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Doing What's Right:
Providing Culturally Competent
Reunification Services

Lori Klein†

I. INTRODUCTION

Every day of every year, children are separated from their parents amid allegations of abuse or neglect and placed in foster care. The primary caretaker in these families is usually the mother. Also, single parent households appear to be over-represented in the child dependency system in various communities, and single parents are much more frequently women.

These mothers who are swept up into the child dependency system come from a variety of racial and ethnic backgrounds. They have differing levels of acculturation and assimilation into the dominant white, middle-class culture in the United States, and differing English language abilities. While some county child welfare departments offer an array of family reun-

† Lori Klein is an attorney in private practice in Santa Cruz, California who receives court appointments to represent indigent clients on appeal in criminal and child dependency cases; J.D., University of Pennsylvania Law School, 1985. I would like to acknowledge the help of Marlene Hertoghe, whose creative advocacy sparked my interest in this topic, and provided many of the litigation strategy ideas contained in this article; Santa Cruz County Law Librarians Patricia Fremenmer, Dolores Wiemers, and Linda Campbell, who helped me overcome the disadvantages associated with conducting legal research in a relatively small county; and Jessica Delgado, who inspired me to write this article.

1. The child dependency statutes discussed in this article always refer to “parents and guardians.” For purposes of this article, “parents” will refer to both parents and guardians.
2. See Renee Goldsmith Kasinsky, Child Neglect and “Unfit” Mothers: Child Savers in the Progressive Era and Today, 6 WOMEN & CRIM. JUST. 97, 98, 110, 120 (1994). The California Department of Social Services does not keep statistics on the gender of the primary caretaker in families who have become part of the child dependency system. However, it has been my experience, after years of representing families in child dependency cases, that the mother is the only or primary caretaker in the vast majority of cases.
4. Acculturation is the process by which people of one culture learn to adjust their behavior to accommodate the rules and expectations of another culture. The individual does not give up his or her culture in the process, but retains the identity, customs, and most everyday behaviors of his or her culture of origin. Assimilation is the process by which an individual adopts the new
fication services that account for some of these differences, others do not. Currently no California case law requires such “culturally competent” services to be offered.

The term “cultural competency” will be new and unfamiliar to most legal professionals. Terry Cross, a nationally recognized expert on the issue of culturally competent social services for families, defines a culturally competent individual as a person capable “of functioning effectively within another person’s or family’s culture.”

I am an appellate practitioner. Among the other work I do, I receive appointments from the appellate courts to represent parents, usually mothers, whose children have been removed from their custody due to allegations of neglect or abuse. This article is inspired by an appeal I am working on in which I represent G.T., a mother whose son was placed into foster care based on allegations of physical abuse. The county social workers believe either G.T. or the father is responsible for the abuse. G.T. denies abusing her son, and at least one expert psychologist believes her. However, even if G.T. did not abuse her son, someone did, and as his primary caretaker, G.T. must protect him from future harm. G.T. is Filipina, was born and raised in the Philippines, and did not come to live in the United States until she was a young adult.

At a six month review hearing held after G.T. lost custody of her child to foster care, an expert psychologist who had interviewed and tested her testified that G.T. was capable of being an appropriate parent, but needed culturally competent services, such as individualized parenting instruction. Despite this testimony, the juvenile court judge found a reasonable level of reunification services had been provided to G.T., and at that time, did not order that culturally competent services should be provided to her in the future. When researching the appeal in this case, I found that the social work literature supports the need for and efficacy of culturally competent services. The current state of child dependency law requires that families receive reunification ser-

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5. Terry Cross is the Executive Director of the National Indian Child Welfare Association, located in Portland, Oregon. As part of my initial research for this article, I called social work, child welfare, and consulting organizations all over the United States. Terry Cross’ name came up repeatedly as a leader in cultural competency advocacy and training.


7. Id. at 5.

8. “G.T.” is a pseudonym which I am using to protect my client’s identity and respect the confidentiality of child dependency proceedings.

9. Another expert psychologist has testified it is also unlikely the father abused her son.
vices tailored to their individual needs. Even so, there are no published appellate opinions holding that culturally competent services must be provided.

In this article, I propose that the "reasonable reunification" services that must be provided to each family should be culturally competent when appropriate. This article will be especially helpful for attorneys who represent parents in child dependency proceedings. To date, few trial or appellate attorneys have considered the lack of culturally competent services as a possible issue in child dependency cases. As a result, this article contains some practical suggestions for litigating this issue both at trial and on appeal. To acknowledge the reality that most of these parents are in fact women, this article usually will use the term "mother" to refer to both parents.

Part II of this article contains an overview of relevant child dependency law. Part III is a discussion of the treatment of families of color in the child dependency system, and the need for culturally competent services. Part IV sets forth suggested legal arguments to help convince juvenile court judges to order culturally competent reunification services when necessary. Part V discusses potential strategies at trial, and Part VI suggests strategies on appeal.

Writing this article has alerted me to the need for future research and writing. Even though some commentators have noticed that the primary caretakers in families within the child dependency system are women, they do not address how sex stereotypes or sex discrimination affect the mothers whose children are placed in foster care. Also, almost no scholarly attention has been paid to the intersection of racial/cultural and gender issues for women of color whose children have been removed from the home. Addressing these issues would add insight into how women of color and recently emigrated women are treated by the child dependency system, and how culturally competent reunification services may be designed to meet their needs.

II. THE ANATOMY OF A CHILD DEPENDENCY CASE

When the juvenile court in California declares a minor to be a dependent of the court, it does so under the authority of the California Welfare

10. Some commentators have wrestled with practical or theoretical ethical dilemmas faced by attorneys representing parents accused of child abuse or neglect. See Douglas J. Besharov, Representing Parents: Effective Advocacy Can Make a Difference, 24 CLEARINGHOUSE REV. 467 (1990) [hereinafter Besharov, Representing Parents]; Bruce A. Boyer, Ethical Issues in the Representation of Parents in Child Welfare Cases, 64 FORDHAM L. REV. 1621 (1996). This article does not address those issues directly because the strategies in this article are geared to help the mother obtain adequately tailored reunification services, a goal that does not raise a conflict of interest between parent and child.

11. A limited exception to this dearth of research may be found in Kasinsky, supra note 2; this article talks about how a combination of class, ethnic, and racial biases and sex stereotypes have led to the government's particularly harsh reaction to certain pregnant mothers who use drugs.

12. This section is intended to provide a broad overview of the stages of the child dependency process, from the initial detention of the child to the termination of parental rights. This is a broad-brush survey; many nuances and details have been left out because they are not necessary to explain the themes of this article.
and Institutions Code. The process begins when a child somehow comes to the attention of the local child welfare department or law enforcement. An anonymous telephone call from a relative or neighbor, a mandatory report from a school teacher or pediatrician, or the parent's voluntary contact can trigger intervention.

Section 300 of the California Welfare and Institutions Code describes the minors who may become dependents of the court. In general, such minors include those who have suffered or are at risk of suffering "serious physical harm inflicted nonaccidentally . . . by the minor's parent or guardian," or serious physical harm or illness resulting from the parent's or guardian's (1) failure to adequately supervise the minor; (2) failure to protect the minor from the conduct of other caregivers; (3) failure to provide adequate food, clothing, shelter, or medical treatment; or (4) inability to regularly care for the minor due to the parent's mental illness, disability, or substance abuse. Potentially dependent minors also include those who are "suffering . . . or [are] at substantial risk of suffering serious emotional damage or sexual abuse, and those whose siblings have been abused or neglected and are at substantial risk of being abused or neglected.

Either a peace officer or a social worker in a county child welfare department can take a minor into temporary custody if certain preconditions

13. This article will focus on California law, but can be applied elsewhere because most states have developed similar statutes and rules.
14. All such reports must be investigated. See CAL. WELF. & INST. CODE § 328 (West Supp. 1997).
16. CAL. WELF. & INST. CODE § 300(a) (West Supp. 1997). Other provisions of the statute separately provide for minors under the age of five who have suffered "severe physical abuse," which includes "the willful, prolonged failure to provide adequate food," and minors who have been subjected to acts of cruelty. Id. § 300(e), (i). While these subdivisions also describe forms of physical harm, they are not redundant of subdivision (a), because the future path taken by the case may change. For example, a parent whose child is made a dependent of the court due to physical abuse may lose custody of that child without any attempt at reunification if she is found to have subjected her child to severe physical abuse under subdivision (e). See id. § 361.5(b)(5).
17. There is also a catch-all provision describing a child of the court as one who has been left without any provision for support; . . . [or whose] parent has been incarcerated or institutionalized and cannot arrange for the care of the minor; or . . . [whose] relative or other adult custodian with whom the minor resides or has been left is unwilling or unable to provide care or support for the minor, the whereabouts of the parent is unknown, and reasonable efforts to locate the parent have been unsuccessful. Id. § 300(g).
18. Limited exceptions exist for those parents or guardians whose religious beliefs affect their decision-making regarding appropriate medical treatment for their children. See id. § 300(b).
19. See id.
20. Id. § 300(c).
21. See id. § 300(d).
22. See id. § 300(j). A minor may also be declared a dependent of the court if the minor's parent "has caused the death of another minor through abuse or neglect." Id. § 300(f).
are met. Essentially, the minor must have an “immediate need for medical
care,” the minor must be in “immediate danger of physical or sexual abuse,”
the physical environment must pose an “immediate threat to the child’s health
or safety,” or the minor must have been left unattended by parents who have
disappeared or are unable to assume custody.24 Before removing the child
from home, the social worker must consider whether referring the family to
public assistance or other “reasonable services available to the worker” would
allow the minor to remain safely at home.25

Once the minor has been taken into temporary custody, a social worker
or probation officer26 assigned to the case must “immediately investigate the
circumstances of the minor and the facts surrounding the minor’s being taken
into custody and attempt to maintain the minor with the minor’s family
through the provision of services.”27 The law requires the social worker to
return the minor to the custody of a “parent, guardian, or responsible relative”
unless (1) no such person exists; (2) no parent, guardian or responsible relative
steps forward willing to care for the minor; (3) the minor needs immediate
and urgent protection; (4) “[t]here is substantial evidence that a parent,
guardian or custodian of the minor is likely to flee” the court’s jurisdiction; or
(5) the minor has left a previous court placement.28 Any minor not released
after this initial investigation is considered “detained” for purposes of the
laws governing dependency proceedings.29

Within forty-eight hours30 after a minor has been taken into temporary
_custody, a social worker who wants the minor detained must file a petition31
asking the juvenile court to assume jurisdiction over the child and declare
the child a dependent ward of the court.32 Once this petition has been
filed, the juvenile court must hold a detention hearing before the conclusion

24. See CAL. WELF. & INST. CODE §§ 305, 306(2) (West Supp. 1997). Furthermore, the peace officer
may take a minor into temporary custody if the minor “is found in any street or public place suffer-
ing from any sickness or injury which requires care, medical treatment, hospitalization, or other
remedial care.” Id. § 305(d).
25. See id. § 306(b)(1)-(2).
26. The California Rules of Court use “probation officer” and “social worker” interchangeably for the
purposes of this article. CAL. R. CT. 1401 (West 1996). Child welfare social workers are responsi-
ble for filing child dependency petitions under section 300 of the California Welfare and Institu-
tions Code. CAL. R. CT. 1406(b)(1) (West Supp. 1996). For purposes of clarity in this article, the
text will refer only to social workers, not probation officers.
28. See id.
29. See id. § 309(c).
30. This forty-eight hours excludes nonjudicial days. See CAL. WELF. & INST. CODE § 313(a) (West
1984).
31. The social worker is not required to file a petition if the parent or guardian consents to supervisi-
ion by the child welfare department. See CAL. WELF. & INST. CODE § 301(a) (West Supp. 1997).
32. See CAL. WELF. & INST. CODE §§ 311, 313, 325 (West 1984); id. § 332 (West Supp. 1997).
Although section 313 seems to provide that the minor must be released if no petition has been filed
within forty-eight hours, this deadline has not been strictly enforced. See L.A. County Dep’t of
Children’s Services v. Super. Ct., 246 Cal. Rptr. 150 (Cal. Ct. App. 1988) (holding that the trial
court should have promptly held detention hearing rather than release the minor even though the
Department filed petition a day late).
of the next judicial day to determine whether the minor should continue to be detained.\textsuperscript{33}

It is at the detention hearing that the juvenile court first considers whether to appoint counsel to represent the parent or guardian. If the parent or guardian is unable to afford counsel and would like legal representation, the court has the discretion to appoint counsel.\textsuperscript{34} However, if "the minor has been placed in out-of-home care, or the petitioning agency is recommending that the minor be placed in out-of-home care," the court must appoint counsel unless the parent or guardian waives that right.\textsuperscript{35}

The detention hearing may be a contested hearing at which the juvenile court hears evidence from all interested parties.\textsuperscript{36} At the conclusion of the hearing, the court must release the minor unless a "prima facie showing has been made that the minor comes within Section 300" and (1) the minor's physical health is in "substantial danger" or the minor "is suffering severe emotional damage, and there are no reasonable means" to protect the child without removing the minor from the parent's or guardian's custody; (2) "[t]here is substantial evidence that a parent, guardian, or custodian of the minor is likely to flee" the court's jurisdiction; (3) the minor has left a previous juvenile court placement; or (4) the minor has been "physically or sexually abused by a person residing in the home" and "indicates an unwillingness to return home."\textsuperscript{37} The juvenile court must also "make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the minor from his or her home... and whether there are available services which would prevent the need for further detention."\textsuperscript{38}

If the minor is detained, the juvenile court must proceed with a jurisdictional hearing.\textsuperscript{39} The purpose of the jurisdictional hearing is for the juvenile court to determine "whether or not the minor is a person described by Section 300 and the specific subdivisions of Section 300 under which the petition is sustained."\textsuperscript{40}

If the judge decides the minor is a person described by section 300, the juvenile court assumes jurisdiction over the minor.\textsuperscript{41} At that point, the juvenile court must hear evidence and determine the appropriate disposition for

\textsuperscript{33.} See CAL. WELF. & INST. CODE § 315 (West Supp. 1997).
\textsuperscript{34.} See id. § 317(a). The court may also choose to appoint counsel for the minor at this time. Such an appointment must be made when "it appears to the court that the minor would benefit from the appointment of counsel..." Id. § 317(c).
\textsuperscript{35.} Id. § 317(b).
\textsuperscript{36.} See CAL. WELF. & INST. CODE § 319 (West Supp. 1997).
\textsuperscript{37.} Id.
\textsuperscript{38.} Id.
\textsuperscript{39.} See CAL. WELF. & INST. CODE § 334 (West 1984).
\textsuperscript{40.} CAL. WELF. & INST. CODE § 356 (West Supp. 1997).
\textsuperscript{41.} One implication of the juvenile court's assuming jurisdiction is that the court becomes the only entity with power to determine who should have custody of the minor. See In re Jeffrey P., 267 Cal. Rptr. 764, 768 (Cal. Ct. App. 1990).
the minor. After hearing evidence presented by the parties, the juvenile court may enter a judgment which (1) refrains from adjudging the minor a dependent child of the court, but which orders that time-limited family maintenance services be provided to the family to keep it together; (2) declares the minor a dependent of the court; or (3) appoints a legal guardian for the minor if the family is not interested in family maintenance or family reunification services.

If the court adjudges the minor to be a dependent child of the court, the court may order the minor placed with his or her parents or guardians and family maintenance services be provided, or order the minor placed away from home, such as in foster care. If certain closely related relatives express an interest in caring for the minor, the court must give preference to this request before placing the child with a stranger in foster care. When considering this request, the court must consider factors such as the child’s best interests, the relative’s ability to care for the minor, and the parent’s wishes. For parents or guardians separated from their children at the dispositional hearing, the court, through the county child welfare agency, must provide family reunification services unless certain exceptions apply. Such services may include case management, drug testing, substance abuse counseling, general psychological counseling, housing assistance, transportation,

43. See id. § 358.
44. See id. § 360.
45. See id. §§ 361, 362. A relatively small portion of the cases that begin with an emergency response to a report of abuse result in referral to family maintenance services. In calendar year 1995, of a statewide total of 690,005 emergency response cases initiated in California, only 34,858, or 5.05%, were referred to family maintenance services at the dispositional stage. See Cal. Dep’t of Soc. Services, Preplacement Preventive Services for Children in California, Annual Statistical Report Chart 3 (1995).
46. See Cal. Welf. & Inst. Code §§ 361.1, 362 (West Supp. 1997). The court may order the minor placed outside the home only if one of the following conditions exists: (1) “substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor” if the minor returned home, and “no reasonable means” to protect the minor without removing the minor from the parents’ custody; (2) the parent is “unwilling to have physical custody of the minor, and . . . has been notified that if the minor remains out of their custody . . . the minor may be declared permanently free from their custody and control . . .”; (3) the minor suffers “severe emotional damage . . . and there are no reasonable means” to protect the minor’s emotional health without removing the minor from the parents’ custody; (4) the minor has been sexually abused and “there are no reasonable means” to protect the minor from further abuse without removing the minor from the parents custody “or the minor does not wish to return to his parent . . .” See id. § 361(b).
47. Qualifying relatives are the minor’s grandparents, aunts, uncles, or siblings. See id. § 361.3(c)(2).
49. See id.
50. See Cal. Welf. & Inst. Code §§ 361.5(a)-(c) (West Supp. 1997). The circumstances under which a court is not required to offer reunification services include severe physical or sexual abuse of the minor or a history by the parent or guardian of such abuse of other minors, mental disabilities on the part of the parent or guardian which render her or him incapable of benefiting from reunification services, and situations in which the parent or guardian cannot be found after a diligent search. See id. § 361.5(b).
parenting classes, individualized instruction, and supervised visitation. The court may order that such services be provided for up to twelve months, although an additional six months of reunification services may be ordered "if it can be shown that the objectives of the service plan can be achieved within the extended time period." After the court has adjudged a minor a dependent child, the court must conduct a review hearing at least once every six months. At each hearing, the court determines the following:

- the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, the continuing need to suspend sibling interaction, if applicable . . . , and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and . . . a likely date by which the child may be returned to the home or placed for adoption or legal guardianship.

Once the court has made these preliminary findings, it must return the minor to "the physical custody of his or her parents or guardians unless, by a preponderance of the evidence, . . . [the court] finds that the return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor." It is the probation or child welfare department's burden to establish that detriment.

At the review hearing, the court may consider evidence from the department and from the parent or guardian as to the "efforts or progress" made toward reunification. If the parent or guardian has not participated in court-ordered treatment programs, the court must consider that prima facie evidence that returning the minor to the family's custody would be detrimental. In addition to making findings concerning whether the minor should be returned to his or her parents or guardians, the court, "where relevant, shall

51. See In re David D., 33 Cal. Rptr. 2d 861, 869-70 (Cal. Ct. App. 1994) (visitation); In re Terry H., 34 Cal. Rptr. 2d 271, 278 (Cal. Ct. App. 1994) (housing assistance); In re Mario C., 276 Cal. Rptr. 548, 551-52 (Cal. Ct. App. 1990) (counseling and drug testing). According to the Foster Care Information Services database, as of October 1996, county child welfare departments in California had provided the following reunification services in 102,760 open foster care cases: case management (70,692); counseling (37,367); emergency shelter (16,578); transportation (23,087); teaching (945); parenting training (24,627); and adoption related services (3,206). Memorandum from Todd Snell, Information Services Bureau, California Department of Social Services, to author (Dec. 3, 1996) (on file with author).

52. CAL. WELF. & INST. CODE § 361.5(a) (West Supp. 1997). In rare circumstances, the court will allow reunification services to extend beyond this 18 month period. See In re Elizabeth R., 42 Cal. Rptr. 2d 200, 213-15 (Cal. Ct. App. 1995) (finding mother had made considerable progress and needed additional time to assure her stabilization and child welfare agency had inappropriately denied her visitation); In re Daniel G., 31 Cal. Rptr. 2d 75, 79, 82 (Cal. Ct. App. 1994) (finding the reunification services a "disgrace"); In re Dino E., 8 Cal. Rptr. 2d 416, 422-23 (Cal. Ct. App. 1992) (holding a court may use discretion where no reunification plan was developed when 18 months elapsed).


54. Id. § 366.2(e).

55. See id.

56. See id.

57. See id. §§ 366.2(e), 366.21(e)-(f).
order any additional services reasonably believed to facilitate the return of the minor to the custody of his or her parent or guardian.\textsuperscript{58} At the first status review hearing, held six months after the minor has been declared a dependent child, the court must make the above findings, and must also "determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the minor."\textsuperscript{59} Except in rare circumstances,\textsuperscript{60} the court then orders that reunification services be provided to the parent or guardian for another six months, although the court may modify the precise services offered.\textsuperscript{61}

At the twelve month review hearing, the court must again make "substantial risk of detriment" and "reasonable services" findings.\textsuperscript{62} If the minor is not returned home after the twelve month review hearing, the juvenile court must do one of the following: (1) order that reunification services be continued for up to six additional months;\textsuperscript{63} (2) order that the minor be continued in long-term foster care;\textsuperscript{64} or (3) order that a hearing be scheduled within 120 days to establish a permanent plan for the minor.\textsuperscript{65} If the court sets a selection and implementation hearing, it also must terminate reunification services for the parent or guardian.\textsuperscript{66}

If an eighteen month review hearing is held, the court must again make "substantial risk of detriment" and "reasonable services" findings.\textsuperscript{67} If the minor is not returned home at the conclusion of this hearing, the court terminates reunification services\textsuperscript{68} and schedules a selection and implementation hearing to develop a permanent plan, unless the evidence already before the court establishes by clear and convincing evidence that the minor is not suitable for adoption and there is no one willing to step forward as a legal guardian.\textsuperscript{69}

At the selection and implementation hearing, the court will select long-term foster care, legal guardianship, or adoption as the minor's permanent

\textsuperscript{58} Id. § 366.2(e).
\textsuperscript{59} CAL. WELF. & INST. CODE § 366.21(e) (West Supp. 1997).
\textsuperscript{60} See, e.g., In re Monique S., 25 Cal. Rptr. 2d 863, 866 (Cal. Ct. App. 1993) (holding reunification services may be terminated at six month hearing if parent does not contact or visit child).
\textsuperscript{61} See id. § 366.21(f).
\textsuperscript{62} The court shall hold another review hearing within six months, and presumably order continuation of reunification services if "there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months." Id. § 366.25(c). However, at the 12 month review hearing, the court is not required to find there is no substantial possibility of reunification within six more months of services in order to terminate reunification services. See In re Brian R., 3 Cal. Rptr. 2d 768, 772 (Cal. Ct. App. 1991).
\textsuperscript{63} See CAL. WELF. & INST. CODE § 366.21(g)(2) (West Supp. 1997).
\textsuperscript{64} See id. § 366.21(g)(3). If the juvenile court made an earlier finding that no reunification services were to be offered, the court must schedule a hearing within 120 days after the dispositional hearing to determine a permanent plan for the minor. See id. § 361.5(f).
\textsuperscript{65} See id. § 366.21(h).
\textsuperscript{66} See id. § 366.22(a).
\textsuperscript{67} But see supra note 52.
\textsuperscript{68} See CAL. WELF. & INST. CODE § 366.22(a) (West Supp. 1997).
If the minor is adopted or a future adoption is identified as the permanent plan, the court may decide to completely terminate parental rights, or may decide to continue to allow contact between the parent or guardian and the minor, but without providing further reunification services.

III. THE NEED FOR CULTURALLY COMPETENT SERVICES IN THE CHILD DEPENDENCY SYSTEM

Culturally competent reunification services are needed in the child dependency system both to compensate for present institutionalized racism and to accommodate the particular needs of the populations which the system serves. Advocates for culturally competent services must be ready to examine their own biases, seek out qualified experts to properly evaluate the case, and find appropriately tailored services for parents.

Currently, the child dependency system does not treat families of color and white families with equal respect. Families of color are treated differently than white families, and to their disadvantage, at every step of the child dependency process.

Parents of color are more likely to be reported for abusing or neglecting their children. Some may argue that this over-representation of children of color in the child welfare system is not a reflection of institutionalized racism because the agency's decision to act on a report is based on physical signs of physical or sexual abuse. However, in most cases, the signs of abuse or neglect may not be so clear-cut. The child

70. See id. § 366.26(b).
71. See id. § 366.26(b)-(c). The factors affecting whether the court will terminate parental rights are beyond the scope of this article.
72. After the selection and implementation hearing has been held, particularly if long-term foster care or legal guardianship is chosen as the permanent plan, the juvenile court may retain jurisdiction and continue to hold periodic status review hearings. See id. §§ 366.25, 366.4.
73. See Sandra T. Azar & Corina L. Benjet, A Cognitive Perspective on Ethnicity, Race, and Termination of Parental Rights, 18 LAW & HUM. BEHAV. 249, 250, 252, 263 (1994); see also Douglas J. Besharov, How Child Abuse Programs Hurt Poor Children: The Misuse of Foster Care, 22 CLEARINGHOUSE REV. 218, 220 (1988) [hereinafter Besharov, The Misuse of Foster Care] (noting that "[c]ompared to the general population, families reported for maltreatment are four times more likely to be on public assistance, and almost twice as likely to be black" (footnotes omitted)); Mark E. Courtney, et al., Race and Child Welfare Services: Past Research and Future Directions, 75 CHILD WELFARE 99, 100 (1996) ("[a]ny thorough assessment of recent trends in child welfare populations (e.g., abused and neglected children, children in family foster care, children awaiting adoption) must take note of the disproportionately large number of children of color"); Lindholm & Willey, supra note 3, at 114-15 (reporting that Anglo children are least likely to be reported for abuse, African-American children most likely to be reported for abuse, with Latino children falling in between the two groups). The most recent annual report published by the California Department of Social Services lists the following reasons for emergency response by the child welfare agencies: physical abuse (31.3%), sexual abuse (15.7%), severe neglect (6.8%), general neglect (31.7%), emotional abuse (5%), exploitation (3%), and caretaker absence/incapacity (9.4%). See Cal. DEPT. OF SOC. SERVICES, PREPLACEMENT PREVENTIVE SERVICES FOR CHILDREN IN CALIFORNIA ANN. STATISTICAL REP. Chart 2 (1995). This predominance of neglect cases is not unique to California, but occurs throughout the nation. See Boyer, supra note 10, at 1646.

The exception to the rule that families of color are more likely to be reported for child abuse or neglect is in the arena of reported sexual abuse. White families are more likely to be reported for sexual abuse than are families of color. See Courtney, supra, at 104-05.
dependency statutes also call for children to be removed from their families in certain cases of neglect and emotional harm. Socioeconomic status may also lead to a family being reported for neglect. There is a split in opinion as to whether race remains a factor in reporting of neglect cases when socioeconomic status is taken into account. At least one study in which the surveys examined reporting rates for neglect and factored in rates of poverty showed that African-American families were still disproportionately represented. On the other hand, another group of researchers, who analyzed the results of the second National Study of Incidence and Severity of Child Abuse and Neglect, did not find race was a significantly predictive factor in determining rates of reports of neglect when separated out from socioeconomic factors.

Once reported, children of color are more likely to be removed from their parents and placed in foster care. Once in foster care, children of color are more likely to remain in out-of-home placement for long periods of time, in part because fewer treatment and reunification options are available for families of color. A review of studies conducted over the past twenty years demonstrates that families of color consistently receive fewer services than white families, and even though special services may be required in some cases, they are not provided to families of color.

The mother’s attorney should never forget this past and present discrimination when serving as the mother’s advocate. At a minimum, the mother’s attorney should try to ensure the mother receives at least the same respect and services within the system as a white, English-speaking parent. The attorney’s ultimate goal, however, should be to advocate and encourage systematic reform so that the child dependency process is culturally competent at every stage.

The need for dependency courts to take racial and ethnic differences into account is becoming more urgent with each passing year. “Although the ethnic diversity of the nation’s population is increasing, the trend is

74. See CAL. WELF. & INST. CODE § 300(b)-(c) (West Supp. 1997).
75. See Courtney, supra note 73, at 103 (citing James L. Speary & Michael Lauderdale, Community Characteristics and Ethnicity in the Prediction of Child Maltreatment Rates, 7 CHILD ABUSE & NEGLECT 91 (1983)).
76. See Courtney, supra note 73, at 103-04 (citing Elizabeth D. Jones & Karen McCurdy, The Links Between Types of Maltreatment and Demographic Characteristics of Children, 16 CHILD ABUSE & NEGLECT 201 (1992)). See also Saunders et al., supra note 3, at 350 (finding African-American families in its study “were no more likely than Caucasian families to have neglect confirmed by” the local children’s services investigators, but they were more likely to be referred for “inadequate supervision” and “problems with poor hygiene and chronic neglect”).
77. See Courtney, supra note 73, at 116-17. In California, of 97,227 foster care cases open at the end of October 1996, 35.5% represented white families, 26.5% Latino families, 35.5% African-American families, 1% American Indian/Alaskan Native families, 0.3% Filipino families, 1.1% Asian/Pacific Islander families, and 0.1% ethnicity unknown. Memorandum from Todd Snell, supra note 51.
78. See Besharov, The Misuse of Foster Care, supra note 73, at 222; Courtney, supra note 73, at 107-116; Azar & Benjet, supra note 73, at 257; Saunders, supra note 3, at 351.
79. See Courtney, supra note 73, at 107-12; Saunders, supra note 3, at 351.
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uniquely pronounced in California.” Melton provides the following telling statistics:

In 1970, whites (Anglo-Americans) comprised more than three fourths (15,636,000) of the population of California. By 1980, that proportion had dropped to two thirds (15,835,600), and by 1990 had fallen to fewer than three fifths (16,715,900). By the turn of the century, whites are expected to remain barely in the majority (51.6%, or 16,958,100). In the next century, there will be a “majority of minorities” as the proportion of whites in the state population is projected to continue to decline to 45.6% (16,537,300) in 2010 and 40.6% (16,092,500) in 2020.

Although the white population has remained relatively constant since 1970 and is projected to continue to stay so until 2020, the overall population will have nearly doubled during that period (from 20,039,200 to 39,618,500). The Asian population is projected to grow by a factor of nearly nine from 648,000 in 1970 to 3,013,600 in 1992 to 5,615,200 in 2020. The Hispanic population is expected to show a six fold increase from 2,377,100 in 1970 to 7,604,800 in 1992 to 14,948,300 in 2020. The black population is expected to more than double during the same fifty year period, from 1,378,000 in 1970 to 2,217,100 in 1992 to 2,962,500 in 2020.

The shifts in the population of children are even more striking. In 1990, whites already comprised a minority (only 45.5%) of Californians under the age of twenty. By 2000, the proportion is expected to drop to 40.2%, barely a plurality; the child and youth population is projected to be 38.9% Hispanic.

The present and future reality of the child dependency system is that it will serve people of many cultures, and the system must address the needs of the populations it serves.

The first step in providing culturally competent services is for child welfare social workers either to become knowledgeable about cultural differences and the implications of those differences or to consult with knowledgeable case managers and evaluators. From the outset of a child dependency case, the social worker assigned to the case makes highly subjective decisions about whether and to what degree the parent poses a risk to her child, and about whether and to what degree the parent would benefit from reunification services. Such subjective decision-making is a fertile ground for assumptions made from the social worker’s perspective that may operate to the mother’s disadvantage. Similarly, at each court hearing, the judge must make subjective decisions about the mother’s parenting ability, fitness, and

81. Id.
82. See Azar & Benjet, supra note 73, at 252 (“mental health professionals observe families through cultural filters that operate outside their awareness and often will persist in their established views in spite of contradictory evidence.” (citations omitted)). See also id. at 253, 255, 259-61 (explaining the danger that an evaluator who is of a different cultural or ethnic group may view the client’s responses or behavior as non-normative, rather than as simply a reflection of a different cultural perspective).
compliance with court-ordered services. The relatively vague standards set by the child dependency statutes83 “allow the judge’s personal values to serve as the standard for measuring parental attitudes and behavior.”84 Because California’s Superior and Municipal Court judges are still overwhelmingly white and male,85 a judge’s use of such personal values may lead to distortions that disadvantage families of color.

This need for cultural competence in case evaluation continues throughout the dependency process. For example, one commentator has discussed how unexamined cultural differences may influence a social worker’s assessment of the parent’s compliance with reunification services:

A second area often considered in assessing compliance is the family’s response to the services aimed at improving parental functioning. Response is assessed along multiple dimensions, including attendance at parenting, evaluation, or therapy sessions, responsiveness to feedback, ability to form relationships with professional and paraprofessional service providers, integration of information provided (e.g., demonstration of new parenting skills), and ongoing help-seeking behavior. Here again, ethnic and racial differences may be relevant. Subtle factors such as tolerance of strangers within one’s home (especially from another culture), the ability to communicate in another language, cultural ease with seeking help from nonfamily members, and sensitivity to cultural differences in parenting values may color the impression formed by service providers.86

What would culturally competent reunification services look like? The case of G.T., a recently emigrated Filipina mother, provides a good example. After meeting with the parents several times, the first therapist assigned to work with both parents wanted them to undergo a psychological examination before continuing with therapy. G.T.’s trial attorney secured the services of a psychologist who had experience working with women from

83. For example, at the periodic review hearings held if the child is removed from home, the judge must determine whether the “return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor.” CAL. WELF. & INST. CODE § 366.2(e) (West Supp. 1997). See also id. § 366.21(e)-(f).


85. According to a recent report commissioned by the California Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts, as of 1993, 89.4% of Superior Court judges were white, 4.51% were African-American, 4.06% were Latino, and 2.03% were Asian-American. No Superior Court judges were Native American. Of Municipal Court judges, 83.27% were white, 6.77% were African-American, 6.64% were Latino, 3.05% were Asian-American, and 0.27% were Native American. This same study also revealed that 77% of Superior Court judges and 69% of Municipal Court judges were white males. The number of judges who are women of color is extremely low: of Superior Court judges, only four are African-American females (0.5% of the total), four are Asian-American females, and only two are Latina (0.26% of the total). Of 119 judicial commissioners, 71 are white males, 36 are white females, 6 are African-American males, 3 are African-American females, 2 are Latinos, and 1 is Latina. There are no Asian-American or Native American commissioners. See AR RESOURCES, RACIAL AND ETHNIC COMPOSITION OF THE CALIFORNIA TRIAL COURTS: A REPORT TO THE JUDICIAL COUNCIL ADVISORY COMMITTEE ON RACIAL AND ETHNIC BIAS IN THE COURTS, at 12, 28-31, 35, 46-49 (1995).

86. Azar & Benjet, supra note 73, at 254-55.
Asian and Pacific Islander cultures. Both the initial therapist and the expert psychologist recommended that G.T. receive some form of individualized parenting instruction. In their collective opinion, G.T. would not be able to obtain the usual benefit from parenting classes both because English was not her first language and because she lacked some of the basic medical knowledge instructors would assume most parents possess. In addition, the psychologist thought G.T.'s therapy should be continued by a Filipina therapist.

It is important to note that the particular services needed by G.T. are not unusual. Individualized parenting instruction is one type of reunification service offered by child welfare agencies, although it is usually reserved for cases in which reunification is imminent. Similarly, counseling or therapy is a common component of a child dependency service plan. All that was required in my case, and in most cases, is that the method of delivering the usual services, or the knowledge possessed by the person who delivers those services must be made appropriate for the particular mother.

A well-rounded model for offering culturally competent services will take into account not just race or ethnicity, but also the frequently related issues of language and acculturation. One commentator explains:

Language issues may interfere with accurate mental status assessment. The use of interpreters, often required in diagnostic interviewing, may be problematic. For example, in some Asian cultures a belief in spirits is an integral part of daily life. Records in social service agencies or hospital admission summaries used by judges and evaluators may include misinterpretations of statements about such beliefs and indicate that a parent was “hearing voices” or “hallucinating.” Cultural styles in presenting complaints may also influence labeling. For example, a cultural tendency to engage in more complaining may account for findings that Italian clients are often labeled as having mental health problems despite a lack of evidence of psychosocial difficulties. The degree to which consideration should be given to such issues may vary with the immigrant parent’s degree of identification with Anglo-American versus their “home” culture. Acculturation scales have been developed to aid in assessment of this factor, but it is unclear whether they are used by evaluators.

While access to a culturally diverse services staff and pool of expert evaluators and treatment providers would be ideal, the demographic composition of particular counties and limited financial resources make that ideal

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87. For example, G.T. did not know how to diagnose a fever or read a thermometer.
88. “Teaching” or individualized parenting instruction is one of the reunification services offered on a statewide basis in California. See Memorandum from Todd Snell, supra note 51. It has been my experience, both in this case and in other child dependency cases on which I have worked, that individualized parenting instruction generally is not provided unless reunification is imminent, or unless the parent qualifies for such services through the regional center for people with developmental disabilities.
89. See id.
90. Azar & Benjet, supra note 73, at 253 (citations omitted); see also Cross, supra note 4, at 3-4 (discussing communication and culturally influenced speech patterns).
unattainable in many cases. At a minimum, however, the mother’s advocate should argue that the county obtain any expert advice needed, even if from another county. At the county level, the entire child social work staff should be trained to ask the right questions, learn when to turn to other experts for help, detect the tell-tale traces of their own biases and flag the need for culturally competent services.

IV. LEGAL ARGUMENTS SUPPORTING CULTURAL COMPETENCY REQUIREMENTS

Currently no California case law requires courts to order culturally competent reunification services. However, the court’s authority to order different types of reunification services is broad, and the advocate can marshal statutory, case law and constitutional arguments in an attempt to persuade the juvenile court to order culturally competent services.

At each status review hearing held before reunification efforts are terminated, the juvenile court must determine whether the child welfare

91. Based on numerous telephone interviews I conducted to prepare for writing this article, I have concluded that expert advice on culturally competent social services can be found in most major metropolitan areas. Telephone interviews with Barbara Christensen, Nat’l Resource Center for Fam. Centered Practice, U. Iowa (July 29, 1996) (Iowa City, Iowa); Josie Romero, Exec. Dir., Hispanic Inst. for Fam. Dev. (June 17, 1996) (San Jose, Cal.); Catherine Rouse, Professor, U.C. Berkeley Sch. of Soc. Welfare (June 19, 1996) (Berkeley, Cal.); Victoria Santos, M.S.W. (June 21, 1996) (Fremont, Cal.); Betsy Thielman, Am. Pub. Welfare Ass’n (July 25, 1996) (Wash., D.C.). Other sources of information on culturally competent social services include: Child & Adolescent Service System Program (CASSP), Center for Child Health & Mental Health Pol’y, Geo. U. Child Dev. Center (Wash., D.C.); Fam. Resource Coalition (Chicago, Ill.); Nat’l Indian Child Welfare Ass’n (Portland, Ore.); Jose Soto, J.D., Ass’t to the Chancellor, Southeastern U. (Lincoln, Neb.). There is also increasing scholarly attention to culturally competent social work in the child welfare field. See, e.g., Rowena Fong, Family Preservation: Making It Work for Asians, 73 CHILD WELFARE 331 (1994); Sylvia Sims Gray and Lynn M. Nybell, Issues in African-American Family Preservation, 69 CHILD WELFARE 513 (1990); Charles Horejsi et al., Reactions by Native American Parents to Child Protection Agencies: Cultural and Community Factors, 71 CHILD WELFARE 329 (1992); Elvia R. Krajewski-Jaime, Folk-Healing Among Mexican-American Families as a Consideration in the Delivery of Child Welfare and Child Health Care Services, 70 CHILD WELFARE 157 (1991).

92. Terry Cross has outlined the task facing professionals who wish to become culturally competent: To work toward culturally competent practice, family-centered practice professionals need to acquire knowledge on: the impact of a culture’s history on families, the role of acculturation and assimilation, patterns of communication, family structures, cultural norms and values, etiquette (i.e., what people respect and how they show it), spirituality and its impact on concepts of health and healing, and help-seeking and problem-solving behavior.

Cross, supra note 4, at 3; see also Brenda M. Rodriguez, From Self to Other: Communication Across Cultures, 14 FAM. RESOURCE COALITION REP. 11 (1995-96). For some specific steps that professionals can take toward becoming culturally competent, see note 118, infra.

93. In one appellate case, which the California Supreme Court ordered not to be officially published, the fact that the child welfare agency had not provided the mother with a Spanish-speaking counselor was a reason the court reversed the trial court judgment and remanded the case for the trial court to determine whether reasonable reunification services were provided. See Matter of Jose F., 224 Cal. Rptr. 239, 245-46 (Cal. 1986).

94. See CAL. WELF. & INST. CODE § 366.21(e) (West Supp. 1997). While this statutory section applies only to the six month review hearing, case law reveals that the court may also order additional reunification services at later review hearings. See, e.g., In re Dino E., 8 Cal. Rptr. 2d 416 (Cal. Ct. App. 1992).
agency has provided or offered reasonable reunification services. In addition, one of the juvenile court’s tasks at the six month review hearing is to “order any additional services reasonably believed to facilitate the return of the minor to the custody of his or her parent or guardian.” While there is no case law that specifically requires the juvenile court to order culturally competent services, there is analogous precedent supporting the adoption of such a rule.

California case law has interpreted the child dependency statutes to require “[a] reunification service plan [that is] well-defined, specific, and tailored to provide services that will lead to the resumption of a family relationship.” Section 361.5 has been construed . . . to require “[a] good faith effort” to provide reasonable services responding to the unique needs of each family. The question at a review hearing is whether “the services provided were reasonable under the circumstances.” The court must consider the circumstances and the particular needs of the family before the court.

California courts have made some general attempts to define what is meant by “reasonable reunification services”: “[T]he agency supervising the children must identify the problems leading to the loss of custody, offer services designed to remedy these problems, and maintain reasonable contact with the parents to assist in areas where compliance proves difficult, such as transportation.”

95. See CAL. WELF. & INST. CODE § 366.21(e)-(f) (West Supp. 1997). The requirement that the child welfare agency provide reasonable reunification efforts originated with a federal mandate that states make reasonable efforts to keep children with their parents, or, if removal is necessary, make reasonable reunification efforts. See 42 U.S.C.A. §§ 620-28 (West 1991 & Supp. 1996); see also Alice C. Shotton, Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later, 26 CAL. W. L. REV. 223, 223-25 (1989-90) (providing further background on the federal reasonable efforts requirement). California, and other states that wanted federal funding for child welfare activities, were required to institute several legal reforms, including the reasonable efforts requirement. See 42 U.S.C.A § 671(a)(15) (West Supp. 1996); Cynthia D. v. Superior Court, 19 Cal. Rptr. 2d 698, 699 (Cal. 1993). In 1982, the California Legislature passed Senate Bill No. 14 to comply with the federal mandate. See Cynthia D., 19 Cal. Rptr. 2d at 699. While federal regulations suggest some services, 45 C.F.R. § 1357.15(e)(2), neither the federal statute nor the accompanying regulations describe what constitutesreasonable efforts, thereby leaving the states to define reasonable reunification services for themselves. See Shotton, supra, at 223, 225.


101. In re Joanna Y., 10 Cal. Rptr. 2d 422, 425 (Cal. Ct. App. 1992) (citing In re Riva M., 286 Cal. Rptr. 592, 599 (Cal. Ct. App. 1991)). Shotton has suggested a three-step process for identifying the reasonable efforts that must be made in individual cases: (1) identifying the exact danger that puts the child at risk of placement and that justifies state intervention; (2) determining how the family problems are causing or contributing to this danger to the child; and (3) designing and providing services for the family that alleviate or diminish the danger to the child. If any one of these steps is missing, it is unlikely that the efforts made on behalf of the family will be reasonable.

Shotton, supra note 95, at 225-26.
There is precedent for requiring specialized services to meet the particular needs of certain parents. In *In re Victoria M.*, the court required that services be tailored to meet the needs of a developmentally disabled mother.102 Similarly, the particular needs of a mentally ill103 or incarcerated104 parent must be accommodated. Thus, the courts have recognized that there are barriers that prevent developmentally disabled, mentally ill, or incarcerated parents from effectively utilizing the usual array of reunification services offered. Language and cultural diversity may be seen as analogous barriers, requiring reunification services to be tailored so as to be culturally competent when appropriate.

There is also legal precedent for the concept that a parent’s language and cultural background must be accommodated as part of a reasonable reunification plan. The curriculum for a parenting course offered as a family maintenance or family reunification service must include “[r]espect for, and sensitivity to, cultural differences in child rearing practices . . . .”105 When placing a child in foster care with non-relatives, the child welfare agency “may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster parents to meet the needs of a child of this background.”106 If the child falls within the purview of the Indian Child Welfare Act (“ICWA”), of course, a whole panoply of special foster care placement procedures must be followed.107

The Congressional findings underpinning the ICWA are instructive. Among the findings set out in the statute are the following:

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often

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103. *See In re Elizabeth R.*, 42 Cal. Rptr. 2d 200, 209 (Cal. Ct. App. 1995) (stating that in cases of parental mental illness, the "reunification plan, including social services provided, must accommodate the family’s unique hardship").

104. *See In re Precious J.*, 50 Cal. Rptr. 2d 385, 394 (Cal. Ct. App. 1996) (holding that reasonable services had not been provided to an incarcerated parent when the social services department had not facilitated visitations provided for in the reunification plan).


106. CAL. FAM. CODE § 7950(b) (West Supp. 1997).

107. *See 25 U.S.C.A. §§ 1901-63 (West 1983).* The issue of culturally competent foster care placement is beyond the scope of this article. However, a tremendous amount has been written on the topic, both for and against the idea that the racial and cultural background of the foster or adoptive family and the minor should match.
failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.\textsuperscript{108}

Thus, an alarmingly high number of Native American children in out-of-home placement, and the failure of child welfare agencies and the judiciary to recognize the particular cultural needs and standards of Native Americans require the provision of culturally competent services to Native American families. As discussed in Part III, similar types of discrimination exist for families of other racial and ethnic backgrounds, and should therefore require the provision of culturally competent services whenever necessary. At a minimum, the ICWA findings may be used as an example that Congress has recognized the concept of making cultural accommodations in the provision of social services. This example could help overcome a court's reluctance to create a new set of culturally competent reasonable reunification requirements.

While courts are often reluctant to decide cases based on constitutional principles, it is worthwhile to remind courts that fundamental constitutional rights are implicated by dependency proceedings. Both the United States Supreme Court and California courts have recognized the fundamental nature of parents' rights to raise their children and the need to afford parents due process in dependency proceedings.

In \textit{Stanley v. Illinois}, the plaintiff was a father who desired custody of his children after their mother had died, but Illinois law presumed him an "unfit parent" because he was not married to the mother.\textsuperscript{109} The United States Supreme Court made the following sweeping statements when ruling in the father's favor:

\begin{quote}
It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements."
\end{quote}

The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed "essential," "basic civil rights of man," and "[r]ights far more precious . . . than property rights." . . . The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment.\textsuperscript{110}

Ten years later, the Supreme Court had a less sympathetic plaintiff to protect. In \textit{Santosky v. Kramer}, the Court held that the Due Process Clause of the Fourteenth Amendment requires the state to prove its allegations by at least clear and convincing evidence before terminating parental rights.\textsuperscript{111} In mak-

\begin{flushleft}
\footnotesize
\textsuperscript{108} Id. § 1901.
\textsuperscript{110} Id. at 651 (citations omitted).
\textsuperscript{111} See 455 U.S. 745, 769-70 (1982).
\end{flushleft}
ing this ruling, the Court stated that even parents who have abused or neglect-
ed their children retain their fundamental constitutional rights.

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.\textsuperscript{112}

While the California Supreme Court has also recognized the parent's fundamental constitutional rights,\textsuperscript{113} California courts balance the rights of parents against the state's duty to protect children. In \textit{In re Marilyn H.}, the court delineated the competing interests as follows:

Although a parent's interest in the care, custody and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect.\textsuperscript{114}

The key for California courts is timing. For the twelve to eighteen months in which reunification services are offered, the courts weigh parental rights to reunification more heavily, although never at the expense of the minor's safety or well-being.\textsuperscript{115} Once reunification efforts have been terminated, however, the parent's rights are given relatively little weight in comparison to the minor's right to a permanent, stable home, even if that home is not with the child's birth family.\textsuperscript{116}

When arguing for culturally competent reunification services, the mother's advocate need not convince the court to honor the parent's constitutional rights above that of the child's. Culturally competent reunification services, because they are more likely to lead to successful reunification of the family, protect both the mother's right to due process and the child's right to a safe and stable home. Although decided in another factual context, the declarations of the court in \textit{In re Heather B.} resonate here: "Until the state has established parental unfitness it cannot assume that the interests of the child and his or her parents diverge and until such time parent and child share an interest in preventing an erroneous termination of the relationship."\textsuperscript{117}

\textsuperscript{112} \textit{Id.} at 753-54 (footnote omitted).
\textsuperscript{113} \textit{See, e.g., In re Kieshia E.}, 23 Cal. Rptr. 2d 775, 780 (Cal. 1993); \textit{In re Marilyn H.}, 19 Cal. Rptr. 2d 544, 551 (Cal. 1993).
\textsuperscript{114} 19 Cal. Rptr. at 551 (citations omitted).
\textsuperscript{115} \textit{See id.; In re Heather P.}, 257 Cal. Rptr. 545, 549 (Cal. Ct. App. 1989).
\textsuperscript{116} \textit{See In re Marilyn H.}, 19 Cal. Rptr. at 551; \textit{In re Heather P.}, 257 Cal. Rptr. at 549.
When a state deprives the mother of the basic constitutional right to raise her children, it follows that reunification services should be provided in a manner that does not discriminate against her on the basis of race or national origin.

V. TRIAL STRATEGIES

The first and most important trial (or appellate) strategy for the attorney is to become culturally competent with respect to his or her client. The need for self-education is particularly pronounced if attorney and client are from different racial or ethnic backgrounds. However, given the often complex interplay of ethnicity, language, and acculturation discussed above, every attorney should consider additional self-education. The fruits of this education will be better attorney-client communication, more knowledge of community resources, and a more creative approach to adapting existing reunification services to meet the client’s needs.

The attorney representing the mother has two opportunities early in

118. Terry Cross has suggested the following steps to take to learn more about a culture:
   - First, spend more time with strong, healthy people of that culture.
   - Second, identify a cultural guide—that is, someone from the culture who is willing to discuss the culture, introduce you to new experiences, and help you understand what you are seeing.
   - Third, spend time with the literature. Reading articles by and for persons of the culture is most helpful. Along with the professional literature, read the fiction. This is an enjoyable way to enter the culture in a safe, nonthreatening way. Find someone with whom you can discuss what you have read.
   - Fourth, attend cultural events and meetings of leaders from within the culture. Cultural events allow you to observe people interacting in their community and see values in action. Observing leadership in action can impart you with a sense of the strength of the community and help you identify potential key informants and advisors.
   - Finally, learn how to ask questions in sensitive ways. Most individuals are willing to answer all kinds of questions, if the questioner is sincere and motivated by the desire to learn and serve the community more effectively.

Cross, supra note 4, at 2-3.

119. See supra note 82 and accompanying text.

120. The strategies discussed here are most likely to assist the attorney representing the mother or father. However, these strategies could also be used by the attorney appointed to represent the minor to the extent that the minor’s interest in reunification overlaps with the parents’ interests.

As stated in footnote 34, the minor is not always appointed an independent attorney. The court is to appoint counsel for the minor “[i]n any case in which it appears to the court that the minor would benefit from the appointment of counsel . . . .” CAL. WELF. & INST. CODE § 317(c) (West Supp. 1997). The court may appoint the minor separate counsel from the petitioning agency’s counsel if the court finds that counsel for the agency would have an actual conflict of interest by also representing the minor. See id.; In re Candida S., 9 Cal. Rptr. 2d 521, 528 (Cal. Ct. App. 1992). In my experience and in the experience of my colleagues, the attorney for the minor, even if independently appointed, usually follows and supports any recommendations made by the child welfare agency social worker. However, one study has shown that social workers would prefer that the attorney for the minor remain genuinely independent and serve as a balance against the authority of the social worker. See Prygoski, supra note 84, at 901, 912.

If the court does not appoint an attorney specifically to represent the minor’s interests, then the attorney representing the child welfare agency also represents the minor. As a government attorney, this attorney could advocate for culturally competent services behind the scenes, in her or his role as a legal adviser to the agency.
the child dependency process\textsuperscript{121} to advocate for culturally competent services by educating both the social worker and the juvenile court. The first occurs at the dispositional hearing, when the child’s placement is decided in a non-emergency context for the first time, and when the juvenile court first may order reunification services. The second occurs at the six month review hearing, the first post-disposition hearing at which the judge must formally consider whether the reunification services offered have been reasonable.

Before the dispositional hearing, the social worker is required to prepare the following:

a social study of the child, that shall include all matters relevant to disposition, and a recommendation for disposition. . . . If petitioner recommends removing the child from the home, the report shall include a discussion of the reasonable efforts made to prevent or eliminate removal and a recommended plan for reuniting the child with the family, including a plan for visitation.\textsuperscript{122}

The mother’s advocate should use this opportunity to assist the social worker by suggesting specific culturally competent services available in the community or modifications of existing services that will meet the particular needs of the mother. All suggestions should be sent to the social worker in writing, so they become part of the social worker’s file. Proceeding in this formal fashion is advantageous because if the social worker ignores these suggestions, the mother’s advocate can then cross-examine the social worker at the dispositional hearing as to why she or he did not explore readily available options to construct a culturally competent reunification plan. In this way, the mother’s attorney can influence the type and duration of reunification services provided.\textsuperscript{123}

At the dispositional hearing, it is the attorney’s task to identify and advocate for services that may be provided to the parents to allow them to keep the child at home and out of foster care altogether.\textsuperscript{124} The court is required to receive into evidence “any relevant information offered” by any of the interested parties, including the parents.\textsuperscript{125} In addition to cross-exam-

\textsuperscript{121} One commentator has emphasized the importance of enforcing the “reasonable efforts” requirement vigorously before the court begins actively considering terminating parents’ rights. “[D]uring the first six to twelve months after a child is removed from the parental home, the child welfare agency should be required to make intensive, effective efforts to reunify the natural family.” David J. Herring, Inclusion of the Reasonable Efforts Requirement in Termination of Parental Rights Statutes: Punishing the Child for the Failures of the State Child Welfare System, 54 U. PITT. L. REV. 139, 143 (1992). Herring argues that imposing a “reasonable efforts” requirement at the termination of parental rights hearing punishes the child for the child welfare agency’s failure, and may prevent the child from securing a permanent home in time to meet developmental needs. See id. at 179-94.

\textsuperscript{122} CAL. R. CT. 1455(a) (West 1996); see CAL. WELF. & INST. CODE § 358.1 (West Supp. 1997).

\textsuperscript{123} See Besharov, Representing Parents, supra note 10, at 468.

\textsuperscript{124} See id. According to Besharov, “[t]he most likely source of on-going pressure for more and better in-home services will come through the demands of parents represented by attorneys.” Id. at 470. See also Besharov, The Misuse of Foster Care, supra note 73, at 224 (arguing that “child-oriented services that compensate for parental deficiencies” yet allow the child to remain in the home is a better solution than foster care for many families in which the child has been made a dependent due to neglect).

\textsuperscript{125} See CAL. R. CT. 1455(b) (West 1996).
ining the social worker as to all options pursued, the mother's advocate should consider calling expert witnesses to present alternative or additional reunification services. At least two types of expertise will be useful—expertise on the concept of cultural competence (the juvenile court is likely to need education on this point), and expertise and experience with how particular services might meet the particular cultural needs of this mother.\textsuperscript{126}

While the court may resist the introduction of such social science literature and testimony, commentators have recognized that dependency court "is not simply a court. It is a court with social objectives and a social service orientation."\textsuperscript{127} The juvenile court's broad mission to protect the child and reunite the family should allow the mother's attorney substantial leeway to argue that expert testimony on culturally competent reunification services is relevant.

These same tactics, educating the social worker about options and educating the juvenile court at the hearing, can be used at the six month review hearing. Before the six month review hearing, the social worker is required to prepare a report "describing the services offered the family and progress made, and if relevant, the prognosis for return of the child to the parent or guardian. The report shall contain recommendations for court orders, and the reasons for those recommendations."\textsuperscript{128} The mother's attorney should use all available resources to feed the social worker information to be included in this report to set up future cross-examination of the social worker at the hearing. For example, the mother's attorney could provide the social worker with relevant articles from the social work literature, or with reports prepared specially by experts the attorney intends to call as witnesses at the hearing.

The mother's attorney has an additional bit of legal leverage at the six month review hearing. At the hearing, if the child is not returned to the parent, the juvenile court is required to determine whether or not the child welfare agency has made "reasonable efforts" toward reunification.\textsuperscript{129} If the child welfare agency has resisted the attorney's attempts to obtain culturally competent services, the mother's attorney should try to persuade the juvenile court to make a "no reasonable efforts" finding. A finding of "no reasonable efforts" can have both immediate and long term benefits for the mother. The immediate benefit is that the judge can order additional services to compensate for the lack of services in the past.\textsuperscript{130} The long term benefit is that if the

\textsuperscript{126} As of 1994, one commentator noted that discussion of the fact that “[p]arenting behaviors vary widely across different ethnic and racial groups . . . has not been discussed much in the child custody literature and, thus, may not be fairly considered by expert witnesses and the courts.” Azar & Benjet, supra note 73, at 250 (citations omitted). But see supra note 91, for several easily located examples of social work journal articles upon which an expert might rely. Furthermore, given the reality that juvenile court hearings are comparatively informal, and that the legal standard describing who qualifies as an expert witness (see, e.g., CAL. EVID. CODE § 720 (West 1995)) are broadly worded, it is always worth the effort to try to get relevant expert testimony admitted.

\textsuperscript{127} Besharov, Representing Parents, supra note 10, at 470.

\textsuperscript{128} CAL. R. CT. 1460(c) (West 1996).

\textsuperscript{129} See CAL. WELF. & INST. CODE § 366.21(e) (West Supp. 1997).

\textsuperscript{130} See id. § 366.2(e).
mother needs longer than twelve or even eighteen months to complete all reunification requirements and convince the child welfare agency and the court that returning the child would not expose the child to substantial risk, an earlier finding of "no reasonable efforts" may convince the judge to allow the mother precious additional time.\textsuperscript{131}

Judges are reluctant to make "no reasonable efforts" findings, often because judges are sympathetic to the paucity of resources child welfare agencies have to draw upon to provide reunification services.\textsuperscript{132} One judge has proposed a novel solution to this reluctance: at the periodic review hearing, the judge could announce that he or she will make a "no reasonable efforts" finding unless the child welfare agency immediately provides the requested services, then continue the hearing for a short time period to allow the agency to comply.\textsuperscript{133}

Obviously, these same strategies may also be used at the twelve and eighteen month review hearings. However, at these two later hearings, the juvenile court begins to actively consider terminating reunification services altogether.\textsuperscript{134} The court is required to focus increasing attention on finding the child a stable home, even if that requires termination of parental rights.\textsuperscript{135} As a result, it is important for the attorney to spend sufficient energy at the dispositional and six month review hearing stages of the case to build a record for requiring and obtaining culturally competent services. For example, in G.T.'s case, the trial attorney arranged for G.T. to have a psychological evaluation performed by a culturally competent psychologist. This expert made specific suggestions about the kinds of reunification services that should have been offered. That psychologist's testimony at the six month review hearing laid the groundwork for my being able to raise the cultural competence issue on appeal.

\section*{VI. APPELLATE STRATEGIES}

The most important appellate strategy is to file an appeal at the first sign that the court is not willing to order culturally competent services. Most appeals take at least a year to reach the stage at which the appellate court issues an opinion. Given the twelve to eighteen month limitation on providing reunification services, only an early appeal will be likely to have a practical impact on the case at hand. The dispositional hearing is the first hearing at which the juvenile court reaches an appealable final judgment.\textsuperscript{136} An appeal also may be taken from orders made at the six month review hearing because

\begin{itemize}
  \item \textsuperscript{131} See supra note 52.
  \item \textsuperscript{133} See id. at 19.
  \item \textsuperscript{134} See \textsc{Cal. Welf. \\& Inst. Code} §§ 366.21(h), 366.22(a) (West Supp. 1997).
  \item \textsuperscript{135} See supra notes 115, 116 and accompanying text.
  \item \textsuperscript{136} See \textit{In re Sheila B.}, 23 Cal. Rptr. 2d 482, 486 (Cal. Ct. App. 1993).
\end{itemize}
these are appealable as orders after judgment.\textsuperscript{137} If an appeal is made later in the process, the mother’s advocates run the risk of the court deciding that any request for culturally competent reunification services should have been made sooner, and that such objections to the reunification services provided are therefore waived. An appeal at any point in the process may at least be useful to establish precedent for future cases, but the attorney’s obligation is to zealously represent the present client.\textsuperscript{138}

An early appeal has another advantage—the attorney representing the mother in juvenile court will then have access to the advice of an appellate attorney on the case. In California, indigent parents are entitled to an appointed attorney on appeal.\textsuperscript{139} Both the trial attorney and appellate attorney can benefit from each other’s strategic thinking. For example, the appellate attorney may be more familiar with law review or social work journal articles that the trial attorney can transmit to the social worker to help build a record for the need for culturally competent services.

Generally, the only materials that the appellate attorney may include in the appellant’s briefs are materials from the appellate record, relevant statutes, published judicial opinions, and law review articles.\textsuperscript{140} These limitations have strategic implications, and may require creative work on the part of both the trial attorney and the appellate attorney to build an adequate appellate record.

For example, in my case, G.T.’s attorney at the trial level presented evidence at the six month review hearing that G.T. needed culturally competent services such as individualized parenting classes, and that the child welfare agencies had not made reasonable efforts to provide such services. At the conclusion of the hearing, the juvenile court took the matter under submission. At a later date, the parties received a written court order in which the court found the agency had offered reasonable reunification services. This written order was made on a pre-printed form, on which the court had checked the appropriate boxes with minimal additional notes. As a result, it is not possible to tell from this form what the juvenile court thought of the arguments made and evidence presented regarding the need for culturally competent services. There was merely an implied finding that the juvenile court was not persuaded that the child welfare agency had failed to make reasonable reunification efforts. A more complete record for an appeal on this issue would contain detailed oral or written findings by the juvenile court specifically addressing the cultural competency issues. More detailed findings by the juvenile court judge would provide the appellate attorney with a better record from which to argue that either the judge did not take cultural competency factors into account at all, or that there is insufficient

\textsuperscript{137} \textit{See} CAL. WELF. & INST. CODE § 395 (West Supp. 1997).
\textsuperscript{138} \textit{See} MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 7-101 (1980).
\textsuperscript{139} \textit{See} CAL. WELF. & INST. CODE § 317 (West Supp. 1997).
\textsuperscript{140} \textit{See} CAL. EVID. CODE §§ 451, 452 (West 1995).
evidence in the record from which the judge could have concluded reasonable reunification services had been offered.

Giving the social worker journal articles other than law review articles, and entering those articles as exhibits at juvenile court hearings also helps build the record on appeal. In my case, I requested that the appellate court take judicial notice of the Courtney article, which outlines the various forms of prejudice faced by families of color within the child dependency system. The appellate court refused, and was within its discretion to do so. However, if that same article had been entered as an exhibit in a juvenile court hearing below, I could then cite to it as part of the juvenile court record.

Finally, it is important for the appellate attorney to be creative in fashioning arguments. It is at the appellate level that new law is made. Once appellate courts begin equating reasonable reunification services with culturally competent services, juvenile courts and child welfare agencies will have to ensure that such services are provided.

VII. CONCLUSION

Race, ethnicity, and other cultural factors already affect the process and outcome of child dependency cases. Too frequently, however, such cultural factors are interpreted only by resort to stereotypes, within a discriminatory child dependency system. The time has come to acknowledge race, ethnicity, and culture as neutral or positive factors—indicators that culturally competent evaluation and services are needed. Working together, the mother's advocates can continue to challenge the child welfare agencies and the courts to truly meet their statutory mandate: reasonable reunification services tailored to meet the unique needs of each family. With continued advocacy, designing and providing culturally competent reunification services can become an integral part of that statutory mandate.

141. See Courtney, supra note 73.
142. See CAL. EVID. CODE § 452(b) (West 1995).
143. See In re James V., 153 Cal. Rptr. 334, 336 (Cal. Ct. App. 1979) (stating that “an appeal reviews the correctness of a judgment . . . upon a record of matters which were before the trial court . . . ”).