

Risky Business:

How Common Sense and Uncommon Talent Can Reduce
Lawsuits and Save the Lives of Children

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“In science, the most exciting expression isn’t ‘Eureka!’ It’s ‘Huh?’ ”

-- Michael Hawley, computer scientist, Cambridge, Mass., in Markoff,
“Intuition + Money: An Aha Moment,” NEW YORK TIMES, 10/11/2008,
<http://www.nytimes.com/2008/10/12/business/12stream.html? r=1>

When a child's case goes terribly wrong at the Department of Children and Families, litigation is likely to follow. That is why the ultimate corrective for the steady drumbeat of new lawsuits is better management, earlier identification of problems (especially those that, when the litigation comes, look so obvious), alertness to seemingly small matters that suggest more fundamental weaknesses, and the application of a "sense of urgency" before a headline-generating harm to a child occurs.

In the words of the scientist quoted on the cover, we need people throughout the organization who say "huh?" more often. We need to wonder how a bad thing came to happen and respond not simply with revised "operating procedures" but with better hiring and decision-making. The "process" fixation of government attempts to deal with mediocrity and mistake by imposing rules and oversight rather than by seeking excellence. The system in state government allows mediocre people to be paid week after week without challenge, but requires multi-layered approvals for a trip to Jacksonville. The only hope for forward-thinking leaders of state agencies is to hire and develop the best people and hope that they are so motivated by their talent-laden surroundings that even ignorant political policies will not discourage them.

Pilots have a checklist. The most experienced pilot follows that checklist, because there is no point in getting creative about making sure a plane is ready to fly. But no checklist told Captain Chesley Sullenberger where and how to land USAir Flight 1549 when birds took out both engines. The traffic controller was offering him runways and airports to use. Later, repeated simulators demonstrated that every one of those choices probably would have led to a crash short of the runway and the death of everyone on the plane and many more on the ground. Instead, Sully picked the Hudson River and saved every life on the plane. You can't write a procedure for that.

DCF has "operating procedures." But one day Hannah Strauss, a DCF protective-investigator, after grabbing a child threatened by a father with a gun and running inside the house, found herself on the floor with a gun pointed at her head by this angry father. There is no script for this. Hannah used her experience in psychology to talk the father down. She saved her own life and that of the child and perhaps others in the household. You can't write a procedure for that.

You can never write enough rules. Every time a person shows inattention or misjudgment, we try to write a rule with multiple layers of checking to keep such things from causing problems again. Like water flowing to the sea, however, tragedy and unintended consequences will find their way around every obstacle. An organization succeeds not with better procedures but with better decisions, made by better people – capable, knowledgeable, thoughtful people who are fully engaged with equally qualified supervisors who bring additional perspective, curiosity and determination to decisions and who teach and develop the people they supervise. In an environment where thinking and responsibility are encouraged, instead of

obedience to rules, people who see something unexpected, undesirable, even unnoticed by others will feel free to say, to themselves and to others, “Huh?”

An organization succeeds by identifying those people inside and outside the organization and making sure they know they have a great future in that organization – and that anyone who gets in their way does not. Otherwise, the people who get in their way will invariably outlast the ones with talent and options.

It should be very, very clear: The person ultimately responsible for errors and tragedies or other things that go wrong is any supervisor, manager, director, assistant secretary or, for that matter, any guardian of political patronage who stands in the way of continually evaluating people for high performance and seeking out the best person for every position. Every person who sends great prospects our way shares the credit for what goes right, and the people of Florida will be in their debt. And every manager who hires someone smarter and more capable than the manager himself, then makes sure that person thrives and learns, has proven his capacity as a manager. “B” managers hire B’s and C’s, then cover up for them. “A” managers hires A’s and A-pluses and bask in their accomplishments. The question for every single person in a management role at DCF is, “Which are you?” Actually, you don’t usually have to ask.

A management philosophy based on strong values, as Secretary Sheldon’s is, has to be supported with a consistently high quality of execution. How many mothers have we investigated who loved their children but left a gate open so the child fell in a pool and drowned? It is not enough to love our children. We must be vigilant every second of the day and see around the corners. We must be sure we locked the barn before the horses get out; appointing a work group that recommends barn-door inspectors is no answer.

Redefining “Risk”

At the Department we speak about “Risk,” a term that embraces the range of lawsuit exposure embracing employment practices, workers’ compensation, and protection and care of vulnerable citizens. The largest dollars in legal defense and payouts are devoted to workers’ compensation, and that is consequently the area of greatest concern for the Chief Financial Officer. Because of the primary mission of this agency, our work leading to this report has been on child-protection cases more than any other category, though we have also been involved with some employment cases as well.

We, the authors of this report, have spent much of the past six months with one “risk” case after another coming across our desks. Our observations are largely anecdotal and are surely affected by our inevitable focus mainly on more difficult, challenging cases. The anecdotal evidence is significant and consistent. We also figure there is no penalty for over-estimating the extent of the problems; the penalty (for the agency, for the taxpayers, and for the children) is in under-estimating them.

Some cases we went looking for, some came by virtue of Neil's brief tenure as acting regional counsel in Jacksonville, some came in others' request for advice or participation in a case or decision. Virtually every case we saw grew out of individual performance issues – some person failing to properly assess a situation in light of all the evidence and indicators that were available at that moment and to react in a way that adequately protected a child.

It is sometimes argued, in defense, that the Department deals with difficult cases, that children bring longstanding problems with them when they enter our care, that the Department can no more guarantee good outcomes than any parent can. All that is true. But when these cases go before a jury, lawyers are very effectively pointing out the lack of vigilance, an inadequate concern about some fact that proved significant, a lack of skepticism or common sense.

Instead of seeing the critical importance of highly capable people, we focus on procedures. We try to substitute checklists for competence. And the “procedures” are all about what happens in the field. We rarely look at what the people in Tallahassee should have seen, in the data, in the procedures, in the reports, in the laws, in the degree of engagement or non-engagement by people at the top of the organization.

As this is written, the Department is in the throes of analysis of the Gabriel Myers suicide in Broward County. The unfolding of the agency response is pretty typical: We developed a timeline of the case. We appointed a work group and initiated public hearings. We identified shortcomings in data and procedures, and found violations of law. We immediately started fixing the data, held media briefings, considered changes in laws and procedures.

But we really are not focusing on the series of performance inadequacies. The very simple timeline shows a caseworker, an initial foster parent, and subsequent foster parents both uninformed and under-educated about Gabriel's background and psychiatric needs, combined with a troubling lack of supervision. The timeline also suggests that the Department (through what we love to call our “community partners”) was lax about getting background information from Ohio, seemed rather unconcerned about the unexplored indications of sexual abuse, and just overall wasn't really paying enough attention to this little boy. Somewhere in the course of all this it is noted that the supervisor of Gabriel's caseworker left even before Gabriel died.

Meanwhile, up in Tallahassee, the Program Office is responsible for procedures and measurement of our implementation of a 2005 statute (CS/SB 1090, Ch. 2005-65, codified as Fla. Stat. 39.407(3)) requiring parental consent or a judicial order promptly after a doctor prescribes one or more psychotherapeutic drugs for a foster child. Initial data suggest that about 16% of DCF's cases are in violation of that statute, and there is suspicion that the quality of the consents we do have is less than adequate. For all our data-gathering, we didn't know until Gabriel's death revealed it, four years after the law passed, that our data are so deficient and our procedures so inadequate and out of compliance with law.

We have sent more or less annual reports to a Senate committee about the percentage of kids on psychotropic drugs; each report has a different calculation of the percentages, fails to describe the numerators and denominators clearly, makes statistically inadequate comparisons with other data, lacks any meaningful analysis or evaluation of the situation (such as whether we are content or concerned with the situation reflected in the data), and offers no plan of action. The report was originally requested by a committee staff director; she left the job not long after making the request, but the reports continued. The cover letter each year is addressed to a different person in a different role and is signed by a different DCF person each year, most recently by an assistant secretary. And nobody seemed to notice any of the problems in the information transmitted. It seems to us likely that nobody at DCF actually read the report.

The Department's operational improvements are frequently a reaction to crisis and headlines rather a product of a state of continual alert to systemic problems. After a tragedy, people throughout the leadership drop everything and spend hours in meetings and conferences calls defining action steps that should have been identified and taken months or even years earlier. But when the cameras aren't rolling, the sense of urgency recedes. Inertia is a scientific reality, but leadership exists to redirect or counteract natural human tendencies. It should not take the death of a 7-year-old for us to discover that (a) FSFN, the DCF database, does not have complete or adequate information about children's psychotropic drugs (and who knows what other significant medical information) and creates a clunky, inconsistent, unreliable process for gathering that data (b) a supervisor in Family Safety who works with contract administration, acting apparently without the engagement of either Children's Legal Services or the Office of Legal Counsel, had declared a policy in violation of the 2005 statute about parental and court approval of psychotropic drugs.

But it's worse than that. Two weeks after Gabriel Myers's death, the secretary apparently STILL did not know about the policy, because no one in the Program Office had told him, perhaps because the writer himself had not reacted to the headlines about the death by telling anyone. The secretary learned about the errant policy pronouncement on psychotropic drugs from Carol Marbin Miller of the *Miami Herald* (who learned it from the Scientology-related Citizens Commission for Human Rights, which had been in communication with DCF's Program Office on this issue for weeks before Gabriel's death). Carol had an e-mail string on the issue that included a number of DCF employees, none of whom apparently thought, after Gabriel died, to let the secretary know.

This specific incident is simply the latest in a long string of examples in our brief experience, both significant and insignificant, of the isolation of both the Program Office and the General Counsel's Office from other parts of the Department.

The Program Office should be the strongest point of contact with the many advocates interested in the welfare of children; instead, advocates learned in the last two years that they got more response by calling the secretary himself or key people in the Office of the Secretary.

But it is worse still. Foster-child advocate Andrea Moore says she identified psychotropic drugs as a major issue two years ago, as Secretary Butterworth took over the Department. But headlines and reorganizations got priority attention. It is important to stress – as Andrea Moore herself has – that many good things happened during this time. But the agency does not have the management intensity and depth to troll through the Department’s activities and identify problems, even when others point them out.

This agency simply cannot be run effectively by using headlines as its main source of operational intelligence. Secretary Sheldon has asked on a couple of occasions what else we should be noticing but haven’t. It’s an excellent question. Perhaps someone in the agency leadership will try to answer his question before he asks it again.

A switch in time, barely

When you go looking for clues, you rarely find them. The best clues are the ones you stumble across and have the wit to recognize – sort of a Sherlock Holmes “dog that didn’t bark.” DCF has too many dogs that don’t bark.

No one is likely to die, for example, from substandard lawyering (at least directly), but as the Myers case was in the headlines, a different kind of drama unfolded elsewhere in the Broward operations. It wasn’t in case management but in the legal Department. The case is surely a clear violation of the “common sense” directive to elevate issues when rules seem to require doing the wrong thing. It demonstrates our frequently expressed concern that the most insistently, visibly expressed intentions of the secretary – about common sense and a sense of urgency – still have not trickled down in any meaningful way to the masses in this far-flung organization. And that is a significant management failure.

DCF sued Linda Kupperman, the grandmother-caregiver of a foster child, to reclaim \$1,441 in alleged overpayments of relative caregiver funds. (DCF Case No. 1218525312.) The Kuppermans did everything right, by everyone’s account. Grandmother and uncle (grandmother’s son) shared caretaker responsible for the child of the grandmother’s daughter; sometimes the child lived in one house, sometimes at the other. The two took excellent care of the child. They kept the CBC, the court, and the guardian ad litem informed of all status changes, including the child’s place of residence from month to month. They complied with every element of the case plan. It was tiresome to keep switching the names of the payee on the monthly checks from DCF whenever the caregivers changed. Late in 2008, some monthly checks were made out to Mrs. Kupperman while the child was at the uncle’s house. Mrs. Kupperman herself called to DCF’s attention that the checks went to her instead of the son. Common sense scored a victory: The caseworker suggested she just cash the checks and pay her son the cash.

She did. DCF sued.

Mrs. Kupperman had to get a lawyer. It happened to be Tana Sachs Copple (daughter of Peter Sachs, who chaired the Governor's Council on Independent Living for Governor Bush, and State Rep. Maria Sachs). The DCF lawyer wrote later, "Attorney Copple, Esq. and I agreed to avail ourselves of the available fair hearing forum in order to have the hearing officer weigh the Appellant's mitigating factors against the Department's claim for overpayment. In hindsight, it is now clear that the law in this matter does not allow for fair and equitable adjustments"

Many of our "adversaries" at this point would have called a newspaper or television station in outrage. Copple, knowing of the Butterworth-Sheldon directives about common sense, contacted Florence, a longtime friend of her parents. Florence was not at all convinced by the DCF lawyer's description of why the law was interpreted as it had been. Persevering (a critical trait in DCF for those who want to make a systemic impact), Florence then asked circuit public information officer Elisa Cramer, a former newspaper reporter, to inquire. Within hours, Elisa reported that the lawsuit had been withdrawn.

Nonetheless, Florence wanted to understand what systemic flaw could have produced such a silly case. How could this happen? The DCF lawyer wrote her, "'By administrative law, the case was handled correctly. However, it needs political correction, as the outcome is not equitable. This cannot come from Circuit Legal.'" We take that as an implication that Florence's intervention was nothing more than pulling strings in Tallahassee, which is surely how many people in the agency shrug off such interventions. Florence replied, "Secretary Sheldon says, and means, that where policies and rules stand in the way of justice, bump it up the ladder a rung or two or ten. Our job is to support and honor and lift up the grandmothers and uncles who sacrifice their own dreams and obligations to help a child who is their blood, but not their legal responsibility." Deputy General Counsel John Slye also replied to Florence's query. The case "sounds like one [the Broward Regional Counsel] talked to [an assistant general counsel in Tallahassee] and me about yesterday that we all agreed recovery should not be pursued where the individual that received the payment should not have received it (our error), but when they erroneously received it made sure it got to the person it should have." John seemed unaware that this resolution was instigated by Florence and Elisa.

Unfortunately, there is no sign that anyone in the chain of command inquired into how such litigation could have gotten started in the first place and how one of the most visible themes of two consecutive secretaries, "common sense," could have been so ignored.

The case has not made the General Counsel's report so that it might be a lesson for all lawyers in the Department. No one seems to have thought it appropriate to apologize to Mrs. Kupperman and thank her for her services to a foster child. No lesson has been learned by anyone, judging from the responses to Florence's systemic inquiry. From the standpoint of "risk" analysis, there is no reason to think the chance of a recurrence has been reduced in any way. No one seems to wonder whether any more fair-hearing cases – dozens? – are happening because of silly lawsuits or being resolved against common sense with a horrifying conclusion that "the law in this matter does not allow for fair and equitable adjustments."

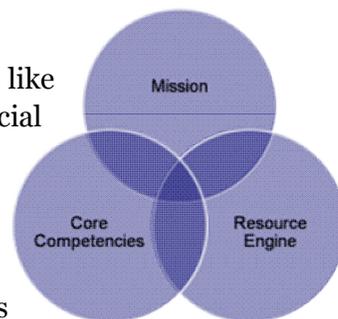
When we wonder why we have so much litigation that drags on and on, we might think of this simple, wrong-headed case and wonder what is happening with far more complicated, big-dollar cases. Unaware of our systemic disinterest in the case, however, Tana Copple wrote to Florence that her successful intervention to correct “the unjust and illogical outcome of the appeal” gave her client “a renewed faith in justice, our government and the belief that agencies such as DCF really do exist to help Florida's most needy families.”

We believe so too. And that is the driving vision behind this report.

The single most important organizational imperative for the Secretary and the leadership of the Department of Children and Families is to see weaknesses and problems before others do, to have a management system so strong and deep that people four and five managerial levels below the secretary know that they are expected to see around corners and anticipate trouble. We are, after all, simply one big institutional parent for a whole lot of children. We need to act with the keen sensitivity of an attentive parent, who makes it his or her responsibility to see dangers and minimize them. We need to child-proof our social system just as we child-proof our homes. We have to see the dangers – especially the ones our own children tell us about.

Secretary Sheldon, in his maiden speech as secretary, at the Dependency Summit last August, expressed the aspiration to be “the best social-service system in America.” As he said to the audience then, it is not enough just to aspire to it. It requires executing well and demonstrating to others nationwide our innovation, alertness to problems and opportunities, and our methods. Larry Bossidy, former turnaround CEO at Honeywell and Allied Signal, says execution is “the missing link between aspirations and results.”

Jim Collins, the management consultant who wrote best-sellers like *Good to Great* and a monograph applying his approach to the “social sector,” says greatness “is largely a matter of conscious choice, and discipline.” (Collins, using the diagram shown here, says success requires a clear mission, resources and “core competencies” that make the organization better than anyone else.) People in social services like to lament the perennial lack of resources. But that is just an excuse. As both Secretary Butterworth and Secretary Sheldon declared after difficult budget sessions in the Legislature, the agency has to do the job with whatever it has.



Good intentions don't get the job finished.

[W]e can find pockets of greatness in nearly every difficult environment—whether it be the airline industry, education, healthcare, social ventures, or government-funded agencies. Every institution has its unique set of irrational and difficult constraints, yet some make a leap while others facing the same environmental challenges do not. This is perhaps the single most important point in all of Good to

Great. Greatness is not a function of circumstance. Greatness, it turns out, is largely a matter of conscious choice, and discipline.

Jim Collins, author of *Good to Great*,
in *Good to Great in the Social Sector*

Hiring and Evaluation Practices

The only way to truly transform an agency is to embed talented people at every level. Mary Cagle, creating a new “children’s legal services” division with a very different legal mission, selected her own leadership team and focused a great deal of effort on “training” about the new philosophy. She also declared after a year of the building effort that people who had not “gotten it” by now had to be replaced. Secretary Sheldon himself has declared, “The people have to change, or we have to change the people.”

Decisions about replacing people are not necessarily a reflection on their competence. The decisions instead reflect a leader’s assessment of the suitability of the person’s skills to the job requirements at this time in these circumstances. Each new leader, at whatever level of an organization, needs a management team that complements his or her talents, thoroughly understands his or her priorities, and has a “chemistry” and close trusting relationship with the new leader.

Some very competent people can be the wrong people for a job, and their suitability may change as circumstances change. James Madison was a phenomenal “founding father” and a mediocre president. Herbert Hoover was an impressive Secretary of Commerce in the boom times and a disastrous president in Depression. Abraham Lincoln, a Rushmore-level president who was brilliant at politics and political philosophy, was a slow learner on picking generals and supervising them.

A new leader at the top of an organization brings new characteristics and skills to an organization, and that affects the selection of talent at the next level. A change-oriented organization maximizes hiring opportunities at every level and ensures that its new talent is well supervised, challenged, encouraged, and held up as a model. The theme of change has a rhythm, beginning with emphasis on specific pressing matters and gradually becoming more systemic. If hiring opportunities have been used well, the system change happens far more naturally.

Secretary Sheldon, after his appointment, rejected the traditional request for the resignations of top people in the agency; his decision symbolized that the team which had made great strides under Secretary Butterworth should be the team to “keep it going.” But Secretary Butterworth is not Secretary Sheldon; indeed, Secretary Butterworth succeeded with the substantial operating focus provided by George Sheldon, brought in as assistant secretary for operations. Secretary Sheldon has a natural inclination as well as a lot of skill in focusing on the “outside,” the relationships with stakeholders outside the agency. He has not replaced by any

clear designation and consistent behavior his primary operating lieutenant. With his confirmation in hand, it is now critical that he make this designation and focus on an experienced, disciplined, even hard-edged executive who can complement the secretary's own strengths. It is an appropriate time to do what secretaries must do, which is to restructure their team to suit his expectations and the agencies current needs as he assesses them.

A high-performance management team complements the CEO's own skills and perspective. You run your own area of responsibility, but you are part of a group that has a broader perspective and a clear understanding of each other's role as well as what each brings to the overall team. In fact, one way you develop talent (as well as make sure good decisions made) is by getting managers out of their silo and involved in decisions for the next level or two up in the organization.

That's why the chain of command matters. If people have piecemeal knowledge, and you never know who's going to be involved or responsible on a given matter, the system fails. You also wonder why something that is your responsibility suddenly was handed to someone else. A team has to become "The Incredibles," not because every member of the team can do everything but because they match one member's ability to the problem at hand and together fix anything.

Perhaps our best demonstration of superior hiring practice was in helping to attract top talent to existing vacancies in Legal. David Tucker, now regional counsel for the General Counsel's office in the Northeast, and Jenny Greenberg, regional director for Children's Legal Services in the Northwest, are two hires we are very proud of plucking out of the stream of referrals and championing to those who make hiring decisions. Neil also joined the enthusiasm of the selection committee for new counsel at North Florida Evaluation and Treatment Center, in Refugee Services, and as risk counsel at headquarters. These are very promising hires, as are others. The full leadership of the agency, however, needs to join in making sure they are encouraged, nurtured, and in their daily experiences feel reassured that they have come to the right place. We have also resisted too-hasty selections when the existing candidates were not well qualified.

We want people who are engaged in their profession and have the regard of the leading people in the field and in our state. Jenny Greenberg came to us with the strong support of one of the eminent lawyers of this state, Sandy D'Alemberte, and with headline-making accomplishments as director of the Florida Innocence Project that has freed innocent people from prison. David Tucker, a former county attorney who in private practice has represented municipal governments, has an impressive record of publication and strong relationships throughout the state. Both are lawyers who have built effective litigating alliances. They bring abundant past accomplishment and an ability to hire, evaluate and motivate people who work for them, to contribute to wise decision-making in the larger organization.

Talented people ask "huh?" a lot, and they focus their curiosity on opportunity. If the organization is weak, they will focus inward, because their need is to find or create an

environment where they can do their best work. If the organization is strong, they will focus outward, on the “product” and the “customers.” Talent attracts talent, and new talent sustains and encourages existing talent. Talented people gravitate toward organizations where they not only are well utilized but also where they find people they can learn a lot from (and who think it important to teach). We do not yet have that kind of organization, an organization that nurtures talent. It is urgent and critical that we focus on this in the kinds of leaders we have at every level of the organization.

And leaders do matter. In our view “leaders” includes first-line supervisors, who should be selected not simply for their competence on the front lines but for wisdom and an ability to teach others and help them make good decisions. When Steve Holmes was leading a reconfiguration of our Hotline operation last summer, one thing he focused on was getting supervisors in a more consultative relationship with the counselors instead of just second-guessing decisions about which calls to accept. If the supervisors are good and the staff is open to learning (very important “ifs”), the organization grows better.

Leaders also lead by example in every aspect of their work. The secretary can talk repeatedly about “common sense” and put it up on posters, but people follow the lead of their boss. What the boss values is what they tend to deliver. People who get shot at whenever they stick their heads out of foxholes will be reluctant to stick their heads out of foxholes. People who don’t face provocative questions on critical decisions will get lax in their own thinking. People who see that “next month” is an acceptable timetable develop a difference sense of “urgency” from those who work for a boss who suggests “next week.” In unchallenging environments, the best people will tire of the bureaucracy, the multiple conference calls, the memo-writing, the drawn-out decisions. They will leave.

The agency’s evaluation form for its legal management (regional counsel) illustrates the narrow perspective on success. The “Critical Elements” on which a regional counsel is rated include 12 items under “Organizational Efficiency, Productivity, and Effectiveness” and 8 items under “Individual Efficiency, Productivity and Effectiveness.” Most of the details refer to procedure: “bases plans on Department mission and goals . . . operates efficiently . . . initiates change effectively and adapts to necessary changes in operations . . . effectively evaluates subordinates . . . uses time effectively . . . builds on strengths and works on deficiencies.”

Under skillful management, these characteristic are quite adequate as a basis for a true performance-driven culture. Under less skillful management, these become a checklist of whether work is completed on time and in the right format rather than whether the lawyer consistently wins or loses cases or renders sound, useful, reliable advice. In actual practice, just weeks after DCF’s acting regional counsels received ratings above 4 (“often exceeds expectations”), they were deemed unsuited, pending additional mentorship, for promotion to the permanent role. Four months after that, however, they were given the promotions.

We need to choose experienced, skillful leaders who not only set a clear example but who can recruit, hire, develop and motivate high-potential lawyers who can set a new pace of performance and effectiveness in the agency. These need to be lawyers with substantial previous leadership experience and successful legal practices, preferably including large-firm private practice with its disciplines of client management, coordination, partnership relations and high standards of client service and legal practice.

Let's pause for a moment on the matter of state salaries. This is a challenge when competing for people who can do "better" financially in the private market. But that is not a reason to settle for less. It is a reason to adapt a strategy. If you can't afford highly experienced, talented people, make the agency attractive to less experienced people who have demonstrated high potential, then give them great supervisors to nurture them. Being known as an incubator of talent will have talented people lining up at DCF's doorstep for lower pay, just as college students flock to prestigious or career-enhancing unpaid internships. There is a way to do this.

This agency has made substantial progress in many areas under the two reform-minded secretaries of Governor Crist's administration. But complacency about the progress already made is the enemy of success. Transformation of an organization brings with it rising expectations among stakeholders both inside and outside the organization. When the expectations are not met, disappointment leads to a loss of confidence. That can never be allowed to happen at DCF. If an assistant secretary, a director, a manager has not changed the culture and level of performance in his or her area of responsibility, if problems are still apparent in the reliability of the work product, if deficiencies are embarrassing the agency and the people who want to be part of a successful organization, it is time that leader is replaced. Otherwise, everyone else understands that it's okay to fall short.

[A] finding from our research is instructive: the key variable is not how (or how much) you pay, but who you have on the bus. The comparison companies in our research—those that failed to become great—placed greater emphasis on using incentives to "motivate" otherwise unmotivated or undisciplined people. The great companies, in contrast, focused on getting and hanging on to the right people in the first place—those who are productively neurotic, those who are self-motivated and self-disciplined, those who wake up every day, compulsively driven to do the best they can because it is simply part of their DNA. . . . Lack of resources is no excuse for lack of rigor—it makes selectivity all the more vital.

Jim Collins, author of *Good to Great*,
in *Good to Great in the Social Sector*

Two cases: Employment

We fired Sally Holt for taking donuts to her elderly father in a nursing home.

That's an oversimplification, but it reflects the initial event and the final result. Today, her lawyer says she is disabled and homebound. As in the Kupperman case, the issue to us is what management decisions and actions brought us into litigation, as described by DCF's outside counsel.

Sally Holt's father was in a nursing home, with a restricted diet. The daughter had a power of attorney, and was generally overseeing his care and other aspects of his life. Among other things, she would bring him treats that were proscribed from his diet. Asked by nurses not to do that, the daughter persisted. Feeling this to be "abuse" under Florida Statutes and feeling obligated to report abuse, the nursing home representatives, rather than simply barring this undesirable person from the premises, called the DCF Hotline, where the daughter herself had worked for several years.

At first, according to our counsel, the Hotline counselor declined to "accept" the call, which in DCF parlance means that after collecting information, the decision was made to not investigate. That decision was based on a lack of jurisdiction, since DCF has jurisdiction only over the actions of "caregivers." With the father in a nursing home, the daughter was deemed not a caregiver. If that is so, it appears the decision was made on inadequate information, for our counsel says it was later demonstrated that the daughter had a power of attorney and other authority and roles in her father's life.

It might have been decided that a daughter's decision to give pastries to a father with few remaining joys in life was not the kind of abuse DCF should pay attention to. But that is not necessarily a decision that Hotline counselors should make on the basis of a phone call, but instead would refer for at least a brief follow-up by an investigator. Instead, the Hotline determination focused on jurisdiction, perhaps the best substitute for common sense that the counselor could call upon. But the nursing home called back when it happened again. Finally a report was accepted, possibly because the accused abuser was a DCF employee and supervisors wanted to lean over backwards to avoid favoritism. A DCF investigator was assigned, and the employee/ daughter was found to be abusing her father by feeding him sweets prohibited on his diet. Hotline employment rules prohibit employment of those found to be abusers, so the finding forced the termination of Holt's employment. Recently, after a couple of years of litigation, the case came to the attention of the secretary. We do not know how much the secretary was told about Holt's employment record or details of her actions or the condition of her health, which our lawyer had not yet verified. But the secretary concluded that a settlement is appropriate and a suitable job offer should be extended. A settlement will cost tens of thousands of dollars, perhaps into six figures, not to mention the legal fees incurred to date.

In other words, after extensive litigation, we finally looked back at the original decision-making and found it troublesome or even unsupportable. It took the secretary to do that.

In a different employment case that arose in one of DCF's circuit offices, a new manager was appointed in an investigations unit and began raising standards of performance and

productivity. An employee with previous good marks on evaluations repeatedly fell short of productivity goals. A decision was made to terminate her, though for some reason, instead of simply beginning the termination process (which includes notice under state rules), the employee was moved to the mailroom with no change in pay. The employee happened to have a brother who is an employment lawyer, and she appealed the decision to the Public Employees Relations Commission (PERC). The issue of settlement arose. As described by our regional counsel, the employee demanded something in excess of \$60,000 and reinstatement. DCF noted in response that the woman had suffered no financial harm so far.

There is a problem with DCF's approach to such cases. The Department has been inclined to settle for "nuisance" value when the cost of defending exceeds the available settlement. This means that settlements for \$5,000, \$10,000, \$30,000, even \$50,000 can be agreed to even if the Department feels its termination decision was appropriate. Settlement might be viewed as a financial savings, except that it encourages other terminated employees to take a chance on litigation and get something from DCF as well. (Perhaps even worse, it creates an environment in which the agency will not stand behind its managers, a debilitating environment indeed.)

During 2008 (after Neil gave a monologue against nuisance settlements to the regional counsels), a case in the Orlando region was taken to trial through outside counsel, and DCF won a defendant's verdict. In a discussion with Neil on the later case, both the regional director and the acting assistant secretary for operations were adamant that they did not want the employee back in her previous job and were willing to settle if necessary to avoid any chance of a reinstatement order. At Neil's suggestion, they consulted with the outside counsel who had successfully defended the 2008 case; he felt the new case could be won at PERC and at a civil trial. A small settlement that included termination might be in order, in light of the employee's long service with good evaluations, but settlement at such a figure did not seem likely. A short time later, however, the regional counsel called to say that the case had been settled. Wow! What a surprise! And what were the terms? \$15,000? Had to go to \$18,000? No. We reinstated her, with her promise (and our caution) that she had to perform well.

Unlike the Hotline case, we had not spent much money on outside counsel. But we ended up doing in a settlement what we should have considered more carefully at the time of the original decision. What made this employee salvageable today when she wasn't a year ago? And then, having acted, what made us still adamant that we did not want her back when we were deciding how to pursue the litigation, only to reverse position completely?

This approach to decisions and litigation is costly in so many ways besides the obvious ones. We need to get decisions right the first time. We too often fail to do so.

Not long ago, DCF nearly ruled "unverified" an abuse complaint regarding a 5-year-old who came home from Head Start with a bloody lip and a bloody blouse. She said her teacher kicked her in the face. It seems the 5-year-old's story varied in multiple retelling, a consideration

that nearly overcame the very visible bloody face. This was true even though DCF learned that the teacher had been reprimanded seven years ago for failure to report another instance in which a kid had a similar injury. Meanwhile, law enforcement was investigating the same case and ended up charging the teacher with six – six! – counts of abuse, including two other victims. The DCF report ended up “verified.” Local DCF counsel, during a Legal management call, described this near-blunder as a “communications problem.” Contacted later, he explained that law enforcement had been unable to contact the DCF investigator. When we expressed concern about the quality of the DCF portion of the investigation in light of the criminal charges filed by others, our lawyer noted the lack of authority to interrogate the teacher under oath. This leap to some excuse is really a problem. Do we need that authority? If so, we have a good case to justify legislation. Is that really the problem? Doesn’t seem likely.

Again, we don’t say “huh?” enough.

DOAH Cases

Within a three-week period during the summer of 2008, DCF lost several cases at district courts of appeal (DCA). There was a common theme: DCF had lost an initial hearing at the Division of Administrative Hearings, had concluded the case with a “final order” from the secretary disagreeing with the “recommended order” of the DOAH judge, and had been reversed on appeal because of DCF’s lack of legally required deference to the findings of the DOAH judge. Such cases fall primarily in two categories: licensing of foster homes or other facilities, and denial of exemptions when individuals are disqualified by prior convictions from working in child-care roles.

Secretary Butterworth was frustrated and embarrassed by the appellate losses as well as the original losses at DOAH. A subsequent monthly CLE event for all General Counsel lawyers focused on DOAH practice (it was led by Agency Clerk Greg Venz with significant participation from Florence, a former DOAH judge). Secretary Butterworth came on the call to personally express his embarrassment over these losses, said the lawyers needed to restore the reputation of the agency with DOAH and the courts of appeal, and asked that preparation of cases be more rigorous and include a pre-hearing review by Florence or Neil as special counsel. No longer, he said, would the agency repair inadequate hearing practice with final orders contradicting the recommended orders. If the cases were worth taking to DOAH, they were worth the preparation needed to win.

After that session, lawyers in regional offices would collect the basic documents, affidavits, reports and summaries and send them to Florence (occasionally Neil). Rarely did the lawyers volunteer any analysis of the case, and there was no apparent involvement at this point by the Regional Counsel who supervised the lawyer.

It usually would take us only a matter of minutes to see the weakness in the case or the problem that needed to be overcome with persuasive evidence. They were, after all, the same

weaknesses Florence and her fellow judges had observed during her years on the bench at DOAH and that the district courts of appeal spotted in overturning DCF's orders. We were relying on the testimony of caseworkers who were inadequately prepared to clearly and succinctly articulate the basis for a finding and who lacked the larger view that would put a denial in the context of agency experience. We also did not successfully rebut the parade of character witnesses typically offered by a petitioner. Often these were close cases involving people whose lives were less than exemplary but who were to one degree or another attempting to overcome the problems in their past. Weakness (or inadmissibility) of key evidence supporting DCF's denial, and a lack of adequate rebuttal of the petitioner's collection of character witnesses, would often be enough to persuade the judge to side with the petitioner.

In a hallway discussion of one of the DCA cases we lost, Deputy Secretary Don Winstead cogently disputed the DOAH judge's determination and argued why the license was properly denied. He was, in that moment, an incredible "witness." Had he, rather than the caseworker who testified so superficially, been called as a witness, DCF might well have won. In fact, one of the things that we suggested to counsel, if they wanted to press a weak case at the behest of their circuit or regional director, is that the director personally testify.

A few quotes from cases:

- *A case manager, who testified that reunification would not be in the children's best interests, also had no current information to sustain her opinion.* G.V. vs. DCF (4th DCA)
- *Without Ms. McDonald's testimony or an admission by Petitioners, there is no competent evidence by Respondent [DCF] to show facility's noncompliance.* George and Alicia Barrett d/b/a Child Care 2000 Inc. vs. DCF
- *At the formal evidentiary hearing ... the Department repeated but did not explain its determination that due to the seriousness of the offense, Petitioner failed to demonstrate his rehabilitation.* S.L.A. vs. DCF
- *Respondent's initial consideration of the abuse report at issue here was appropriate. However, in the context of a formal administrative hearing, the disputed factual findings in investigative reports are not business records under Section 90.803...* B.M. vs. DCF

But there was an even more fundamental failure of legal practice in a number of cases: The DCF lawyer simply did not submit a proposed order after the hearing. One regional counsel dealt with a DCF lawyer whose work in a couple of recent instances was substandard by going into Westlaw and retrieved all of that lawyer's cases at DOAH over the past couple of years. In many cases, the lawyer had not even filed a proposed order, which is fundamental to good practice; when a proposed order had been filed, the odds of success improved.

A proposed order is fundamental sound legal practice. It is a prime opportunity to tell the judge exactly what ruling you want and what evidence supports that ruling. In fact, good preparation would mean that the proposed order is drafted even before the hearing begins (subject, obviously, to actual presentation of evidence), because it provides the road map to the needed preparation of the case.

Hearing of this recurring omission by one lawyer, we asked Agency Clerk Greg Venz, who monitors DCF's DOAH cases statewide and writes final orders for the secretary's signature, if we had such won-loss records on all our lawyers. We do not. Asked whether it is standard in our legal practice to file proposed orders at the end of hearings, he assumed so but did not know.

It is important to note in this area, as in every area of DCF practice, that some of the lawyers do thoroughly prepare and present their cases. We are focusing here on areas of weakness. And this is not a matter of singling out individual performance, which is why we have not named names. We are describing a system in which the supervision and coaching by Regional Counsels has been less than we think it should be and in which the overall culture has been complacent about these cases and even arrogant that the agency's power of "discretion" could trump a DOAH judge (the DCA opinions set us straight on that). It was eye-opening to realize that lawyers were sending us material on their DOAH cases without bothering to offer their own assessments or consult with their own bosses. We sometimes felt lawyers initiated the consultation as just another bureaucratic step in a process of having their homework checked.

One more thing was eye-opening. During Neil's brief tenure in Jacksonville, a case came back from DOAH with another loss. The judge cited the lack of foundation for reliance on hearsay evidence from a child, which was consequently excluded, and noted the lack of a proposed order. But the order did give DCF leeway to impose "conditions" on the grant of the license it had sought to deny. Neil asked the lawyer to work with the licensing staff to establish what conditions those should be. About three weeks later, back in Tallahassee, Neil asked Greg Venz as a follow-up if he had gotten the information he needed from the Jacksonville lawyer for the final order. Greg responded that he normally does not consult the lawyer on the case in preparation of the final order because of a concern for a "neutral" final determination. In other words, we seem to take the position that the Agency Clerk and the head of the agency, previously uninvolved in the case in any substantive way, must totally ignore their own lawyer and perhaps others in the organization in making the final decision. This seems undesirable and unnecessary, and the practice needs immediate reconsideration.

Outside Counsel

One of the unexpected frustrations in our work with the Office of Legal Counsel the past few months has been the lack of enthusiasm for choosing our own outside counsel to handle litigation against the Department.

This was an early theme of ours, even before we had any particular focus on “risk” litigation. But at a recent weekly management call with regional counsels, the General Counsel reported on the Gabriel Myers suicide case in Broward with the conclusion that the Division of Risk Management (part of the Department of Financial Services) had been “asked to assign counsel” to the case without waiting for a lawsuit to be filed. DCF apparently made no suggestions, even as the case was getting extraordinary attention in other parts of the Department. From the beginning both of us have urged regional counsel, the deputy general counsel and the General Counsel to take the initiative in choosing lawyers as we refer the case to Risk Management, and then to take an active role in managing the cases rather than deferring ongoing decisions to Risk Management. We thought we had reconfirmed that approach after a Northeast Region case was assigned in March without the knowledge of Neil as acting regional counsel. Certainly the General Counsel’s comment sounded, to his management team on the call, contradictory to the mentoring we had given regional counsels (we thought in keeping with agreed-upon new philosophy) in our individual conversations with them.

This control over DCF cases by the General Counsel’s office is important for several reasons: (1) It is DCF, not Risk Management, which ultimately has to defend the outcome (including settlement) of any case to the governor, the Legislature and the public, and which ultimately pays the price through “premiums” assessed by Risk Management in the Department budget. (2) It is “our” children who are affected by the outcome of the litigation, with the children and their families “put on trial” by defense counsel in an effort to deflect blame from the Department; in employment cases, it is our employees, including managers, who are affected and are to some extent “on trial” for the quality of their employment decisions. (3) A recurring problem in the management of these cases is the lack of clarity about who is responsible for overseeing cases and with what decision-making authority. (4) We need to understand these cases in depth because we need to understand, in house, what went wrong.

A further word on the latter two points.

The current system of management works inefficiently. It is Exhibit A for an office in which responsibility and accountability are unclear. First, the outside lawyers feel a responsibility merely for the case and its damages, not for management issues and broader implications for any decisions; they also take their guidance from Risk Management, not the Department, and do not routinely even submit bills for the barest monitoring by DCF. Yet DCF’s General Counsel holds the regional counsel where the case arose responsible for the progress of the case and ongoing consultation with the outside counsel; in-house Risk counsel, the deputy general counsel and the General Counsel all take a role at vaguely defined decision points in major cases. For any status call, all of these lawyers have to devote time to preparation, the call itself, and follow-up. That’s one or two lawyers from the outside firm, one person at least from Risk Management, the regional counsel, sometimes a circuit lawyer actually delegated local responsibility, plus the three lawyers at HQ.

On the fourth point, while we do need to look at all these cases not just from a legal perspective but also from the perspective of managerial and operational behavior, our lawyers historically have played no such role. This tradition needs to change. The General Counsel has recognized a need for “preventive law” as a focus within his office, but it is not clear that the lawyers have an understanding of what this means or how to carry it out.

Finally, we consider Risk Management’s insistence on paying no more than \$90 an hour for defense counsel a grossly unwise policy that is inconsistent with any good business practice. The division’s own written policy allows for an increase up to \$125 for specific kinds of cases for attorneys with more than 12 years’ experience, but we have not heard of any such variation. (We suspect that the Chief Financial Officer, in her former role as statewide president of Barnett Bank, did not limit herself to lawyers who would work for \$90 or even \$125 an hour.) The Florida Administrative Code Paragraph 2-37.030 (implementing Fla. Stat. Section 287.059) allows for fees for “specialized services,” including litigation, of up to \$250 per hour.

In Jacksonville one afternoon, we gathered with some prominent local lawyers, including former Florida Bar President Jim Rinaman. He scoffed at the state’s limitation on fees as we described it. He said he tells clients of his much higher rate but assures them that he will account for no more than 10% of the time billed on the matter. He knows that he is valued for his experience and counsel, not for his prowess in the law library, and his clients know that they will get what they pay for. He also distinguished true “trial lawyers” from those he disparagingly called “litigators,” who engage in elaborate sideshows and run up billable hours scrapping over every minor issue in discovery and motions and other stages of the case rather than focusing on the best resolution for the client.

"I haven't found a low-priced lawyer yet that's any good. You want to have the best, and they cost quite a bit. And the whole process, beyond the cost, is time-consuming."

– Paul Otellini, CEO of Intel, on the planned appeal of a \$1.5 billion fine imposed by the European Union.

Infallible Departmental Early Alert System (IDEAS)

On May 16, the following item appeared in a story in the DCF clips:

“Bill Janes, who oversees substance abuse and mental health programs for the Department of Children & Families and is Gov. Charlie Crist's drug czar, said Thursday that he had not been told that Broward was seeking to do away with the jail programs. "I'm very disappointed to hear that," Janes said.

Bill Janes could be a national leader in the transformation of policy on mental health as part of social services. Certainly Florida, through DCF, is making important changes, most

notably including its efforts in early intervention (the Leifman Plan) and its integration between the Substance Abuse and Mental Health as well as with other social service programs. Bill certainly has the stature, the knowledge, the articulateness and the connections to be a significant force in the Broward County decision on the jail programs and similar local decisions. But no one in the organization is positioning Bill Janes in such a way. But if Bill doesn't get alerted to things (and people) he can influence, he cannot influence them.

We highlight this example not because it is a unique missed opportunity but because it is a common missed opportunity. It is another example of a system that is NOT on alert.

People in politics and government love to complain about media coverage, especially negative media coverage, but few people realize what a powerful early-warning system it is. A reporter's inquiry about something – a request for records, for information, for comment – should raise the question throughout the organization whether there is something going on that we ought to know about but don't. And we need to be curious – not just to answer the specific questions or “manage” the next-day story, but to get ahead of problems, before they turn into dead or missing children. Secretary Sheldon has expressed this idea in print: The CBS 4 I-Team in Miami revealed on May 21 that “If you're poor or a minority, your children have nearly twice the likelihood of attending a daycare with a questionable safety record.” Secretary Sheldon was quoted as replying to the account, ““We need folks like you.” He added, in a statement reminiscent of the Gabriel Myers issue, “It does very little good if I have a database and the information is in the database, and I don't know how to mine that information.” He said the I-Team's findings confirm what has been suspected but never acknowledged openly in policy discussions. “I think we've got to do a better job in terms of providing information to the public. We've got to a do better job of closing facilities down.”

The Broward jail program may or may not have been in our Department clips, but it apparently was in the local paper. If decision-makers in our regional and circuit offices don't read the local paper, they are closing off a source of intelligence, a perspective on the community they serve, and an opportunity to reach an important audience with a better understanding of what we do. We talk often about being involved in our communities. Secretary Sheldon added “a sense of community” to Secretary Butterworth's “two senses,” the sense of urgency and common sense. To Secretary Sheldon, “sense of community” meant engagement with local providers of services. If we do not take note of something so visibly affecting our strategic and operational priorities and get that information to the key people who can act on it, it is an important weakness in our organization.

As noted earlier, the Secretary's aspiration to be “the best social-service system in America” requires two strategic efforts: (1) executing well and (2) demonstrating to others nationwide our innovation, alertness to problems and opportunities, and our methods. One of the simplest ways to further that goal is to read and react to the news and to put forward our most articulate leaders as the national experts they have the ability to be.

Three principles for better execution at any level of the organization

1. Respect the chain of command at all times. If the leader doesn't respect it, no one else will.
2. A person you value for advice or wisdom is NOTHING without full information. Including someone at the last minute is a good way to make bad decisions, not because the advisors are bad but because their information is bad. Paul Rowell, Northwest Regional Counsel, calls it the "oh, by the way" problem: People belatedly remember or come upon key information that others need but didn't have.
3. Everyone involved in an issue – advisers, adversaries, everyone – needs to work from a common nucleus of operative fact. The first effort required is to agree on as many material fact elements of the situation as possible, identify the areas of disagreement on what the facts are, identify the evidence and counter-evidence, and then determine the course of the discussion from there. This applies to litigation with others, and it applies to internal decisions. People cannot have a worthwhile discussion of the proper resolution of an issue without first having a common understanding of all the material facts.

And in conclusion . . .

We have spent six months in close observation of the "headline" cases and active litigation as well as the role of the Office of Legal Services in the leadership of the Department.

In assigning us to review ways to reduce the Department's exposure to litigation and liability, Secretary Sheldon told us, "Lawyers are fundamental to what we do." In our subsequent work, "Risk" was a window into many aspects of the organization. Some of the agency's worst "media moments," and a couple of its most heart-warming ones, sprang from litigation against the agency. Unfortunately, the signing of an \$18.2-million claims bill on behalf of 9-year-old Marissa Amora at the Governor's Mansion, heartwarming as it was to the governor and the secretary and others who attended, nonetheless was Exhibit A for the high price of negligence in the agency.

It was a real step forward, then, when Northeast Regional Director Nancy Dreicer decided, after a seven-figure settlement involving the Department's failure to protect a foster child from repeated sexual assaults by boys in the same foster homes, to assemble key members of the regional leadership to ask how to identify and address the risk of future child-on-child sexual attacks. Nancy began seeking information about the practices in other states that might offer ideas. "We know what not to do," she said, "but we don't know what TO do." The regional counsel was part of that group from the beginning.

The disadvantage of statewide workgroups and the assigning of "Quality Assurance" reports is that recommendations tend to focus on one of two specific causes: a "procedure" that was ignored or inadequate and thus needs some kind of rulemaking fix, or a bad act of a front-line employee, who then is disciplined or terminated. This satisfies the need for a completed narrative of the story, a kind of confession and redemption. But it is not the real answer. The

real answer, again, is that we have management that can be alert to this kind of gap in procedure or performance when it produces a minor problem rather than a major one. Secretary Butterworth used to talk about a community's effort to get a traffic light installed at an intersection and being told by the transportation authorities that there had not been enough accidents there yet to justify it. Of course, one bad headline-making fatal accident would change the dynamic and raise the political urgency of a traffic light. Secretary Butterworth would shake his head about that, because DCF doesn't get to give that response.

But of course, the Department does have that chance. But unlike the data-tracking of intersection accidents, we just don't know how many minor "accidents" have warned us about the inadequacy of our procedures or our work.

As the Northeast case involving child-on-child sex was moving toward a final settlement offer, the plaintiff's lawyer, in a late-night conversation with the acting regional counsel, described the latest twist in his quest for DCF records. The girl, the plaintiff, had told her therapist during a treatment session of a previously undisclosed sexual assault, and the therapist had reported the assault to the hotline. No record of that report had been provided to the plaintiff as part of what was supposed to be "all documents" related to the case. But the therapist had the time and record number for her report, and it was found on specific inquiry. It turned out that calls to the Hotline about sex abuse perpetrated by a child was referred automatically to law-enforcement, as a statute requires, and that no record of the incident is made in FSFN. Thus the Department's procedures essentially ignored this incident in the life of both the perpetrator and the victim, both foster children in our care. Well, the case was being settled. It would be easy to just ignore that problem. But the now-former regional counsel was concerned about the missing call, not only as a matter of records policy but as a matter of properly caring for foster children. He contacted the Hotline Director and the Director of Family Safety. New procedures were initiated.

But you never know for sure. On May 27, Neil asked Family Safety Director Alan Abramowitz if the Hotline had actually implemented the new procedure. Alan thought so, but decided to check with Hotline director Steve Holmes. No, said Steve, he understood Family Safety wanted further comments. Alan bristled. He called a subordinate and directed that the policy document go out promptly. In this agency, one truly can "assume nothing."

There is so much more that we have become curious or concerned about during our tenure with the Department: the efficacy of the so-called "quality assurance" process, the challenge of setting and enforcing higher performance standards for our contractors known as "community-based care agencies," the urgent need for a sense of urgency in other state agencies with which DCF deals regularly, the need for interagency databases that can "talk" to each other and deliver not mere "data" but what DCF's Chief Information Officer, Ramin Kouzehkanani, calls "business intelligence." We hope this assessment provides a map for others to follow in examining closely these and other parts of the Department's operations.

The accomplishments of the Department over the past two years are remarkable, certainly unprecedented in the history of this agency, and it has been a privilege for us to be part of an organization that accomplished so much, first under Secretary Butterworth and then under Secretary Sheldon. Our comments in this report should be understood as our effort, as lawyers with long experience in the private sector, to “keep it going,” as the slogan said at the 2008 Dependency Summit. The Department CAN “keep it going,” and achieve much more than it has, but only if it more extensively turns its reactive, case-by-case, determined problem-solving into a permanent rethinking of the organization and management structure itself.

The Department’s job is not an easy one. The Department deals with some of most vexing problems facing some of the most sympathetic citizens in modern society. The children we try to protect are already in crisis by the time we hear of most of them. Some are permanently affected, physically and psychologically, by what they have suffered. It is beyond our capabilities to assess, as a matter of morality and public policy, what society owes these children in terms of extraordinary treatment and care. But our first obligation is to do them no further harm.

The real opportunity is not about “risk management” in the narrow sense – controlling litigation losses – but about seizing opportunities to accomplish things without the compulsion or threat of litigation.

We cannot expect perfection from any organization, much less from one that deals with problems that entail so much judgment. The best parents make mistakes with their children. In a capitalist world that rewards individual achievement, we sometimes forget how much of what we all are and will become is a result of luck – what Secretary Butterworth used to refer to as the “parent lottery.” The Department of Children and Families is part of this society’s way of balancing the odds, taxing those who have succeeded in part because of the genes and environment they lucked into and using the proceeds to bolster those who came into families and environments that most of us would rather not endure.

Secretaries Butterworth and Sheldon gave this agency a heart and reminded all of us that we were about children and vulnerable adults. They also recognized the incredible demands on the people on our front lines – the investigators and caseworkers – who apply their training and sensitivity and courage to make educated guesses about the most unpredictable situations. We are not writing about individuals here. We are writing about giving talented people the management and leadership they deserve at every level of the organization.

The human significance of the Department’s work, the enormity of the challenge, and the inherent imperfection of organizations and people are all the more reason to create an organizational culture of performance and disciplined execution even as DCF also becomes an agency with a long-term outlook and a very big heart.

“To see others believing what we believe is a powerful confirmation. To embrace what others prize creates comfort and self-assurance. . . . We can easily convince ourselves that what we do and how we do it are just and right, that strangers given to other customs are mistaken or even evil, and that changing anything will subvert the natural order of things. . . . I invite you to live with open eyes, conscious of what we do well, but always learning where and how we can do better.”

– John Lachs, Centennial Professor of Philosophy, to Phi Beta Kappa graduates of Vanderbilt University, May 7, 2009.

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