

Session 1: Problems in Child Advocacy

PANELISTS:

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Joni Pitcl *

Good morning. I wanted to focus today on four major things – the need for advocates today in the field, the context in which policy making is developed, some of the tools used in children’s advocacy and then why we really need more advocates to step up to the plate in California. My background really is with children in child welfare systems, in particular children in that system are the most vulnerable children in California. They have no parents, well they have parents but they’re not living with their parents, and they have no one to really step up and speak out for their best interests. Although it’s a \$2 billion dollar system, \$2 billion dollars are spent in California today on the care and services of children in foster care, they are mostly people and programs involved in these children’s lives, social workers, county welfare departments, foster parents, group home providers. All of them are looking out for these children and yet no one is really individually responsible for these children. Case in point, just this last year we lobbied on a bill in the California Assembly that basically said: someone needs to be responsible for the children in care, in foster care. And the bill actually tried to reverse a case in which a judge reviewed all the law in child

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welfare and said something to the effect that, as he read the law he saw only two mandates. Only two mandates where children in foster care are concerned after reviewing everything! One was that children should be visited on a monthly basis and the other is that reunification services should be provided to their families. This actually put the children's advocacy community in cardiac arrest. People were wondering, how can that be? And isn't the state responsible, aren't the counties responsible? And the truth is that when we started trying to have a dialog about who was ultimately responsible for children in foster care, no one wanted to step up to the plate. It was a very, very challenging bill, it was a bill in which the insurance companies for the counties paid big bucks for a hired lobbyist to kill the bill because the counties did not want to be ultimately responsible for the children, and neither did their social workers. A few years ago there was a bill that would have created some kind of repercussions for social workers that didn't follow the permanency plan for the child or performed services that could undermine the care of the child. But bills like that one rarely go anywhere, because ultimately no one really wants to be responsible. It is a system driven by liabilities. And everyone is afraid of saying that they are ultimately responsible for a child because if something happens to that child then they're liable, and can be sued and worse. So legal advocacy has both an upside and a downside. It certainly holds people accountable for breaking the law, but the other side of that is then people are frightened of having any law. All of what goes on in foster care, child welfare law and policy making is really in the context of politics. And I bring that up because for years, and I've done this for 12 years, it was confusing to me at the beginning why people didn't make decisions about children in foster care that would protect the best interests of children and really provide for them. And then I went to a presentation done for children's advocates and one of the things discussed at this presentation was voting data, that is, who are the people that are registered to vote and that actually vote. It was said that the majority of the people that are registered to vote and actually come out and vote are white men over the age of 60. Their biggest number one pressing issue? Crime. They're

afraid of being hurt, they're afraid of people attacking them, they're becoming more vulnerable, and that's their number one issue. So it's not surprising that Three Strikes, which at the time was supported with these billions of dollars, was passed quite handily, while at the same time people said to me, "Oh, we don't have money to help children in foster care, we don't have money for kids' issues." And then Three Strikes came and they said, "Oh, that will never happen because there's no money." And magically that happened. But the reality really is there is no penalty for elected officials if something doesn't happen to children in foster care, and conversely, there is no great political payoff if you do great things. We have actually one of success and worked wonderful representatives in Assemblyman Steinberg and he has done a fabulous, fabulous job and I wonder if he's an unsung hero in that issue because we all love him, but I don't know how much his constituents say Hallelujah, he's watching out for children in foster care, but we love him and we appreciate that he does that.

I wanted to say just a couple of other things about how policy has been made in the past. In child welfare because there is no penalty or gap, it's usually made when something goes wrong, when something goes desperately wrong. There are lots of laws that pass because one bad thing happened, and that forced us to create one law to protect the kids from that one bad thing, kind of ignoring that the broader system really was undermining the care and protection of that child. And so changing one little thing to make that not happen again doesn't necessarily impact all the children or do the best thing for the system as a whole. The other thing that really moves policy and advocacy is media attention. Media is becoming bigger and bigger and bigger in terms of advocacy. We had a huge media blitz probably five years ago about group homes in California in three major media markets. And suddenly people really supported the notion of "fixing" foster care. And I thought, in five weeks they're going to do all this and they're going pass some laws? I was shocked, actually. We had one very successful bill, and lots of wonderful reforms were put into place, and then last year, five years later, a couple of the

fundamental reforms that came out of that bill almost disappeared when the legislature attempted to reverse them in the budget. Most of the people that tried to reverse policy that had been successful had forgotten why we passed it in the first place and so their institutional memory, or lack thereof, had a great deal to do with the changes.

I think as an advocate one of the things that's most important is to really understand the audience and the political climate you're dealing with when you're out there trying to make changes for kids in foster care or children in general. They most generally don't have clout, they don't have political representation, they don't have lots of money to get access to members of the legislature. And that money that they don't have is money that could be spent on gathering data. My favorite person, Marion Wright Edelman says data is dollars for kids. If we had the research, we had the information, we could show people what kids are really facing. And that type of data really moves policymakers. And without that data, children's policy groups are individually not very powerful. But when we come together and identify those allies that are powerful and do have influence we can move forward policies that really can make changes for kids in foster care. And again the media is becoming an increasingly important tool for kids in foster care because legislators are increasingly relying on the media for their information about substantive issues. This is of course very scary. But it just goes to show you that when you're a member and you're trying to get your finger on the pulse of what the public is thinking and feeling and the way the wind is blowing, you're looking at what's going on currently. And media, and getting information into newspapers and onto public radio and onto radio stations is really one of the biggest tools for children's advocates today. And we'll use it and we are becoming more media savvy, I think, from having successes. I want to end my time here by saying that I think that advocates are so important. They play a very, very important role for kids in general and society as a whole. If there isn't someone paying attention to and watching out for children, society would really disintegrate. We need to have

people that are really paying attention to our most vulnerable children. And it becomes even more critical today as we put more and more focus on the local level decision making. Now lots of decisions are made for kids in Sacramento, lots of laws are put together there, and there are a handful of advocates that pay attention and try and protect the most vulnerable population. As we move more and more of those decisions to the local level, there may be fewer people paying attention at the local level. We have great fears about that in foster care in particular. And so I want to encourage you all to keep your eye on the prize and upon the activities at your local level so that you can be a voice for children.

Regina Deihl ** :

I wanted to take some time this morning to talk a little bit about federal child welfare law and policy and how it is driving what's happening in states throughout the country and certainly to a large extent what's happening in child welfare here in California. Some of the trends we've seen over the past several years have been strongly influenced by federal mandates because they are associated with ensuring continued federal funding for our state child welfare programs. A large percentage of the funding for child welfare programs both here in California and throughout the nation comes from the federal government through Title IV-E of the Social Security Act. There are a few national trends that I thought I would mention in my remarks this morning that really have come down as a result of federal mandates and other concerns at the national level.

The first area of concern relates to permanency for children in out-of-home care. This has become a real watchword here in California and throughout the country. Congress was concerned that we have too many American children who are drifting through life in an unending series of temporary foster home placements and that those children are aging out of the system with no permanent family in sight. Children who do not achieve permanency do not fare well after they age out of the system at the age of eighteen. In response to these concerns, Congress passed the Adoption and Safe Families Act, which as we all know as ASFA, which really talks about safety, permanency and well being of children in care. There are various legal requirements in the statute. In most cases, child welfare agencies must make reasonable efforts to return children home, but in some cases no reasonable efforts to return children home are required, including in certain egregious circumstances that the federal

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statute calls “aggravated circumstances,” such as where there were convictions for certain serious crimes or where there has been prior termination of parental rights for other children of the same parent. There are requirements in the law for mandatory filing of termination of parental rights petitions when a child has been in care for 15 out of the last 22 months. There are some big exceptions to that, but nonetheless, there is this movement toward permanency so that at some point the court is going to terminate parental rights and get the child permanently placed elsewhere. Other provisions of the law state that there have to be permanency hearings 12 months after the child entered foster care, and as importantly, at least in my mind, child welfare agencies must make efforts to actually finalize those permanency plans. It’s one thing to have a judge on a bench who says, “Okay, the permanent plan for Johnnie is going to be X.” It’s a very different thing to have that permanent plan actually occur. And, in many places, years go by while children wait, even though they may have a family that is willing to make a permanent commitment to that youngster. Agencies and courts, as I’ve said, are very anxious to get in compliance with these requirements because their federal funding depends on it. We’ve also seen, at the federal level fiscal incentives to move more children into permanent homes; and this year, we saw legislation passed at the federal level that would increase the fiscal incentives for older children, age nine and older to be adopted. Here in California, we have a lot of work to do in this regard because more than 20% of the children in the foster care system in our country reside here and in terms of permanency, many older youth age out of the system without a permanent family. Child advocates, both at the state and national policy levels, and at the individual case level, I think, are really key players in terms of promoting permanency for children. Those of you who will go out and be advocates for individual children and families will be in a position to focus the system’s attention on what is actually happening in the real lives of the children you represent and to insist that the system respond to the child’s need for permanency and stability in a timely manner. My organization, LAPP (Legal Advocates for Permanent Parenting) does a lot of work with the families who may

actually be the permanent parents for children. We try to help them understand how the system operates, what they can reasonably expect from the system, and how to advocate for the children that they have in their homes. Our willingness to do that, in part, is that in addition to our professional expertise as attorneys in the field, many of us have been foster and/or adoptive parents, or were raised in foster care or who grew up in a family that fostered or adopted. Since this population is the only group of people without access to legal information about the system, we try to help fill that void by helping children's caregivers negotiate what seems to them to be a confusing and often frustrating system. So, I think this whole area of permanency is an area where we've seen a real trend throughout the country.

The second area of concern I'd like to talk about which we are seeing increasing work in is in the whole area of accountability. There's a real sense that there is not adequate accountability in the child welfare system, even at the federal level. The federal government has been taking more of a hands-on approach than they have in the past through two different kinds of audit procedures. One is what they call the IV-E audits, which are essentially paper reviews to see if cases meet certain eligibility requirements for federal reimbursement of those all-important federal dollars. The second type of reviews are the Child and Family Services Reviews, better known as the CFSRs. CFSRs are more qualitative, outcome-driven reviews where the state sends a report to the federal government about their child welfare system and the reviewers actually come to the state for a joint review of a state's child welfare service delivery system. They review files, conduct interviews, and then talk to a variety of people who are involved in individual cases to get a sense of what's really happening in that state. If states don't meet the requirements they have to enter into a Program Improvement Plan (PIP). Since no state has passed the CFSR, we have these Program Improvement Plans going on throughout the country to try to make the situation better. Here in California, we're working on ours and these federal accountability measures have really filtered down to the states

and I hope Kathy will perhaps mention AB 636, which was a piece of state legislation to increase accountability in California's child welfare system that her office was really instrumental in bringing to the legislature. It is an effort to make sure needed reforms are happening on the ground level with staff that are serving children and families and not just on the policy level.

The third area that I think we've seen movement in over the last several years in child welfare policy is an increasing concern about openness and access to the legal process and court hearings. A number of states have opened their juvenile court systems in an effort to allow the public to understand the process, and I think that reflects a belief that child welfare is a public issue, that people need to understand how these processes work, and the public needs to be engaged. The Pew Commission on Foster Care, which is a national group of child welfare experts, recently found that the public isn't really engaged with foster care issues. We've seen movement regarding this issue in our own state. In Los Angeles, Judge Nash and the head of the Department, David Sanders, recently came out publicly in support of some level of openness in our California child welfare system, presumably in an effort to increase accountability and also to engage the public in understanding the system and recognizing that we all bear a responsibility for children in the foster care system. My organization does a great deal of work on providing educational information on how the individuals actually caring for children in their homes can provide information about them to the juvenile courts who make decisions about their futures. Foster parents and relative caregivers who are caring for these children every day are usually the only players in the system who don't have access to free legal counsel and are without access, by and large, to the information about them in agency reports to the court. So they're often left in the dark as to what's happening with the child that they're caring for. Last year, we brought SB 591 to allow these caregivers to have certain basic information that anyone caring for a child ought to have, including requiring the child's attorney to let the child and their caregiver know

how to contact them. This seems like a basic idea, but believe it or not that doesn't always occur.

I think to conclude my remarks, what I'd like to say is that while I've talked a bit about three general policy areas, what I'm always struck by is how difficult it is to implement the underlying intent of the policy requirements contained in the law. I spent several years reviewing juvenile court files in California for compliance with the federal mandates, and I found that it is fairly easy to get people to say the magic legal words, but it's a very different thing to actually implement the underlying intent of the policy in the lives of the real children and families who are the consumers of child welfare services in our state. Most of this does not involve some sort of theoretically complicated legal construct. It's a matter of consistently advocating for the individual needs of an individual child. In other words, somebody needs to step up to the plate to play a parental role in ensuring that each child's needs are met. The unfortunate fact is that the state simply is not equipped to act as an adequate parent in the long run. Unfortunately, though, we are not attracting and retaining quality caregivers in the numbers that the children need to care for the children we have in our system, and this is particularly true for older foster youth who are often placed in congregate care facilities like group homes rather than with quality, individual families who are really able to meet their specific, individual needs. I do see a few hopeful signs on the horizon. First of all, I think there's a national consensus that we have a child welfare system that is in crisis and something needs to be done about it. We've seen the Pew Commission on Foster Care I mentioned earlier doing important work in identifying the problem areas in the system and exploring solutions to them. This group includes some of the nation's leading child welfare experts, agency heads, former foster youth, foster and adoptive parents, and prominent judges who will shortly issue their recommendations for reform in two key areas: the federal financing structure of our child welfare system and court oversight of child welfare cases. Many people are concerned about the strings on the federal money that comes to states to support their child welfare systems. Others worry the court

oversight of individual cases is not working as well as it might. My organization submitted recommendations to the Commission that we hope will inform their deliberations. We also see more public recognition of the need of quality families to care for children who cannot return to their families of origin. The Collaboration to Adopt US Kids plans a major media blitz this Spring focused on children languishing in foster care who need a permanent home. There are also advocacy organizations doing wonderful work here in California, like the California Youth Connection (CYC), that are clearly making a difference for children in foster care. So, I think that there are some hopeful signs, but we certainly have a long way to go, and we need advocacy both on the policy level as well as on the individual case level on the ground to make sure that the intent of the law is implemented in the real lives of the real children in our system.

Kathryn Dresslar^{*}:**

Both of these wonderful advocates have kind of taken a lot of the material that I was going to talk about here, but they both seem to want me to talk about A.B. 636¹, so I'll get to that real shortly. I did want to reinforce, though, the effect of the devolution of responsibility and dollars from the federal levels, the block granted, not just in child welfare, because we're not there on child welfare yet. That's one of the last few entitlements left any more. But in TANF² [Temporary Assistance to Needy Families], we've block granted that money down to the state. There is a growing tendency for the feds to take dollars, package them up and say, here, these are the outcomes we want, you spend it however you want and get these outcomes. Then the states do the same thing down to the counties. And while that sounds like it's really good, local control and all those good things you can say about that devolution of responsibility, it's also kind of a handwashing. It's a sort of washing their hands of the responsibility for what's going to happen to these kids with these dollars. At the same time, if you have this accountability for the local governments or for the state, you have to look and see what's working in certain areas. And then trying to replicate what's working is viewed as the kind of micromanagement that we were trying to get away from. So there's this tug of war between the devolution of responsibility and the identification of specific things you can do to get those outcomes. So in A.B. 636, which is really a state adoption of the same kind of

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¹ A.B. 636, 2001 Leg., 2001-2002 Sess. (Cal. 2001), Chapter 678, Stats. 2001.

² 42 U.S.C. § 601 et seq. (2000)

compliance reviews that the feds were doing on us. We were doing paper check off procedures. Did we put the child in a placement within the statutorily required time frame? Yes, we did, check. Okay, did the child get a medical checkup within 30 days? Oh, yes, we did that too. Never mind whether they have any of the medications that they need to stay healthy, whether or not they have a medical home, whether or not they're healthy or have a chance to go back to the doctor and follow up on some health problems, none of that was in our old compliance review system. If we met the requirements in statute, that was good enough. And so children, not surprisingly, weren't doing all that well. So what we wanted to do in California was to move away from that system, since the feds were looking at outcomes now, and say, "you know what? We're going to be looking at outcomes too. The feds give the money to the state on the condition that you have a single statewide agency. We don't really have that. We pretend to, Department of Social Services, but we have 58 different counties that do this in a different way." And the Child and Family Service Reviews at the state level are designed to allow the kind of cross-pollination of good practices that get you the kind of outcomes from a combination of your peer counties and state officials so that we can all move collectively forward.

Another thing about the federal Child and Family Service Review, it was noticed that all the states have failed in that regard. All those that have been reviewed are in Program Improvement Plans and the press loves to pick that up and I like that they do that, quite frankly, because it means it lights a fire under folks. But if the truth were told those standards were set deliberately high because I don't think any of us thinks we're doing a really good job for kids as long as we have foster care systems in our states. Our motivation should be to work ourselves all out of a job so that we have the kind of support for families that prevents kids from having to be removed from their homes at all. On those rare occasions when that does have to happen, I really think the system should be one where that is viewed strictly as a temporary solution, and it should never be done if we can't guarantee that

we'll do a better job for those kids outside of their family home. We don't do that enough. Kids are often re-abused within the system, they feel detached from everything, their siblings, the only family they have left, quite often. A lot of the federal actions have exacerbated that. I think it's great, because getting more kids into permanency is wonderful. At the same time we have been in conflicts with county counsels in our office for sibling legislation that we worked on with California Youth Connection because they felt that those laws that required us to establish and maintain relationships between siblings was impacting their ability to find adoptive homes and give fresh starts to these kids. And it was quite offensive to us because when I was growing up, if someone told me that I didn't have to live with my sister any more it probably would have been no big shakes. But for kids that are in foster care, they've been abused and neglected, often times the older siblings are acting as the parent for their younger siblings. There were some heartbreaking letters that we received in our office from young children, 8 and 9 years old, who were desperately pleading to be placed with their younger siblings so that they could comb their hair. "I'm so afraid her hair isn't being combed the way she likes it." Things that you don't think are very important but are critically important to these kids. And I'm getting choked up just talking about those letters. These are very sad letters pleading with the presiding judge to make sure that they can be placed with their sibling. And yet you have federal law that's focusing on the need for permanency for these kids and even that means finding an adoptive home away from their siblings. There's a move to find adoptive homes and dollars that go along with that. So it kind of fights with some of the child advocates' efforts to be able to find permanent placements for sibling groups so that we can keep families together to the greatest extent possible so that we can salvage families before they go into foster care and so that we can mend families. But we have the resources and the flexibility and funding to mend families with the dollars that are made available at both federal and state and local levels. One thing that I don't think anybody has touched on that I think might be interesting to mention are advocacy tools. I think the most important tool that you can have as an

advocate is relationships. We all know each other. We work together, we talk all the time. And not just with each other, with the legislators, with other advocates in the world. We know what others in the field are doing and that is absolutely critical. If any one advocate has this benevolent dictator attitude about what should be the right thing to do and charges off on their own and doesn't talk to the folks, it's not going to happen. You might be absolutely right, but if you don't get other people on your team and hit the ground together, it's probably not going to happen.

A second issue is reputation, which is much more important now with term limits, because a lot of times you don't have an opportunity to develop a relationship with legislators, so you have to rely on your reputation. The way legislators who've been there for awhile react to you and what they say about you and whether or not they go to you for advice, says everything about how effective you're going to be. So learning as a child advocate at the elbow of somebody who's been doing it for some time is a terrific networking opportunity for you to meet the people that make the decisions that are going to change the world for the kids that you represent. So I highly recommend that to everybody.

There is another issue that is so important, which is also related to term limits. When you've got legislators that are only in the Assembly for 6 years and only in the Senate for 8 years, you've got this constant revolving door where you need to have champions. You need to have champions in the leadership positions all the time. This is not a "juice" area as I think Joni and Regina both have pointed out, "juice" as in legislators don't typically fight and claw and scratch to be on Human Services Committee, because the only parties concerned are the county welfare directors and the social workers. There's not a lot of moneyed people there that are lobbying in Human Services Committee. So people tend to not want to be on that committee. But the motivations of the people that are there are real and rich and you've got the legislators that wait to do their bills that usually are very dedicated. So you need to have them help you find the next champion in the freshman class. As soon as they get there,

you should find out who's interested in child welfare. Who was a former foster child? Who has foster children? Whose kid has a friend who's a foster kid? Find a connection. Dig until you find a connection and make that person your champion. Go to them, educate them, and make sure that they will be ready to take the place of the person who's terming out. I was a lobbyist with the Children's Advocacy Institute and I decided to work for Darryl Steinberg because he was in the party leadership and he was really interested in foster care. I made him more interested in foster care, and when he had an opening on his staff for a Legislative Director, he asked me to come. I saw that as a wonderful opportunity to just run roughshod over the whole policy area. So I could come in there and have this champion who felt very strongly about this. I helped to educate him and have him be the champion that he's become. It's been quite good.

One last thing here I wanted to discuss is something that I usually use in talks to new staffers, to new lobbyists, and people who want to advocate. I think it's critically important to understand what the motivations are of the players in the policy arena. I call it my 11 commandments of good policymaking. It might be a little shocking, but I'll try to explain each one. The first one, and this is the number one commandment, the Golden Rule: Thou shalt first and foremost protect your boss. And that's shocking to everybody but that is what the motivation is of the staffer that you go and talk to. If you can frame your issue in a way that makes them know that their boss is going to be better off because they do what you want them to do, you're going to convince them.

The second commandment is Thou shalt always remember who your boss is. When I came into this field I was completely ideological. I did what I said not to do. I wanted to be a benevolent dictator and outline exactly what the course of action would be, but I found that that does not work at all. I've never lived in the foster system and have found much more effective strategies by coalescing with people who've actually lived this life, Help Our Youth Connection in particular. For lobbyists, the boss is the client. For staffers, the boss is the legislator. We'll often say legislators are

elected by hundreds of thousands of voters, while staffers are selected by one and serve at the pleasure of that same person, so you have no job security. And for the legislators, your boss is the public. As a good staffer you need to make sure your legislator knows that they are serving everybody in their constituency, not just those that vote, and not just those that voted for them. They represent the kids, they represent everybody else that may not even agree with them.

Third commandment: You've got to remember who everyone else's boss is. Fourth: You shall remember whose name is at the top of the bill. That person makes the final decision and that's who takes the flak when things go wrong. The fifth commandment: Thou shalt not lie. Being strategic is one thing, but lying is quite another. The sixth commandment is: Thou shalt make no permanent enemies. This is a game. Policymaking is a game. Today's opponent is tomorrow's ally. That happens all the time. Thou shalt never forget the stakes of the game. People's lives could be at stake – their entire lives. Or they may not. So you have to make sure you don't take those too seriously. You've got to choose your battles wisely. And thou shalt know that the role of staffers is divided into two groups. There are the policy wonks and they know everything – they've got all the data that Marion Wright Edelman was talking about. They've got the course of action mapped out. The other ones are the hall rats, and that sounds pejorative, but that's what we call them. The hall rats know who's mad at who, how to frame an issue, what their personal lives are, and how you can get your votes based on how many of each there are in the room. Both are absolutely essential to policymaking. The ninth commandment: Thou shalt keep an eye on the line of demarcation between good public policy and a pile of paper. A lot of legislators don't do that. They keep amending their bills to the point where it's meaningless. Know when to let go. Just let it go. And: Thou shalt not amend beyond that line. Thou shalt verify everything. We often say assumption is mother to the screw-up, even when it seems obvious. The last commandment is: Thou shalt never forget that your reputation is your most valuable professional asset. You should work with your obituary in mind. That's

how you stay. Really. If you think about what they're going to say about you in your obituary it helps you to make the right decision. So I think when you understand everyone's motivation it's easier to frame things in a way that moves things along. Reputations and relationships are absolutely essential.