

NACC 4th Edition Child Welfare Law and Practice Red Book Introduction

JUSTICE AS THE THROUGH LINE

Ivory K. Bennett & Corey B. Best

In our culture, neighborhoods, and brave, liberated spaces, we share abundantly about the prolonged, traumatic impacts that punitive and carceral systems have had on our bodies and minds. Our Black bodies. Our Black minds. In our current child welfare system, for many families like ours, the severity of exposure to child protective services (CPS) is life or death. Just look at Ma'khia Bryant's and Cornelius Fredericks's cases –where family regulatory practice resulted in literal death. What we refer to as the life and/or death here is that with one roll of the proverbial dice, lifelines are too often lost. Not given. Not forgiven. Just lost. From our collective experiences, we have observed intentionally ruptured familial bonds. And through it all, the most impacted are expected to be parented by an abusive system that demands that they sit down, shut up, be quiet.

Within this brief introduction, we will demonstrate what we mean by effective legal representation. We offer lawyers and judges a view into our world and challenge you to question what legacy building means to you. To start, we must face a few realities that you have been witness to and may have been active in perpetuating. We mean pain, cuts, wounds, and scars that we have been taught to disregard. We understand fully that we have an experience that many of you who are reading this can only attest to from the position of the “spectator.” Or maybe, you watched us develop into tokens for systems change through storytelling and vulnerability – as if our lives were meant for some type of savage sport, in an arena called the child welfare system. The environment where resolving matters of families and what matters to families is virtually impossible without effective legal representation or restorative justice practices. Where spectators take the form of social workers, child advocates, clinicians, law enforcement, attorneys, collaterals, guardians, and the one who might be the most visible, non-active onlooker of all—the judge.

You have built your careers in this arena. The place where your measurement of success is achieved through a dichotic lens of either win or lose. Your practice ground is the life of the youth you represent whose voice is lost in the posturing of your advocacy. And for a parent with a child ensnarled in that arena, you, the attorney, speak because typically, a parent's voice is better silenced out of a fear response that they might just tell it like it is. So, therefore, controlling and suppressing their voices is paramount. In both scenarios, you, the spectator, then take on the role of the oppressor. Your worldview of us has been formed from allegations, family functioning assessments, and historical descriptions that feed the memory of stereotypical Blackness. The lies the world has told you about families that look like ours are deeply entrenched in how you deliver your arguments, your positions, and your motions. Ultimately, these false narratives shape how you build relationships with families. How do we know? Your behaviors. And we want you to know that we see you.

It is time to become more than your position. It is time to become a liberated agent of law, justice, and humanity.

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It is the worst of times. It is also a time of great and necessary changes for all. And although it would feel quite vindicating and from our perspectives, justifiably warranted to burn it all down, many are calling for a more sustainable and radical approach across multiple decision points within the legal dependency system. We must reinvent legal representation to reflect modern times and modern needs - the system needs a true integration of justice-centered practices and liberated legislation that proactively strategizes with the totality of harms caused to historically and systemically oppressed groups of human beings.

We truly believe that the colonized dependency court system can be anything that judicial stewards actualize it to be – effective, restorative, just, and, most importantly, humane. We have experienced the American justice system to be anything that benefits white people in positions of power, at the expense of stripping constituents of their Fourteenth Amendment rights to family, humanity, and due process. However, for us, we hold enduring hope in a few individuals who demand that our child protection system *keep the tokens and coins – and grant us change!* We have hope in those who dare to fight for and provide equitable, effective, restorative legal representation. We have hope for those who openly acknowledge the need for our current justice system to be abolished – not to be replicated and reformed. After all, our Declaration of Independence states our right to abolish destructive governmental systems:

We hold these Truths to be self-evident, that all Men are ... endowed by their Creator with certain unalienable Rights.... To secure these Rights, Governments are instituted among Men.... That whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to affect their Safety and Happiness. ... Mankind are more disposed to suffer, while Evils are sufferable than to right themselves by abolishing the Forms to which they are accustomed. But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future security.

- Declaration of Independence (1776)

The solutions to our collective problems must equal the magnitude and severity of grievances expressed by families and communities ravaged by CPS. As we deepen the frame within this teaching tool, we encourage you to recognize that we have a set of lived-impacted credentials that remarkably qualify us to critique, love, and stand for justice.

Our core purpose is to ensure that justice-centered legal representation becomes an immovable marker of the quintessential, decolonized American child welfare system. The aim is to achieve a level of representation that has not existed since the inception of orphan trains, boarding schools, and “Blue Ribbon” babies. This next level of legal efficacy must be a true

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reflection of the gold that exists in every person, in every situation. Effective legal representation must be an equitable, dependable force that attends to victims of true abuse and neglect without punishing people for experiencing episodes of poverty. Legal representation must reflect the fruits of its labor – all people will be protected, defended, and uplifted at all costs. Lastly, effective legal representation must be proactive and restorative, in the most imaginative ways possible.

And for the children who have been taken and might find themselves lost in our life-or-death child welfare system, effective legal representation must be more akin to an unbreakable bond between a loving mother who will do anything to protect her children, at any expense, the protective father who devotes his time and energy to provide for all human needs, and the adoring family, community, and village who nurtures, supports, and defends always, in all ways. Our experience has taught us that punitive, governmental systems are not well suited to parent – families are!

Pause with us and journal:

- 1) In what ways are you equipped to acknowledge where you have caused harm?**
- 2) Are you the right person for a world filled with restoration? What do you need to learn to engage with the entirety of those you represent?**

We, the impacted – the children, the parents, the family members who have been told that they are not good enough, those of us who might find ourselves in need of support during perhaps the most difficult times of our lives – will lean into our collective truths. We, the impacted, call you to envision, to attach, and to feel the emotional turmoil and trauma that can be seen and unseen, expressed and suppressed, leading to enduring an unnatural childhood, a parenthood, or a family hood dictated by the judiciary system. Such vestiges are reminiscent of the barbaric and peculiar institution of American chattel slavery, followed by another one hundred years of Jim Crow, that led to codifying humanity in 1964. The destruction of Black families has been far too normalized. Therefore, a new chapter is on the horizon.

We, the impacted, will become a part of building a society established by vivid clarity and one audacious dream that centers the expansiveness, liberty, and freedom of holistic happiness, radical representation, preserved family structures, and lasting legacies that lay the foundation for true self-actualization. We, the impacted, know who we are becoming – because we know where we have been.

We, the impacted, deserve the opportunities to manifest our becoming more than a data point, reaching our standards of success, and being afforded the freedom to excel to our highest potential in anti-oppressive ways that humanize our personhood and uplift our magnificence. The suffering of children and families should never be excused away for any reason, and the systemic dependence on individual resiliency is negligent and lazy with chronic, cyclical consequences that ripple effortlessly through generations in degenerative, disparaging ways.

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For many persons with lived expertise, resiliency is not a choice. For many persons with lived experience, resiliency is survival – an unsustainable trauma response that highly activates the nervous systems. Over time, resiliency results in a myriad of physical, mental, emotional, and social effects that when left unaddressed can reduce one’s overall quality of life. Everything has a cost. Whether it be maladaptation, resiliency, or some combination of the two –child welfare practitioners and judicial stewards of the law must acknowledge the need for the dependency system to proactively protect those experiencing family disruptions and stop creating environments filled with trauma so that the only strength you acknowledge is resilience.

We, the impacted, ask you to stop causing harm. We, the impacted, want to know if you are willing to interrogate yourselves by asking:

- 1. Am I aware that my intention and my impact are not the same?**
- 2. What type of human being do I need to be for the families that I represent?**
- 3. How can I acknowledge the impact of my personal and professional practices while building power with those I serve?**

In preparation for this piece, we recognized that during our evolution as the impacted, we have captured glimpses of liberation and moments of freedom. In essence, we have witnessed our power. Each of us has an individualized narrative comprised of personal and collective experiences that shape the lens through which one navigates the world, work, and life. Intellectually, we know that our country was founded on stolen Indigenous land and the forced labor of kidnapped, enslaved Africans. This violent inception created the structure and organization of our exploitive, Eurocentric, capitalist-

centered systems. Through the process of othering people, white, dominant ideology has set the stage for abusive power to be consumed and reproduced at an insidiously harmful rate. Without being proximate to people on a deep transformational footing, the baked-in anti-Blackness serves as justification to capitalize and exploit minoritized groups of people.

National data tells the story of racial disparity. But it does not tell the offensive story of racism. Racism is race plus prejudice plus power. Race has become the number one proxy for a lifetime trajectory of institutionalized injustice. The immense advantages, with institutional and societal consequences, of the benefactors of colonization and slavery are at the expense of the non-white groups of people. It is now your inheritance to bear the brunt of dismantling this oppressive judicial system designed and upheld in contemporary legal practice. Such a shift will be paramount in your practice with families.

The work of liberation and justice should not be viewed as hard, impossible, or tough. The work of justice should be viewed as necessary and obligatory. At every decision point, in contact with someone exposed to CPS, you have areas of discretion to drive proximity. It is your responsibility to grasp the reality that power is relational and who you choose to ascribe power

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to matters. To relinquish power there must be a reciprocal vulnerability with people. Liberation, justice, and belonging are not always measurable, because they are traits that should be woven into the fabric of your everyday existence. Ask your client how they are experiencing you. You may find truer answers and glean more effective ways to allow them to be your mirror to your soul.

As you continue to travel, let's consider:

- 1) In what ways am I showing up as the oppressor?**
- 2) Do I hold onto my positional power to the point that I refuse to learn?**
- 3) How often do I honor the power in people who don't look like me?**

By now, many of you might have observed that our position comes from a place driven by values and fueled by common purpose and passion. In brave spaces, not everything will be what you want it to be. And any space that is riddled with environmental threats to humanity cannot be considered safe. Additionally, you have witnessed scars of memory. In a system that wants us to remember their memories, our soul survival requires us to keep remembering ours. The hope is that you are activated and prepared to do better with the responsibility bestowed upon you. Being activated means collectively, we must pivot from advocacy to action using shared values of effective legal representation, judicial leadership, and restorative justice as the lighthouse that steers us towards the shores of judicial liberation free of the bondage of institutionalized and systemic inequities.

In your approach to learning who you are, we strongly suggest that you rid yourselves of the "founding fathers" ideas of justice. Break free from being a spectator and become a more just and humane individual who stands on values and centers humanity in this work. We must realize that the need for the child welfare system is a direct result of historical and systemic legislative and societal norms that have separated, corroded, and obliterated both the individual and the collective. A fundamental shift in how we design our thinking between practitioners and clients is necessary to facilitate restorative justice through both intention and impact. Honoring the lived expertise of those impacted by the child welfare system and embracing those same individuals' mastery and agency is necessary to redefine guiding principles and practices across all systemic levels.

Now is an unavoidable time for reinvention. And that reinvention begins with self. What can you do as an individual practitioner to create concrete restorative justices on micro and macro levels? The shift from injustice to restorative justice begins internally and moves outward. You are the holders, the keepers, and the defenders of our personal practices. You are the change we have been unknowingly pursuing.

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Here are fifteen actions with which practitioners can **LEAD**:

1. Learn

- a. The true history of America to understand the depths of institutionalized oppression and its traumatic impact on marginalized people.
- b. About yourself and how you have directly caused harm.
- c. What lies the world has told you about who you are and the systems that perpetuate these lies.
- d. What a positive racial identity means to you.

2. Explore

- a. The meaning of right and accountable relationships.
- b. How those you work with and serve see you.
- c. Someone else's experiences - not as a spectator, but as a human being.
- d. What anti-oppressive practice looks and feels like.

3. Act

- a. To intentionally seek areas where you have control and influence.
- b. On all the small things that will inject humanity at decision points.
- c. To include individuals with lived expertise at every level of the judicial system. Instead of talking about and theorizing on their wants and needs, create a permanent, respected, non-tokenized space so that we, the impacted, can be fully represented and present in change initiatives.

4. Discover

- a. That liberation is freedom. And what it means to people when they can be themselves, including you.
- b. The importance and value of proximity and undeniable knowledge that comes from direct, experiential learning and practice.
- c. The infinite possibilities of humanity when true restorative justice is the center of judiciary practice.
- d. Why you are so dependent on solving problems and less focused on creating possibilities.

We hope that you will journey with this message to prevent devaluing families and internalizing oppressive practices. We leave you with four essential questions to unpack and examine as only a reimagined human would:

- 1) **What values do I center in my personal legal practice?**
- 2) **How do those values translate to action and advocacy?**
- 3) **Do I intentionally prioritize relationships with the most harmed over holding relationships with systems of oppression?**

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- 4) How can I empower myself and support the values, actions, and agency of my clients in the most restoratively just, positively impactful, least invasive ways possible – individually and systemically?**