This is not your reality.
This is.
But that is NOT the end of the story.
Who are you? What do you do?

• Parent attorney
• Represent parents in child welfare proceedings
• Defend parents in child welfare proceedings
• Help parents to achieve their ultimate goal
• Reunification – What is it? Who does it involve?
• What are you really defending?
You are defending FAMILIES against unjust or prolonged intrusion by the State.

You are FAMILY DEFENDERS.
You are part of a national community of FAMILY DEFENDERS

• ABA National Alliance for Parent Representation
• ABA listserv
• ABA Parent Attorney Conference
• Experts in all aspects of family defense
WHY IS THIS SUCH A DIFFICULT FIGHT?

“Of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive. It would be better to live under robber barons than under omnipotent moral busybodies. The robber baron’s cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end for they do so with the approval of their own conscience.”

C.S. Lewis
Orphan Trains
American Indian Boarding Schools
• Family defense is a young field
• Child Protection & Treatment Act (1974)
• Prosecution target – criminal vs. child protection
• Public opinion – criminal prosecution vs. child protection
• Law school education
Why do we fight?

• A person accused by the state of wrongdoing deserves zealous representation

• Studies have found that a great majority of children in foster care could remain safely in the home. Lindsay, Duncan. *The Welfare of the Children*, 141, 155 (1994).

• Children placed in foster care are far more likely than other children to commit crimes, drop out of school, joint welfare, experience substance abuse problems, or enter the homeless population. Doyle, Joseph J., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 Am. Econ. Rev. 1583, 1583-84, 1607 (2007).

• Parents are more likely to take advice from an advocate who is fighting for them and are more likely to endure the process when they feel they have a strong defense and a caring professional who listens to them and respects them.

How do we fight?

• Know your client
• Know the law
• Know AND USE your trial skills

• Relationship with the bar
• Relationship with the Court
SHORT GAME vs. LONG GAME
SHORT GAME

- Zealous advocacy for this client
- Winning this hearing
- Achieving reunification ASAP
- Achieving alternative permanency
I have come to understand and believe that each of us is more than the worst thing we’ve ever done. I believe that for every person on the planet. I think that if somebody tells a lie, they’re not just a liar. I think that if somebody takes something that doesn’t belong to them, they’re not just a thief. I think that if you kill someone, you’re not just a killer. And because of that, there’s this basic human dignity that must be respected by the law.
- Bryan Stevenson
HOW DO WE PRESERVE THE BASIC HUMAN DIGNITY OF OUR CLIENTS?
FLIPPING THE SCRIPT

• This is your client’s family
• Your client is the expert on his/her children
• A defense attorney is not confined to playing defense
• Do not internalize any shame or guilt
• Your job is to hold the child welfare agency to its burden
• The child welfare agency must justify State interference into the family unit
No, let’s all paint.
When the agency paints the picture...

- DRUGS
- BAD BOYFRIEND
- HYPER CHILD
- DIRTY CHILD
- PARENT PASSED OUT
- DIRTY DISHES
This parent is *already* in recovery.
This mother has *already* taken steps to keep herself and her children safe.
These children are *healthy, active*, and they *play outside*. (If they were overweight and played video games all day, the agency would complain about that, too.)
This father *works* 3\textsuperscript{rd} shift.

Of course he rests during the day!
This mother prepares food and feeds her family.
What about the parts of the picture that the agency *doesn’t* paint?
RED FLAGS only seem to matter when the agency sees them flying.

UNRELATED MALE IN HOME
CHILD WITH SPECIAL NEEDS
SINGLE PARENT
UNEMPLOYMENT
PRIOR TERMINATION
CRIMINAL HISTORY
PRIOR REMOVALS
ANGRY
CPS HISTORY
UNPLANNED PREGNANCY
What about the good stuff?
Review your client’s case for the absence of red flags.

Use this information on cross-examination.
Lack of risk factors in the home/family

- No unrelated males in the home
- Parents married
- Parents are employed
- No special needs or developmental disabilities
- First interaction with agency
- No criminal history
- Not on food stamps
Attitude of parent

• Cooperative
• Not hostile
• Access to home
• Access to child for interview
• Access to child for physical inspection
• Answered questions
• Provided collateral contacts
• Provided medical information
• Provided child’s medications with instructions
Condition of the child

- Dressed appropriately for the weather
- Clean and well-nourished
- No marks or bruises
- No outcry of abuse
- Spoke freely to you
- Smart, articulate
- Did not express any fear of the home
- Did not express any fear of the parent(s)
- Bonded to parents
More about the child

• Upset when removed from parent
• Normal height and weight
• Developmentally on-target
• Up-to-date on all vaccinations
• No special medical needs
LONG GAME

• Be diligent, reliable, trustworthy
• Do your homework
• Do everyone else’s homework
• Be an asset to the case
• Pick your battles
• Care as much as your client does, but not more
• Learn and practice excellent trial skills
• Chip away at the reliability of problem witnesses
• Preserve your reputation at all cost
• Do NOT sacrifice your long game for your short game
“The Law is a mighty machine. Woe to the unfortunate man who, wholly or in part innocent, becomes entangled in its mighty wheels, unless his innocence is patent or his rescue planned and executed by able counsel. The machine will grind on relentlessly and ruthlessly, and blindfolded justice does not see that the grist is sometimes stained with blood.”

Edward Johnes, “The Pardoning Power From a Philosophical Standpoint” (1893)
Be that able counsel.

Be exceptional counsel.

Be the counsel you would want for yourself.

rughjohnson@gmail.com
404-276-0045