



# Building a Resilience-Oriented Child Welfare Court System

By Robert Wyman Jr. and Kelly Warner-King

## ABSTRACT

The child welfare court system wrestles consistently with how to measure success. Preventing child deaths, ensuring child safety, enhancing child well-being, and faster permanency are some of the metrics used to assess the effectiveness of our system. This article proposes measuring child welfare courts on their principle-driven expression of values that promote the existence of resilience in families, professionals, and the system itself. It is critical to understand that trauma is not a necessary result of adversity, and the existence of protective factors can make us resilient against the triggering and onset of trauma. Child welfare court systems exist in complexity, and need to be managed for innovation and adaptability. The experience of poverty shared between families and the system is often the curse that weighs against performance, but could be the link that opens expanded capacity. The Court Improvement Training Academy at the University of Washington School of Law provides a framework of values, principles, and examples of work aimed at building resilience-oriented child welfare court systems.

**Key words:** resilience, trauma, complexity, adaptability, child welfare courts, health, protein, civility, trauma responsive, healing, generative capacity, Rethinking Foster Care.

## INTRODUCTION

Families engaged in the child welfare court system are almost exclusively indigent, suffering the weight of past trauma, and, in the best of circumstances,

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successfully transition through reunification back into near poverty – remaining susceptible to the ongoing threat of excessive adversity. Similarly, the entire child welfare system (agencies and courts, individuals and systems) is impoverished, almost universally under-resourced and burdened by past, present, and ongoing trauma. Stakeholder experience in child welfare courts is a shared experience of resource poverty, where traumatized families and professionals struggle with ill health and incivility, compounding the impact of traumatic experiences, and missing opportunities to heal and strengthen each other. At a recent foster care symposium hosted by the University of Michigan Law School Child Advocacy Law Clinic<sup>1</sup>, Marty Guggenheim, Professor of Clinical Law at New York University School of Law, suggested intentionality in the impoverished state of dependency court practice. He said, “We [professional stakeholders in the child welfare system] have been played. We are the feeble effort of our society to address poverty, and specifically parenting in poverty, so that our society can say ‘it did something,’ while never putting adequate resources and energy forth to meaningfully address the problem.” A provocative notion for sure, but one that could prove to be more opportunity than curse.

This article proposes a resilience-orientation for families, professionals, and the system, to face their shared experience of resource poverty and the ongoing likelihood of adversity. Resilience is both a mechanism for healing and the bulwark against the impact of future adversity.

What does it look like to orient our child welfare court system toward resilience? This question is better answered in terms of “How to be it?” than “What is it?”. A resilience-oriented child welfare court system is based on a set of values which produces structures and behaviors that nurture resilience. Child welfare is a complex system<sup>2</sup>, which means simple, static answers, such as so-called “best practices,” are only effective in very specific circumstances. An important feature of a resilience-oriented system is that it remains perceptive and adaptable, where leaders constantly make sense of information about its audience and its effectiveness. The leadership challenge is to build *into* the system structures and behaviors that nurture resilience. It is a system that says “Let’s do...” not “Go do...”. We know the system is oriented toward resilience when the expression of its values is understood and measurable, and the data gathered about its function is used for development and improvement.

We propose a set of values for child welfare court systems that will orient its leaders and practitioners toward resilience: **Health, Civility, Trauma Responsiveness, Healing, and Generative Capacity**. Principles for expression of these values are discussed. The values are presented as a progressive set, one building on another. However, they are both iterative and independent.

<sup>1</sup> “Rethinking Foster Care,” May 12-13, 2016.

<sup>2</sup> Glossary of Terms, “Complexity”, *Cognitive Edge.com*: “A complex system is a system composed of interconnected parts that as a whole exhibit one or more properties (behavior among the possible properties) not obvious from the properties of the individual parts.” Retrieved from: <http://cognitive-edge.com/resource/glossary/>

## WHY RESILIENCE?

### Adversity and Trauma are not the same thing

Addressing trauma should be a primary target of efforts to help families involved in the child welfare court system, and avoiding the infliction of further trauma should be a primary goal of system professionals as they work with families. The potential for trauma increases under conditions of poverty<sup>3</sup>, and child welfare work involves almost exclusively families in poverty. What is less understood, and almost entirely ignored, is the communicability of trauma, and that not all exposure to adverse experiences leads to the long-term pathology of trauma or a PTSD diagnosis.<sup>4</sup> All front-line stakeholders in the dependency court system, professionals and families alike, are connected by their susceptibility to the psychological pathology of trauma in response to adverse experiences, and by their potential to heal and be protected from that pathology by resilience.<sup>5</sup>

Understanding “trauma” and Post-Traumatic Stress Disorder (“PTSD”) is an effort that permeates the work of child welfare court professionals. This makes sense because so many of the families involved with the court have suffered significant trauma because of adversity in their lives – not only adversity connected to the specific story that brought them to the court’s attention, but also throughout their lives across many domains and in chronic patterns.<sup>6</sup> However, studying and understanding trauma - the psychological pathology that results from adverse experiences - is like starting a book in the second chapter. It is important to back up a step and understand that trauma is actually a reaction to adversity.

According to the Substance Abuse and Mental Health Services Administration (“SAMHSA”), trauma is defined through the “three E’s”: event, experience, and effect.<sup>7</sup> “Individual trauma results from an *event*, series of events, or set of circumstances that is

<sup>3</sup> Tough, Paul (2012). *How Children Succeed, Grit, Curiosity, and the Hidden Power of Character*. Mariner Books, ISBN 978-0-547-56465-4 (pp. 20-21). In a study measuring the connection between poverty, biometric indicators of stress (precedent to possible trauma), and scores on the '70s game Simon (working memory test), it was found that all three measures were connected: “. . . more time in poverty meant higher allostatic-load numbers [biometric indicators of stress] and lower scores on Simon. But then came the surprise: When they used statistical techniques to factor out the effect of allostatic-load, the poverty effect disappeared completely. It wasn't poverty itself that was compromising the executive-function abilities of the poor kids. It was the stress that went along with it.”

<sup>4</sup> Marzillier, John (2014). *The Trauma Therapies*. Oxford University Press.

<sup>5</sup> Thompson, Machel D. Madson, PhD. (2010) *Trauma Resilience Scale for Children: Validation of protective factors associated with positive adaptation following violence* (Doctoral dissertation). Retrieved from: [http://purl.flvc.org/fsu/fd/FSU\\_migr\\_etd-1398](http://purl.flvc.org/fsu/fd/FSU_migr_etd-1398) FSU\_migr\_etd-1398 (IID). Southwick, Steven M. et al. Resilience definitions, theory, and challenges: interdisciplinary perspectives. *European Journal of Psychotraumatology*, [S.l.], v. 5, oct. 2014. ISSN 2000-8066. Available at: <http://www.ejpt.net/index.php/ejpt/article/view/25338>. Date accessed: 05 Dec. 2016. doi: <https://doi.org/10.3402/ejpt.v5.25338>.

<sup>6</sup> In a 2005 presentation by David Wertheimer, then of Kelly Point Partners and now at the Bill and Melinda Gates Foundation, he described a program where incarcerated mothers were housed with their infants. In setting up their services, he said they decided to make PTSD a “rule-out” diagnosis from the beginning. It turned out that easily 85% of their clientele qualified for the diagnosis after assessment, and so it made sense to set up their program to assume it exists, and then adjust in those less-common instances when it didn't – instead of the other-way-around.

<sup>7</sup> Substance Abuse and Mental Health Services Administration. (2014) *SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach*. HHS Publication No. (SMA) 14-4884. Retrieved from: <http://store.samhsa.gov/shin/content/SMA14-4884/SMA14-4884.pdf>

*experienced* by an individual as physically or emotionally harmful or threatening and that has lasting adverse *effects* on the individual's functioning and physical, social, emotional, or spiritual well-being."<sup>8</sup> Thus, trauma is the sum of the event, how it is experienced, and its effect on a particular person.

In practice, trauma occurs when an event is so overwhelming to a person's neurological system that it is no longer processed in an integrated way and becomes lodged in the brain as something that will trigger a large emotional reaction.<sup>9</sup> When parents' experiences are layered with the stress of unstable employment, housing, and transportation, and find themselves unable to meet basic needs for themselves and their children, they are especially vulnerable to being overwhelmed by current and past adverse experiences. An overwhelmed neurological system decreases a person's ability to adapt and be flexible, and can lead to rigidity and addiction as an attempt to soothe the panic of survival.<sup>10</sup> Then, the needs and care of children can suffer and resiliency is lost.

Almost all families in the child welfare court system suffered a traumatic response to adversity they faced in their lives. In a Washington State study of parents involved in the child welfare court system, over 50% had experienced child sexual abuse, and over one third had experienced domestic violence.<sup>11</sup> It is very likely the traumatic response to those experiences contributed to pathology in the parents' lives,<sup>12</sup> which precipitated the adversity faced by their children and led to the family's involvement with the court.

Some people who experience trauma develop Post-Traumatic Stress Disorder ("PTSD"), a diagnosis made when the traumatic response to adverse experiences is so pervasive that it leads to significant physical, psychological, and emotional symptoms that are pervasive over time and cause distress in one's life.<sup>13</sup> PTSD is actually a fairly uncommon result of adverse experiences in the general population.<sup>14</sup> However, professionals in the child welfare court system encounter an unusually high rate of traumatized people, many of whom do, or likely should, satisfy the diagnostic criteria for PTSD.

The pervasiveness and life-long negative impact of adversity was laid bare by the ACEs Study.<sup>15</sup> ACEs refers to Adverse Childhood Experiences, first described by Kaiser Permanente and the Centers for Disease Control (CDC) in their groundbreaking

<sup>8</sup> Ibid.

<sup>9</sup> Herman, Judith. (1992) *Trauma and Recovery*. Basic Books, pp. 33-35. Van der Kolk, Bessel. (2014) *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*. (2014), Penguin Books, p. 66.

<sup>10</sup> Herman, Judith. (1992) at p. 35

<sup>11</sup> Marcenko M et al, *Evaluation of Washington's Solution-Based Casework Practice Model Interim Report Part IV: Baseline Parent Survey Analysis by State, Region, and Service Context*. (2009) Partners for Our Children. Retrieved from: [http://partnersforourchildren.org/sites/default/files/2009.\\_part\\_iv\\_baseline\\_parent\\_survey\\_analysis.pdf](http://partnersforourchildren.org/sites/default/files/2009._part_iv_baseline_parent_survey_analysis.pdf)

<sup>12</sup> Herman, Judith. (1992) at pp. 122-123.

<sup>13</sup> American Psychiatric Association. (2013). Trauma- and Trauma-Related Disorders. In *Diagnostic and statistical manual of mental disorders* (5<sup>th</sup> Ed.). Arlington, VA: American Psychiatric Publishing. <https://doi.org/10.1176/appi.books.9780890425596.dsm07>. The diagnosis calls for the identification of a trigger; clinically significant distress or impairment in the person's social interactions, capacity to work or other important areas of functioning; and is not the result of another medical condition, medication, drugs or alcohol.

<sup>14</sup> Breslau, N. (2012). *Epidemiology of posttraumatic stress disorder in adults*. In G.J. Beck and D.M. Sloan (eds.) *The Oxford Handbook of Traumatic Stress Disorders*. (pp. 84-97) Oxford: Oxford University Press,.

<sup>15</sup> Anda, Robert F., M.D., M.S., and Felitti, Vincent J., M.D. (2003) *ACE Reporter Vol. 1, Number 1*. Retrieved from: <http://thecrimereport.s3.amazonaws.com/2/94/9/3076/acestudy.pdf>

study of the relationship between adverse childhood experiences and later medical and psychological disease across a large, statistically “normal” population.<sup>16</sup> Researchers found that 67% of the study population had experienced at least one ACE.<sup>17</sup> 16% reported an “ACE Score” of four or more, meaning they had experienced four different “types” of adverse childhood experiences.<sup>18</sup> After matching ACE scores with adult health outcomes, researchers found that a higher ACE score correlated with significantly higher rates of negative health and psychological experiences. For example, a person with an ACE score of four is twice as likely to smoke during their life, twelve times more likely to attempt suicide, seven times more likely to be an alcoholic, and ten times more likely to inject street drugs.<sup>19</sup> According to Dr. Robert Block, the former President of the Academy of Pediatrics, “Adverse Childhood Experiences are the single greatest health threat facing our nation today.”<sup>20</sup>

### Healer Heal Thymself

While trauma is not a necessary result of adversity, trauma and PTSD are exceedingly more prevalent for families involved in the child welfare court system than in the general population; which is extremely important because trauma is communicable.

Vicarious Trauma, Work Related Stress, and even PTSD are conditions that professionals can experience, especially those in a helping role. Vicarious trauma is defined as “the transformation of a person’s inner self as a result of the person’s empathic engagement with traumatized clients in the context of a helping relationship.”<sup>21</sup> While everyone has the potential to experience first-hand events that result in trauma, child welfare and court professionals are at higher risk for the stress that results from indirect exposure to traumatic events experienced by their clients. It is the role of empathic supporter, and often the “calling” of the professional to engage the adversity experienced by the client, that increases the risk of traumatic response in the professional.

In the justice system, vicarious trauma has been shown to affect the quality of practice of professionals with their clients, and the affect may be exacerbated when professionals witness, or believe that they have contributed to, the adversity experienced

<sup>16</sup> Ibid. Participants in the ACEs study completed a survey at their routine annual medical checkups, indicating the ACEs they had experienced in their lives, which was then matched with the patients’ current health status. The researchers received results from over 17,000 people, all of whom could afford health insurance. The ACEs that study participants were asked to identify were: emotional abuse; physical abuse; sexual abuse; emotional neglect; physical neglect; witnessing mother being treated violently; a household member abusing alcohol or drugs; a household member suffering mental illness; parental separation and/or divorce; and a household member in jail or prison.

<sup>17</sup> Anda, Robert F., M.D., M.S., and Felitti, Vincent J., M.D. (2003) *ACE Reporter Vol. 1, Number 1*. Retrieved from: <http://thecrimereport.s3.amazonaws.com/2/94/9/3076/acestudy.pdf>

<sup>18</sup> Ibid. Note: The study did not quantify the number of times a respondent experienced a particular ACE.

<sup>19</sup> Ibid.

<sup>20</sup> Burke Harris, Nadine. TEDMED (2014) *How childhood trauma affects health across a lifetime*. Available from: [https://www.ted.com/talks/nadine\\_burke\\_harris\\_how\\_childhood\\_trauma\\_affects\\_health\\_across\\_a\\_lifetime?language=en](https://www.ted.com/talks/nadine_burke_harris_how_childhood_trauma_affects_health_across_a_lifetime?language=en)

<sup>21</sup> Geary, Jennifer, PhD. (2008). *Work-related vicarious traumatization of professionals in the justice system* (Doctoral dissertation) (pp. 86-89) Retrieved from <http://pqdtopen.proquest.com/doc/304831012.html?FMT=ABS 3354478>.

by clients.<sup>22</sup> Child welfare clients experience adverse events in court and service settings that often trigger a traumatic response. Attorneys, judicial officers and social workers are frequently *participants* in these events. The scarcity of effective resources and the pressure of high caseloads inhibit a sense of efficacy in their work. For example, when attorneys, social workers, and judges participate in a process that results in the removal of a child from their parents, they have more than *witnessed* trauma, they've participated in the process that created it. The professionals may feel that their own and the system's inadequacies prevented them from doing more to save this person from suffering, regardless of the legal justification of the action, the "greater good," or the ethical and professional competency they brought to the moment. This special relationship with the client's trauma blurs the line of "secondary" and creates a strong nexus between professionals in the child welfare court system and the potential for their client's adversity to have a real and detrimental effect on them.

The potential toxicity of witnessing and participating in a clients' trauma can have devastating effects for child welfare professionals. Laura van Dernoot Lipsky, of the Trauma Stewardship Institute,<sup>23</sup> lists the manifestations of traumatic response in professionals: feelings of helplessness and hopelessness, "never able to do enough," hypervigilance, diminished creativity, inability to embrace complexity, minimizing, chronic exhaustion, inability to listen/deliberate avoidance, dissociative moments, sense of persecution, guilt, fear, lack of empathy, anger and cynicism, addictions, and grandiosity (identity is all about your work).<sup>24</sup> Van Dernoot Lipsky says, "When more and more is asked of us, with fewer and fewer resources offered to accomplish it, we are seduced into externalizing [identifying the problems that prevent our success as being outside of ourselves]," contributing to feelings of helplessness and exhaustion, lack of efficacy, defensiveness, and decreasing empathy.<sup>25</sup>

The experience of secondary trauma can lead to a state of hypervigilance, that has negative implications for how professionals respond to situations. A study of first responders examined whether professionals who are routinely exposed to the traumatic experiences of others could modulate their emotional state in high and low stress environments.<sup>26</sup> Researchers found that trauma-exposed professionals responded with elevated intensity to a task regardless of whether the situation called for it.<sup>27</sup> They also found that in high-intensity conditions, trauma-exposed individuals outperformed unexposed people.<sup>28</sup> So, not only did the first responders fail to modulate their intensity to match

<sup>22</sup> Geary, Jennifer, PhD. (2008). *Work-related vicarious traumatization of professionals in the justice system* (Doctoral dissertation) (p. 20) Retrieved from <http://pqdopen.proquest.com/doc/304831012.html?FMT=ABS3354478>.

<sup>23</sup> <http://traumastewardship.com/>

<sup>24</sup> Van Dernoot Lipsky, Luara (2015) *Beyond the cliff*. TEDxWashingtongton. Retrieved from: <http://traumastewardship.com/watch/#ted>

<sup>25</sup> Ibid.

<sup>26</sup> Levy-Gig, E., Richter-Levin, G., Okon-Singer, H., Keri, S., & Bonanno, G.A., (2015) *The hidden price and possible benefit of repeated traumatic exposure*. (pp. 2) Stress, 19. Note, they weren't actually involved in the occurrence of the trauma like child welfare court professionals so often are, but only recorded the aftermath (crime scene investigators).

<sup>27</sup> Ibid. at 4-5.

<sup>28</sup> Ibid.



the situation, they consistently performed better under high-intensity situations. What does it mean to the functioning of our child welfare courts if professionals seek out (or create?) intensity and chaos because that is their default setting for optimal performance?

Trauma is a maladaptive symptomatic response to adverse experiences; a response that is prevalent in families involved in the child welfare court system. Trauma is communicable between professionals and clients, and it can significantly diminish empathy, compassion, and creativity required for their working relationship. Without resilience against the onset of trauma, child welfare court professionals risk not being able to contribute to the higher functioning of themselves, the families they serve, and the systems in which they work.

## RESILIENCE

### Resilience in Individuals

A simple dictionary definition of resilience is illustrative for this discussion. “The capability of a strained body to recover its size and shape after deformation caused especially by compressive stress.”<sup>29</sup> Individual resilience enables a person to retain their “exquisite self”<sup>30</sup> despite the adversity around them, whether first-hand experiences, or through the empathic helping others.

There has been considerable research conducted on the concept of personal psychological resilience. One excellent overview of different perspectives on resilience can be found in an article recording a presentation by four leading researchers, “Resilience definitions, theory, and challenges: interdisciplinary perspectives,”<sup>31</sup> moderated by Dr. Steven Southwick. Dr. Southwick points out that the study of resilience is creating the potential for a paradigm shift away from a deficit model that focuses on the negative consequences of trauma, and toward a strength- and competency-based model that focuses on prevention and building strengths in addition to addressing psychopathology.

Resilience at the individual level is described as the ability to “take a licking and keep on ticking,” like the old Timex watch line. But in addition to regaining healthy functioning in the wake of an adverse event, resilient people are changed for the better by their experience.<sup>32</sup> This is because resilience “. . . involves a reintegration of self that includes a conscious effort to move forward in an insightful, integrated, positive manner as a result of lessons learned from an adverse experience.”<sup>33</sup> While they may still suffer

<sup>29</sup> Resilience. (n.d.). In *Merriam-Webster's online dictionary*. Retrieved from: <http://www.merriam-webster.com/dictionary/resilience>

<sup>30</sup> Van Dernoot Lipsky, Luara (2015) *Beyond the cliff*. TEDxWashingtongton. Retrieved from: <http://traumastewardship.com/watch/#ted>

<sup>31</sup> Southwick, Steven M. et al. Resilience definitions, theory, and challenges: interdisciplinary perspectives. *European Journal of Psychotraumatology*, [S.1.], v. 5, oct. 2014. ISSN 2000-8066. Available at: <http://www.ejpt.net/index.php/ejpt/article/view/25338>. Date accessed: 05 Dec. 2016. doi:<https://doi.org/10.3402/ejpt.v5.25338>.

<sup>32</sup> *Ibid.* at 2-3.

<sup>33</sup> *Ibid.* at 3

the negative effects of trauma and PTSD, resilient people are capable of deciding to move forward.

The ability to adapt is also key to a systems theory of resilience. According to Dr. Ann S. Masten, from the Institute of Child Development at the University of Minnesota, “resilience refers to the capacity of a dynamic system to adapt successfully to disturbances that threaten the viability, the function, or the development of that system.”<sup>34</sup> This can be seen at the molecular, individual, family, community, and societal level.<sup>35</sup>

From a cross-cultural anthropological perspective, Dr. Catherine Panter-Brick, of Yale University, asserts that resilience can be viewed not so much as an individual trait or characteristic, but as “a process to harness resources to sustain well-being.”<sup>36</sup> This process involves making sense of one’s experience. “What matters to individuals facing adversity is a sense of ‘meaning-making’ – and what matters to resilience is a sense of hope that life does indeed make sense, despite chaos, brutality, stress, worry, or despair. . . . [And the] effort to sustain dignity, rather than simply alleviate misery, is the key to a hopeful future.”<sup>37</sup>

In his summary, Dr. Southwick talked about how systems theory plays a strong role in the work to build resilience:<sup>38</sup>

In order to develop effective interventions to enhance resilience, it is critical to understand that humans are embedded in families, families in organizations and communities, communities in societies and cultures. Interventions targeted at any one of these levels will impact functions at other levels. Sometimes the most effective strategy to enhance resilience at a specific level may involve intervening on a different level. For example, to enhance resilience in a young child it may be more effective to provide schools and parents with needed resources (e.g., healthy meals; education on how to raise children) than to intervene at the level of the individual child. Similarly, communities may enhance individual resilience by providing job training and placement for those who are unemployed. In other words, resilience in the individual is highly dependent on multiple layers of society.

What are the characteristics that make us resilient? They are often referred to as “protective factors,” and the occurrence of them in an individual, family, or other system can be thought of as that system’s level of, or manifestation of, resilience.<sup>39</sup> See Figure 1.

<sup>34</sup> Ibid. at 3-4

<sup>35</sup> Ibid. at 3-4

<sup>36</sup> Ibid. at 4-5

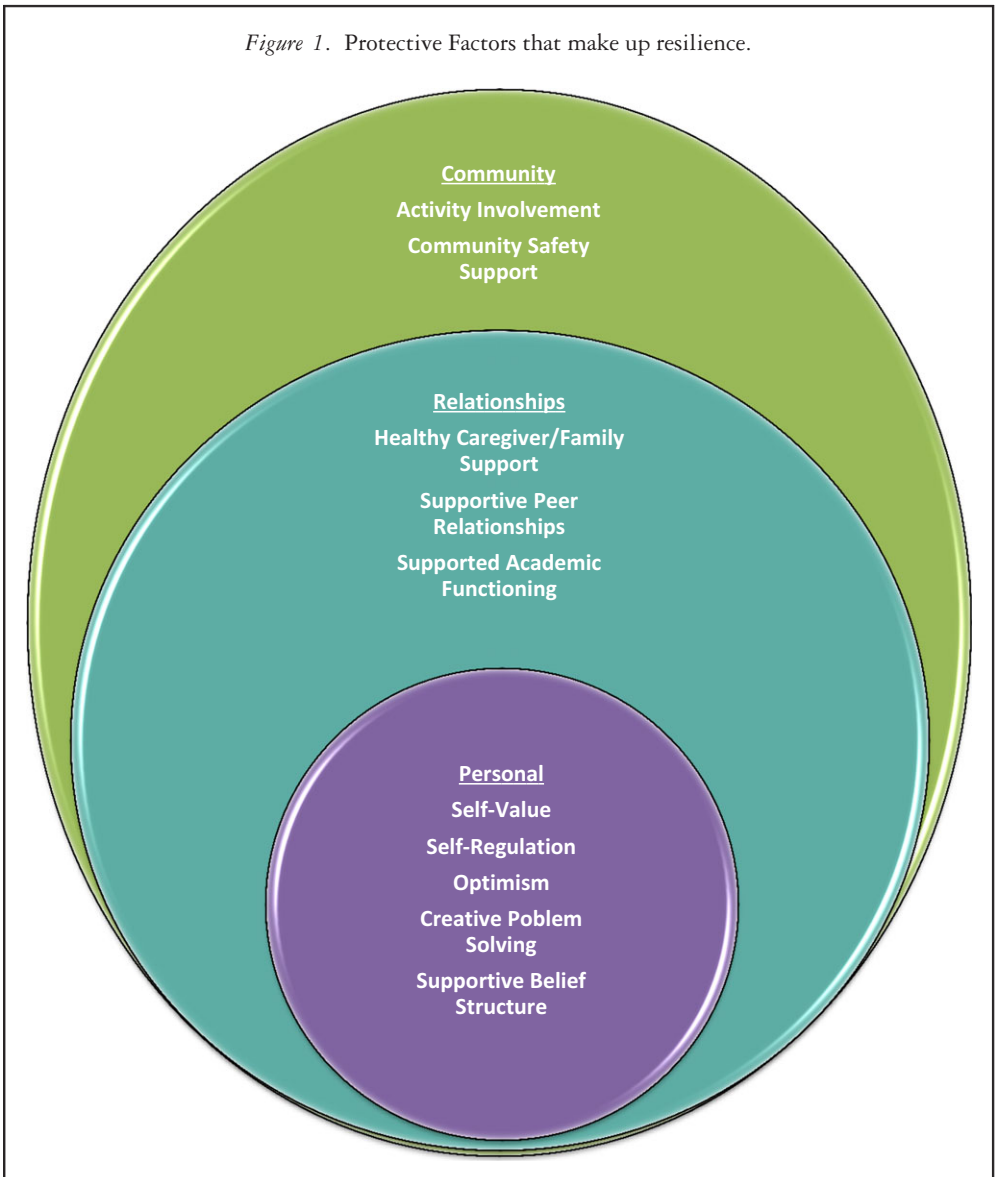
<sup>37</sup> Southwick, Steven M. et al. Resilience definitions, theory, and challenges: interdisciplinary perspectives. *European Journal of Psychotraumatology*, [S.l.], v. 5, oct. 2014. (pp. 4-5) ISSN 2000-8066. Available at: <http://www.ejpt.net/index.php/ejpt/article/view/25338>. Date accessed: 05 Dec. 2016. doi:<https://doi.org/10.3402/ejpt.v5.25338>.

<sup>38</sup> Ibid. at 12

<sup>39</sup> Thompson, Machel D. Madson, PhD. (2010) *Trauma Resilience Scale for Children: Validation of protective factors associated with positive adaptation following violence* (Doctoral dissertation). Retrieved from: [http://purl.flvc.org/fsu/fd/FSU\\_migr\\_etd-1398](http://purl.flvc.org/fsu/fd/FSU_migr_etd-1398) FSU\_migr\_etd-1398 (IID). Find Dr. Thompson now at: [http://www.avahealth.org/aces\\_best\\_practices/author-bios.html/title/machelle-d-madsen-thompson-phd](http://www.avahealth.org/aces_best_practices/author-bios.html/title/machelle-d-madsen-thompson-phd).



Figure 1. Protective Factors that make up resilience.



In this list of protective factors, we see the ecological levels of resilience, from the individual to the community. While protective factors in children are the most rigorously researched at this point, other research that looks more generally at these factors in people has come to similar conclusions.<sup>40</sup>

<sup>40</sup> Bonanno, George A., Romero, Sara A. & Klein, Sarah I., (2015) The Temporal Elements of Psychological Resilience: An Integrative Framework for the Study of Individuals, Families, and Communities, *Psychological Inquiry: An International Journal for the Advancement of Psychological Theory*, 26(2), 139-169.

## Resilient Systems

Resilience within the individual depends to a certain extent on resiliency in the systems around them. It is worthwhile to discuss briefly the intentional design of our systems (court, agency, attorney organizations, CASA, etc.) for resilience. In short, resilient systems are adaptive systems. Adaptive systems are “open” systems that operate with the understanding of their connection to and the inter-reliance of their products, stakeholders, and environment.<sup>41</sup> Managers in adaptive systems understand complexity, and how different domains of ordered, complex, and chaotic circumstances call for different managerial responses.<sup>42</sup> “Judicial Leadership” is a continually emerging practice and skill in child welfare court system design. In no other area of the law is the court so often called upon to act in a leadership role; to, at least, convene multi-disciplinary stakeholders to address a vast array of interconnected systems and their role in the transformational process of child welfare court practice. Our court system is a resource-strained environment, and such intentional management is both a challenge and a necessity. A paramount challenge for leadership in child welfare courts is to build the system to express resiliency values *within* the structure of the system, and not just acknowledge them and admonish stakeholders to “go out and do it.” For example, it is not enough to say “be healthy” while maintaining caseloads, calendars, and behaviors that are not healthy; the court system that values resiliency builds into its structure demonstrative examples of healthy behavior.

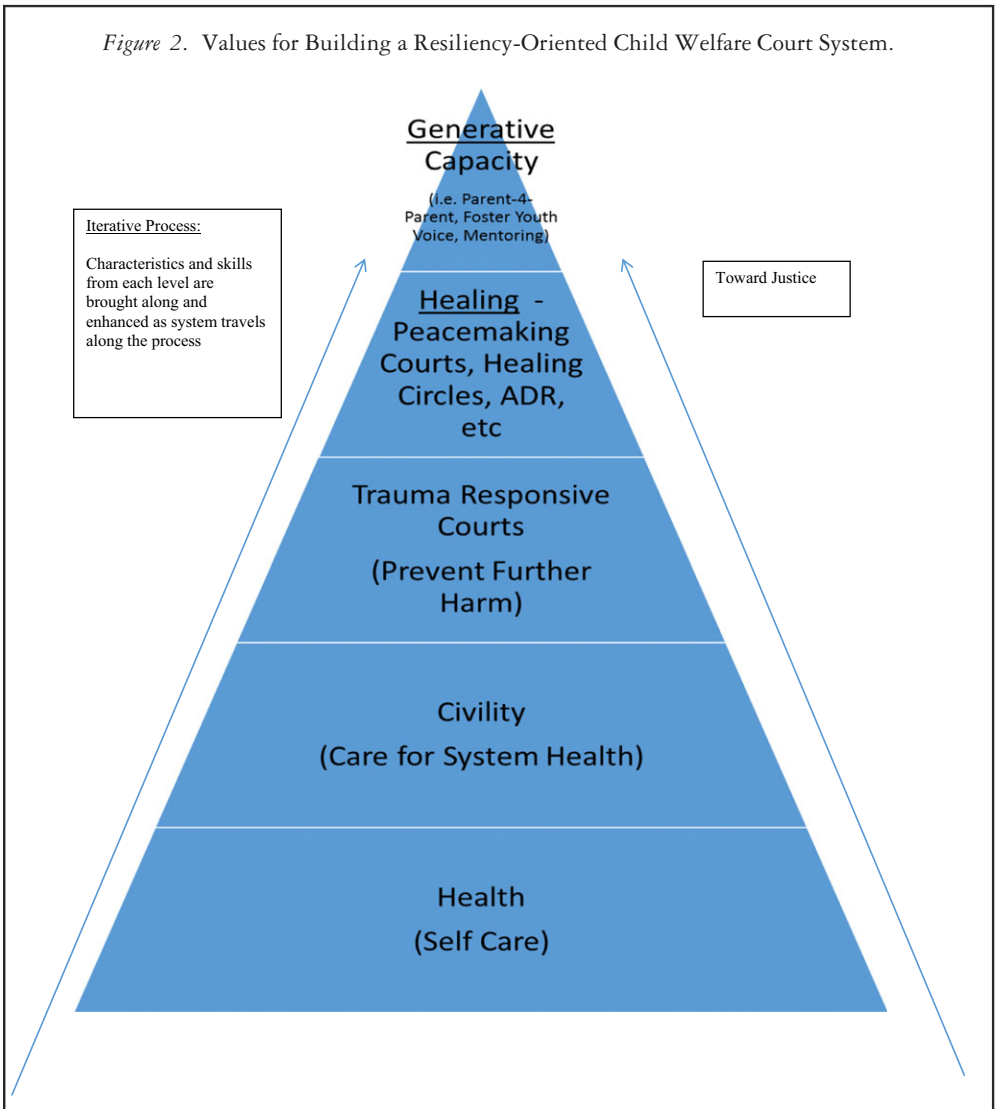
## OUR WORK WITH COURTS TO BUILD TOWARD RESILIENCE

At the Court Improvement Training Academy (“CITA”) at the University of Washington School of Law we created a framework of values to help child welfare courts build protective factors for resilience.<sup>43</sup> Principles we developed with our local partners, outlined below, are part of the implementation process to express resilience values, and were created and refined with members of the system who were doing the work. While the values are not necessarily as linear as they appear, there is some logic to the structure. Working on improvements in health provides opportunities for civility, both of which set the foundation for being trauma responsive, and so on. But we’ve learned that work in one area often implicates others, and that expression of these values is often an iterative process toward improved justice. It is critical that the expression of values through principle-based innovation results in identifiable and measurable structures and behavior changes. Our model is illustrated in Figure 2.

<sup>41</sup> Fiksel, Joseph. (2003) *Designing Resilient, Sustainable Systems*. Environ. Sci. Technol., 2003, 37, 5330-5339.

<sup>42</sup> Snowden, David (n.d.) *Cynefin Framework: An introduction to the Cynefin Framework by David Snowden*. Retrieved from <http://cognitive-edge.com/>. (For a good discussion of complexity science as it relates to managing systems.)

<sup>43</sup> See [www.uwcita.org](http://www.uwcita.org) for our website.



**Value: Health**

**Principle:** Individual behavior and performance is connected to basic conditions of health

In our work on health, we partnered with Dr. Kristen Allott of Dynamic Brains Consulting.<sup>44</sup> Dr. Allott started by training judges on the physiology of decision-making. What we learned from her is how our brains are fueled (short answer, glucose and protein) and what happens to our brains when we fail to fuel them properly.

<sup>44</sup> www.KristenAllott.com Optimizing Brains for Improved Decision-Making, Creativity and Health.

Interestingly, our brains function much like brains that are reacting to adversity and experiencing trauma. When our brains run short on proper fuel, our bodies trigger the release of adrenaline and cortisol. This is the same system that is triggered when we are confronted by threats in our environment (fight, flight, freeze), and is also the system that becomes dysregulated as an effect of trauma. Dr. Allott explained that eating sugar provides approximately an hour of energy for optimal brain function, but eating protein provides approximately 3-4 hours of energy. By helping judges examine their eating patterns, we found that many judges (and others in their courts) go hours without eating well and sometimes lack adequate amounts of protein to function at their best.

But, so what? It is in our American ethic to soldier through, right? We hear constantly about those who sleep four hours per night, or survive on just coffee until lunch. Many judges have been shocked into self-reflection when Dr. Allott explained the results of a study examining judicial decisions that were made within an hour of eating compared to decisions made four hours after eating. The study involved judicial review of simple parole applications. Researchers found that 65% of parole applications were granted by judges when making decisions right after having eaten, but the percentage of applications granted gradually dropped to 0% right before the judges ate again, at which time the percentage leapt back to 65%.<sup>45</sup> The researchers assert that, without proper fuel, our brains run on adrenaline, reducing our capacity for compassion, creativity and patience, and increasing fear and defensiveness.<sup>46</sup>

Many judges who participated in CITA training with Dr. Allott were motivated to make changes to their diets and eating habits. Several of them reported that they feel better able to manage their workloads, they have more energy throughout their day, and they are even sleeping better.

***Principle: Basic conditions of health affect all stakeholders similarly – professionals and families***

As child welfare stakeholders learned about Dr. Allott's training, our health work took off in other directions. In response to interest by Parent Allies,<sup>47</sup> Dr. Allott explained that proper nutrition, including eating sufficient protein, can help calm the mind and enable creativity, compassion, and patience for families, just as it does for judges. We distilled her information into one-page tools that attorneys, social workers, CASAs, and parent mentors can use to help parents better handle high-stress events like court, psychological evaluations, and supervised visits<sup>48</sup>. Now courts in Spokane, Seattle, and Olympia, WA have formal programs in which Parent Allies explain the role

<sup>45</sup> Allott, Kristen, N.D. Power Point presentation from CITA judicial training in Dec. 2015. Found here: <http://www.uwcita.org/judge-training-december-10-11-details-agenda-and-materials/>; citing Danziger, Shai, Levav, Jonathan, & Avnaim-Pesso, Liora. (2010). Extraneous factors in judicial decisions. *Proceedings of the National Academy of Sciences*, 108(7), 6889-6892. Doi: 10.1073/pnas.1018033108. Retrieved from: <http://www.pnas.org/content/108/17/6889.abstract>

<sup>46</sup> Ibid.

<sup>47</sup> Parent Allies are formerly involved parents who reunified with their children and then return to serve as mentors and support for currently-involved parents. Also discussed below.

<sup>48</sup> To find these tools go to: <https://www.proteinforall.org/tools/> and scroll down to "Tools"; or go here for the tools and a voice-over-power point presentation by Dr. Allott on this topic: <http://www.uwcita.org/optimizing-brain-function-in-court-and-other-high-stakes-settings/>

of protein, and provide protein-rich food to parents when they arrive at court, often without having eaten that day. Attorneys for parents report that they now provide food to parents when they meet with them to discuss their case and prior to attending court or evaluations. In less than a year, we have heard from Parent Allies and attorneys that their clients are more engaged and appear calmer under stress since they have paid attention to their protein intake. In short, this work has helped people in our court system with being “present”.

With Dr. Allott we are working to develop a metric for what it means to have an adequate power supply for our lives. What does it mean to have “room left in the cup,” where we can afford to be open and compassionate, to bring ourselves to our work, metabolize the heartache and joy that comes from it, and to be able to accurately and empathically assess which of our professional tools is best for a situation? One question she often asks, toward this goal, is how do you feel when you leave work? Is your day “over” when you leave work, your energy spent, and your desire empty? Or, do you have time and energy to be “present” for our family, friends, and selves beyond the work day?

Our learning in this area relates to a concept the military uses called a “force multiplier.” In general, it refers to an attribute that increases the effectiveness of a group. Here, some simple health concepts can, sometimes dramatically, increase the effectiveness of a group without investing in more people or technology. In other words, while we continue to advocate for smaller caseloads and better resources for the families we serve, we can dramatically increase our effectiveness and the efficacy of the families with whom we work, by learning about and facilitating some simple dietary principles. This is just one small example of how to express the value of health within the court system and toward resilience.

### *Value: Civility*

#### *Principle: There are individual and system costs of incivility*

Incivility is pervasive and toxic, and it takes a measurable and significant toll on us.<sup>49</sup> Not only does incivility harm those directly involved, it has a deleterious effect on others, much like the communicability of trauma. The negative impact to individuals and organizations is real, including reduced effort, reduced time at work, lost time worrying about incidents of incivility, lowered commitment to the organization, and leaving the workplace. Additionally, stress caused by incivility in the workplace can lead to a reduction in creative ideas, lower performance on verbal tasks, and reduced working memory.<sup>50</sup>

#### *Principle: Civility is associated with consciousness, creativity, and community*

Civility is generally subjective in nature and difficult to define with precision. Civility has been identified as having an awareness that extends beyond the self, and

<sup>49</sup> We frequently work with Tim Jaasko-Fisher, formerly director of CITA, and now with Roberts Fund at Seattle University. Tim does significant work with his colleagues at Roberts Fund in the arena of civility in the law. See Tim’s biography and learn about Roberts Fund here: <http://www.robertsfund.org/staff/timothy-jaasko-fisher-ma-jd.html>

<sup>50</sup> To see a copy of Tim’s power point for one of our recent training sessions, go here: <http://www.uwcita.org/wp-content/uploads/2015/12/Civility-PowerPoint-12-11-15.pdf>

entails conveying respect and concern for the well-being of others;<sup>51</sup> and as behaviors that preserve the norms for mutual respect at work that are fundamental to positively connecting with another, building relationships, and empathizing;<sup>52</sup> In a practical work environment, civility is best described by those practicing in that environment. People from different cultural backgrounds including geographic community, ethnicity, education, profession, etc. may define behavior differently in terms of its promotion of the concepts and principles outlined above. In child welfare courts, what we consider to be important is whether professionals and families in the court community find that discourse and behavioral norms offer the opportunity for civil, respectful engagement toward better justice.

Roberts Fund identified three pillars of civility: Consciousness, Creativity, and Community. We worked with courts in Washington to build upon these principles of civility. In one court dealing with consistent complaints about disrespectful behavior among professionals, we worked with leadership from the various disciplines to identify civil behavior and intentionally point out civil interactions when they occurred. Anecdotally, members of the court community identified a decrease of incivility, and found a benefit in identifying civil behaviors and expanding on them.

Our next level of work will involve the application of tools for measuring and addressing perceptions of civility, such as the Civility Norms Questionnaire – Brief, developed by Benjamin Walsh, et al.<sup>53</sup> The questionnaire is a simple, four-domain assessment tool that measures the subjective perception of civility by individuals, and provides direction for areas in need for improvement within a community. This is an example of how to measure and adjust the expression of civility as a value for resilience.

### **Value: Trauma Responsive Courts**

***Principle:* Trauma is prevalent in the child welfare court system, and it is communicable between stakeholders**

In defining our trauma-based child welfare court work, we intentionally chose the phrase “trauma-responsive courts”, rather than the more popular “trauma-informed courts.” We have seen that despite receiving significant training on trauma and vicarious trauma, child welfare court stakeholders rarely change the way they operate. Being informed does not necessarily result in practice change.

Laura van Dernoot Lipsky conducted a trauma stewardship training for the King County Juvenile Court in Seattle. Responding to a question about how a person in leadership could mandate or encourage their employees to engage in “self-care” she

<sup>51</sup> Walsh, Benjamin M., et al. (2012) Assessing Workgroup Norms for Civility: The Development of the Civility Norms Questionnaire-Brief, *J Bus Psychol* (2012) 27:407-420, 408. doi: 10.1007/s10869-011-9251-4. citing Peck, D. L. (2002). Civility: A contemporary context for a meaningful historical concept. *Sociological Inquiry*, 72, 358–375, and Sypher, B. D. (2004). Reclaiming civil discourse in the workplace. *Southern Communication Journal*, 69, 257–269.

<sup>52</sup> Ibid, citing Pearson, C.M., Anderson, L.M., & Porath, C.L. (2000). Assessing and attacking workplace incivility. *Organizational Dynamics*, 29, 123-137.

<sup>53</sup> Walsh, Benjamin M., et al. (2012) Assessing Workgroup Norms for Civility: The Development of the Civility Norms Questionnaire-Brief, *J Bus Psychol* (2012) 27:407-420, 408. doi: 10.1007/s10869-011-9251-4



answered: “Rock your own program first.” In other words, trauma responsive work needs to come from an attitude of “Let’s do . . .” rather than “Go do . . .” The instruction suggests that where system leaders engage in their own trauma stewardship, within the structure of their workload and work place, they will serve as an example and support building trauma stewardship into the larger system. In our work, we’ve seen examples of this principle in action, including judicial officers who respect breaks and invite their staff into chambers during busy days for five-minute yoga sessions. Other courts created Protein for All programs that makes healthy food available for families in the court waiting room - addressing both health and trauma.

***Principle:*** The structures, processes, and language of the child welfare court system can be managed to decrease incidents of adversity and reduce the onset and triggering of trauma

On the system level, there are concrete things courts can do to change their language, physical plant, organization, and process. The National Council of Juvenile and Family Court Judges conducts Trauma Consultations with courts. The Council performs a trauma audit for a court and develops a report identifying areas of environment, practice, and policy that could change to become more trauma responsive.<sup>54</sup> Similarly, SAMHSA provides technical assistance for courts to become more trauma responsive, and published a useful issue brief called “Essential Components of Trauma-Informed Judicial Practice.”<sup>55</sup> In any such effort a strong multidisciplinary team working to implement the information into practice is important.

At CITA we support a collaborative court improvement structure called “Tables of Ten,” which has served as a vehicle for facilitating trauma-responsive court efforts. Tables of Ten begin with the gathering of ten or so individuals in a child welfare legal community (often at the county level) who want things to be better. We work from the premise that the real question in court improvement is not what is broken and how to fix it, but what is possible and who cares enough to change it? Tables of Ten typically begin with a work session to review local data, map local work processes, and begin the task of strategically intervening where the greatest impact can be had. A Table of Ten is a focused effort to review a child welfare court system and an opportunity for those involved to make meaning of what they see and intentionally design a process to change it for the better. It is continuous quality improvement. In facilitating the group, CITA utilizes Liberating Structures<sup>56</sup>, inviting stakeholders to engage each other in a highly intentional, results focused, and collaborative way. This provides an opportunity for judges to lead through their convening power, but also to encourage other leaders in the court system and to distill the intelligence of everyone who cares to join in strategic thinking at a

<sup>54</sup> National Council of Juvenile and Family Court Judges. (2015). *Preparing for a Trauma Consultation in Your Juvenile and Family Court*. (NCJFCJ Publication). Retrieved from: <http://www.ncjfcj.org/ncjfcj-releases-guide-courts-prepare-trauma-consultation>

<sup>55</sup> Substance Abuse and Mental Health Services Administration. (Draft for Review and Comment 2013). *Essential Components of Trauma-Informed Judicial Practice*. (SAMHSA Publication). Retrieved from: [http://www.nasmhpd.org/sites/default/files/JudgesEssential\\_5%201%202013finaldraft.pdf](http://www.nasmhpd.org/sites/default/files/JudgesEssential_5%201%202013finaldraft.pdf)

<sup>56</sup> See the whole set of Liberating Structures and learn how to use them and where to go to practice, here: <http://www.liberatingstructures.com/>. “Liberating Structures used routinely make it possible to build the kind of organization that everybody wants. They are designed to include everyone in the shaping.”

system level. Collaborative implementation efforts are a critical component of any adaptive, resilient system.

### **Value: Healing**

***Principle:* Relationships are the subject of child welfare court practice, the mechanism through which families will succeed, and the foundation of a high-functioning system**

At the Rethinking Foster Care Symposium in May, 2016, at the University of Michigan, participants developed the concept of “transformational lawyering”.<sup>57</sup> Under a transformational concept, professionals understand their role in the child welfare court system is one that supports and influences the transformational process through which a family must travel. An aspiration of a transformational process is healing. The core experiences of trauma are disempowerment and disconnection from others, while recovery and resilience are based in empowerment and the creation of new, healthy connections.<sup>58</sup>

In Washington, CITA observes the principle of supporting relationships by using a Community of Practice model<sup>59</sup> to create intentional mentorship and coaching opportunities for professionals to support each other. We have developed Communities of Practice for court improvement staff and for attorneys representing children in child welfare cases.

***Principle:* Discord in relationships is a signal of disharmony in the community, and the community has a stake in the solution**

At CITA we are just beginning to learn about Peacemaking for child welfare cases, and we see it and other restorative justice practices as a vehicle for the transformational role of dependency courts in the lives of its stakeholders. To introduce the concept to Washington State and Tribal judicial officers, we invited Hon. Cheryl Fairbanks<sup>60</sup> of the University of New Mexico School of Law to explain the basic cultural foundations and principles of Peacemaking. She explained the underlying principles, including that the relationship between offender and victim represents disharmony in the greater community, and that not only the primary parties, but the community generally, must take responsibility for the restoration of relationships and community.<sup>61</sup> We also heard from Judge Timothy Connors of Washtenaw County Trial Court in Michigan, where he helped start a Peacemaking Court process that is now helping to resolve dependency cases.<sup>62</sup> Judge Connors described the four basic principles of his State court’s unique

<sup>57</sup> The concept is applicable to other stakeholders in the system, and to the system as a whole.

<sup>58</sup> Herman, Judith. (1992) p. 133.

<sup>59</sup> Wenger-Trayner, Etienne, and Wenger-Traynor, Beverly. (2015) *Introduction to communities of practice*. Retrieved from: <http://wenger-trayner.com/introduction-to-communities-of-practice/>

<sup>60</sup> Hon. Cheryl Fairbanks is a partner in the firm of Cuddy & McCarthy, LLP, concentrating in the areas of Indian Law, State-Tribal Relations, Indian Gaming, Tribal Courts, Mediation, Family, School, and Educational Law.

<sup>61</sup> See her power point from this presentation here: <http://www.uwcita.org/wp-content/uploads/2015/12/The-Shift.-Tribal-Sovereignty-and-Peacemaking-Courts-Hon.-Cheryl-Fairbanks-ppt.pdf>

<sup>62</sup> Butterwick, Susan J., Connors, Hon. Timothy P., and Howard, Kathleen M. (2015). Tribal Court Peacemaking, A Model for the Michigan State Court System? *Michigan Bar Journal*. June 2015, 34-38. Retrieved from: <http://www.michbar.org/file/barjournal/article/documents/pdf4article2628.pdf>

application of the Peacemaking process: Relationships, Responsibility, Respect, and Redirection<sup>63</sup>. CITA will continue the cross-cultural discussion and support the application of Peacemaking and restorative justice principles as a structure for healing families, professionals, and our communities.

***Value: Generative Capacity***

***Principle: Healed families mentoring currently-involved families offer hope and connection that increases the likelihood of success***

Organizations find success by developing and sustaining certain capacities essential to their purpose (i.e., for courts - safety, service delivery, hope, support, etc.).<sup>64</sup> The term “generative,” means that which has the ability to originate or produce. “Generative Capacity” refers to the ability to build capacity. Parents, children, and families who enter the court system, find healing and success, and then become stakeholders in the courts, represent a Generative Capacity that helps the court learn, adapt, and evolve – in other words, remain resilient as an organization.

***Principle: Increasing successful families helps build stronger, better connected communities, and decreases incidents of maltreatment***

We often work with former foster youth and Parent Allies to share their experiences with judges, legislators, and others as a way to educate them about what works for families, and to advocate for system reform. Resilient people, who are living examples of success, represent an under-realized capacity for growth in child welfare court practice. It is hard to quantify the hope instilled in a parent at their first court appearance when they meet another parent who introduces herself as someone who “was where you are right now,” but succeeded in getting her family back together and moving on with her life. Social connections that build resilience are formed when a parent learns from a Parent Ally about how the court system works and what are the responsibilities of their social worker, attorney, and judge. When former foster youth and Parent Allies are invited to the table and help redesign our systems to be more responsive to the people they serve, the system becomes informed and adaptable in ways that could not be realized before. The power of parent and youth voice in the exploration, design, and implementation of innovative solutions is a true generative capacity that must be nurtured and expanded.

## CONCLUSION

It is possible that we can be renewed by the very environment that threatens our health. We can and should continue to advocate for concrete structural improvements to the way our society engages parenting in poverty. But as we do that, let us also embrace the opportunity to build resilience in ourselves, our relationships, and our

<sup>63</sup> Judge Connors is considering changing the fourth “R” to Resilience.

<sup>64</sup> The Infinite Games. *Generative Capacity-Building as a Core Organizing Strategy*. Found at: <http://www.theinfinitegames.org/e04/>

systems. Even if we have “been played,” our experience of that event does not have to be despair. We can become resilient by deciding to move forward in an insightful, integrated, and positive manner out of the lessons learned from adversity. And an important lesson is this: We are all in this together; we are both the source of each other’s struggle and the opportunity for healing; and the generative power of healed people engaging in principle-driven strategic planning can build resilience that will protect and nurture us all.