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# In Era of Family Separation, a Top Administration Official Vows to Fight the Practice in Child Welfare

April 17, 2019 Daniel Heimpel



David Kelly was met with thunderous applause from parent advocates last week as he jogged onto the stage of a Ritz-Carlton ballroom, just outside of Washington, D.C.

As the special assistant to Children's Bureau Associate Commissioner Jerry Milner, Kelly plays a lead role at an agency that oversees nearly \$10 billion in annual funds spent on



David Kelly, a top official within the Children's Bureau, is widely credited as the force behind new federal funds to support the legal representation of children and parents in child welfare proceedings.

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everything from child maltreatment prevention to adoption. As a key player behind a plan to inject significant federal money into providing top-flight legal representation for parents and children caught up in the country's child welfare system – the slender, black-haired lawyer is a bit of a rock star to this crowd.

And he delivered a stunning message, especially when weighed against his current employer's roundly reviled treatment of families at the southern border. Kelly said the child welfare system is "perfectly designed to devalue families and undermine communities."

He added, "That the federal agency responsible for child welfare in the United States is saying this is an important precondition of change. Reflect on that."

It was a Friday, nearing 5 p.m. Hundreds of activists and attorneys who fight for parents in fraught child welfare proceedings were still scattered around a sea of round tables, even though it was the last speech of the two-day conference.

New York University law professor Martin Guggenheim, a founding father of an intensifying parents' rights movement within child welfare, introduced Kelly. Guggenheim told the crowd that Kelly is "the person responsible" for a recent rule that will allow states to draw down federal funds to pay for the legal representation of children who have been abused or neglected and the parents who are accused of doing so.

The development – which could make many millions of dollars available to states through the federal entitlement that pays for foster care (Title IV-E of the Social Security Act) – is considered a coup within this widely ignored and underfunded corner of the law. The change portends a new era of family representation in a system where attorneys and judges struggle to find justice with caseloads that regularly reach the hundreds. Moreover, it could be child welfare's best chance at stopping parents from wrongly losing their children to foster care, forestalling devastating outcomes for families and saving the federal government unknown sums of money.

Before he began speaking, two large screens on either side of Kelly displayed a video produced by the Children's Bureau, with statistics, text and images of families interspersed over a dramatic score. Its message was clear: The system takes too many children into care and this must change.

The video stopped and the audience held silent for a moment before Kelly leaned over the lectern to speak\*:

*Many say the child welfare system is broken. We disagree with that. We believe the system is perfectly designed to achieve the precise outcomes it's achieving today.*

*It's perfectly designed to bring more and more children into care, and do little to help the parents or their families. It's perfectly designed to perpetuate and exacerbate the trauma, disproportionality, disparity, dependency and harmful intergenerational cycles of family destruction. It is perfectly designed to devalue families and undermine communities.*

*That the federal agency responsible for child welfare in the United States is saying this is an important precondition of change. Reflect on that.*

*That we are saying this to your congressional delegations, including the Texas delegation – who we addressed a couple of hours ago – to your governors, to your first ladies, to child welfare agency directors around the country, to advocates — basically to anyone who will give us an audience — I think that's unprecedented.*

*Now I don't believe for a moment that the professionals who go into the field do so with malignant intent. But the hard truth is that we do harm in the name of doing good.*

*We know this. We have to be honest about this. We have to come to terms with the harm that we have and continue to cause. We have to stop it.*

*We are all complicit. Every judge that fails to make meaningful inquiries about reasonable efforts and rubber-stamps a court order is complicit. Every attorney who fails to help ensure that reasonable efforts are made to prevent removal is complicit. Every caseworker that continues the assembly line case plans is complicit. Every time there's an automatic presumption that this [visitation] needs to be supervised in the absence of a clear danger, we are all complicit. Every time that a child is unnecessarily removed from their home and their parent and all that they know, we are all complicit. And every time a journalist writes a piece that puts politics over substance, he or she is complicit. And yes, the federal government and the funding structure we have, that pays for foster care as our primary support and intervention makes the federal government complicit, too.*

*If we're going to change what the country thinks about child welfare and what it's intended to do, if we're going to change the language, we need to*

*stop mythologizing vulnerable families. We need to let go of the system that was designed to rescue children, and construct a system that's designed to promote health and well-being for all families.*

*We're not asking you to engage in magical thinking. We know that foster care will likely always be necessary, but we're absolutely convinced — absolutely convinced — that it can be dramatically lessened. And we're absolutely convinced that where it is needed, that it can be something that is much, much [more] substantively and qualitatively different.*

*A recent policy change that allows for IV-E reimbursement is a precondition for change, it changes nothing on its own. We hope it does send a very strong message of the importance of your work, and the importance of quality legal representation for parents.*

*Our charge to you is to organize around it. Don't fall into individualistic thinking about how it might benefit you and your office, don't paralyze yourself like attorneys like to do, and kill a momentum by constructing nuanced hypotheticals about every exact little detail about how it's going to work.*

*Step back, get organized and use this as an opportunity to identify the standards that you want to promote in your communities, the standards that kids and parents deserve in your communities. Look at the models, decide which model makes the most sense for your jurisdiction, create a plan with your colleagues, your parent bar, your child bar, your court improvement program.*

*Approach your state child welfare agency as a collective, through a unified plan. Be prepared to make a compelling case to the child welfare agency as to why it's in their best interest to help fund your work.*

*Absent these efforts and many more, the policy change does nothing. It's not time for premature celebration; it's time for action. At the Children's Bureau, we are aligning and changing every policy, every funding stream we can, to help propel our vision. We intend to use every letter, every incentive we have.*

*So I have an invitation, and that's to be complicit in bringing this change to fruition, to be complicit in us bringing children and families the respect they deserve, bringing children and families and communities the supports [they need].*

*I have a friend who I suspect is in this room someplace who every night has a call with her father. And he asks her if she did justice that day.*

*We should be able to answer yes.*

And with that, he held for a beat. Then the lawyers in the room broke, once again, into loud applause.

*\* Kelly's remarks have been slightly abridged for readability.*

*The article was updated on April 17, 2019.*

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Daniel is the founder of Fostering Media Connections and the publisher of The Chronicle of Social Change.

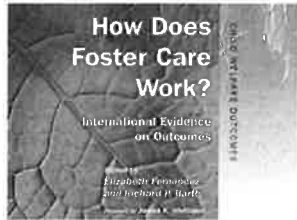


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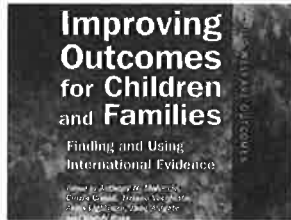
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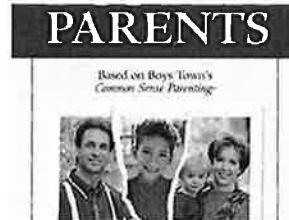
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