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## 2017 Keynote Speech: Poverty's Cost

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## 2017 KEYNOTE SPEECH: POVERTY'S COST

Daniel Hatcher<sup>1</sup>

Thank you so much Matt, Professor Fraidin. I'm humbled by the comments and I could double, triple them, quadruple them right back at you for your amazing past work and current work. Thanks to UDC, to the law school, to the students for putting on such a great symposium on incredibly important topics, especially now. I also thank my publisher NYU Press; they've been incredibly helpful throughout this whole process. To my school, the University of Baltimore School of Law and their support, to the clinic program. Most of all, I want to thank my former and current clients who I have learned a tremendous amount from and who I continue to learn a tremendous amount from. I find them to be heroes in every sense of the word with all of the struggles that they're dealing with trying to overcome the struggles of poverty. For many of them the struggles never end. I'm just floored every time I have the opportunity, and the honor, to encounter them and have the chance to help them. I am now helping them through law students as they learn.

I have been writing about issues I encountered in my first job at legal in both my past scholarship and in the book on the poverty industry. It has been almost twenty years since I started representing children in the foster care system with legal aid in Baltimore. This was an eye-opening experience for me, which is an understatement. I grew up in a mainly white middle-class suburb of Fort Wayne, Indiana. So, going to Baltimore to start representing children in their broken, still broken, foster care system was overwhelming to me.

I represented about sixteen children on my very first afternoon in court and I represented somewhere over 250, probably close to 300, children in a year. It was a blur and amazingly just again overwhelming to me. And, being candid, I feel guilt from that time period because I don't think I was able to do enough, in part because I was learning, and in part, because of my caseload. So, I still carry with me a lot of what I encountered then, and I still try to remember that when I try to engage in efforts in scholarship or in advocacy. So, thank you to my former clients and I hope they are all doing well.

There are a couple of common of themes I want to get out front, so I don't forget. First, in my book, The Poverty Industry, I am highly critical of several practices carried on by state governments and state agencies, including agencies that exist to protect vulnerable populations: our human service agencies. With that in mind, I think most of our social workers and whichever agency they are working for, are doing heroic work. They are underpaid, overworked, underappreciated, so I do not at all address my critique at the front-line workers. The practices I criticize are occurring higher up at the secretary level often of the agencies or the governor's office in terms of where the practices are taking place.

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Also, the book is critical in some of the uses that states are using public aid for—aid that is intended for the poor—but that does not create an argument to cut aid programs or cut the aid itself. If you have a governor who is misusing aid intended for the poor, the answer is not to cut that aid or cut the aid programs, it is to stop the misuse of the aid.

So, let's transition into the overarching concern that I have encountered throughout the process of my scholarship and writing this book: a diverted purpose with our government and with our government agencies. Agencies that exist to serve also seek to exist. Even those public agencies that exist to protect the most vulnerable among us have their own fiscal self-interest. Unfortunately, there are many practices in which our agencies, the most trusted agencies such as foster care agencies, are putting their own fiscal self-interest above those that they serve. Government is supposed to exist to maximize the public good, to maximize the public welfare of the citizenry, whether it is at the state level, the federal level, the local level. When that purpose of maximizing the public good, maximizing the public welfare, instead shifts to maximize revenue, harm results.

Just a couple days ago in the news, Trump's son-in-law, Jared Kushner, is going to be leading up a new office in the White House where the whole effort is to reform federal agencies to become more like businesses. Apparently, they are even calling it a swat team. They are going to figure out every single way they can, for all the agencies, make them "more like a business." The quote is "[t]he government should run like a great American company." Now I am all in favor of efficiency and effective operations of our agency programs. But again, shift of purpose, if your purpose shifts towards profit and maximizing revenue rather than maximizing the public good, harm will and does result.

I want to step through then a few examples of this that I highlight in the book and that I've written about and done some advocacy on over the years. The first example is the one that probably, to use a legal term, pisses me off the most. This example I encountered earliest in my legal career and I think is probably the starkest example and it involves foster children. I will start with an example of a story that I encountered in the process of doing some research out of Westchester County, NY. There was a small newspaper story that I ran across where there was a foster child who was in foster care, then was lucky enough to be adopted and the child was in foster care because her biological mother died. Then her adoptive mother ends up dying of cancer. The adoptive mother had been managing and protecting survivor benefits and social security survivor benefits that the child had because the biological parent died. Survivor benefits are something that a parent can earn by paying into the system, much like life insurance. I think it was about, I cannot remember the exact amount, maybe \$12,000-16,000. Not a huge amount of money but significant for that child. It was going to be protected and used to help that child's transition potentially into college. When the adoptive parent was dying, a social worker gained access to the money and took it. I cannot imagine a greater breach of trust than a social worker gaining access to a former foster child, while literally the adoptive parent is dying of cancer, and taking the survivor benefits. Well, there were criminal charges pursued in that case and the

prosecutor and the public officials in Westchester county put out press releases where they were going to do the right thing and go after the bad guy, and they did. Meanwhile, Westchester County, county-wide, has had contracts for multiple years now with multiple revenue contractors to not just take survivor benefits from one child but from every child in foster care in that county who gets social security survivor benefits. Not only do they take survivor benefits, but they are taking SSI/disability benefits from kids. Counties like Westchester county will even take veterans assistance benefits from foster kids when parents die in the military. Some states are taking even more. Maryland promulgated a regulation that will take virtually everything, even a child's own earnings, life insurance, savings, you name it.

I encountered this issue and dug into it when I had a former client that I am still in touch with. I talk about him a little in the book. His first name is Alex. Alex entered foster care when he was about twelve, when his mother died. He was moving around from placement to placement, and he was never in the same placement for any length of time. I think he was in twenty placements, if not more, by the time he aged out of care. He went into group homes, foster care homes, and was sometimes homeless. Sometimes he would leave care because he was frustrated with the system. They found his brother, who was significantly older, and his brother was going to be potentially a placement for Alex to go live with him. Then his brother died while Alex was in foster care. They located his father and he had not been in contact with his father. His father was a potential placement for Alex. While he was in care, his father died. Everyone in this poor kid's life was dying. When his father died, Maryland realized he is eligible for survivor benefits because his dad had worked and paid into the system. So the foster care agency whose sole reason for existing is to protect and serve the best interest of Alex, never told him he was eligible for the survivor benefits, never told him they were applying for the benefits on his behalf, never told him they were applying to become representative payee to take over control of the money and they never told him they were taking the money rather than using it for his best interest. States are doing this. Maryland, as an example, has a contract with a company by the name of Maximus. Maximus is huge. They are headquartered out of Virginia. I found contract documents through various FOIA requests both from Maximus and several other contractors in multiple states. In Maryland, one of the contract documents Maximus describes foster children as a revenue generating mechanism. Some of the other documents I received from FOIA requests makes it sound like these kids are minerals on a conveyer belt, in terms of how they are talked about. They are described as units on this revenue maximization conveyer belt, again a revenue generating mechanism. They are scored and triaged, plugged into data mining algorithms and literally described as subject to dissection to increase the penetration rate of children who are going to be eligible for these benefits, so the state can take their money. They say the goal is to have as many children in foster care as possible who are poor and, therefore, eligible to receive the SSI benefits and are eligible to receive IV-E [Foster Care] benefits. Title IV-E of the social security act is a federal funding stream. Foster kids are only eligible if they are taken from poor families. So, states literally have an incentive for kids to come from poor families, rather than better off families. All of this is happening. It is all about the money.

Also in the documents I obtained, states are literally ranking kids, when they are in foster care, in terms of who they are going to use to apply for disability benefits first, based upon how much money comes in. It is sort of complicated. It looks at the various funding streams. Some children cost states more money than others. But they rank the kids, not based on which kids need the most help, but on which kids are going to bring the most money to the state, on who to go after for the SSI benefits. The documents from Maryland that I obtained showed that, at the point when I obtained the documents, maybe about four percent of the children in foster care were eligible for these disability benefits. The documents with the company Maximus had set goals they thought they could potentially increase the rate of children eligible for disability benefits to upwards twenty percent of the population. The entire goal was not to provide any additional services whatsoever for those disabling conditions, but for the state to take the SSI/disability benefits from the kids. Now, the states argue that the reason why they do this is that foster care is expensive. It is, and states spend money on foster care, but it is nonsensical, at best, for us to think that the very children who are in care, abused and neglected children, should be forced to pay for their own care. States already have a legal obligation under federal and state law to pay for foster care, not the kids. It is a horrific practice that is harming kids and that is happening, unfortunately, around the country. I have a lot in the book, including the various FOIA requests, that details these practices and more. So I started to encounter more and more examples where you have this conflict between agency purpose, the purpose of protecting and serving the beneficiary, the vulnerable beneficiaries, and agency self-interest. I found several examples dealing with Medicaid. Medicaid is a matching grant program. Maryland is an easy example, because Maryland is a 50/50 match state. If Maryland spends \$50 of state money on Medicaid services, it can claim a match from the federal government of an additional \$50. So, you have a \$100 total that is supposed to be available to help the poor, to provide Medicaid services for the vulnerable population. It is a collaboration between the states and the federal government. What is happening, unfortunately, is the match is often illusory. States are moving money around. The states are often not spending the required state match. That, in itself, is very troubling to me. But what is really troubling is where I found examples where the states are then taking the federal match, federal Medicaid funds intended to help vulnerable populations, and instead using it for non-Medicaid purposes. They are routing it into general state coffers or to other purposes not intended for the Medicaid funds.

In New Jersey, for example, schools can receive school-based Medicaid. Often it is supposed to be used for poor students and for special education and other related services. New Jersey, by statute, requires every school district to participate with a contractor to maximize the number of children participating who are potentially eligible for the school-based Medicaid claims, to maximize the claims on behalf of those children. Schools are punished if they do not meet quotas and threatened with a reduction in school funding. Eighty percent of those funds is supposed to be used on behalf of the poor and students with disabilities. This is not complicated. Instead, right in the New Jersey budget documents, in the Christy administration, over eighty percent of those funds were taken from the school children and routed into the general state revenue. In the

meantime, schools are so often underfunded in New Jersey that there are several examples of the public schools selling ads on the side of school buses.

Now moving to the other end of the spectrum for another example: nursing homes. Unfortunately, nursing homes are used in a wide variety of these schemes. Nursing homes in our country are not doing well. This is, what is the worst word I can come up with, a travesty on how we are treating older Americans in this country, especially low-income older Americans. I grew up in Indiana and one of the examples I use is from there. Indiana has had the worst performing nursing homes in the country. In 2009, the GAO found they had the poorest performing nursing homes; another ranking found them 51st, and 51st not in a good way in terms of staffing levels. There are so many poor performing nursing homes in Indiana, but there is a municipal agency in Indianapolis, called the Health and Hospital Corporation. It is a government agency that runs the health program in Indianapolis, including the hospital system, and it found a way to use nursing homes to maximize aid and take the money. Health and Hospital Corporation started buying up for-profit nursing homes and they would buy, essentially, the rights and licenses to run the nursing home. Then they would often hire the very same companies that they bought the nursing homes from to keep running the nursing homes, so there was not even a change in operations but just the legal ownership. Once they became considered government-owned, the Health and Hospital Corporation in Indianapolis could trigger immediately a higher Medicaid reimbursement rate. They started buying these for-profit nursing homes, not just close to Indianapolis, but corner to corner all around the state of Indiana. They maximize the Medicaid from these poor performing nursing homes. You have older Americans languishing in poor care and then they took the funds, instead of using it to provide better care for those nursing homes, to build a hospital system, a really nice new hospital system in downtown Indianapolis. At least that is a healthcare related purpose, to build a hospital, but that is not what it is supposed to be used for. The hospital is supposed to be funded through other means, through other local taxes, referendums, property taxes, you name it; not through taking Medicaid funds from poor, older Americans in these poorly performing nursing homes.

Meanwhile, while that is happening in Indianapolis, it is also happening statewide, effecting all the nursing homes. There are examples, and I mention Texas as an example in the book, where states will use nursing homes to move money around. They will sometimes give state funds to the nursing homes and force them to give it right back or they will tax the nursing homes, called bed taxes, and then give that money effectively right back. So, you have this round trip of money, but then the state will say that it is spending that triggers the federal Medicaid match, so they will claim federal Medicaid funds intended for the nursing homes and use the funds for other purposes. Texas and other states do this as well, using a disproportionate share of hospital funds, specifically hospitals that serve a disproportionate amount of poor people.

Texas, when Rick Perry was governor, was doing this with hospitals. In over a five year period, maximized through illusory means and schemes, and diverted over \$1.7 billion in federal Medicaid funds, intended for Medicaid services, into the general state coffers. These practices go

on and on and on. Unfortunately, there are several more examples I discuss in the book. The scope of this connection between private contractors and government is unending.

There is an example out of the District of Columbia (“DC”) that happened in 2007 with the same company Maximus. Maximus also runs the child support program in Baltimore city where they have a wide variety of contracts. They have run the ticket to work programs for the social security administration. They have contracts in most, if not all, states and in multiple countries. So, in 2007, Maximus had a contract with DC, where they were helping DC to maximize a form of Medicaid benefits for foster children. There were False Claims Act proceedings brought both by, I believe, the DC government and by the U.S. Department of Justice, based on allegations that Maximus was submitting Medicaid claims it knew were untrue. Maximus agreed in a deferred prosecution agreement to submitting Medicaid claims that it knew were not true for a settlement of over \$30,000,000 that Maximus had to pay. When this happens with an individual physician or a small healthcare provider, when there are allegations of Medicaid fraud, they often lose their licenses or go to jail. They are certainly not going to participate with the Medicaid program anymore after that happens. After this deferred prosecution agreement, I think within a year of when this happened, Maximus landed a contract with the state of New York to help New York to run its Medicaid fraud program. Within a short time after that, Maximus apparently re-upped the contract with District of Columbia, doing the exact same work it had gotten in trouble for. Within a short time after that, Maximus either landed new contracts or re-upped contracts with the Centers for Medicare/Medicaid Services. This is the federal agency to which the allegedly fraudulent Medicaid claims had been submitted. Within a short time after that, Maximus landed a contract with, who do you guess, the Department of Justice itself to help run computer programs in helping to investigate criminal activities. So, barely a bump in the road for this company after what happened in DC.

There are countless examples, unfortunately, that I talk about in the book, of the poverty industrial complex. Often many of the contractors involved in these practices are some of the same very companies that were the stars of the military industrial complex. Lockheed Martin runs child support offices. Northrop Grumman has contracts like this. You name virtually any of these large contractors and they are doing these other forms of work because there is so much money intended to help the poor flowing from the federal government to the states. I could go on about these type of examples, but I want to wrap up and open up to some general questions and discussion if anyone has questions.

So, a couple of closing points that I want to make. I talk in the book, I write a lot and I talk a lot, about the vulnerable, abused and neglected children, low income children, struggling families who are struggling with poverty, older Americans struggling with poverty, the disabled, but we are all vulnerable. We are all often just all one paycheck away from poverty, if not closer. We are all interconnected, like it or not, we are all interdependent on each other and upon our government institutions that are supposed to serve us. And when a foster child in West Baltimore is harmed, we are all harmed. I do not just mean that from the moral perspective,

although that means a lot to me. I think morals should be enough, where we care about helping foster children. If a child in West Baltimore ages out of care and does poorly, that child is more likely to end up in criminal justice system, more likely to end up back on public benefits, more likely to end up homeless. The child is going to be an enormous cost for society and for all of us. If that child does better, we do better. So, I hope we care about that connectivity again as we are thinking about solutions and moving forward.

I do have a section in a book where I propose several detailed solutions in terms of legislation. I have worked with congressman out of Illinois, Danny Davis, who has introduced federal legislation to address the issue regarding foster children. As Professor Fraidin explained at the beginning, I have met with some staff, this was before the election, so there has been a lot of shifting happening, but I met with staff from various senators' offices on ways that we can start addressing the issues, including Medicaid. I am hoping to keep doing that. I think there can be legislative fixes. I have sample pleadings if anybody is interested or knows people that are pursuing some of these issues through litigation. I also think the most important way to fix these issues is through people talking about these issues. I know this sounds maybe a little touchy-feely and amorphous, but awareness is so crucial. For us to be able to fix the problems, we need to be aware of the problems. And with awareness brings power to impact change. So, I hope you all, as you are finishing law school or with all the great work that you are doing, whether in private practice or in public service or in any form of service, that you participate in any way that you can to have an influence towards improving things for those of us who might not be as lucky as the rest of us. I use the phrase "vulnerable," but keep in mind that we are all vulnerable. So, thank you for the chance and I would love to field any questions.

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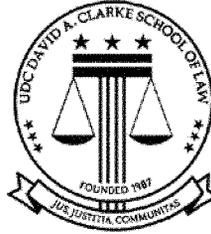
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