MEDICAL KIDNAP

How One Judge Almost Eliminated Foster Care Simply by Applying the Law – A National Model?

Image from YouTube.

by Brian Shilhavy | December 11, 2019

The Washington Post recently featured a judge out of Louisiana, Judge Ernestine S. Gray, who has reportedly "reduced foster care numbers to levels unmatched anywhere in the country" in Orleans Parish.

Richard A. Webster, writing for the Post, reports:

> Between 2011 and 2017, the number of children in foster care here fell by 89 percent compared with an 8 percent increase nationally. New Orleans children who do enter the system don't stay long. Seventy percent are discharged within a month; nationally, it's only 5 percent.
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> Gray has effectively all but eliminated foster care except in extreme situations, quickly returning children flagged by social workers to their families or other relatives.
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> "We shouldn't be taking kids away from their parents because they don't have food or a refrigerator," she said in explaining her philosophy. "I grew up in a poor family in South Carolina, and we didn't have a lot. But what I had was people who cared about me."
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> The greatest threat of harm for most of the children who appear before her, she stresses, is being unnecessarily removed from their families.

> “Foster care is put up as this thing that is going to save kids, but kids die in foster care, kids get sick in foster care,” she said. “So we ought to be trying to figure out how to use that as little as possible. People have a right to raise their children.”

Read the full article at The Washington Post.

Image Source.

Reading about this judge reducing the number of children taken from their homes and going into foster care must have sounded like music to his ears for attorney Vivek Sankaran, a clinical professor of law at the University of Michigan Law School, where he directs both the Child Advocacy Law Clinic and the Child Welfare Appellate Clinic.

Attorney Sankaran is on the record as saying: “The United States destroys more families than any other country in the world.”

In his blog, *Rethinking Foster Care,* he has previously written about how judges could put a stop to most of this simply by applying the law, rather than trying to do “what is best for the child.”

> A few weeks ago on a phone call discussing how systems can support keeping kids safely with their families, a judge abruptly interjected, “I don’t like this focus on the rights of parents. We should always be focusing on the best interest of children at all times, before a kid is removed and once a court is involved!”
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> In my years practicing child welfare law, I’ve heard this refrain many, many times. It makes my head hurt.
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> The refrain pains me because we all know that the “best interest of the child” is not an objective standard. All of us disagree – all the time – about what we think is best for a child. What time should they go to bed? Should they co-sleep with us? How should they be

disciplined? Should they be raised in a “free-range” parenting style? Or is helicoptering around them best? Gather a group of parents, chat for a few minutes, and you’ll quickly realize how much we disagree about what is good for children.

Crucial to this framework is the realization that prior to finding a parent to be unfit, judges don’t get to issue orders based on what they think is best for a child. Consider a world where this standard didn’t apply. Do I really want someone to second-guess my decision to allow my children to watch America Ninja Warrior this morning? Or to eat pizza for a week straight? Or to not shower for a few days?

Absolutely not. These are my calls as a parent. The constitutional jurisprudence makes clear that the state doesn’t get to interfere in these decisions until they prove me to be unfit. It is a doctrine that all of us benefit from. Every day. (Full blog post here.)

Attorney Vivek Sankaran recently wrote about Judge Ernestine S. Gray as well, and not unexpectedly, he took it one step further. He wrote that judges in dependency hearings need to “own the removal decision” as a true leader.

Some excerpts from Own the Removal Decision by *Vivek Sankaran*:

The most striking aspect of the “reforms” instituted by Judge Gray is that she didn’t reform anything. She simply applied the law. Just like all judges are required to do.

But the article missed a key storyline, which has implications for courts across the country. And one that strikes at the heart of what it means to be a leader – the importance of owning the most important decisions your institution makes.

Would Ford introduce a new car without its CEO signing off? Would a college basketball coach allow her assistants let a player onto the team without her knowledge? Would the head of a major company lay off thousands of workers without endorsing the decision? No – because good leaders own their company’s decisions.

In child welfare, there is no decision as important – or life altering – as the one to separate children from their parents. Yet, in courts across the country, judicial practice shows dissonance between our values and our actions.

Judges speak of the devastating impact of removing children. At conferences, experts tell them about the overwhelming research that supports those views. Children share stories about the permanent damage that family separation created in their lives. This “consensus” suggests that our system will invest the time and resources to ensure that only those who children who must enter foster care do so. No decision is more important.

But visiting courthouses across the United States (except maybe the one in New Orleans) leaves you with a very different impression – that the removal decision is one we don’t really value. Courts often entrust the decision to allow emergency removals by child welfare agencies to probation officers, magistrates or referees – who may or may not be trained in child welfare law.

In fact, some courts have even created pre-signed court orders, which they then permit agencies to fill in the blanks.

Then, they permit this same array of actors to preside over the first full removal hearing in court. As a result, those with the least amount of discretion, political power and training are tasked to make the most important decision in a family's life.

So unsurprisingly, they often take the path of least political resistance – to place kids in foster care. Journalists rarely report on the kid who shouldn't have been yanked from his family. It's the "safe" choice.

So here's what I think is the most radical part of Judge Gray's transformation of the New Orleans Juvenile Court. She actually presided over the removal process. She considered the requests for removal. She heard evidence. She applied the law. She owned the most important decision in her courthouse. She led by example.

To all those juvenile court judges out there, follow her example. Don't entrust others in your courthouse to render the most important decision in a family's life. Make sure that you – and no one else – closely examines whether an ex parte removal is warranted, whatever time the request comes in. Is there such an emergency that immediate action is needed without a hearing?

Guarantee families that you will be sitting on the bench at that first removal hearing, even if your busy docket makes it inconvenient.

Own the decision. Because that's what leaders do.

Read the full article at Rethinking Foster Care.