



LEADERSHIP LESSONS

# TRANSFORMING CHILD WELFARE SYSTEMS

## How can the judiciary help narrow **the front door to child protection?**

### **Q&A with Judge Ernestine S. Gray, Orleans Parish, Louisiana<sup>1</sup>**

Across the country, too many children enter foster care each year, with the majority (62%) entering as a result of neglect. State mandatory reporting laws contain expansive criteria for reporting child maltreatment, including broad categories of neglect that include poverty-related issues that do not warrant the involvement of child protection agencies. Subjecting families to unnecessary involvement has detrimental human and socioeconomic implications, especially for communities of color. Judge Ernestine S. Gray of the Orleans Parish Juvenile Court in New Orleans understands the trauma families and children endure when they are separated. Her approach to reserve foster care for only the most extreme cases has fundamentally shifted the front door of child welfare in New Orleans Parish.

### **What values and beliefs guide your work?**

Family is important, and each child is part of a family. Each family has the right to care for and protect their children without unreasonable governmental interference. However, children belong not just to their parents but also to the community. That was clear to me growing up in South Carolina where family was many times the only resource we had. Every day I remember the close relationships with grandparents, aunts, uncles, and cousins. But I also remember the people who lived next door or down the road — where I grew up, there were no streets. I understood that everybody was interested in my well-being. Children need to know



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they belong not only to their parents, but also to the community at large and that community members care about and want the best for them. For I believe the Nigerian Igbo proverb, ‘*Oran a azu nwa,*’ which means it takes a community or village to raise a child. When parents come to my court, I emphasize that no parent can raise their children alone. I want parents to feel there is a place they can go in their community, when things are tough, to get help. I also tell them that almost everyone needs help at one time or another.

### How do you approach your role as a judge, and in sustaining your efforts over time?

When I first went on the bench, I wanted to be a leader. I took it upon myself to get trained really well in the law. After all, I took an oath to uphold the law. Being grounded in the law gives me credibility when I speak to my colleagues and when I train other stakeholders. My relationship with the child protection agency has not always been a smooth one, and I often approach things very differently than other people in the field. When it comes down to it, I apply the law rigidly and do what I believe the law requires, which means not removing children from their families unless absolutely necessary. Sometimes there is tension between what I consider to be the appropriate thing in a case and what someone else might consider appropriate: If the child protection agency can’t offer evidence that a child’s safety is imminently at risk, I send the child home to their family, consistently. Even when I feel that people might think I’m from Mars, I still go into the courtroom and make the findings that need to be made and are required by the law. At the end of the day, I’m doing

it for children and families as well as the community. I believe that strong and supported families make strong communities. We are all in this together.

While my goal is to keep children with their parents whenever possible and safe to do so, sometimes that just isn’t possible. When it is not, I’m prepared to make tough decisions. But I am not going to sever that familial relationship until I have given the parent opportunities to become the kind of parent their child deserves. It is very infrequent that I terminate parental rights.

I am retiring from the bench in December 2020, but I’m not leaving the work. The work in New Orleans Parish is not just my work. I know from my work on the national level that there are other judges who approach the work as I do and are making decisions that also contribute to the lower numbers of families involved with child protection.

I’ve also been involved with mentoring other judges. Many states have mentors and training for new judges, and working with the Conference of State Court Administrators (COSCA) is a way to suggest mentors. A new judge is usually matched with a judge who has been on the bench for a longer period of time. While these are beneficial relationships, they don’t necessarily include the substantive work. More meaningful relationships develop and judges learn more when mentoring includes the substantive work.

### Can you talk about the impact of poverty and classism on child welfare?

Poverty is not a basis for bringing children into foster care, and families have a right to raise their children

No matter where you are, somebody else cares about you. If you’re a parent, your community cares about you; if you’re a child, your community cares about you.

—JUDGE ERNESTINE S. GRAY,  
JUDGE OF THE ORLEANS PARISH JUVENILE COURT IN NEW ORLEANS

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regardless of how much money they have or how much food is in the refrigerator. In the United States, a country with a lot of resources, it's criminal to take children away from their families because they don't have food in the house. The solution is to help the family get food. We need to figure out how to get families the resources they need. The state spends more money to have a child in foster care than what it costs to support the family's basic needs. We have to flip the script. If we believe in families, if we think families are important, then we need to figure out how to get resources to families rather than somewhere else. When you spend money on the front end, the outcomes are so much better. We need to make sure that we are not doing as some have hinted: neglect and abuse are often just nice and more acceptable terms for poverty. There are many wars waged on the poor, and the workings of the child welfare system should not be one of them.

## What about the intersection of poverty and race in child welfare?

Now is not the time to shrink away — we must figure out how to have hard conversations about race and keep them going. I've been having these conversations for a long time, and nothing seems to be changing. We

have to keep hitting the nail, and we will drive it in at some point. There should be a racial lens to everything we do and everyone must join in the conversation. Data is a powerful tool for these conversations — insisting that every data point be disaggregated by race and ethnicity is critical. One thing I kept hearing was that there was no disproportionality in Louisiana, which isn't true. You need to drill down into the ZIP code level. When you do that, you see a different picture. These conversations need to be driven by the data.

## Have you been involved in other efforts to strengthen and support communities?

I currently serve as the president of the board for the [Pelican Center for Children & Families](#), which is a nonprofit organization in Louisiana that grew out of the Court Improvement Program CARE Advisory Committee. The goal of the center is to improve quality legal representation for children and parents by providing interdisciplinary legal training and education programs to child welfare practitioners. The Pelican Center started the My Community Cares initiative, in partnership with the Louisiana Court Improvement Program and the child protection agency, to advance a community-based approach to preventing child abuse



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and neglect, and reducing the number of children who need to enter foster care. And for those families whose children are removed by child protective services, the Pelican Center aims to help them believe they can be successful in reuniting with their children. We started by engaging with communities in four parishes: Caddo, East Baton Rouge, Livingston, and Rapides.

The first step was to identify the ZIP codes within those communities that had the most referrals to the child protection agency. Then we engaged directly with those communities — not just with schools or police, but with neighborhoods — to establish relationships and ensure all residents had a stake in designing resources for their community. It was really important that we communicate directly to the residents: ‘We want to do things differently, and we are here to try to find resources for what you identify as your needs, not what we say your needs are. Not what we say your problems are, but what you say your issues are that need to be addressed.’ We want to give equal power and decision-making to all community members. The goal is to figure out how to put services in the community, where they belong, so people can have them on demand and on an as-needed basis.

## Can child protection agencies better partner with schools?

There’s a study that says 85% of the referrals made by school personnel to child protection hotlines are not validated. The lives of those 85% of families have been unfairly disrupted and traumatized, and we’ve unnecessarily interfered with the parent-child relationship. There is a need to strengthen the

mandatory reporting system — to inform and train teachers about what is an appropriate referral — to avoid additional trauma to children and families. Encountering child protection is traumatic for families, not unlike encountering the police department. In many jurisdictions, police actually participate in child welfare investigations.

If there is no basis for a valid referral from the school to the child welfare department, one should not be made. There is a great need for improvement in this process — both teachers and child welfare workers need a better understanding of what is required before state intervention in the lives of children and families. I participated in a recent convening where one attendee suggested that we should have ‘mandated supporting’ rather than mandated reporting.

## What have you learned about the digital divide as a result of the pandemic?

We obviously had no choice but to embrace technology during COVID-19. But then the question is: *What about the families?* Going forward, as people are advocating for more virtual hearings, we need to be mindful that everybody does not have the latest and greatest gadgets, or know how to use technology. People may have cell phones but might not have a sufficient data plan to accommodate the meetings they need to attend. We need to figure out how to make technology work for everyone, and not assume that everyone has the same access and capacity. We need to make sure that this is not yet another way to limit access to the courts for already marginalized individuals.

We need to figure out how to push the money to the front end, which is where it needs to be.

— JUDGE ERNESTINE S. GRAY,  
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## How can constituents advocate for transformation?

The voice of constituents must always be included in a meaningful way in any conversation about transforming the current child welfare system. Constituent voice, in this instance, means those with lived experience in the child welfare system. In particular, lawyers representing young people who are involved in the system should always advocate for their presence in court at every hearing. Judges should take steps to remove the barriers that inhibit the young person's ability to be present, and when the young person is present, the judge should engage in conversations directly with the

young person about a variety of topics including: how they are doing in their placement; what is happening at school; extracurricular activities; what their desires are; what their likes are; what they want to be when they grow up; and what can be done to help them accomplish their goals. Procedural justice requires that parents and youth be provided an opportunity for voice in the process.

And how will we know when the system is transformed? When we can answer the Maasai greeting '*And how are the children?*' with '*All the children are well.*'

1 Adapted from an interview with Judge Ernestine S. Gray on August 6, 2020.

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