

Supportive Material to Incorporate Into Arguments, Briefs and Motions

Consider the following ideas to add balance and multiple persuasive perspectives as you plan your legal strategies and when writing briefs and motions, or during oral argument. For example, this [Decision-Making Points in Continuum of Child Welfare Cases](https://familyjusticeinitiative.org/wp-content/uploads/sites/48/2023/09/Decision-Making-Points-in-Continuum-of-Child-Welfare-Cases-Where-structural-racism-lives.pdf) <https://familyjusticeinitiative.org/wp-content/uploads/sites/48/2023/09/Decision-Making-Points-in-Continuum-of-Child-Welfare-Cases-Where-structural-racism-lives.pdf> lists research and data points based upon the stage of the proceeding. This is followed by suggestions and practice tips, for example- litigating vague definitions of neglect, challenging specific hospital's testing policies, or advocating for the right to exonerate previous unsubstantiated reports, etc. Consider also bolstering your arguments with positive client attributes, delineating safety from risk factors, a child's constitutional right to family integrity, and resolutions promulgated by the American Bar Association.

✓ Positive Client Attributes

Families come to the attention of the child welfare system because of a crisis, which has either been building over time or is caused by a particular set of circumstances. Parents charged in child protective proceedings frequently face multiple problems and need significant time to address them. Practitioners must focus on these problems as they can compromise children's safety, but often do so without also assessing a more comprehensive picture of the family, including what strengths a parent has that can be built upon in planning. Strengths are routinely overlooked or ignored in family court practice, despite the practitioner's best intentions.

Counsel for parents and children can change those narratives by laying out the families' protective capacities. Advocates should highlight their client's cultural, race, and ethnic perspectives and traditions; history's current impact on laws, and policies related to the client's life and case.

Protective factors are conditions or attributes in individuals, families, and communities that promote the health and well-being of children and families. These factors emphasize family strengths while also identifying areas where they need assistance. This

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can be particularly effective in dispositional case planning. Lastly, protective factors may lessen the likelihood of children being abused or neglected. Identifying and understanding protective factors are equally as important as researching risk factors.

✓ *Safety vs Risk Factors*

Safety assessment differs from risk assessment in that it assesses the child's present danger of immediate/serious harm and the interventions currently needed to protect the child. In contrast, risk assessment looks at the likelihood of any future maltreatment. All risks cannot be mitigated, and many "risks" are often held against families coming into child welfare, such as living in a community with high rates of violence and crime, or families experiencing food insecurity. Instead, when there is no immediate and serious harm to a child, keeping that child in their home and providing resources for the family, along with changing policies and barriers within institutional structures is a much more humane and longer lasting solution.

Also examine if predictive risk modeling and AI driven tools were utilized to determine that a child client was at "risk" which prompted their removal. Artificial Intelligence-Based Decision tools are used in child welfare to augment human decision-making as to whether to investigate a call alleging abuse or neglect. Roughly half of U.S. states have considered predictive analytics tools for their child welfare systems, with jurisdictions in at least 11 states currently using them, according to **Anjana Samant**, a Senior Staff Attorney with the American Civil Liberties Union (ACLU) Women's Rights Project. The concern is that "any tool built from a jurisdiction's historical data runs the risk of perpetuating and exacerbating, rather than ameliorating, the biases that are embedded in that data." [Family Surveillance by Algorithm | American Civil Liberties Union \(aclu.org\)](#) Others argue that these algorithms empower case workers to gather insights and identify patterns and risk factors so that they can proactively intervene and implement preventative measures.

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✓ *A Child's Constitutional Right to Family Integrity*

Many children's advocates fail to assert this argument in court, or the children are without advocates at all. Accordingly, the law remains stagnant. What could happen if counsel for children zealously, carefully, and frequently made this constitutional argument in court? When denied, these cases were taken up to the court of appeals.

- [My Family Belongs to Me: A Child's Constitutional Right to Family Integrity](#), by Professor Shanta Trivedi, sets forth that children should assert their right to family integrity in legal proceedings that are against their parents that could result in the destruction of their family units. It comprehensively examines the legal, theoretical, and international law principles that support such arguments. Harvard Civil Rights-Civil Liberties Law Review (CR-CL), Vol. 56, No. 2, Summer 2021 University of Baltimore School of Law Legal Studies Research Paper Forthcoming

✓ *American Bar Association Rules and Resolutions*

The following collection of American Bar Association resolutions, policy memos, and reports should be cited to remind courts of the role of counsel, the impact of systemic bias on individual families, and the rights of families.

- [ABA Model rule of Professional Conduct 2.1- Comment 2](#)
In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors, that may be relevant to the client's situation.
- [ABA Policy Resolution 606 "which calls on all legal professionals to recognize how over-surveillance of and underinvestment in Black families has shaped the child welfare field for centuries."](#)
- [2019 ABA Policy on Child and Parent Rights to Family Integrity](#)
The American Bar Association believes that children and parents have legal rights to family integrity and family unity.

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- [ABA Report on Trauma Caused By Separation of Children from Parents](#)

Much clinical research has been done on the profound trauma removal inflicts on children and their parents including by the haphazard nature of the removal process. On balance, child welfare agencies' reliance on removal to foster care as its predominant safety intervention makes little sense.