



FOURTH ANNUAL SYMPOSIUM ON FAIRNESS & EQUITY ISSUES IN CHILD WELFARE TRAINING

Debate:

Is Justice Blind?

Honorable Marlene Hertoghe and James Bell

Summary of Debate

April 27, 2006

Referee Hertoghe and James Bell are both committed and passionate advocates for youth and families in the juvenile courts. The goal of this debate was to examine the issue of fairness within the judicial system and specifically within the juvenile courts.

Referee Marlene Hertoghe, Sacramento County Juvenile Dependency Court

- When we are talking about justice, it is important to remember how laws are made and the role of the legislative branch of government in solving problems. It is the responsibility of the people to educate their representatives when there is something wrong with the system, so that our legislative representatives can promote legislation.
- Our government uses a system of checks and balances. Each branch of government interplays with the other two. Individual constituents, through their representatives, are also responsible for laws that are made.
- There are safeguards within the Welfare and Institutions Code and in the procedures of the judicial system to keep justice “blind.”
 - The dependency system is not here to serve children or parents, but to serve families who are in crisis.
 - Keeping the purpose, definitions and intentions of the Welfare and Institutions Code in mind can help judicial officers interpret specific laws. Within dependency law, the legislature has provided even clearer direction about the purpose and duties of dependency courts to protect children from abuse and neglect, not to punish parents. Punishing parents for wrongful acts is left to the criminal courts.
 - Within this system, although there are some areas of subjectivity, such as in varying interpretations of what constitutes a substantiated referral, the judicial system does not control which cases are heard in the dependency courtroom.

- It is important to remember the difference between concerns and evidence. In the judicial system and dependency courts, concerns need to be addressed as factors that elevate the level of risk for a child.
- During the assessment of the jurisdictional allegation, it is either abuse or neglect or it is not; poverty and culture should not come into account. However, at disposition, all of those factors must be considered in order to treat the family as a whole and not use a cookie cutter approach.
- The Welfare and Institutions Code provides clear instructions to return children to their families unless the proper criteria are not met.
- The rules of court mandate that dependency lawyers receive specialized training and have an ability to demonstrate understanding that the purpose of the dependency system is identifying issues to protect the child and the family.
- Due process rights and parents' rights to be informed of the allegations are upheld in the dependency system.

James Bell, Executive Director, W. Haywood Burns Institute

- Regardless of what the Welfare and Institutions Code says, the juvenile justice system is irrational and unaccountable. Short-sighted legislation, neo-segregationist policies and race-based practices are hiding under the guise of neutrality.
 - In the juvenile justice system, there is little correlation between who is locked up and who is dangerous.
 - Most youth who are incarcerated have committed technical offenses and other misdemeanors.
 - Only 15% of youth in detention are incarcerated for a violent offense.
- This is a system that rarely distinguishes between high need and high risk.
 - Youth are detained because they have high needs, not because they pose a risk to society or themselves.
- The large institutional model we have in California in juvenile justice is a failure.
 - It costs \$73,900 to incarcerate a youth at the Youth Authority while the cost of education is only \$6,765.
 - The recidivism rate is 75%. Yet, this system has thrived on bad results.

- Youth of color are detained in numbers that cannot be accounted for by crime alone and that increase at every decision point.
 - Two-thirds of youth detained in California are youth of color.
 - For similar offenses, a youth of color is more likely to be detained, charged, and transferred to adult court.
 - We often set youth up for failure by their conditions of probation and fail to recognize the many ways in which we do so.
- The work of the Burns Institute engages systems to reduce disparities in juvenile justice by strategically bringing stakeholders together, including youth and community members, in a cooperative process that is driven by data.
- This process acknowledges that not everyone in the collaborative has equal power and that some stakeholders have greater authority and power because they can deprive others of their liberty.
- Systems are challenged to self-examine themselves to analyze at what decision points youth of color are getting “Velcro-ed” in and White youth are getting “Teflon-ed” out. The Burns Institute process consists of the following steps:
 - The system is mapped from arrest to adjudication. The system is extremely confusing, even for people within the system, much less for youth and their families.
 - The disparities at every decision point are measured.
 - Success is defined. Is the goal to reduce the overall numbers or the percentage of youth of color in the juvenile justice system?
 - A community profile is completed to gather data about the communities that are contributing the most to the juvenile hall population, including a physical map of the community. The profile also identifies the services and resources available for young people in that geographical area.
 - Promote race neutrality in the detention process by using a risk assessment instrument.