edwina R. M.: [00:23:41](#)

I've got a really good one. To be quite serious, it's impacted me and I do think about this situation. It's a case that I presided over as a judge. But imagine from the parents' perspective for purposes of this story. You have a three-month-old who's in

distress and you go to the emergency room with your child. They take your child away and they're taking care of your three-month-old and the doctor comes out and tells you, "This baby has been shaken and is exhibiting signs of shaken baby syndrome."

You're the parent. You've been caring for this child by yourself, along with your husband of course, morning, noon, and night and you know this child hasn't been shaken. That child ends up in foster care and before me as a judge. Long complicated case.

I will tell you there's a happy ending, a somewhat happy ending because that family will never get the months at over a year back that that child was in foster care. But a high-quality lawyer for that mother found a medical expert. That expert came to court. Did a full investigation. Quality representation. That lawyer is now one of our finest judges in New York City Family Court. This case happened quite a while ago.

I actually pulled the decision and I'm holding it in my hands to read the words that I issued as a judge in this case, dismissing the case because there was no child abuse proven. The medical expert testified that the child had a neurological condition that the emergency room physician rushed to judgment, saw some signs that would have ruined this family's life permanently had that mother and that child, by the way ... The child also had a powerful attorney. All of them presenting evidence to me so I could make the only decision that was appropriate in that case: dismissing that case; returning that child to the child's parents.

The child welfare agency did not appeal that decision. So the high quality work of that lawyer and those lawyers in that case convinced the agency that there was no abuse or neglect and that's my powerful story about the difference in a life, in a family, high quality legal representation provided.

Shrounda S.:

[00:26:19](#)

And I'll actually answer that question and I'll actually use my case itself. That when I was introduced into child welfare, I was in the grips of a very, very severe addiction and just because you get into child welfare doesn't mean that you quit using. But child welfare continues on and my attorney was amazing and what he did was, there was points in the case because I was absent for the first year but the case still proceeded. And what he did was he was a presence in the courtroom even when no one else was there and at one point, he reached out to my mom and he said, "Listen. No one's showing up to court. Could you show up?" And she did.

And I have to tell you that my mom was the catalyst for me to be sitting here today. So while you may believe that I am unworthy of legal representation because I'm not there, what I actually just needed was someone to stand in the gap until I could get well. And I have to tell you, I've had the wonderful opportunity of working with this attorney as a professional and what's really interesting about him is, is that what I've learned from him more than anything else is he does quality legal representation for everyone.

I've worked with him with people with disabilities, all different races, all different levels and what he does is, the quality that he displays is universal and really what it tells me is more about him. You know, he does his job. Not about who I am but really about who he is. So quality representation can actually be the driver of the outcome, of positive outcomes for people who are informing and guiding and remembering that there actually is a parent there.

It's really easy to forget about me because of the judgements that are absolutely riddled on a person. I think that people come into a time in my life when you read me on the piece of paper, it's a snapshot. Most people take that snapshot and then just pretty much say that you can count me out for the rest of my life and that's just not true. I'm a living, breathing testament of the power of people in their beliefs that things could be different.

No one wakes up and says that it's a good day to be a drug addict. No one wakes up and says, "I would love to see my children in child welfare." There is something that has gone very, very wrong in someone's life, and I really believe that it's our responsibility to help people get back on track.

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| David Kelly:    | <a href="#">00:29:05</a> | And that's a responsibility you help see happen every day.   |
| Shrounda S.:    | <a href="#">00:29:15</a> | Absolutely.  |
| David Kelly:    | <a href="#">00:29:18</a> | Any other-   |
| Vivek Sankaran: | <a href="#">00:29:20</a> | Yes. So I'd like to jump in and actually, I'd like to add a twist. The two examples thus far have been about parent advocacy and I want to talk a little bit about children's lawyers as well and the impact they can have. You know, as a law professor, my work is primarily supervising students. And so, I'm often the proud parent watching students just shine and do sort of brilliant things in the courtroom on behalf of the family. And I'm |

thinking about the case and Shrounda, your point about the snapshot, right. When we get a petition in a Child Welfare case, it's that snapshot of like the worst moment of a family's life. And it's so easy for all of us to let that define the family in its totality, right.

So we got a petition where it was all the horrors: prior termination of parental rights for both mom and-

PART 1 OF 3 ENDS [00:30:04]

Vivek Sankaran:

[00:30:00](#)

...it was up for all the horrors: a prior termination of parental rights for both mom and dad, severe substance abuse, the baby was born, tested positive for drugs, parents were then currently in a methadone treatment. And the department in Michigan often asks for termination immediately. If there's a prior termination of parental rights, it's a practice that we have and the department didn't want to make reasonable efforts. They didn't want to give the family a chance. They wanted to get this child adopted as quickly as possible. It would have been so easy for my law students in this position of representing this baby to just go with the flow, to do what the department wants. All too often children's attorneys do this, they just rubber stamp the decision on behalf of the department, but they didn't do it.

They went out and they met with both parents in their home with the permission of their lawyers within days. They realized that these parents were not defined by the set of allegations in their petition, but instead had made a pretty dramatic recovery in their addiction, had a support network in a supportive housing community of therapists, housing workers, professionals. All things that you would not know if you just read the petition. They went out and got methadone treatment records with the consent of the clients to show the court that the parents were completely compliant with drug treatment. They worked to put together more experts and professionals that could help convince the court that this was a family that deserved to have their children back. The moment that I was the proudest was that it wasn't the parents' attorney who filed the motion to get these kids back home. It was my students as the children's lawyers arguing on behalf of these parents because it was in our client's best interest to be back home.

And I think the judge was perplexed. He's like, "Well, isn't this a motion that the parents should be bringing? Why are you all bringing this motion?" It was a great moment of education to say, "No. As children's attorney, this is what my clients need more than anything else and we're not going to wait for some

other attorney to do it." It was just one of those moments as a teacher and as a lawyer that I'll always remember it because, to this day, this family remains together in Ann Arbor and we hear, we get updates about how well they're doing. I just think about the other reality that could have existed if we hadn't put the brakes on the train that was speeding towards termination.

The icing on it is now the student who handled the case is working in New York as a parents' lawyer for Neighborhood Defenders Services. So, again, moments of obligation. This was her moment of obligation that her life was forever changed after this experience and just seeing the impact that we can have on the trajectory of someone's life.

- David Kelly: [00:32:59](#) There's power, so much power in that. Something you said really strikes me and that's really that the family that most children need is their own. It can be a children's attorney that helps accomplish preservation, reunification, prevention of the trauma of removal, or it could be a parent attorney that does that. Those interests are maybe much more aligned more often than we might suspect.
- Vivek Sankaran: [00:33:33](#) David, if I could just add on, it could also be an agency attorney that does that.
- David Kelly: [00:33:36](#) Of course.
- Vivek Sankaran: [00:33:37](#) Let's not forget that. Our system has become so siloed that we think, "Yeah, the parents should get more visits, but that's not my job. That's the job of the parents' attorney to raise that issue." That is just fundamentally ... It serves all of our clients, regardless of ... If we think it's what the family needs, we shouldn't wait until somebody else does that. In whatever role we have, we have to be pushing those issues.
- David Kelly: [00:34:03](#) Couldn't agree more. I just want to be very clear that when we talk about high quality legal representation, we do absolutely recognize the importance of high-quality representation for the child welfare agency because that is an individual who can exact justice for families. We're a little centered on parent and child representation right now because of the policy change and we want to make sure that folks out there are aware of that change, aware of what it makes possible and maximize it. We've used the term "quality legal representation" repeatedly. I'd just like to hear each of your thoughts about what does that mean, what does "quality legal representation" look like? Just for those who might be watching who, unlike the good professor to my right here, might spend less time thinking about specifically

what high-quality legal representation looks like. So, Marc, let's start with you.

Marc Cherna:

[00:35:07](#)

Okay. Sure. I believe strongly that the folks who are doing this work need to really believe in it and it needs to really be value driven. I try to do that in our system, but also with the lawyers too, that you're there for that purpose of best interest of the child and the parent and the system and that you're really dedicated to doing the right thing. Examples that we've heard, certainly that way believe in professionals, full time lawyers because I see so often that these pro bono lawyers get some rotation. They really couldn't care less and there's really no representation then. They don't see their parent who they're representing until they walk in the door. It's really the worst kind of thing. So, funding them adequately so they can pay a decent wage and that it's not ... So we can get at least a living wage because the lawyers really don't get paid much in the system, much less than the private sector and the for profits.

And then also funding, perhaps supports for those lawyers, so the case workers and things, so they can actually do that kind of work. When Beck talked about his student who went out there and went into the house. We have a term. Our parent lawyers and our guardian ad litem have social workers attached so they can go do that. And they bring back the reports and do that whole piece. They work in tandem to really do that. And our lawyers all talk to each other, too. There may be adversaries in court sometimes, but more often than not they're on the same page and they will talk about what's in the best interest of this family and all that kind of thing. That's what I think is really effective.

David Kelly:

[00:36:56](#)

Yeah, that's helpful. Thank you. Judge Mendelson, from a judicial perspective, what does high quality legal representation look like? What does it mean?

Edwina R. M.:

[00:37:04](#)

When we talk about high quality legal representation, I think about my role as a parents' attorney and child's attorney in the '90s when we had a foster care population of over 40,000 and it was the crack epidemic. I was a lawyer representing parents and children. And I will confess that I did not provide high quality legal representation, at least not consistently. I did my best. I had over 100 cases. They paid us so little as assigned counsel that there weren't enough attorneys to go around and the judges would keep assigning cases to me and my colleagues because we had a right to counsel in our state. You have to resource the lawyers and pay them so they can do the work of a

lawyer, which is to be in a courtroom zealously advocating on every single court appearance date.

But more importantly, the role of lawyer is counselor: to investigate, to speak with your client, and to learn from your client, to be able to communicate to the court your client's strengths, and to obtain the resources necessary to serve your clients. It's the role of the attorney as the in courtroom zealous advocate that's critically important to high quality representation. But it's also the ability to have the time and the resources necessary to counsel your client.

David Kelly: [00:38:37](#)

Shrounda, you work with parents day in and day out. How would you describe high-quality legal representation? What should it look like?

Shrounda S.: [00:38:46](#)

Well, I've experienced it on a professional level. I can tell you the good attorneys and I can tell you the sub-par attorneys. What a good attorney like is that they are very invested in their client. They are in constant communication with the parent. They're not just showing up on the day of the court hearing and saying, "Hey let's go in the back room and talk for 10 minutes and get prepared." They are certainly putting in the work hours outside of the courtroom. I believe that's where some of the key work occurs is not necessarily in the courthouse but outside of the courthouse because that certainly is how we would be most prepared for when you go before the court.

Also the attorneys are asking really, really good questions. They're not just accepting answers from the department. They are bringing it forth in a very clear and concise manner along with evidence to support whatever claim that the department has made, which I have to tell you makes the department be better because they're being challenged. I think that any time that the department is not being challenged, you're not going to produce better workers. I've learned more from my mistakes than I have from my successes. The good quality work looks like asking those questions, challenging those answers.

And the other thing is really bringing about the strengths. The department can be very punitive. It is really geared towards looking at my deficiencies and not really wanting to pull out the positive pieces of me. Good representation talks about what's good about me. Let me tell you what, I don't care who you are. There's always something good. Parents, attorneys, the department, judges all need to be reminded of that. I think that legal representation has the opportunity to present that in a way, in a multitude of different meanings to shine light on

what's going well for the parent and hopefully from that space that we're actually building from that place instead of saying all the things that are wrong and then just wanting to concentrate on that. But actually exposing some of the goodness and then just saying, "You know what? Here's what's really going right and here's where we can go next."

David Kelly: [00:41:06](#)

Vivek, do you have any thoughts on what high-quality legal representation is?

Vivek Sankaran: [00:41:12](#)

Just a few. I don't want to repeat things that were said, but I think what I hear, and what I feel that is the centerpiece of high-quality representation is the relationship. The relationship between the client and the parent is what I would highlight as the most important thing that we need to double down on. Because that is the entry point into all of the activities that we're talking that good lawyer would do. You can't form a meaningful relationship between a lawyer and a client if all you're doing is showing up at the court hearing and standing next to a parent, reacting to information that you learn for the first time in that court hearing, whispering to the parents saying, "Is there anything else you want to say?" In that moment of fear, often I see parents just saying, "No." They just want to get it over with. And then moving on and then not seeing your client for the next three months. We can't even say that legal representation in any ... That's not even legal representation.

What we're talking about to form an effective relationship is individuals who will meet with their client outside of court, outside of that insanely stressful experience, who will then learn about the complexities and the strengths and the challenges that the client is facing, who will then go out into the community and hear from others about what the client has been doing and collecting that information. Then the heart of the relationship is then telling stories. Telling stories to a judge to change that narrative, change that script, change that initial petition that comes in that defines that parent in the eyes of the court.

As a parents' attorney, what we're doing is chipping away and trying to show the court that the parent isn't defined by the worst day of their life. As Brian Stevenson often says, "Each of us is more than the worst thing that we've ever done." I think that holds true in our world. And the job of a good parents' attorney is to show the court, in as much detail and storytelling as they can, that there is so much more to the family than what's on that piece of paper.

David Kelly: [00:43:25](#) Couldn't agree more that. Shrounda, can you share with us the parents that you work with, how do you think they're typically feeling? How are they typically experiencing court?

Shrounda S.: [00:43:44](#) Well, I think court, just the way it's ... This is kind of a loaded question so I'm going to try to do my best here. First of all, I have to tell you that more times often than not, families of color are going to be on one side and Caucasians are going to be on the other. From that moment onward, I'm already feeling like this is not going to be fair. The voices that are heard in the courtroom rarely are asked to be mine. My voice is not entered into the conversation and people are always talking about me and I'm standing right there. I don't think there's anything more worse in life than to be invisible. Then as you're sitting there and you're talking about me and you have my future with my children at hand, I'm just not a consideration. I think that that's so counterproductive. If I'm a part of the problem, I've got to be a part of the solution. Rarely do people look at me as being that. I think that, for the parents that I serve, the first thing I do is I always remind them that, "No one is more important than your child. No one than you is more important in your child's life than you." Most parents are feeling that their children would be better served somewhere else, whether they have social and economic statuses that are a bit better and the way that foster families are presented in the courtroom. Immediately people are going and talking to foster parents and not talking to parents. There's just this incredible environment that is not supportive towards my reunification.

But mind you, we sit there and we say, "Primary plan reunification," but the actions are not saying that. So, it's a big uphill battle for parents. Hopefully there's a parent partner, at the very least, at the very least there has to be an attorney. You cannot say that you support reunification and not have an attorney. I just don't believe that. Those two things don't go together. If we are talking about reunification as a primary plan and on the onset of a court case, there has to be actions that follow.

An interesting parallel is that I'm required to have nothing but action. You are asking me to be accountable towards arresting my deficiencies, but I am in a court setting that doesn't hold itself accountable because no one else is really there to do that. It's by the checks and balances that actually are occurring in a setting that everyone is to be held accountable. We should have no assumptions. What I can tell you for myself as a parent that's navigated the system and for the parents that I have come across is that I don't think that there's anything more

frightening than to have in the forefront a life sentence that you may not have your child. I think that sometimes that evades people. It is a life sentence when your child does not come home with you.

- David Kelly: [00:47:30](#) That's right.
- Shrounda S.: [00:47:30](#) For the rest of your life you will wander this earth wondering if that's my kid, what's going on with my kid and I don't know where my kid is. Those are the things that are going on for parents that are going through the system.
- Edwina R. M.: [00:47:50](#) That was powerful.
- David Kelly: [00:47:50](#) Yes.
- Marc Cherna: [00:47:50](#) Yes.
- Vivek Sankaran: [00:47:50](#) Yes.
- David Kelly: [00:47:52](#) Yes, it was. It's hard to follow that so I'm not going to try. I'm going to latch onto a couple of things that you said. We have a glaring disproportionality problem in the child welfare system. We know that 60, conservatively, percent of kids who end up in foster care are there for neglect, not for physical abuse, not for sexual abuse. We know that it's incredibly disproportionately families and children of color that are affected. Shrounda, you talked about being invisible, feeling invisible. Can high quality legal representation help make parents more visible? Can it help make sure that you're seen, heard? Could it be a strategy that finally helps us take on endemic issues like disproportionality when done in the highest quality possible?
- Shrounda S.: [00:48:59](#) You want me to answer that?
- David Kelly: [00:49:04](#) I want everyone to answer that. Let's start with Judge Mendelson.
- Edwina R. M.: [00:49:08](#) Why always start with the judge?
- David Kelly: [00:49:11](#) It's training. I'm sorry.
- Edwina R. M.: [00:49:15](#) I'm glad you raised that thorny issue. It's the elephant that's a very large elephant in every courtroom in our state. Disproportionality is real. If we know and believe that high quality representation can make a true difference in our courts, even if it means there will be fewer people, our children in our

child welfare system, fewer children being removed from their parents, that's going to address the disproportionality issue because there will be fewer children of color in our system and families of color. I think it's our obligation, the moral obligation of our society. It's justice to make sure people are well-represented. Even in states like my own, where we do have parental representation in these cases, there is a movement afoot to improve our parental representation. Our chief judge recognized that we have work to do, we have pockets of excellence, but that we can't be satisfied with a pocket of excellence.

We need to spread high-quality legal representation throughout the state. So, our chief judge created a Commission on Parental Representation. I'm on that commission. It's interdisciplinary and it's led by a phenomenal retired justice, Justice Peters. I should give credit to my chief judge, Janet DiFiore, for creating this commission and focusing her attention on the needs of parents in our system. The interim report has recommended that we strengthen parent representation by increasing what we pay assigned counsel in these cases and providing statewide oversight over parental representation issues and improve our system to make it a state cost, not relying on the localities to be able to support parental representation. These are recommendations. It's because of the recognition that that thorny elephant in the room needs to be addressed by all of us.

David Kelly: [00:51:20](#)

Thoughts from Marc or Vivek on this topic?

Marc Cherna: [00:51:22](#)

Yeah. Let me jump in. I wish your folks talked to my folks in Pennsylvania because they don't see it at all and that's a real challenge. They don't reimburse anything for parents. They reimburse for the required ad litem, they reimburse for solicitors, but they will not put state money in for parents. As a consequence, it's really much more difficult to do around that. But I think that whole thing about disproportionality, it's really much more endemic. It starts from the front door.

David Kelly: [00:51:54](#)

Yes.

Marc Cherna: [00:51:54](#)

We don't go out looking for cases, they come to us. When you have a disproportionate number of calls of people of color it generates from there. We look at every step in the system and are we making an impact to reduce that as we go forward. And I do think, ultimately, strong parent representation and child representation does help to reduce some disproportionality. But the real thing is stopping it at the front door. But I'm going a little bit further with the whole thing about the financing. Really

it's so unfair for parents and that their view is that parents are not important, that parent representation is not important. That we have counties who just about do nothing at all. Or if they do, they round up somebody who doesn't really care. There's only just a couple of counties, Philadelphia and Allegheny and maybe a couple of others, who actually do professional representation and do that kind of work. It's a real problem. It's not viewed as a positive.

David Kelly: [00:53:05](#)

Vivic, thoughts and comments on Marc's remarks.

Vivek Sankaran: [00:53:10](#)

I agree with with much of what Marc has said. The thing that, and you opened up the elephant in the room, so I'll jump on it or I don't know the analogy there, but I'm trying to make one. But one of the things that shocks me about our field is how complacent we have become about certain statistics and realities, and racial disproportionality is one of them, that we just seem okay with it. I totally get, Marc, your point about there's a million reasons that explain it. But what I fear is that we've just gotten used to it. That we're okay being a country that takes black children, native children at a much higher rate than white kids. And we're just okay with it. We don't talk ... It's not the mainstream media. It was for a little while, there were some reports, but it died down a little bit. If you think about the criminal justice system, there's a lot of literature and popular reporting about sentencing disparities and all sorts of stuff that have resulted in meaningful change. But we don't talk about it. And we don't talk about it in the context or the lens of a civil rights issue. I get it. There's different solutions. It could be fighting for more resources in communities. But at the end of the day we should all feel a sense of outrage that if you're black or native or other non-white cultures, you just have a higher rate of losing your kids. We, as a field, can't be okay with it. Let's debate whatever, the interventions, but we just can't be okay with it. At every opportunity we can express our outrage. I feel like we need to be doing it to get others to realize that this really is a civil rights issue that's going unnoticed by many, many people.

Even folks who are writing about disproportionality in books. There was a book, *The New Jim Crow*, but they don't talk about foster care in there because they just don't think about our world through that lens. I think that like any civil rights issue, lawyers play a critical role in addressing inequalities. Parents' attorneys often fight for supports for families and services and access to things that our families often don't get.

I also think Marc's point about moving up the continuum to try to get services earlier on to families is a crucial point. In many ways, assigning a lawyer for a parent after a petition has been filed to then start fighting for services and supports for that family is far too late. That if we actually get serious about trying to address these issues, we need someone fighting for these families far before a petition is filed when there's some sign of instability where a lawyer could help that family access the resources they need to help prevent Child Protective Services from ever knocking on that door. If we really cared about children, that's the thing that we would do.

- David Kelly: [00:56:11](#) There's no question-
- Marc Cherna: [00:56:12](#) If I could just answer. It really does lead into the Families First piece and the prevention because we totally subscribe to upfront prevention so you never enter our system in the first place.
- David Kelly: [00:56:24](#) Right.
- Marc Cherna: [00:56:25](#) If you can provide services so they never get there, that they're helped before they have real issues, and before any adverse circumstance for the kids, that's the ideal is to do that. Changing the financing, the federal financing, Families First is a first little step, but it's a step and it's significant.
- David Kelly: [00:56:25](#) It is.
- Marc Cherna: [00:56:46](#) How do we continue to build on that? We get to where Jerry Milner talks about primary prevention.
- David Kelly: [00:56:46](#) That's right.
- Marc Cherna: [00:56:50](#) And funding that as opposed to something that's evidence-based, that's way down the road, that kids have already been hurt and now you're trying to keep them in their homes, but they're already in the system. Something's happened.
- David Kelly: [00:57:02](#) That's right.
- Marc Cherna: [00:57:02](#) Can we get to it earlier? And I know you're totally there, but that's what all of us really have to advocate for and push that piece.
- David Kelly: [00:57:11](#) Yeah. To take it one step further and to follow your lead, absolutely Family First is a helpful tool. But if we go even

further, if we go further upstream to primary prevention, so we're not waiting-

- Marc Cherna: [00:57:25](#) That's what I'm saying.
- David Kelly: [00:57:26](#) ... until kids are at imminent risk of actually being removed.
- Marc Cherna: [00:57:29](#) Right.
- David Kelly: [00:57:29](#) If we're able to truly invest in communities and make services available that are non-stigmatic that families can access like you do in Allegheny County through your town's resources-
- Marc Cherna: [00:57:40](#) Yeah. It's all state money, state and county money. New York City does a lot of the same.
- David Kelly: [00:57:44](#) New York City is an outstanding example of that as well. But if we-
- Marc Cherna: [00:57:46](#) But we invest that way because it's so important.
- David Kelly: [00:57:49](#) Yes. Investing in communities, and investing in families, ensuring that there's high quality legal representation, ensuring that people are seen and recognized as the human beings that they are taken together, maybe just maybe, we can finally make some headway on this endemic, long time, wicked problem.
- Shrounda S.: [00:58:13](#) And just to piggyback a little bit off of Marc. I'm just going to shoot for the stars here.
- Marc Cherna: [00:58:18](#) Go for it.
- Shrounda S.: [00:58:18](#) Just going to go for it.
- David Kelly: [00:58:19](#) Okay. Why not?
- Shrounda S.: [00:58:20](#) I would really like to see legal representation pre-petition because as people are investigating families and gathering all of this information, the attorney essentially has to work through all of that. If the opportunity presents itself somewhere in the future and there's a space to have that type of out of the box thinking, that's another really good place where we could look at some prevention that's pre-petitioned legal rep.
- David Kelly: [00:58:51](#) That's that space exists.

Vivek Sankaran:

[00:58:53](#)

Something I get out of that, that space exists. For seven years, from 2009 to 2016, we had a project in Detroit, Detroit Center for Family Advocacy, where we got referrals directly from our child welfare agency of basically the substantiated cases of neglect and abuse. But the agency wasn't rushing to court to remove the children, but were willing to work with the families. We assigned a lawyer, a social worker, and a parent partner to work with the family and help the family resolve whatever legal issue existed with the family in addition to helping them navigate the complexities of a CPS investigation process. It was collaborative. It changed how I viewed CPS workers. I usually only got involved after a petition was filed, and so of course, and this is pervasive amongst parents' attorneys, they all ... CPS workers only want to remove kids. You hear that a lot when the reality is the stats don't bear that out. They actually very infrequently remove kids based on their total number of cases they investigate. So we-

PART 2 OF 3 ENDS [01:00:04]

Vivek Sankaran:

[01:00:00](#)

... kids based on their total number of cases they investigate. We worked handed in hand, what I realized is that CPS workers just were looking for tools. They didn't have the tools, so often they were forced to take kids away because they didn't have the resources they needed.

What would we work on? Landlord/tenant cases, housing. When the conditions of a home are horrendous and the worker would say, "You got to clean your house up." But it was really a rogue landlord who didn't want to apply the law, unwilling to clean the house pursuant to his statutory obligations. Well then we'd go after the landlord, and make him do it. It could be a domestic violence case where we help the non-offending parent get a restraining order and a custody order. It could be a paternity issue, to help a father establish paternity so that way he could care for the child and have legal authority over a child.

We would do whatever it took to help a family. In our three-year evaluation project of the 110 kids we served, not one of those kids entered the foster care system. So I think that the sentiment on this panel, that we have to move where we deliver services up, is exactly the right way.

Although I think we were too late. Even though we were pre-petition, we were child welfare involved cases. But if we want to dream big, taking Shrounda's invitation to dream the world that we want to be, we would be establishing community-based clinics that everyone could access. Maybe target them to

communities that on an aggregate level have higher risks, if we have to allocate resources that way. It would be a place where folks can get legal services, mental health services, parenting classes, access to public benefits, all in one place, all delivered in a community.

What we've set up is a system, and we've said this a couple of times, that we wait for kids to get harmed until then we offer real supports or try to offer supports for families. That to me doesn't sound like a child welfare system. That seems like a system that has missed the boat and missed the mark. I love the idea of just... We could base them at head starts, at hospitals, at places where people access services anyhow, and then surround the family that way.

Recently I heard LeBron James has a school in Cleveland that's performing pretty well, and the part of the story that made me so excited was that they have a resource center for families as part of the school, and as part of the resource center they have legal services. That is the way we have to start thinking about how we deliver services to families.

David Kelly:

[01:02:38](#)

I couldn't agree more. And that is the perspective and the type of work that the Children's Bureau would like to see happen nationally, and have spent the better part of the past two years traveling the country with Jerry Milner, our commissioner, to see some of those programs, and to learn about them. And to meet with the parents, and the families, the children, the youth that are receiving the benefit from those programs. It's profound. The stories we hear reinforce that need time and time again. And but for those services the likelihood of many of those children or families being vulnerable enough to end up in the foster care system is astronomical.

Marc, from your perspective, legal services pre-petition to handle some of these ancillary issues that families that struggle with poverty often struggle with: housing, economic security, or economic stability, benefits, maybe immigration. How useful, from the perspective of someone running a child welfare agency, would it be to have attorneys to help take care of some of those issues that might well lead folks to your doorstep?

Marc Cherna:

[01:04:12](#)

Sure, I think it would be very useful. What we do with that, we don't have attorneys doing it, but we have resources and supports in every child welfare office, so they [inaudible 01:04:21], so we have a housing specialist, so a worker can bring them in to resolve their issue. Behavioral health specialist, addiction counselor, and women in recovery, to help engage the

parent to try to get them the treatment so they don't have their child removed. Nurses, we have domestic IPV specialists. We have a whole range because we're an integrated service department. I can use other funding streams to support those folks, so the workers have a whole team. I don't have the legal piece to it, but a lot of those things can get resolved by specialists who know how to do that.

It would be great if we were able to get some funding to have legal resources and we're doing a lot of that with our guardian ad litem for kids who are outside of... who have aged out of the system, we go to 24. So, can't use the child welfare money, we can do it up to 21, but other types of things, and they've gotten grants to really help with credit things, and landlord pieces, and different... expungement, and all kind of things, to help our kids get back on track. Because they come out of the system with all kind of issues, and we should be doing the same with parents the same way.

So, yeah, to the extent... but financing would be the critical piece of how to do that, if there's a way to get that.

David Kelly: [01:05:46](#) So we've referenced a few times the policy change that we recently made that makes IV-E reimbursement dollars available for representation of... well, for legal services and representation for parents, children, and youth at all stages of the proceeding. Would you see advantage to thinking of all stages as including pre-petition work?

Marc Cherna: [01:06:13](#) Absolutely. The challenge for us is that since we are a state supervised, county administered system the state has to be the one who does the claim for the IV-E parents, or any legal representation. Since the state doesn't put any state money in they say, "Well, we don't have any money to claim." I'm really working with them about, "Well, we are putting the money in for the local level, from the court, so how do we work a mechanism that you use that money and get a 50 percent reimbursement so we can increase and maximize on that." It's a challenge of getting folks to do this, but if you think about it, it makes so much sense. If we were able to really go earlier in the system, I think that would make a lot of sense.

If I can get the mechanism to get the state to claim it, 50 cents on a dollar really does help.

David Kelly: [01:07:06](#) So an idea worth pursuing.

Marc Cherna: [01:07:07](#) Oh, absolutely.

David Kelly: [01:07:13](#) An issue that has come up inevitably and organically during our talk is just how frequently I think that we confuse poverty for neglect. Is there a role for attorneys, especially high-quality attorneys, in disentangling that? And I'm going to look right at Vivek for this question.

Vivek Sankaran: [01:07:40](#) Yes, there is totally a role in doing that. I think it starts first with the... we talked a lot about prevention work. I think that if we had attorneys working on the front end before a petition's ever filed, they can help access resources. We know the link between poverty and neglect is so... we know it exists, right? I saw recent stats that families that had a home foreclosure were 70 percent more likely to be CPS involved. Increasing the minimum wage by a dollar decreased child maltreatment reports by 10 percent. Roughly a third of kids in foster care could go home if their family had housing.

You look at the research, it exists out there, I think that one that a good lawyer even post-petition can do is also narrow that front door to the child welfare system. We think about the impact and the trauma that removal can inflict on a child. The last year, we've seen tons of research that have come out on calling it catastrophic, calling it... one doctor from Harvard opined that if people paid attention to the studies, we would never do this to a child. And yet in child welfare there's a real disconnect that when do we pay attention and give long court hearings? It's at the end of a case, when we're terminating parental rights that we spend weeks doing that. In many jurisdictions, we spend maybe three to five minutes, maybe five to seven if you're lucky, on the removal decision where... and in many places across the country, we don't give lawyers to parents, or children, at the removal process.

So really high-quality representation has to mean rich, meaningful preliminary or initial hearings where you're deciding whether or not a child needs to be removed. And part of that is litigating this issue of whether we're conflating poverty and neglect, and the key buzzwords in the law talks about reasonable efforts. Did the agency make reasonable efforts to keep the family together? And on any poverty case, that's where the reasonable efforts would come in. It's unreasonable if the agency is saying a family doesn't have housing, well what did the agency do to provide housing to the family? Homelessness is not a reason for a child to be separated from their parents.

But I think we're letting families get through this front door, and kids slip through, and inflicting this severe penalty on children of separation because we don't have good, strong... we have no push back at that front door. That's a fundamental shift that we have to make in child welfare, is to get courts, and lawyers, and just people to rally around the idea that we need to be really careful before we do this to a family. Right now, I think the word is careless, in terms of how we're exercising this power of when we remove and when we don't.

David Kelly: [01:10:37](#)

Thank you, yeah. Reasonable efforts.

Marc Cherna: [01:10:43](#)

I could just... I couldn't agree with Vivek more. But from a child welfare director's perspective, it will save you. Because you look at how we're going to finance this and all the rest of it. But if you had that strong representation and you controlled that front door better, you would reduce your placements. You would reduce your length of stay. You will save so much more money. So, it's a really good investment to do. It makes a ton of sense, besides being the right thing, obviously that's most important, but it really will save you practically. When folks say, "I can't afford good representation." You can't afford not to do it. That's what you end up with if you don't.

David Kelly: [01:11:22](#)

So not only cost savings, but a return on investment.

Marc Cherna: [01:11:25](#)

Absolutely, absolutely.

David Kelly: [01:11:30](#)

Vivek, you used a phrase that we hear a lot, but don't often unpack: reasonable efforts. I want to talk a little bit about, or hear your thoughts a little bit, about how high-quality legal representation can help ensure that reasonable efforts are made. But I want to start with... I opened with asking for five-word responses, I'm curious, I would like a one word response from the panelists on this question: Is making a referral to a struggling family a reasonable effort to keep that family together? A referral alone.

Marc Cherna: [01:12:15](#)

No.

Vivek Sankaran: [01:12:15](#)

No.

Edwina R. M.: [01:12:15](#)

No.

Shrounda S.: [01:12:16](#)

No.

David Kelly: [01:12:17](#) Is there anyone in the audience here that believes that that would be a reasonable effort?

Audience: [01:12:23](#) No.

David Kelly: [01:12:26](#) Okay, so let's take that and pivot to how can high quality legal representation make sure that families get more than referrals alone. How can it make sure that reasonable efforts to prevent removal, to prevent that trauma that could last a lifetime even when it's necessary, how can legal representation help?

Vivek Sankaran: [01:12:52](#) So I think it starts first with education about what this requirement is in the law. And I say that because I was actually... I paused before I said no to your question, because I actually think the answer could be yes, if you're talking about current practice. Which is anyone who's looked at court orders, and has set foot in a juvenile court across the country, the answer has to be yes. Because court orders consistently talk about referrals, things like CPS investigation is a reasonable effort. Family team meeting is a reasonable effort. I think we've gotten to the point where the reasonable efforts requirement is actually not a meaningful check on the agency in any way, in any child welfare court that I've seen or been in.

I think what high quality representation can do is inject meaning into that.

David Kelly: [01:13:43](#) Yes.

Vivek Sankaran: [01:13:44](#) I've looked at the legislative history of the reasonable efforts requirement, it was supposed to be a robust check to make sure that kids weren't needlessly entering the foster care system. It's become this pro forma exercise where we create really easy boxes for people to check, so that we don't really have to make these robust inquiries. We really need a reckoning, of a cadre of really good lawyers out there who will say, "That's not an effort." And then we can talk about whether it's reasonable or not, but that's not an effort, and then we can start pushing. Because I think that that's a conversation that just isn't happening right now.

David Kelly: [01:14:22](#) Yes.

Vivek Sankaran: [01:14:23](#) And so what is a reasonable effort? It is actually providing concrete services and supports to families. It's not saying, "Go call that service provider over there and maybe they'll help you." It's accompanying them to that meeting and making sure

that the family actually gets the benefit or the service that you're offering to them. I think of what the social... of what our social worker did at the Detroit Center for Family Advocacy. Those were reasonable efforts, because she would first vet the programs in our community to see if they were actually operational, and functional, and were effective, and then would accompany our clients to those meetings to make sure those clients actually accessed those services. That's just not what we do in child welfare right now. But nobody's talking about it. Nobody's calling out judges and courts about the fact that we're checking those boxes, when we all know that we're not doing it. But there's no accountability right now.

David Kelly: [01:15:17](#) Yeah. I'll take a small amount of exception to the no one is saying that reasonable efforts are not happening nationally because we at the Children's Bureau are. We're saying that it's wholly unacceptable that reasonable efforts have been reduced to a check box on a form order, court order, and that it is not living up to what was statutory intended. It is not what families and children deserve. Current practice doesn't reflect reasonable efforts being made.

Marc-

Marc Cherna: [01:15:50](#) I'd also be careful not to generalize, too, because I would say in my system my parent advocates are very strong. They are lawyers, and they really do push it. Much to the chagrin of my solicitors, sometimes. But that's good, because that really is important to have that strong voice. So, I think you can find your sections here and there, you got to be careful about generalizing that nobody, but it certainly is in the minority of [crosstalk 01:16:14].

Vivek Sankaran: [01:16:14](#) I love the nexus you make, Marc, between the strong representation and the law being followed. Because I think that that's right. And I think cities like New York City and Pittsburgh that have high quality legal representation-

Marc Cherna: [01:16:26](#) Right, that makes a difference.

Vivek Sankaran: [01:16:28](#) ... you just see different types of hearings than you do in jurisdictions, which is the vast majority across the country, where you don't have the richness where laws are being enforced in the same way they might be in your jurisdictions.

David Kelly: [01:16:40](#) And Marc.

Marc Cherna: [01:16:41](#) Yes?

David Kelly: [01:16:41](#) From an agency perspective once again, do you view as useful to have strong parent representation that's not only just helping make sure that the agency is making reasonable efforts, but actually helping make those reasonable efforts come to be?

Marc Cherna: [01:17:05](#) Oh, yeah. I think Vivek said before, too, if you have that strong push it does really encourage, it forces it in court. Parent lawyers who are really strong advocates they really help to guarantee and to ensure that a parent really has a good opportunity. It's not going to be perfect all the time, there's going to be times... but they really do force that issue. And I think the same thing on guardian ad litem. Really strong guardian ad litem do the same thing. That's that real strong check and balance of doing this work. But we try to ensure people get access and we actually connect them to the service. It's not enough to give a referral and then... sometimes we end up closing cases like that, too, and then it comes back to when something really bad happens because you haven't connected. Safety's always that issue that we can't lose sight of, for especially the really young kids. But there really is that balance, and you can do so much more to help parents around this kind of thing. I think in the system we're so weak on that.

David Kelly: [01:18:15](#) Yes. Yes. We're drawing near the end of our session. There's a question I want to ask Vivek, and then I want to give everyone a chance to share some closing thoughts. Vivek, you as a law professor have a foot in a couple of different worlds. You're very connected to the direct practice through your clinics and your own work, you're also in the academic world. You're around researchers and, I know, value and contribute to research. There's this tension in the legal community about whether legal representation should be thought of, or sold, or messaged as a basic justice issue. Or whether it's necessary to have outcomes to prove that legal representation is making a difference. This is a unique conversation within child welfare. Drawing upon your comments earlier that I think we also have consensus about, on this panel, about child welfare being a civil rights issue, what thoughts do you have on this tension between legal representation as what's just and fair, and this push among some in the field to say, "Well, legal representation, but only if we can prove it improves outcomes."

Vivek Sankaran: [01:20:11](#) So I have a lot of strong feelings about this. I'm certainly happy, and welcome a lot of the studies that have come showing how legal representation affects outcomes that might be good for child welfare agencies. That's great. It might bring some people

into the room that I ordinarily couldn't reach, and get them engaged on the issue.

Fundamentally though, this is not about outcomes. This is not about some metric about whether we can get kids home sooner or the public savings. This is about how we treat people. This is about justice. It's about due process. It's about creating a system that we would want for ourselves. It's about relationships. And I just worry that we cheapen this right that we all should have by thinking about it in outcomes. I think about youth in the system and how we hear, and you've heard from your listening tours across the country, that the recurring theme of youth, about how disempowered and hopeless they feel; you might not capture that in a simplistic outcome analysis. And honestly, would we as a field be okay if these studies came back and said, "It didn't really make that much of a difference."? Then all of us, if we were consumers of the system would say, "Well then we don't want attorneys either." No. This is about a fundamental right. I think the relationship between a good attorney and a client is something that is special, unique, and lifelong ramifications.

Just a quick example I want to give you is last night I had the opportunity, after 15 years, to reconnect with three kids I represented in DC when I was here. They found me on Facebook. I remember these kids like it was yesterday, except that they're now taller, and bigger, and stronger than I am. And that's not how I remember them. They shared so many things with me about how important it was for them to have a voice in the system, and how I helped them do that, in a way that I didn't even realize that I was doing at that moment. That I was having... That they would be remembering this 15 years later.

We're not going to capture that in a study. And I just want to make sure that as a field, let's push for the studies, let's access the studies, but in the end this is about humans and how we treat them, and how we make sure that we're recognizing the humanity in each person and child that comes before us. I want to make sure we don't lose that. I would flip the script, that this should be about dignity, and rights, and justice first, then let's get the studies to show perhaps what type of representation... whatever it might be. I worry that our field is so data and research obsessed right now that we're... the first question that I often get about high quality representation, "Well can you show me the studies that show this is a good thing?"

David Kelly:

[01:23:01](#)

Right, right.

Vivek Sankaran: [01:23:01](#) That to me shows that we're applying a different metric if we were involved in the system then those people are in the system. Because if we were involved, it's not like my friend the law professor's asking, "Can you show me outcome studies about whether talking to you would be helpful before I pick up the phone and call you?" No. None of us would ask for those studies. Because he knows that there's an intrinsic value that attorneys can bring in these tough, life altering situations.

David Kelly: [01:23:29](#) And we might only be having that conversation because or when we think about the children and the families that make contact with the child welfare system as the other. As someone different or less than.

We got a moment or two to wrap up, and we have an opportunity as a country to make some major inroads in changing that. The policy that I've made reference to a few times is not a panacea. I think it can be a very helpful boost to making sure that not only every parent and child has high quality legal representation in these proceedings, possibly even pre-petition, but that that representation is high quality. We've talked about what that means. If each of you could make a very succinct closing argument.

Shrounda S.: [01:24:38](#) That's a dare.

David Kelly: [01:24:39](#) To...

Vivek Sankaran: [01:24:39](#) How many words do we get?

David Kelly: [01:24:46](#) 20, and I'm not going to count. A really succinct argument that will help people see the moral obligation to take advantage of this opportunity, and specifically might compel child welfare directors around the country who are the individuals who have to decide whether to exercise this option. And have to decide whether or not to maximize the opportunity to use some federal funding to help promote high quality legal representation for all. What's your argument? What do you want them to hear? What will it take for them to act on this? Marc?

Marc Cherna: [01:25:36](#) Sure. Well, one, it's an absolute right thing to do, as Vivek said. And everybody else on this panel. It is a moral imperative to do this. But if you're the child welfare director and you go beyond that and like, "How do I this practically?" It's an investment. You will save money in increased performance in your system and if you did this. I would say just do it.

David Kelly: [01:26:05](#) Just do it. I think that was 22 words, with the just do it. But powerful words. Powerful words that I hope every child welfare director who sees this takes into consideration, and that I hope everyone that might be watching virtually does the same.

Judge Mendelson.

Edwina R. M.: [01:26:25](#) You know we've been discussing this and I'm convinced, and I walked into this room convinced, but I'm even more convinced now, about how important high quality legal representation is. We're talking about real human beings, real children, real families, real parents, and the lifelong consequences. So, I will just echo what's already been said, and say it's a justice issue. It's a fairness issue. It is the right thing to do, and we must do it.

David Kelly: [01:26:56](#) Shrounda?

Shrounda S.: [01:27:00](#) I will just say that historically America has done a lot of injustice, and the foster care system seems to be perpetuating that. It has been long viewed the value of certain people. If you ask my child who would the most valuable person was in her life, she would say me. And countless other parents. If you are an individual who has the ability to fund, and to remind people, and to encourage accountability, it is your responsibility to fund this. Parents deserve to be represented. They deserve to be heard. And as you continue to elevate children, my child is way better served today by me being here as her parent, and without legal representation I probably wouldn't be here.

Vivek Sankaran: [01:28:04](#) I just want to end by saying as a system we've struggled for years to engage and partner with parents. And at its core I think that's because we haven't treated them with dignity and respect. It's time to end that, and I think parent representation is an essential tool in making that happen.

David Kelly: [01:28:29](#) Thank you everyone on the panel. Thank you everyone who joined us here in the room, and to those of you on the internet. We've got a moment to make this possible, we urge everyone to take advantage of it. Thank you.

PART 3 OF 3 ENDS [01:28:54]