
CHAPTER 1

Introducing the Broken Judicial Ladder

IN *CLIMBING THE Broken Judicial Ladder*, we will be looking in detail at what happened when I shoved the perspective and orders of the Los Angeles Juvenile Dependency Court into a large and prejudicially weighted backpack and attempted to climb the California judicial ladder. This climb would take me through the California Court of Appeal (Second Appellate District) to the rarefied atmosphere of the California Supreme Court itself, the largest and busiest court of the fifty states and second in importance only to the United States Supreme Court.

Part I. Marching to the California Court of Appeal and California Supreme Court

In part I, I will be dealing with my experiences before the California Court of Appeal (Second Appellate District). I will start with a fictionalized version of the court's unpublished opinion, *In re Cordelia C.*, that does *not* affirm the decisions of the lower court with respect to ending reunification services and issuing a restraining order.

I will then be building my arguments around the strengths, weaknesses, and contradictions of the real briefs that were submitted to the upper court by the attorneys for both sides. The California judicial system does *not* allow for any new facts to be submitted on appeal, but it *does* allow for the validation or rebuttal by the appellate justices of those that have already been submitted and argued in the lower trial court. The upper court will also review the legal processes that were

involved in the presiding judicial officer reaching his or her findings and the merit of the orders following.

Although I was always more than aware that I was not a lawyer, as a *parent*, I did believe that I owed it to Cordelia to challenge the orders and prejudicial basis of Commissioner No's findings and to make use of every available resource and pathway to do so. I did not have to be a lawyer to be Cordelia's advocate or my own. When I considered that the professional lawyers had been so remiss in representing me, what did I really have to lose by deciding to appeal everything promulgated by Commissioner No's hostile court with every fact and argument that I could muster?

Yet as Mallory had once viewed climbing Mount Everest, I would begin my journey up the judicial ladder in some measure "because it was there." I had hope of eventual success but not the expectation. As we shall see, my appellate attorney felt much the same, although his hopes were dimmer than my own and his expectations of failure that much stronger. My Asperger syndrome also sat heavily on my shoulder and repeated urgings hard to ignore. Aspies dwell forcefully on the truth and usually land on the most socially injudicious or compulsive ways of advocating or advancing it. We saw how this all played out in *Pride and Legal Prejudice*, and we shall see more of this dynamic in the chapters ahead dealing with both the California Court of Appeal (Second Appellate District) and the California Supreme Court.

Part II. Reforming the Los Angeles and California Child-Welfare Legal Complex

In further developing my theme of "lessons learned," we will be looking in part II at my suggestions for how best to make the experience of being involved in a dependency case fairer for parents and more conducive to identifying the best interests of detained children. The idea of *fairer* should include consideration of how dependency cases are initiated through DCFS petitions to dependency courts and a greater

accountability of the social workers and presiding judicial officers assigned to manage subsequent proceedings.

In this part, I will also be looking at how to help the DCFS social workers to “see better,” how to make the Children’s Law Center of Los Angeles appear less hostile and more collaborative, and how best to ensure that the public or privately hired attorneys for parents advocate better on behalf of their beleaguered clients. In the interests of developing an equitable approach, I will *not* be ignoring the fact that parents involved in dependency cases will need to be aware of just how much restraint, effort, and motivation are truly needed if their children are to return home. Although anxiety and verbal frustration in dependency court are totally understandable feelings, they do not convey the responsibility and remorse that the court will want to hear from parents if reunification is to receive the validation that it needs to be successful. Many parents will not easily understand this.

I shall also be arguing that visiting one’s child on an inconsistent basis or sending easy-bake ovens (for example) as surrogates for the in-person healing of the parent-child bond are ultimately harmful to the best interests of one’s child. They are also certain to set the caseworker in opposition to any meaningful efforts to reunify the family. Remember that social workers write semiliterate notes on all parent-child contact, and I suggested in *Pride and Legal Prejudice* how the very haste and illiteracy of these urgent notes can seem to inform against parents as much as the unreadable content does when submitted in wider reports to the court. The “deficit mind-set,” as identified in *A Culture of Fear* by Julian Dominguez and Melinda Murphy, is triggered in part by the mistakes that parents make in this area.⁹ As we shall see later, though, this same deficit mind-set can also be misapplied by social workers looking to see the worst of the families that they supervise. *A Culture of Fear* is based on the two writers’ experiences working *with* the DCFS in Los Angeles. I am basing mine on my experiences of *not* being able

⁹ Julian J. Dominguez and Melinda Murphy, *A Culture of Fear: An Inside Look at Los Angeles County’s Department of Children & Family Services*, ed. Lee Barnathan (Houston, TX: Strategic Book Publishing and Rights, 2014).

to work with the DCFS in Los Angeles. I am adding my voice to their conclusions and sadly not subtracting anything from them.

Parents involved in dependency cases should *not* take away from my own failure to achieve greater visitation that similar efforts in their own circumstances will be just as much of a waste of time. In my own situation, many variables clashed in dysfunctional ways that could not be reconciled. Each dependency case will have its own unique set of variables, and it should be up to the attorney of each parent involved to make these variables work constructively for their client.

As I have made clear throughout my trilogy, parents should be aware that in dependency proceedings, minor's counsel and DCFS counsel will be striving to establish and work with a standard template of an "abused" child and an "abusive" parent. Both will also be looking to provide an institutionalized and statutory response to the concurrent or divergent requests for resolution by both parent and child. The latter will typically include reunification services working alongside a concurrent planning process for an eventual adoptive or other long-term care permanent solution.

I see little reason to think that my own case was unique in any of this, but I learned that my being *willing* to visit my daughter on a consistent basis was insufficient to ensure that such visitation *would* either take place or that it would have a forward momentum if it did. This willingness ended up being both compelling in its forcefulness and sadly negative in its effect. As we address the need to reform dependency proceedings in Los Angeles, we will need to ask how such a positive quality can be turned into forward momentum in dependency proceedings. This does not involve the use of tricks but recognition, and it still rankles why the court was so unwilling to work with me in my daughter's case. I believe that such willingness and motivation can only work when there is a concurrent effort by social workers to see better without the blindfold of the "deficit mind-set" thinking that Dominguez and Murphy felt to be pervasive throughout the DCFS in Los Angeles County.

Part III. An Alternate History

After excoriating so many of those involved in protecting Cordelia or myself, in part III, I will be asking what I might have done differently *if* I had been one of the many legal, therapeutic, and other professionals with whom we interacted over the course of Cordelia's adoption journey in Seattle and then her detention in Los Angeles.

Part IV. The Child-Welfare Legal Complex in the United States

When I first started to write *Climbing the Broken Judicial Ladder*, I believed, along with everyone else, that Commissioner No's three-year restraining order would be the final death knell for any chance of eventually restoring my relationship with my daughter. It seemed impossible to look forward beyond those three years and be able to see where something positive could emerge. The chances of very significant progress and shoots of recovery *ever* appearing to the extent that both now have would have seemed as unlikely as my chances of being chosen to be the first human to step foot on Mars.

In part IV, I hope to capture some of my ideas about the very complex area of raising children in the United States today and even more about the child-welfare policies designed to protect them. The legal framework and expectations under which they are conducted need to be understood if my work is to be more than a clinical tale, case study, and memoir of a traumatic personal experience. I shall be looking chiefly at the effect of such policies within the borders of Los Angeles County. It is the largest child-welfare jurisdiction in the country, which hopefully makes up for the fact that outside Washington state, I have no direct experience of how child detention policies are conducted in the other forty-eight states. My guess, though, is that we would be able to find similar situations of overreach, ignored abuse, and mismanagement. Newspapers and other social media are full of horror stories of abused children and of social workers negligent in their oversight. However, as I endeavor to explain, it is just as easy to get situations of possible child

abuse wrong from taking an overly zealous and interventionist approach as it is from overlooking some of the more obvious signs.

Child welfare and both our collective and legal response as a society to child abuse have evolved over the years. At one time, children who lost their parents were sent away on orphan trains and with the expectation that performing unpaid labor in exchange for food and shelter would be enough to assuage their grief. Unethical adoptive practices followed in some parts of the country as some accepted overly draconian responses to the challenges posed by at-risk children remaining in poor families.¹⁰ We shall be seeing how Georgia Tann as executive secretary of the Memphis branch of the Tennessee Children's Home Society from 1924 until her death in 1950 came to shape devastating child-welfare and adoption policies across the United States. Although her philosophy of removing children from families steeped in poverty has echoes in child-welfare policies to this day, it also has many rebuttals as well.¹¹ More is known of the rich love that can exist in poor families.

Mothers and some fathers are now reduced to being eligible members of a group of people known as "primary caregivers." Such a group has broadened over the years to now include licensed "interferers" in the

¹⁰ Readers interested in the evolution of child-removal policies and adoptions over the years may like to consult the following illuminating resources:

Helen Grigsby Doss, *The Family Nobody Wanted*, with a new introduction by Mary Battenfeld and a new epilogue by the author (Boston, MA: Northeastern University Press, 2001).

Christina Baker Kline, *Orphan Train: A Novel* (New York, NY: HarperCollins, 2012).

Barbara Bisantz Raymond, *The Baby Thief: The True Story of the Woman Who Sold over Five Thousand Neglected, Abused and Stolen Babies in the 1950s*, UK ed. (first published in hardback in 2009; London: John Blake Publishing, 2013).

Jeannette Walls, *The Glass Castle: A Memoir*, Scribner trade paperback ed. (New York, NY: Scribner, 2005; repr., 2017).

—, *The Silver Star: A Novel*, (New York, NY: Scribner, 2013).

Lisa Wingate, *Before We Were Yours: A Novel* (New York, NY: Ballantine Books, 2017).

¹¹ In addition to *The Baby Thief* mentioned above, we also have the following work of fiction:

Lisa Wingate, *Before We Were Yours: A Novel* (New York, NY: Ballantine Books, 2017).

former sanctity of the parent-child bond. Under the umbrella of being mandatory reporters, social workers, foster mothers, adoptive parents, and even teachers, doctors, and therapists have been able to assume the role of quasi parents or at least be able to influence the direction of any parenting needed in any given family situation. The current thinking is that anyone performing maternal or nurturing functions can be described as a primary caregiver. More on these ideas later, of course, but as parenting has evolved along with our response to any identifiable shortcomings, it has not been possible to identify consistently successful practices and ways to intervene, assess errors, or coalesce around viable solutions in every circumstance.

Meanwhile, children have been left unaccountably in abusive homes or “stolen” without rhyme or reason ever since the institutions to which we have delegated oversight assumed the responsibility of judging parenting mistakes based on cursory or hasty interventions. Child-welfare policies are also based on two presumptions that children are easily abused with lasting consequences and that a myriad of other professionals could raise them better. The lack of enough resources means that the latter becomes an easier and cheaper approach than providing wraparound and costly family services that may be needed for years. The transferring of parenting responsibilities to those presumed to be less of a financial burden over the long term is an attractive incentive, but it is also potentially cruel to parents and harmful to children.

Sadly, it is also likely that the child-welfare legal complex will continue to make rash and precipitate judgments in some cases—Cordelia’s for example—and ignore others far worthier of intervention. I am not saying this as a rationalization of my own behavior as a parent but because I firmly believe that the presenting problems of my daughter’s case could have been managed by family-focused therapists far removed from the drama and trauma of a dependency case that ultimately resolved nothing and which left my family even more divided.

Inevitably, the raising of children within family units run by biological or adoptive parents will forever be under scrutiny and suspicion. Despite conflicting and shifting standards of morality, civilized societies will always demand something perfect in the areas

of parenting and child-welfare response. However, because of these shifting standards as to what constitutes good parenting and when child-welfare agencies should intervene, it seems just as likely that those to whom we have assigned the reasonable role of acting as mandatory reporters in the sphere of child welfare—teachers, foster parents, social workers, doctors, religious figures, and lawyers—will forever be under scrutiny and suspicion. Such scrutiny and suspicion will emanate from a public primed by the media to see only an underwhelming response in child-welfare policies and from unhappy parents fearful of any and all errors getting reported without reason. We need to recognize that we have seemingly reached this point because the two primary ways of thinking about child welfare and safety are always colliding and resolving themselves so unsatisfactorily. On the one side, we have parents who think they should have untrammelled sway over the raising of their children. On the other, we have social workers, therapists, institutions, and dependency courts who think that *anyone* can raise children given the right levels of support and resources. This sets up an unresolvable clash since there is little room for compromise and even less for trust.

We should be concerned about the worth and problems associated with both extremes, and Cordelia's story, I think, illustrates how I may have gone too far in terms of resenting what I saw as the DCFS's precipitous and ill-judged enthusiasm for solutions that could have possibly worked if I had stepped away and not interfered. That said, I believed strongly in my responsibilities as Cordelia's forever dad and I never wavered from my belief that I should have been allowed to reunify my daughter. Given that I made the parenting mistakes that I did and that my daughter's high-school years were disastrously mismanaged by the DCFS and the court, I am also reluctantly prepared to listen to the arguments of those who feel that Cordelia could have been left in her family of origin with better resources deployed to help her and her birth mother, Cindy J. A further argument could have coalesced around the value of a residential treatment facility with attached school and therapeutic facilities.

Obviously, I have *not* accepted the long-term value of any alternative that would have left me bereft of my daughter for any prolonged period.