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Afterword: Reimagining Family Defense

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Afterword

Matthew I. Fraidin
University of the District of Columbia

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Afterword

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AFTERWORD

Matthew I. Fraidin†

That family defense lawyering has reached a stage of maturity at which it can be “reimagined,” is, well, hard to imagine. Our day together at CUNY School of Law, and this extraordinary volume, represent a vision of the future of family defense. The Symposium and the collection of articles in this volume give but a hint of the ever-growing strength and vitality of lawyers’ commitment to seeking justice for families.

Over the course of the day, more than one hundred attendees heard from more than a dozen speakers. Speakers included academics, practicing lawyers, and parents previously entangled in child welfare who now advocate for change. To fully appreciate the vision of the future conveyed by Symposium participants and the authors represented in this volume, we must look to the past to understand our trajectory and to the present for context. We see that clinical legal education, legal services, legal scholarship, policy, and activism all are covered in family defense fingerprints. Nowadays, no credible conversation can be had, in any realm of child welfare, without a family defense lawyer in the room. More and more, the needle is moved throughout child welfare by our respect for parents and families, and our insistence on justice.

In perhaps the clearest signal of a sea change in the field of family defense, CUNY’s was but one of two symposia centered on family defense held in the same city in the same week, NYU School of Law having celebrated just the day before its Family Defense Clinic’s 25th Anniversary Celebration Symposium.¹ Two separate symposia convened on the subject of parent representation. Enough scholars with something to say about family defense to fill two days’ worth of panels and events, hosted by two law schools renowned nationwide for their cutting-edge clinical education programs and pursuit of justice.

Indeed, developments in clinical legal education with respect to family defense have been instrumental in the development of

† Professor of Law, University of the District of Columbia David A. Clarke School of Law (UDC-D CSL). Thanks to the CUNY Law Review staff for convening the Symposium, and for excellent editorial assistance.

¹ *Family Defense Clinic Celebrates 25 Years Providing Interdisciplinary Family Representation*, N.Y.U. SCH. L. (Jan. 26, 2016), <http://www.law.nyu.edu/news/family-defense-clinic-25th-anniversary> [<https://perma.cc/YTV7-WQ5A>].

the field and augur well for the future. Establishment in 1991 of NYU's Family Defense Clinic was followed up by the University of the District of Columbia David A. Clarke School of Law—17 years later.² Since 2008, however, family defense practices have mushroomed throughout the world of clinical legal education. This volume alone includes important work by Professor Kara Finck of the University of Pennsylvania and Professor Amy Mulzer of Brooklyn Law School. Professor Mulzer's co-author, Tara Urs, previously served as a law professor and has published several important pieces in our field. In recent years, representation of parents in child welfare cases has become an important component of law clinics at the University of Michigan Law School, Howard Law School, Mitchell Hamline School of Law, and the University of Illinois College of Law. We are more than a handful (yes, in every sense of the term), and our ranks are growing.

Our law schools produce family defense civil rights lawyers: energetic, creative, and fierce warriors who admire their clients' strengths and who know that justice is their clients' due. The new lawyers minted in these clinical programs understand that something big can be brewed in family court and that family defense provides an important pathway for change. Change can be made in our courtrooms, and justice pursued. New York City alone is home to three institutional providers with city contracts to serve family defense clients. The Bronx Defenders,³ Brooklyn Defender Services,⁴ and Center for Family Representation⁵ are populated by ravenously justice-hungry family defense lawyers, whose fervent advocacy honors the vital nature of this practice. Many of those lawyers participated in the Symposium and a number are represented in this volume. Now, in addition to filling criminal defense courtrooms and pursuing racial and economic justice in education and through prison reform, servants of justice seek in Family Court—that most-reviled of venues, long-despised by judges and lawyers alike—opportunities to make change.

Law graduates looking to family defense as a route to creating lasting social change now can find a home in the American Bar

² Katherine S. Broderick, *The Nation's Urban Land-Grant Law School: Ensuring Justice in the 21st Century*, 40 U. TOL. L. REV. 305, 315 (2009).

³ See generally BRONX DEFENDERS, <http://www.bronxdefenders.org> [https://perma.cc/L4G8-273Z] (last visited Dec. 4, 2016).

⁴ See generally BROOKLYN DEFENDER SERVICES, <http://bfdp.org> [https://perma.cc/3246-SFB6] (last visited Dec. 4, 2016).

⁵ See generally CTR. FOR FAM. REPRESENTATION, <http://www.cfrny.org> [https://perma.cc/CZR6-GSKR] (last visited Dec. 4, 2016).

Association's National Alliance for Parent Representation.⁶ Celebrating its 10th anniversary in 2016, the Alliance is a safe harbor for lawyers across the country who have long known, individually, that too many families were being broken and too many children destroyed, too many communities ravaged and too-little justice done in dependency courtrooms.⁷ Our colleagues and friends nationally long have labored for little pay and with even less respect. The louder their cries about the emperors' nakedness, the more hostile the reaction.

Lawyers across the country who need the favor of trial judges to secure appointment to cases risk their very livelihoods by insisting that judges follow the law. They risk their livelihoods by insisting that their clients are three-dimensional humans, not inhabitants of the crass racist stereotypes assigned to them. Lawyers risk their livelihoods by asking for even a few moments to read court documents before responding, or a few moments to meet—let alone to counsel—their clients before helping their clients make the most important decisions of their lives. Our colleagues and friends are demeaned and derided for putting the government to its paces: how many times have we been scolded, in the very words rejected by the Supreme Court in *In Re Gault*, that these are not adversarial proceedings⁸ even though it sure felt adversarial when they took our client's children?

The ABA Alliance is the hub of a movement to turn the tide. It is a cozy clubhouse for family defense lawyers—small, but ever-expanding. We have a national listserv with hundreds of members, and we send emails asking each other questions and sharing stories of outrages and triumphs. Under the Alliance's auspices, we gather for national conferences every two years. The Alliance sponsors trainings and influences policy nationwide. The Alliance supports lawyers in states where we are still mistreated and disrespected—in

⁶ *Parent Representation*, AM. BAR ASS'N, http://www.americanbar.org/groups/child_law/what_we_do/projects/parentrepresentation.html (last visited Dec. 4, 2016) [<https://perma.cc/3SWS-DK6E>].

⁷ See CTR. ON CHILDREN & THE LAW, AM. BAR ASS'N, ABA NATIONAL PROJECT TO IMPROVE REPRESENTATION FOR PARENTS (2013), http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/At-a-glance%20final.authcheckdam.pdf [<https://perma.cc/4R8E-A7JC>].

⁸ *In re Gault*, 387 U.S. 1, 15-16 (1967) (“[T]he child was to be ‘treated’ and ‘rehabilitated’ and the procedures, from apprehension through institutionalization, were to be ‘clinical’ rather than punitive. These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the state was proceeding as *parens patriae*.”). *Gault* concerned juvenile delinquency proceedings.

other words, just about everywhere—and shines a light on states who remain, in this day and age, still uncommitted to even appointing a lawyer for a parent faced with the permanent loss of her child.⁹ When we are disoriented and fatigued from—as Professor Martin Guggenheim put it in his 2006 keynote address at the first ABA parent conference—“being polite to people who do despicable things” to our clients and their children, the ABA Alliance helps us find each other.

Our role in seeking justice has not escaped the notice of the National Coalition for Child Protection Reform (NCCPR).¹⁰ Directed by a non-lawyer, the organization’s child-protection platform is built, perhaps improbably, on due process planks. In NCCPR’s “Due Process Agenda,” three of its “child protection” recommendations focus on the irreplaceable value of lawyers.¹¹

In contrast to the D.C. City Council member who once told me that lawyers have ruined child welfare, NCCPR argues that “[q]uality legal representation must be available to all parents who must face CPS.”¹² NCCPR agrees with us that lawyers should be appointed and start working as soon as a child is removed from a parent’s care, and that all lawyers should act like lawyers, instead of pretending, in the guise of law guardians and guardians ad litem, that we can guess at a child’s best interests.¹³ It is a new world when lawyers infiltrate child protection advocacy and are seen for the indispensable cleansing agents that we truly are.

More tangible, bricks-and-mortar evidence of our progress comes in the form of a book, *Representing Parents in Child Welfare*

⁹ See, e.g., MISS. CODE ANN. § 43-21-201(2) (2016) (“If the court determines that a parent or guardian who is a party in an abuse, neglect or termination of parental rights proceeding is indigent, the youth court judge *may* appoint counsel to represent the indigent parent or guardian in the proceeding.”) (emphasis added); *Joni B. v. State*, 549 N.W.2d 411, 417-18 (Wis. 1996) (“[A] circuit court should only appoint counsel after concluding that either the efficient administration of justice warrants it or that due process considerations outweigh the presumption against such an appointment.”).

¹⁰ See generally NAT’L COALITION FOR CHILD PROTECTION REFORM, <https://nccpr.info> [<https://perma.cc/F7AA-6M7L>] (last visited Dec. 4, 2016).

¹¹ RICHARD WEXLER, NAT’L COAL. FOR CHILD PROT. REFORM, CIVIL LIBERTIES WITHOUT EXCEPTION: NCCPR’S DUE PROCESS AGENDA FOR CHILDREN AND FAMILIES 5-7 (2015), <http://www.nccpr.org/reports/dueprocess.pdf> [<https://perma.cc/LKS8-PBG5>].

¹² *Id.* at 5.

¹³ *Id.* at 13; see also Martin Guggenheim, *Reconsidering the Need for Counsel for Children in Custody, Visitation and Child Protection Proceedings*, 29 LOY. U. CHI. L.J. 299 (1998).

*Cases: Advice and Guidance for Family Defenders.*¹⁴ But it's not just a book. It is a user's guide, a practice manual for family defense lawyers. What could be duller than a "how-to-lawyer" book? What could be less-exotic or more mundane than yet another practitioner's guide, with chapters and sections and sub-sections? The book is a veritable connect-the-dots collection of best practices. But in its mundanity, our book is everything. Most importantly, our standard-issue practice manual means that there is an audience. That there are lawyers who want to read the book. It means that there is a large-and-getting-larger community of lawyers who are a credible force for justice and change.

We have been out in the cold rain and snow for many years, underpaid and overburdened, victimized by case-appointments practices that deprive us of dignity and which seek to deprive our clients of humanity. Now we send a signal that we are real, that We Cannot Be Messed With. This is a field we *love*. This is where we want to be. The book serves notice to prosecutors, to judges, to other lawyers, to our clients, and even to ourselves, that far from "ruining" child welfare, we plan to fix it.

As family defense lawyers, we still face degradation and obstacles which pale only in comparison to those faced by our clients. Our clients are no-less-reviled than ever; the fuel of the "foster care-industrial complex," to use NCCPR's memorable phrase,¹⁵ remains poverty and racism.¹⁶ In this volume, Mulzer and Urs's indictment is succinct:

By now, it is well known that the child welfare system disproportionately touches the lives of families of color, particularly Black and Native American families. The child welfare system separates more children of color from their families and communities, keeps them separated for longer periods of time, and more often permanently ends those families by terminating disproportionately more of their legal relationships. It is also well cata-

¹⁴ REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS (Martin Guggenheim & Vivek S. Sankaran eds., 2015).

¹⁵ NAT'L COAL. FOR CHILD PROT. REFORM, ALL-PURPOSE DCYF/ FOSTER CARE-INDUSTRIAL COMPLEX EXCUSE CHECKLIST (2010), <http://www.nccpr.org/reports/RIexcusechecklist95472ri21.pdf> [<https://perma.cc/T5P2-8N5Z>].

¹⁶ See, e.g., DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 60-74 (2002); Tanya Asim Cooper, Commentary, *Race is Evidence of Parenting in America: Another Civil Rights Story*, in CIVIL RIGHTS IN AMERICAN LAW, HISTORY, AND POLITICS 103-12 (Austin Sarat ed., 2014); ORONDE MILLER & AMELIA ESENSTAD, CTR. FOR THE STUDY OF SOC. POLICY, STRATEGIES TO REDUCE RACIALLY DISPARATE OUTCOMES IN CHILD WELFARE: A NATIONAL SCAN (2015), <http://www.cssp.org/publications/child-welfare/alliance/Strategies-to-Reduce-Racially-Disparate-Outcomes-in-Child-Welfare-March-2015.pdf> [<https://perma.cc/DA9E-ETCH>].

logged that, even more than race and Tribal affiliation, poverty is the single greatest predictor of a child welfare case. The child welfare system is fully focused on the lives of poor families, and especially focused on poor families of color. The flip side is that families with financial means and white families are far more likely to be left alone by the system despite experiencing the very same concerns that lead to child welfare intervention for low-income families of color, such as mental illness, alcoholism, recreational or habitual drug use, or domestic violence. People of means are less likely to be touched by the system or to know people touched by the system.¹⁷

Subjugation remains the fundamental characteristic of child welfare. There is much work to do.

But in some states, we have slowed the rates of child-removals.¹⁸ We continue to fight against the Adoption and Safe Families Act's reckless, oppressive destruction of children, families, and communities.¹⁹ And yes, we publish law review articles and we gather for conferences and symposia. We have a listserv. We have that practice manual now, just like housing lawyers and bankruptcy lawyers and antitrust lawyers. There are jazzed-up lawyers across the country reading the book voraciously in unstinting effort to be better, run further, jump higher. Students dive into family defense in law school clinics, and, truly against all odds, see family defense as an inviting career choice. CUNY School of Law, with its grand legacy of service and justice-seeking, gathered us together for a day of celebration and to look to the future. That is a big deal.

But as we reflect on the past, cheer our progress, and charge ahead into the future, we must assess the present with hard heads and clear eyes. We see promise and see also that challenges remain.

Perhaps the most revealing and important depiction of the current state of child welfare law and practice can be found by see-

¹⁷ Amy Mulzer & Tara Urs, "*However Kindly Intentioned*": *Structural Racism and Volunteer CASA Programs*, 20 CUNY L. REV. 23, 26-27 (2017) (in this volume).

¹⁸ NYC's foster care population was 16,701 in FY 2008 and had been reduced to 13,112 by FY 2013. MICHAEL R. BLOOMBERG ET AL., MAYOR'S MANAGEMENT REPORT 102 (2013), <http://www.nyc.gov/html/ops/downloads/pdf/mmr2013/acs.pdf> [<https://perma.cc/XA2D-4F54>]; similarly, in the District of Columbia, 3,070 children were in out-of-home care as of September 30, 2003, and 1,085 on September 30, 2015. D.C. CHILD & FAMILY SERVS. AGENCY, CFSA FACT SHEET: CHILDREN AND YOUTH CFSA SERVES 1 (2016), http://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/page_content/attachments/Children%20and%20Youth%20CFSA%20Statistics%20July%202016_0.pdf [<https://perma.cc/7YFJ-HXES>].

¹⁹ See generally Richard Wexler, *Take the Child and Run: How ASFA and the Mentality Behind It Harm Children*, 13 UDC/DCSL L. REV. 435 (2010).

ing through the eyes of judges. These, after all, are the decision-makers in our clients' lives. It is the judges who hear our clients or don't. It is judges who apply law capriciously or fairly, whose actions vindicate or degrade the Constitution, who resist or are captured by stereotypes of the low-income women of color who disproportionately are entangled by governmental interventions.²⁰ Are judges keeping up with the changing culture being built—surely, if slowly—by family defense lawyers allied with their clients?

Some of the evidence is positive. Only two months after the Symposium, the National Council of Juvenile and Family Court Judges (NCJFCJ) promulgated new “Enhanced Resource Guidelines” for use in child welfare court practice. Although a mixed bag, there is much to applaud in the Guidelines, which convey the NCJFCJ's most-current statement of goals, priorities, and recommended practices.²¹

On one hand, the “Key Principles” of these Guidelines are fundamentally flawed, arguing that judging in “juvenile and family court is specialized and complex, going *beyond the traditional role of the judge*. Juvenile court judges, as the gatekeepers to the foster care system and guardians of the original problem-solving court, must engage families, professionals, organizations, and communities to effectively support child safety, permanency, and well-being.”²²

Our experience as lawyers suggests to the contrary, namely that the best decisions can be made by judges who fulfill the traditional role of judges: hear evidence, find facts, apply the law—including by ordering social work agencies to fulfill their roles and holding them in contempt when they fail to do so. In addition, the Guidelines are far too sanguine about the purported benefits of “best interest” guardians ad litem and Court-Appointed Special Advocates.²³

Instead, our experience tells us that children and families would be best served by a genuine adversarial system, not the quarter- and half-measures that have long been the mark of family

²⁰ MILLER & ESENSTAD, *supra* note 16, at 15-17 (highlighting the need for comprehensive and multifaceted efforts to address racial disparities in the child welfare system, including by engaging judges).

²¹ See SOPHIE I. GATOWSKI ET AL., NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, ENHANCED RESOURCES GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES (2016), <http://www.ncjfcj.org/sites/default/files/%20NCJFCJ%20Enhanced%20Resource%20Guidelines%2005-2016.pdf> [<https://perma.cc/2E6G-P8AP>].

²² *Id.* at 14 (emphasis added).

²³ *Id.* at 43.

courts. In *Ambivalence About Parenting* in this volume, Lisa Beneventano and Colleen Manwell point out that:

Focusing on . . . standards and rules can be especially helpful in defending a case centered around expressions of ambivalence, where no actual harm or injury to the child is alleged. In cases based solely on a parent's expression of parental ambivalence, the child protective agency is often missing an essential element of their case: proof the child faced *actual* harm or *imminent* risk of harm.²⁴

Would that Beneventano and Manwell's lament about the lawlessness of child welfare proceedings were an isolated phenomenon, limited to the consideration by judges and case workers of expressions of parental ambivalence. But we have heard countless warnings and complaints about the pervasive deviation in child welfare from the ordinary guideposts of procedural regularity, such as hearings closed to the press and public, underpaid lawyers, overburdened judges, lack of rules of evidence, lawyers and CASAs who purport to know what is "best" for a child—and judges who undertake activities, such as engaging families, professionals, organizations, and communities, that are outside their competence.²⁵

Nonetheless, the NCJFCJ has long supported process-oriented positions on some issues—they have supported open courts for many years, for example.²⁶ And fundamental to these Guidelines are pervasive strands of thought that are consistent with important principles of our work as lawyers for parents. If implemented widely, the Guidelines will minimize the harm inflicted on children and families by the administration of justice.

For example, the Guidelines recognize that, "[j]udicial determinations to remove children from a parent should only be made based on legally sufficient evidence that a child cannot be safe at

²⁴ Lisa Beneventano & Colleen Manwell, *Ambivalence About Parenting: An Overview for Lawyers Representing Parents in Child Welfare Proceedings*, 20 CUNY L. REV. 151, 162 (2017) (in this volume).

²⁵ See generally Anne H. Geraghty & Wallace J. Mlyniec, *Unified Family Courts: Tempering Enthusiasm with Caution*, 40 FAM. CT. REV. 435, 435-52 (2002); see also Amy Sinden, "Why Won't Mom Cooperate?": A Critique of Informality in Child Welfare Proceedings, 11 YALE J.L. & FEMINISM 339 (1999).

²⁶ The NCJFCJ issued a 2005 resolution urging that "our nation's juvenile and family courts be open to the public except when the juvenile or family court judge determines that the hearing should be closed in order to serve the best interests of the child and/or family members." NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, RESOLUTION IN SUPPORT OF PRESUMPTIVELY OPEN HEARINGS WITH DISCRETION OF COURTS TO CLOSE 1 para. 7 (2005), <http://www.ncjfcj.org/sites/default/files/resolution%2520no.%25209%2520open%2520hearings.pdf> [https://perma.cc/7AFT-JBBL].

home.”²⁷ And, further, it recognizes that “[j]udges are responsible for ensuring that parties, including each parent, are vigorously represented by well-trained, culturally responsive, and adequately compensated attorneys”²⁸

Moreover, in a chapter titled “Access to Competent Representation,” the Guidelines insist that:

Because critically important decisions will be made at the very first hearing, parents should be represented by counsel as early in the process as possible. Few parents will be able to afford to hire an attorney on their own. The court should work with counsel who practice before the juvenile and family court to develop a system for appointment sufficiently in advance of the preliminary protective hearing to permit meaningful consultation and preparation.²⁹

The Guidelines say that the “nucleus” of the document itself are “benchcards” for use prior to and during every child welfare hearing.³⁰ The rigor and routine imposed by benchcards can promote a constructive predictability. And a stunning innovation, with potentially dramatic significance, is that every benchcard includes a recommendation for pre-hearing preparation techniques designed to promote internal reflection to prevent bias:

As a measure of recommended practice, to protect against any institutional or implicit bias in decision-making, judges should make a habit of asking themselves:

- What assumptions have I made about the cultural identity, genders, and background of this family?
- What is my understanding of this family’s unique culture and circumstances?
- How is my decision specific to this child and this family?
- How has the court’s past contact and involvement with this family influenced (or how might it influence) my decision-making process and findings?
- What evidence has supported every conclusion I have drawn, and how have I challenged unsupported assumptions?
- Am I convinced that reasonable efforts (or active efforts in ICWA cases) have been made in an individualized way to match the needs of the family?
- Am I considering relatives as a preferred placement option as long as they can protect the child and support the

²⁷ GATOWSKI ET AL., *supra* note 21, at 14.

²⁸ *Id.* at 16.

²⁹ *Id.* at 42.

³⁰ *See id.* at 20.

permanency plan?³¹

The Guidelines' recognition that judges, like all of us, can be prisoners of our implicit biases, is especially important because of the same Guidelines' unfortunate doubling-down in the "Key Principles" and throughout³² on a vision of family court in which judges engage in so many non-judging tasks. When judges do more and less than simply apply the law—when they call social workers on the telephone to urge referrals, or contact housing providers to check on a litigant's housing prospects, or advocate with a drug treatment provider to find a bed for a litigant—they are doing so with big hearts and the very best of intentions. But those activities diminish the already-limited role that law plays in family court proceedings and erode the quality of information on the basis of which family court decisions are made.

As Beneventano and Manwell point out,³³ and as we have seen again and again, the less constrained judges and other humans are by law and process, the more that stereotypes and biases can creep in. When judges learn about cases via *ex parte* phone calls, "trainings," and without rules of evidence, the information generated is less-reliable than that generated the old-fashioned way. There is a reason that we still, in law school, repeat the hoary maxim that cross-examination is the greatest legal engine for truth ever invented.³⁴

Unreliable information and limited information are canvases on which assumptions, guesses, and implicit biases find a home. For that reason, the benchcards' express recommendations for methods judges can use to combat bias are a very welcome and very promising development.

We can find, then, in the past decades, unmistakable signs of progress. But challenges and outrages remain. On the front end of the child welfare system, the Constitution is flouted by the removal of thousands of children *not* in danger, churned in and out of foster care, removed for a few days and then returned home as if, like furniture moved from one room to another, no harm was done.³⁵ And on the back end, thousands of termination proceedings pro-

³¹ *Id.* at 67.

³² See generally *id.* at 14-17.

³³ Beneventano & Manwell, *supra* note 24, at 160-64 (in this volume).

³⁴ 5 JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW § 1367 (James H. Chadbourne et al. eds., rev. 1974).

³⁵ See generally Vivek S. Sankaran & Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less Than Thirty Days in Foster Care*, 19 U. PA. J.L. & SOC. CHANGE (forthcoming 2016) (on file with author).

duce “legal orphans,” whose birth parents’ rights are terminated but who are never adopted by new parents, and thus must live their lives without legal parents.³⁶

In this context, it is of no small moment that NCJFCJ cogently has articulated commitments to fundamental principles and practices that create possibilities for change. As family defense lawyers, it is our privilege and responsibility to work hand-in-hand with our clients to leverage those commitments.

The Symposium was an occasion to imagine a future. And as Professor Delgado tells us, we build the future we imagine: “We participate in creating what we see in the very act of describing it.”³⁷ The very convening of this Symposium signals that the newly-imagined future, so brilliantly-described in the pages of this volume, will be one in which family defense lawyers play an important role in ensuring that our courts live up to their promises.

³⁶ Lashanda Taylor, *Resurrecting Parents of Legal Orphans: Un-Terminating Parental Rights*, 17 VA. J. SOC. POL’Y & L. 318, 326-27 (2010).

³⁷ Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2416 (1989).