

2001

Report of the Race, Class, Ethnicity and Gender Working Group

Dana Hamilton

Recommended Citation

Dana Hamilton, *Report of the Race, Class, Ethnicity and Gender Working Group*, 70 Fordham L. Rev. 411 (2001).
Available at: <http://ir.lawnet.fordham.edu/flr/vol70/iss2/14>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

REPORT OF THE RACE, CLASS, ETHNICITY, AND GENDER WORKING GROUP¹

CHARGE

What should the Conference recommend to change the way parents involved with the child welfare system are treated by the system and perceived by the public, with particular emphasis on issues of race, class, ethnicity, and gender?

INTRODUCTION

The working group examined the way parents involved with the child welfare system are treated by the system and perceived by the public, especially with respect to issues of race, class, ethnicity, and gender. The group members were asked to read an article published in the Spring/Summer 1998 issue of the *Child Welfare Watch*, entitled *Race, Bias & Power in Child Welfare*,² before the Conference for background information.

The working group included lawyers, professors, social workers, community activists, parent advocates, a psychiatrist, an administrator of the local child welfare agency, and former clients of the system.

According to the article in *Child Welfare Watch*, ninety-seven percent of the children in foster care in New York City are African-American or Latino, while only three percent are white.³ African-American children are more than twice as likely as white children to be taken away from their parents following a confirmed central registry report of abuse or neglect.⁴ Recent ACS statistics indicate that of the 4170 children placed in care from July to December 2000, 4.5% were white, 55% were black, 30% were Hispanic, and 10.5%

1. This report was authored by Dana Hamilton (reporter). The other members of the working group were Mimi Abramovitz, Regina Ballard, Alexandra Barsdorf (student secretary), Stephen Billick, Scott Brown, Susan Bryant, Folasade Campbell, Leah Hill (facilitator), Susan Lob, Gessy Nixon, Deirdre O'Sullivan, Rose Pierre-Louis, Chantal Regis, Dorothy Roberts, Yvette Sealy, Evette Soto Maldonado, Jay Wade, and Anne Williams Isom. For formatting purposes, the short title of this group is indicated as the "Race Working Group."

2. Andrew White et al., Ctr. for an Urban Future and the N.Y. Forum, *Special Issue: Race, Bias & Power in Child Welfare*, *Child Welfare Watch*, Spring/Summer 1998, No. 3.

3. *Id.* at 1.

4. *Id.*

were other races or unknown.⁵ As of June 1999, of 36,648 children in foster care, 70.4% were black, 24.9% were Hispanic, 3.2% were white, and 1.5% were other races or unknown.⁶

I. DISCUSSION AND RECOMMENDATIONS

Social workers frequently refer to “the elephant in the living room” when discussing issues that are blatantly problematic but about which no one speaks. The working group began by pondering the lack of public discourse on the issues of the over-representation of African-Americans and Hispanics in foster care, and introduced a number of queries to begin the discussion: what are the obstacles to discussing issues of race, class, gender, and ethnicity; are these issues considered too threatening to discuss; can we talk about achieving justice for parents without a frank discussion of these issues; what can we do to bring issues of race, gender, ethnicity, and class to the forefront?

The vast majority of parents who come into contact with the child welfare system are not referred for abuse. The typical client in New York City is an African-American or Hispanic mother charged with neglect. Neglect charges are typically related to poverty, with issues such as homelessness, single parenting, addiction, mental illness, and domestic violence, frequently associated with removal. There are a number of ways in which the government can respond to such issues. What the working group pondered was this: Is the response to these problems biased?

Issues of addiction and alcohol abuse are spread across the socioeconomic spectrum of our society. A poor woman with addiction problems comes to the attention of State Child Protection Services after delivering a baby at a public hospital who tests positive for drugs. A wealthy or middle class alcoholic or drug-addicted parent is less likely to be drug tested in a hospital and more likely to have treatment options that prevent removal of his or her children. While studies show that addiction can be treated without removing children from their mothers, poor women with minimal support are likely to be faced with removal of their children and then told to find treatment to get them back.

Domestic violence, also present across the racial and socioeconomic spectrum, has different outcomes for poor women of color. Impoverished women involved in relationships where they are victims of domestic violence are more likely to be trapped by their poverty

5. N.Y. City Admin. For Children's Servs., *Realizing Reform: ACS Strategic Planning Conference: Using Data to Achieve Continuous Improvements* 11 (Mar. 2001).

6. N.Y. City Admin. for Children's Servs., *Reform Plan Indicators: Status Report* 2, at 97 (Mar. 2000).

and more likely to lose custody of their children through findings of neglect for “failing to protect their children from domestic violence.”

The group considered whether removal is an appropriate response to charges of neglect, given both the trauma it causes to children and families, and the contradiction it poses with regard to most other family law practices, where the integrity of the family is considered paramount. Preventive services in New York City provide a family with a variety of supportive services that are designed to prevent placement of children in foster care by addressing the family’s needs while the children remain in their own homes. The vast majority of families who receive preventive services are able to improve their problems sufficiently to avoid placement of their children. Funding for preventive services has undergone cuts in recent years and represents less than ten percent of Administration for Children’s Services (“ACS”) spending.⁷ Preventive services are more widely available in communities that are predominately white, while preventive funding has been cut to a greater extent in communities that are largely African-American, despite the greater poverty in these communities. The discussion by the working group included a debate on the implication that even when studies were controlled for socioeconomic status, blacks were far more likely to end up in foster care than whites.⁸ The question of whether this phenomenon could be attributable to the wider availability of preventive services in white communities only highlighted the question of bias and, in this case, institutionalization at the government level where funding decisions with regard to these critical services are made.

The acknowledgement by the working group of the existence of disparities in placement and funding of preventive services, and their implications for poor families of color, led the group to wonder, “How can we move from silence to outrage?” The first recommendation the group offered was as follows:

1. Those who work in the child welfare system (ACS, voluntary agencies, and courts) must begin to look at how issues of race, class, ethnicity, and gender impact decision-making, or any attempt to reform the child welfare system and improve the lives of children and families will continue to fail. Those who work in the child welfare system must include honest and genuine discussions of race, class, gender, and ethnicity in all dialogues about reforming and improving the child welfare system.

There were many reasons offered to explain the lack of dialogue on the issues of race, class, gender, and ethnicity. Race appears to be a

7. Prepared Testimony Before the General Welfare Committee and the Women’s Issues Committee of the Council of the City of New York from Nicholas Scopetta, Commissioner, New York City Administration for Children’s Services 1, 3 (Mar. 16, 2001) (on file with the *Fordham Law Review*).

8. White et al., *supra* note 2, at 6.

particularly toxic subject. Many have been taught that we should not discuss race, religion, or class. People acknowledged such reluctance to express their genuine feelings for fear of being perceived as “bad” or “racist.” Some felt their experiences with racial disparities had been so traumatic and personal that they had difficulty trying to match the realities of their lives with those who were different. The idea that it can be distressing to have to talk about race all the time, and that sometimes participants can feel overwhelmed by the emotions raised in such dialogues, was acknowledged.

Yet, it was also thought that many of the decision-makers consist of those who really do not have to talk, or think, about these issues because they are not personally confronted with them and are less likely to be aware of the extent to which stereotypes and insensitivity may impact their decisions. Some judges have no idea what it is like, and of the inherent difficulties involved in, being a parent in a poor family. Judges, as members of a “higher class” who enjoy the benefits associated with their class status, may define parenting through their own experiences. A mother on a budget of \$400 per month, unable to take her child to the movies or the museum, may find that her inability to provide such benefits to her children is used as evidence of her lack of involvement. The inability of professionals to imagine the difficulty faced by a mother with so little income, and their failure to use different criteria to evaluate poor women in poverty, was seen as part of the problem. While such women may actually be demonstrating even greater strength and resolve as they struggle to provide for their families with miniscule resources and support, such positive attributes have not been recognized readily by the system.

Furthermore, in child welfare, many of the workers on the front line are African-American or Latino, complicating the issue of whether race could be a primary factor in the disproportionately large number of African-Americans and Latinos represented in the system. The African-American members of the working group spoke about “internalized oppression” and the tendency of *both* white and black professionals to stereotype poor families of color. To confront their own personal issues regarding race, gender, and ethnicity, the African-Americans in the group discussed the need to address the internalized racism toward their own racial group as well as racism aimed at people of all ethnicities, rather than viewing these issues as solely connected to white racism. The group also acknowledged that it was unfair that the issue of race always had to be introduced by African-Americans and recognized the need for whites to accept the responsibility of introducing and actively engaging in dialogues on questions of discriminatory practices.

The group agreed that the first step towards change was for people within the child welfare system to stop their own denial and confront the statistics. Since many people cannot accept the idea that they are

prone to engage in stereotypical ways of thinking, the group felt that training on issues of race, ethnicity, and gender should be mandatory and that those who have been subjected to unfair, discriminatory practices take part in providing the training. The ideas discussed above were reflected in the following recommendations:

2. Blacks, Latinos, and Asians who work in the child welfare system should not bear sole responsibility for raising the issues of race and ethnicity either in discussions about individual cases and clients or in policy discussions. White people should share in the responsibility of raising issues of discrimination.

- All who work in the child welfare system should speak out about race, class, ethnic, and gender, discrimination in court and at their agencies and organizations.

3. Blacks, Latinos, and Asians who work in the child welfare system should be supported by their organizations to discuss with each other if, and how, racism affects their practices. Those organizations should support similar discussions by whites about if, and how, race and privilege (e.g., the freedom and benefits that come from being in positions of power) affect their practices.

4. Ongoing mandatory training should be provided by each agency/organization in the child welfare system for all players in the system, including, but not limited to, law enforcement, judges, lawyers, social workers, psychologists, medical professionals, and mandatory reporters on how racial and ethnic stereotypes and sexism can impact decision-making. Training should include research and information on the unique situation created for parents raising children with extremely limited financial and limited local services. Training should include information and discussion on how to distinguish parents struggling because of poverty from parents who are neglecting their children.

5. Grassroots organizations should be recruited to provide sensitivity training on race, ethnicity, class, and gender.

6. Training must be provided to child welfare professionals on research related to strengths, rather than pathologies, of black and Latino families.

7. Stories of families who have been in the child welfare system should be documented and distributed to those who work in the child welfare system. The stories must include the voices of children, mothers, fathers, and workers at local and grassroots organizations that work with families.

Another viewpoint suggested was that the silence on issues of race, class, gender, and ethnicity was due at least in part to twenty-five years of living in a conservative political climate. Public programs are widely viewed as supporting people who live up to bad stereotypes.

For instance, the images of the “welfare queen” that were actively invoked over a period of years are rarely questioned in the current social climate. Public policy is dominated by a punitive social agenda that sees individuals in poverty as responsible for their dire circumstances. Time limits on welfare policies that operate to divert tax revenues away from the poor are espoused as encouraging economic independence, but in reality they are built on stereotypes of lazy women who do not want to work. Societal issues related to unequal education and job opportunities are ignored, as are those issues related to inadequate wages, low welfare grants, and punitive welfare policies.

The group grappled with the extent to which gender issues compete with each other. Mothers are almost always the accused in child welfare cases, even in domestic violence cases where they are the victims of abuse. Fathers are virtually ignored by the system, whether they are perpetrators of the abuse or are viable alternative options for custody of their children. The wider context is the disenfranchisement and invisibility of African-American men in this society and the over-representation of their children in foster care.

The indifference to the poor prevalent in the public at large also contributes to the silence. The current political ideology is that we have achieved racial equality. Voices that allege that there is still serious racial discrimination are diluted in the mainstream. People read the same facts differently and are likely to assert that problems suggesting discrimination are really due to something else like individual inadequacy.

On the contrary, many issues related to child neglect charges extend from larger societal issues, such as lack of affordable housing and child care. While the affluent can be terrible parents, they can afford the luxury of hiring people to enable good parenting. However, a woman trying to work at a low wage job, seeking to avoid the welfare system, may nevertheless have to leave her child alone, and risk neglect charges in doing so, due to the lack of resources available to her for child care. In addition to these challenges that are not considered by the affluent, poor people must address other problems such as trying to protect their rebellious adolescents from the threatening environment of drug-infested neighborhoods.

There is little acknowledgement in child welfare that parenting is challenging for most people. Being a single parent without adequate income only magnifies the challenges related to parenthood. Many women who lose their children to foster care comment that, if they had been given the grant normally available to foster mothers, they could have provided the housing and care needed by their families.

The group acknowledged a need to link child welfare issues to the broader issues of welfare, education, and fair wages. In addition to recognizing these issues as interrelated, the group acknowledged that

these issues must be addressed not only by professionals working in child welfare, but also by the communities affected and the larger society. In New York City, a disproportionately large number of children in foster care are taken from just three geographic areas: South Bronx, Central Brooklyn, and Northern Manhattan.⁹ According to the Child Welfare Watch, one out of every ten children in Central Harlem is in foster care.¹⁰ Galvanizing the community around the question of racial profiling in child welfare was one of many strategies considered by the group to address such an over-representation. Lack of information in communities of color contributes to the powerlessness of individuals most affected by these issues. The working group concluded that it was important to create strategies for individual and community empowerment through community organization, rather than to expect policymakers to transform the system solely through self-examination. Community members must be empowered to advocate their own causes and take responsibility for helping each other. For such empowerment, communities need information and statistics about what is happening around them.

Empowerment of communities that are directly affected by such disproportionate representation in child welfare should include provision of information regarding parents' rights once they are confronted by the system. Many parents confronting removal do not understand the reasons for removal or how to fight the allegations of child abuse or neglect made against them. Immigrants and non-English speaking parents are often completely alienated from the system due to the lack of interpreters in court and a set of child welfare laws that may be completely unheard of in their native cultures. Sometimes information on parents' rights can be found in Family Court, but such information is not always available and needs to be distributed more widely.

The working group recommended that information be widely distributed throughout neighborhoods most affected by the issues of racism, sexism, poverty, and child welfare policies to educate and help empower the people who live in those communities and the service providers who work with families and children:

8. City and state government agencies must issue community data profiles, which include statistics on:
 - the number of reports of suspected child abuse or maltreatment;

9. N.Y. City Admin. for Children's Servs., Community Data Profiles 233-34 (Mar. 1998).

10. White et al., *supra* note 2, at 1.

- details of the results of investigations of reports of suspected child abuse or maltreatment (e.g., the number of indicated and unfounded reports);
- the number of children removed from their homes by ACS, with breakdowns by race and ethnicity;
- the amount of money spent on preventive services in the community; and
- the amount of money spent on maintaining children in foster care.

9. City and state governments should provide information on the availability of all types of services within the community, including mental health, legal, advocacy, substance abuse, early intervention, domestic violence, and preventive services, and the availability of funding for all such services.

- Information should be provided at places where parents first enter the child welfare system, such as the local family courts and ACS field offices.
- Information should be widely distributed in the community, such as through local service providers, community organizations, churches, town hall meetings, leaflets, and brochures.
- Information should be written in plain language and provided in appropriate languages for the community.

In addition to getting information out to the communities most affected by child welfare policy, the working group discussed the importance of raising the awareness of the greater public regarding these policies as civil rights issues. Most members of the general public view parents in the child welfare system through the same horrific lens that depict extreme clients commanding the widest media attention, such as parents who murder and sexually exploit their children. Few understand that such parents represent only a tiny fraction of those whose children remain in the care of the system.

Most envision child welfare as helping and saving children. There is little public discussion on the trauma that children face upon separation from their natural families. There is also little public discourse about problems within the foster care system itself, such as multiple placements, difficulty keeping siblings together, and abuse that occurs during care.

The working group discussed the benefits of child welfare advocacy groups collaborating with other advocacy organizations to educate the public. There is a common ground between welfare advocacy and domestic violence communities and organizations fighting discrimination, such as the NAACP, although it was acknowledged

that even such organizations might themselves need more education on the current discriminatory practices within the child welfare system. The group discussed at length the possibility of recharacterizing this issue as one of racial profiling within the child welfare system, a more radical view which could function as an effective tool for galvanizing the community.

The working group made the following recommendations regarding the above:

10. Those who work in the child welfare system must educate the public on the disproportionate rates of families and children of color in the system and critically examine the role that racial discrimination plays in this stark imbalance. Examples of methods that could be used to educate the public include the following:

- Write op-ed pieces, letters to editors, and letters to broadcast media, to decode the prevailing “helping fallacy” of the child welfare system.
- Use tactics such as subway ads to educate the public about how sexism and racial, ethnic, and class-based stereotypes can impact child welfare decision-making.

11. Advocates in the child welfare system must link with other advocacy groups, such as civil rights, welfare advocacy, and women’s rights groups, to decode and expose to the public those social welfare policies that are deliberately punitive to low-income people of color.

12. Advocates in the child welfare community should educate themselves and, where appropriate, support lawsuits and resolutions challenging racial, gender, language, and other forms of discrimination in the child welfare system.

The working group also considered the Adoption and Safe Families Act (“ASFA”) and how issues of race, class, gender, and ethnicity relate to the policy behind this law. ASFA was designed to prevent children from languishing for years in foster care and to achieve permanency for children quickly. The law requires that children who have been in care for fifteen of the last twenty-two months be evaluated for adoption. In theory, children whose parents are not working towards reunification will find a permanent home quickly through adoption. The working group pondered the extent to which practice would match the idealistic intent behind the law when it came to children of African-American and Latino descent. African-American children, particularly those beyond infancy, have historically been the most difficult to place in adoptive homes.

Notwithstanding the good intent underlying ASFA, the length of time it takes to find permanent homes for children needs to be documented and analyzed for racial and ethnic trends. Some children

who are adopted are returned to care by their adoptive families, or end up back in state custody for delinquency. Rates of failed adoptions and the racial breakdown of such failures need to be investigated in light of the pressures caused by ASFA to quickly terminate the rights of biological parents and permanently dissolve families. Questions regarding the sufficiency of services that allow families to be able to reunify and other barriers to reunification need to be considered in light of such data. The working group recommended the following:

13. ACS and Family Court should conduct long-term studies to track, by race, ethnicity, and socioeconomic origin, children in foster care who have been freed for adoption, and include the following information:

- whether children are adopted, and the length of time spent in foster care before adoption;
- how many children end up back in the Family Court system either via PINS (“persons in need of supervision”) or delinquency cases;
- and how many children are returned to foster care via voluntary placements or involuntary removals.

Finally, the group acknowledged the need for public child welfare agencies to work with community-based organizations. However, problems often arise in such endeavors. Many grassroots organizations feel that they might be “co-opted” by collaborating with the agencies that their constituents find responsible for oppressive practices. The group concluded that this topic merited further dialogue, but suggested the following inquiry:

14. How might ACS develop relationships with parents and other grassroots organizations without compromising the independence of the parent organizations? Non-ACS funding sources should be developed to support the formation of relationships without compromising the independence of the organizations.