



An End to “Insight”; Centering the lived experience of Parents with Intellectual Disabilities in the Courtroom

AMY ARMSTRONG (SHE/HER) & GABRIELA ORNELAS (ANY PRONOUNS)

NEIGHBORHOOD DEFENDER SERVICE OF HARLEM FAMILY DEFENSE PRACTICE

Grounding & Intros

- Questions encouraged at every stage
- Our experience, cases, and information is all mostly centered on Family Defense in New York City
- Not putting ourselves out as experts
- Feedback encouraged



Agenda

- What is insight?
- How do Jurists Apply it?
- Why is insight, as applied, particularly problematic for parents with intellectual disabilities?
- How do we move beyond insight?



Problem

The family policing system disproportionately terminates the rights of parents with intellectual disabilities, causing permanent family separation and lifelong trauma.

For parents with intellectual disabilities a common barrier to reunification is the court's expectation that parents demonstrate "insight" through in court testimony or statements to a case planner, thereby performing contrition through a narrow set of statements and behaviors.

In reality, many parents with intellectual disabilities do not express themselves in that manner.

The result is prolonged family separation, not because of any actual safety issues but rather because courts are ill equipped to recognize progress.

What is "Insight"?

How are Jurists defining insight?

- An admission to the child welfare worker's allegations as written
- An Acknowledgement of what is socially acceptable behavior
- An admission that they are not capable of parenting without state intervention
- A promise that they will garner enough support and/or surveillance to prevent any further child welfare involvement

An Admission to the Allegations as Written in the Petition.

- Why is this a problem for Parents with intellectual disabilities?
 - History of Family Separation
 - Testimony as Capacity
 - Access to Court
 - Memory/Length of time until a trial
 - Ableism



The State's ability to assemble its case almost inevitably dwarfs the parents' ability to mount a defense. No predetermined limits restrict the sums an agency may spend in prosecuting a given termination proceeding. The State's attorney usually will be expert on the issues contested and the procedures employed at the factfinding hearing, and enjoys full access to all public records concerning the family. The State may call on experts in family relations, psychology, and medicine to bolster its case. Furthermore, the primary witnesses at the hearing will be the agency's own professional caseworkers whom the family situation and to testify against the parents. Indeed, because the child is already in agency custody, the State even has the power to shape the historical events that form the basis for termination.”
Santosky v. Kramer, 455 U.S. 745 (1982).

Acknowledgement of what is "socially acceptable" behavior

Why is this a Problem for Parents with Intellectual Disabilities?

- ABLEISM and its intersections
 - Judge
 - Attorneys
 - Child Welfare Agency
- Parents with IDD held to a higher standard
- Parents with IDD have to fundamentally have to agree that their disability is a deficit
- Parents with IDD must agree that the state knows best and conform to patronizing relationship between state and parent

A parent's conformity to the idealized values prized by white middle-class society will also result in faster reunification by the court, a more favorable settlement from family policing attorneys, and less time under the surveillance of the courts and family policing agencies. The refusal to conform, however, will result in more punitive measures by both the family policing agency and the courts, and a greater likelihood of a termination of parental rights. A parent who is deferential to the agency and the court – **who is “polite,” easy to work with, and who expresses “insight” in terms that they admit full wrongdoing** – is more likely to have a swift and favorable resolution. In contrast, a parent who expresses emotions about the separation of their families, who questions unreasonable directives from the agency and court, and who raises concerns about the care their child receives in the foster system, will often be viewed as “angry,” “difficult,” “non-compliant,” and “lacking insight,” which will delay reunification and progress in family court.

- Written Testimony of the Article 10 Family Defense Organizations in New York City: The Bronx Defenders, Brooklyn Defender Services, Center for Family Representation, and Neighborhood Defender Service of Harlem Presented to The New York Advisory Committee to the U.S. Commission on Civil Rights. August 21, 2023. [Link](#).

An admission that parents with IDD are not capable of parenting without state intervention

What is wrong with requiring state interventions in cases where the parent has IDD?

- Informal Community Supports not Recognized & systemically pushed to the margins
- State *creates* barriers, and withholds support for parents with IDD
 - Lack of parenting specific resources
 - Long waitlists
 - Cookie cutter case planning
- The amount of time it takes the state to set up services.
- Parents with IDD criticized for asking for support



"When a parent requests help or identifies a support need, caseworkers do not understand this as a signal of strength, indicating a parent's insight or self-knowledge. Instead, caseworkers and judges demand that parents prove that they can parent without assistance. This interrogation ignores the reality that all parents, of all abilities, require tremendous support in childrearing. It also ignores the systems of support that a disabled parent might already have in place."

Sarah Lorr, *Disabling Families*, 76 *Stanford Law Review* 1225, June 2024



A promise that parents with IDD will garner enough support and/or surveillance to prevent any further child welfare involvement.

Why is this a problem for parents with IDD?

- Requirements of Strict Surveillance, multiple layers of mandated reporters in the home

How do YOU see insight play out in court?

What do YOU think Judges are getting at when they ask about Insight?

What is a better measure of child safety than insight?

Strategies to reframe Insight for Parents with Intellectual Disabilities in the Court Room and Beyond

Convincing the Court that Insight not a Necessary Determination for Child Safety

- No Connection between performance of insight and child safety
 - Compare to the parole context; no data, case law, studies that demonstrate a connection.
- Court is not the expert, our clients and *their* experts are!!
 - Adaptive Parenting Assessments vs. IQ testing
- Testifying is a momentary performance, parenting is a life long journey
 - Creating the best possible conditions to testify
- Using mitigation strategies to paint a more accurate picture of our clients & their families
 - Our clients are the experts of their own disability
 - Showing *not* telling; a full intersectional, complex picture of our clients



More on Mitigation

- What is mitigation and why could it be helpful for parents with IDD?
- Case Conferencing
- Creative approaches to demonstrate safety & security in court (and beyond)
 - Videos
 - Photos
 - Body maps
 - Experts
 - & more



Court's Time is Better Served Getting Families the Support they want and need !!!

- Demonstrating growth, change and learning **requires setting up parents for success**
- Map out a new future- Remind them of an ugly past
- Create the conditions as close to family reunification as possible
- Use the Americans with Disabilities Act to
 - Advocate for more than just a cookie cutter service plan
 - Advocate for accommodations in court
 - Advocate for in home services and visitation
 - Advocate for educated case workers, taking strength based approaches
 - & SO MUCH MORE