Forced Separations and Forced Reunions in the Foster Care System[1]

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This country's juvenile court system was created more than 100 years ago on the premise that children have legal rights and should be treated in a humane fashion. Since then, juvenile court functioning has evolved to focus on the individual needs of children and families by acting "in the best interests of the child." Now, lawyers and judges must not only use their legal expertise to settle cases, but must also be knowledgeable in children's cognitive, social, and emotional development; the impact of the early environment on brain development; alcohol and substance abuse; mental health and mental illness; and the impact of family violence on children and families.

The authors of this article, representing three different disciplines, use the example of a child named "Tammy" to illustrate different points of view regarding collaboration and potential conflict between the professionals working in the best interests of the child.

"Tammy" is a 3-year-old girl who, in her short lifetime, has been abandoned twice by her biological mother, a heroin addict. After the second abandonment, at 22 months of age, Tammy was placed in a foster home. She was withdrawn and her only display of emotion was to laugh when someone was hurt. She was clumsy, could not talk or use gestures to communicate, had no problem-solving skills, and could not do any pretend play. The foster mother, guided by an infant mental health therapist, pursued a variety of services, including occupational and physical therapy, speech and language therapy, and developmental play therapy. In time, the foster mother "fell in love" with Tammy, and Tammy began to recover and thrive.

After Tammy had been in her care for 10 months, the foster mother began the process of adopting Tammy. At this point, Tammy's biological mother reentered her life.

at a glance

The juvenile court system has undergone tremendous changes over the past century, but much still needs to change in order to fully meet the complex needs of very young children. Professionals need to consider the emotional needs of infants and toddlers, and be willing to step outside the bounds of their own discipline to develop a deeper understanding of how to best serve children through the courts.

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Tammy's mother was in a drug rehabilitation center and requested activation of the reunification process. The court approved reunification visits at the foster–adoption agency, with a social worker present to monitor the visits.

The foster mother feared she would lose her chance to adopt Tammy. During her biological mother's first visit, Tammy was disoriented, clung to her foster mother, and intermittently walked toward her biological mother, who was crying and reaching for her with outstretched arms. When Tammy rejected the embrace, her biological mother became further distressed. By the end of the visit, eyes glazed, Tammy walked in a daze. She then collapsed in the car and immediately fell asleep. Tammy's behavior prompted the foster mother to seek guidance from an infant mental health specialist.

Immediately after the first visit with her mother, Tammy's experienced a sharp decrease in her appetite, became aggressive with the family cat, and bit her foster mother. She began to have rages, which included turning over furniture, spitting on and hitting the foster mother, and screaming at the top of her lungs. During subsequent visits, Tammy exhibited the following symptoms: calling her biological mother "the booboo woman" and making hissing sounds that were identified as sounds of fear; vomiting in the therapist's office when asked about "the booboo woman"; severely biting the foster mother; and walking around in an aimless, disoriented manner. Following one visit with her biological mother, Tammy required overnight hospitalization for a severe asthmatic attack. Soon, Tammy began waking up throughout the night, screaming and crying with inconsolable terror from nightmares she could not articulate. Her rages increased in intensity and severity toward bedtime; she refused to sleep and often tried to run out of the apartment. Overwhelmed, the foster mother considered having Tammy removed from her home.

Different Disciplines, Different Roles, Different Biases

A lawyer, a judge, and a child development specialist may all understand Tammy in a different way and may have different goals, skills, and resources to help meet her needs. Each professional must look beyond the traditional bounds of their discipline to fully appreciate the importance of collaboration in the complex system of child welfare services.

The Role of the Child's Attorney

Lawyers for very young children in child protective proceedings are charged with advocating for what is in the child's best interests. To do this well, lawyers must recognize that every child has individual needs, and provide legal representation that reflects those unique needs and circumstances.

The Adoption and Safe Families Act (ASFA; 1997) requires courts to hold permanency hearings in cases such as Tammy's within a strict timeframe of 12 months after removal from the child's home. ASFA emphasizes the need for timely permanency planning because stability is critical

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to a child's well-being. The challenge for Tammy's lawyer is two-fold: to assess whether her mother is able to adequately care for her child; and to assess Tammy's needs to determine what would be in her best interests. Often, lawyers and social workers are simultaneously investigating whether or not the parent has been neglectful, and determining what reasonable efforts should be made to either reunite the child with the parent or pursue adoption. In this case, Tammy's attorney advocated that the court obtain a comprehensive assessment of Tammy's needs before making a final determination on reunification. In most courts, where infant mental health expertise is limited, the attorney would need to request an outside evaluation by an infant mental health expert. Tammy's lawyer wanted an assessment by a specialist who understands post-traumatic stress disorders in very young children.

Tammy's lawyer had to work with both the child's therapist and the social worker assigned to the case from Department of Child and Protective Services to help determine Tammy's best interests. He organized a meeting with all parties involved to identify responsibilities and establish clearer communication about the issues. Sometimes professionals from outside the legal system can help to forge an out-of-court settlement (e.g., by facilitating family group decision making or mediation) that more effectively addresses the needs and rights of all parties.

Although written material on child development can help an attorney, a consultation with a professional who

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has specific expertise with young children is more useful. The attorney may want to explore with experts a nontraditional alternative, such as a shared parenting model, which is common in other cultures. In this situation, the biological parent and other caring adults, usually extended family, collaboratively raise the children, providing an extended network of emotional support. The child's attorney must carefully consider all the options that are available to support the reunification of the child and parent before deciding to terminate parental rights.

The child's lawyer should also learn as much as possible about the biological mother by collaborating with her attorney. If the child's attorney values the parent as an important informational source regarding his or her child, it is likely to lessen the adversarial nature of the proceedings and can potentially engage everyone involved to craft the best resolution for a young child.

The Role of an Infant Mental Health Specialist

Infant mental health specialists are relatively new to the broader field of mental health. They assess and treat very young children by focusing on the relationships between children and their significant caregivers, rather than seeing only the mother or child on an individual basis. Many court systems and child welfare agencies may be unaware of the infant mental health specialty. Practitioners of this specialty should be distinguished from psychologists, psychiatrists, and other licensed professionals designated as mental health experts or forensic specialists (see sidebar for on-line resources for information about infant mental health training programs) because of their specific expertise in working with very young children and their families.

ONLINE RESOURCES

www.futureunlimited.org Go to the Reference Library section for downloadable information regarding infant mental health and dependency court.

www.Miamidcip.org Go to the Resource Library section for downloadable information regarding maltreated children and dependency court.

www.zerotothree.org/imh Click on "resources" and then "training" for a listing of mental health training sites across the country.

www.Miamisafestart.org Go to this site to see how specific protocols are enforced in one Miami courtroom to screen for biological parents who show the capacity for making use of intervention and therapeutic dyadic reunification services.

www.ahomewithin.org Go to this site to view a national organization of licensed, very experienced private practice clinicians who offer long-term, weekly, *pro bono* psychotherapy to children and youth in foster care. The goal is to have such dedicated services organized within 50 major cities across the country.

www.nycourts.gov/ip/justiceforchildren Go to this site to learn about the Babies Can't Wait project, an innovation to enhance the prospects for healthy development and permanency of infants in foster care developed by the Permanent Judicial Commission on Children chaired by New York's Chief Judge Kaye.

Contact Dorothy Henderson at dhenderson@jbfcs.org to find out about training for raising awareness in the judiciary and child welfare systems about the importance of early relationship development and how separations, loss, and multiple placements negatively impact the lives of young children in New York City.

Contact Connie Lillas at infantmentalhealth@earthlink.net to find out about interdisciplinary training across systems of care (Department of Mental Health, Department of Child and Protective Services, Regional Centers, etc.) and across disciplines for foster care training of professionals in Los Angeles County.

The infant mental health specialist involved in Tammy's case used a number of guiding principles (see box below) to understand Tammy's behavior and needs. Using these principles, the infant mental health specialist interpreted Tammy's behavior with her foster parent and biological mother in the following manner:

- Over the last 10 months, Tammy experienced a remarkable recovery while in the care of her foster mother. Tammy made a significant shift in nonverbal and bodily changes, such as establishing eye contact, smiling, babbling and talking, developing coordinated motor skills, and showing regularity in her eating, elimination, and sleeping patterns. The infant mental health specialist viewed her ability to engage with others and self-regulate as signs that Tammy felt safe in the care of her foster mother.
- Tammy demonstrated significant distress during and after visits with her biological mother. Sleeping and eating disruptions, as well as more severe disruptions such as throwing up, defecating, or urinating, are common signs of distress. These behaviors usually indicate an intense source of real or perceived threat to the child. Moreover, Tammy's behavior appeared to deteriorate with repeated visits with her biological mother, with increased intensity in Tammy's anger, anxiety, and aggressive behavior.
- When infants and very young children are left in chronic states of distress, threat, or neglect, their ability to grow and develop is compromised across all domains—social, sensory, motor, affective, speech and language, and cognitive. Tammy arrived at her foster home with significant delays in most areas; however, she began to thrive with early intervention and an engaging caregiver. Given the severity of Tammy's stress signals with her biological mother, reunification of the pair would likely keep Tammy in chronic states of distress, undermining her development and replicating her previous developmental delays. The infant mental health therapist recommended the court at least temporarily halt visits with her biological mother until further evaluation of the situation.
- Falling in love with her foster mother has given Tammy the knowledge of what it is like to be cared by and to care for others. In turn, this security has given her the motivation to explore the world and master new skills. The infant mental health specialist advocated for the foster mother to receive additional support to help her cope with Tammy's challenging behavior so that Tammy did not risk another significant loss by being removed from this foster home.

The Role of the Judge

Historically, the judge hearing a child abuse case in a juvenile court had the responsibility to determine the facts of the case, to ensure the child's protection, and to ensure that the parent's rights were respected. The judge's role has become increasingly more complex as advances in the science of early childhood development have created a greater understanding of the needs of very young children.

Beginning in the early 1970s, juvenile court judges had to consider whether the child should be placed in foster care or remain at home under agency supervision, and ensure that the child was placed in a legally permanent and stable home. At that time, many children drifted through foster care with little attention paid to their long-term placement. This changed with the passage of the Adoption Assistance and Child Welfare Act (1980), when states began to pass measures supporting the concept of permanency planning. States were required to make concerted efforts to achieve permanent homes for foster children. However, the emphasis was on family reunification, and these family-focused plans were not as successful as had

Guiding Principles for Understanding Infant Well-Being

Principle #1: The infant's first and only "language" for communication begins with nonverbal signs and symptoms; therefore, infant stress responses as well as conditions of well-being and safety are communicated and observable through bodily signals.

Principle #2: Signs of distress and threat may be expressed with subtle, moderate, or severe forms of communication. The nervous system organizes stress signals in one or more of three affective avenues, along a hyperaroused to hypoaroused continuum, expressed as anger, anxiety, and withdrawal (Als, 1982; Barnard, 1999; Lawhon, 1986; Lillas, 2000).

Principle #3: A common myth is that infants and young children have "no memory" because they cannot speak. It is now commonly accepted that infants and young children may have the capacity to retain implicit and preverbal memories (Gaensbauer, 2004; Schore, 1994; Siegel, 1999.)

Principle #4: Stable self-regulation is the foundation for all socio-emotional relationships as well as for the capacity to learn.

Principle #5: Emotional care within a stable, long-term, and continuous relationship is a fundamental need of children.

been hoped. Consequently, the ASFA (1997) recognized that child safety and health are paramount and directed states to stop pursuing reunification of the family at all costs. Now, part of the judge's role is to achieve a timely, safe, permanent home for children; to address their special needs while in foster care; and to provide procedural protections for all parties.

Under ASFA, parents have just 12 months to set and accomplish the goals in their case plan and have the child returned; if they fail to do so, the state must move toward terminating parental rights. The judge is required to consider all of these matters and must oversee the progress of the case to make sure that all parties are participating faithfully in a plan that has been approved by the court. Advances in developmental science and infant mental health practice can help judges become familiar with and understand young children's developmental needs. Judges also must be attuned and sensitive to the nonverbal language of the interactions between child and parent (or guardian or caretaker) during proceedings because it may help the judge to formulate an appropriate decision and monitor the family's case plan.

Today's lawyers and judges must not only use their legal expertise to settle cases, but must also be knowledgeable about the many factors that influence children's cognitive, social, and emotional development.

The judge is faced with many conflicting issues. First and foremost is identifying the best interests of the child. The answer clearly varies depending on the individual child, and will be influenced by factors such as the number of children in the household; issues of paternity; whether the child was neglected, abandoned, or abused; and drug addiction, domestic violence, or criminal behavior in the biological parent's household. The judge must also consider siblings, relatives, placement in foster care, the child's age, whether the child has disabilities, and the concerns of the child's and parent's attorneys.

In Tammy's case, the judge listened to the caseworker about the biological parent's well-being and progress; listened to the biological parent's attorney, who provided a favorable appraisal of the biological parent; and then heard the foster mother explain that the biological mother's visits were harming Tammy's development, that Tammy was seeing an infant mental health specialist for counseling, and that she herself was extremely upset and overwhelmed. Next, the judge listened to the child's advocate, the attorney for the Department of Children and Families, and Tammy's therapists.

Because of these differing perspectives and opinions, the judge sought an independent evaluation of the situation by a court-appointed infant mental health specialist who observed the biological mother's visits with the child. At the next hearing, the judge considered the additional information and felt that Tammy was in a very serious and potentially dangerous situation. Abandoned twice by her mother, Tammy had regressed to the point that her physical and emotional well-being were harmed. The likelihood of the biological mother becoming an adequate parent was remote. The law demands that judges hold Tammy's best interests as paramount and in this case she terminated the mother's visitations and ordered that Tammy immediately receive all services necessary to stabilize her in the care of her foster parents. Based upon the mother's long history of abuse and abandonment, the judge ordered the department to begin to terminate her parental rights, ultimately reducing any further trauma to Tammy.

Points of Convergence and Divergence

The lawyer, judge, and infant mental health specialist in Tammy's case are all working to help identify and meet her needs. However, the different responsibilities and limitations of each discipline can create conflict. For example, divergence often occurs between young children's fundamental needs and the structure of the legal system. A child's fundamental needs for love and safety can conflict with: (1) the legal rights of biological parents, (2) court time frames, (3) the length of time it may take a biological parent to secure sobriety and emotional stability, (4) the availability of services to treat children together with either biological or foster parents, (5) a child's stress responses stemming from memories associated with the biological parent's abuse or neglect, and (6) the capacity of foster care to offer open adoptions.

The longer the infant or child has been cared for in a safe, nurturing relationship, the more compelling the reasons would have to be to remove him or her from a positive environment (whoever is the caregiver) to return to another caregiver; to do so would undermine the infant's rights to security, self-esteem, and the capacity for intimacy. From this perspective, "the psychological parent is the real parent" (Brazelton & Greenspan, 2000, p. 32) and the most nurturing relationship should take priority. Although this position can be supported under ASFA, it radically departs from how the legal system currently makes placement decisions. Traditionally, the biological parent's rights to the return of the child have taken priority and placement decisions have favored returning the child to their biological parents. Unfortunately, infant mental health issues, such as attachment and bonding, self-regulation, or other developmental milestones are often not taken into consideration by the court. Another area of contention in the juvenile court system is the issue of open adoptions. An open adoption provides an opportunity for both the adoptive and the biological parents to be involved in the child's life. The arrangement must be considered in light of the specifics of

each case and may not be appropriate, for example, if it causes distress for the child. In Tammy's case, where she was clearly confused and upset by the forced reunions with her mother, an open adoption would not be recommended. In other cases, it might be beneficial for a child to maintain a relationship with a biological parent who can no longer be the child's legal guardian but who may continue to be a part of that child's life. This type of arrangement would require careful planning and monitoring to ensure that the child was able to develop healthy and appropriate attachments to all of the significant adults in his life.

Another area where infant mental health specialists and judicial practices may differ is in the amount of support made available to foster parents once the court has set the goal of reunification. Courts may be reluctant to provide additional services to foster parents because of the economic impact on the state. However, if reunification with the birth mother is the case plan, then the foster parents should be supported so that they can maintain their emotional bond with the child in a long term, open-ended relationship. Yet, it is common for foster parents to be advised to remain neutral in their approach to their foster child. This is problematic because it is not in the best interests of the infant, whose future emotional capacities are dependent upon having a close, loving relationship with a primary caregiver. Even with ASFA's shortened timeframe for permanency planning, 12 months is too long for an infant to wait for a loving, stable home. Second, for the infant to be deeply loved, the foster parents must participate in this "falling in love" process rather then withhold their emotions. Even when "advised" by practitioners to stay neutral, many foster parents cannot always remain so. Without support for both foster and biological parents during the reunification process, it is easy for rivalries, envy, and destructive urges to flare, throwing the child into the middle. Furthermore, therapeutic services should be provided to help the biological parent and child overcome the trauma from their past relationship as they engage in a reunification process. However, depending on the degree of rupture between the biological parent and child, this type of intervention is not always available or adequate.

These kinds of supportive interventions for foster families, biological parents, and traumatized children represent a change in the way the judicial system handles cases of child maltreatment. Although such a shift presents a complex challenge for the court, the benefits are significant and long-lasting. Intervention now may even prevent abused children from suffering the severe emotional and behavioral problems later in life that have been associated with child abuse. For example, Tammy's escalated behaviors may have resulted in poor impulse control, low frustration tolerance, and decreased empathy—all hallmarks of significant emotional disturbance often exhibited by maltreated and disturbed children (Lederman, Osofsky, & Katz, 2001; Malik, Lederman, Crowson, & Osofsky, 2002). Without stopping the visitations with her biological mother and re-establishing safety within the foster care home, Tammy was on her way to either a forced traumatic reunification or to become a lost child in the foster care circuit through a potential series of forced separations.

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Conclusions and Implications for Practice and Policy

We need to consider both short and long term solutions to the current challenges in the child welfare system. The following are recommendations for best practice and policy changes:

1. All children entering the foster-care system must receive an individualized and thorough developmental assessment across physical, emotional, speech and language, sensory, motor, and cognitive systems, optimally conducted with an interdisciplinary team approach.
2. The level of care a foster child will need should match the emotional capacity of the foster parent to accompany the child to services, as well as actively participate in the service delivery by providing high quality emotional care.
3. Selection of foster parents should include evaluating applicants' capacity for providing emotional nurturance to a child who will probably experience one or more stress responses, making it difficult to fall in love with the child without special professional help.
4. Emotional milestones can be used to assess the well-being of infants, toddlers, and adults.
5 Safety, threat, permanency, and well-being are interrelated conditions that cannot be isolated into different domains.
6. A shift in priority from custodial care to emotional care requires that children's rights be extended to include their right to, and fundamental need for, a primary, stable, nurturing caregiver in their life for the long term.
7. Coordination, cooperation, and collaboration among all systems of care that interface with infants and toddlers from birth to 5 years old are needed so that common understanding and principles are developed over time.
8. Mandatory training needs to be provided to all levels of judicial, legal, social work, and service providers within the dependency system.

Exactly how we can integrate these principles and approaches into our legal system is worth further exploration. We need to think "outside of the box" and question whether the current laws are sufficient to address the needs of vulnerable young children and their families. Our ability to adequately meet Tammy's needs depends on our ability to change the legal process by incorporating new knowledge about early childhood development. Unless we take the time to develop this deeper understanding, our assessments of what is best for our youngest clients will tend to remain vulnerable to our own biases—about children's and parent's rights, about what makes a "family," or about who can parent—and we fail, with potentially devastating consequences, in our mission to understand the best interests of the child.

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