Thank you very much. I am glad to be with you today.

You are parent attorneys. You take tough cases and tough clients. The importance of your job may be hard to explain to others.

I come here today to applaud you. It is easy to tell people that you represent a child in a civil child abuse or neglect case. A child's attorney is often perceived as the child's protector. The perception of attorneys representing parents in these same matters is rarely so favorable. You might, at times, feel reluctant to tell people that you represent parents in child deprivation cases. When people ask you what you do, I want you to say that you uphold the constitution. That you protect family integrity. Your job is essential to making the state to do its job, to prove its case. You are critically important to the process, to the family, to the state, and to the pursuit of justice.

Two years ago, Federal Judge Marvin Shoob wrote in a summary judgment order entered in the Kenny A v. Perdue case that "children have fundamental liberty interests at stake in deprivation and [termination of parental rights] proceedings. These include a child's interest in his or her own safety, health, and well-being, as well as an interest in maintaining the integrity of the family unit and in having a relationship with his or her biological parents. On the one hand, an erroneous decision that a child is not deprived or that parental rights should not be terminated can have a devastating effect on a child, leading to chronic abuse or even death. On the other hand, an erroneous decision that a child is deprived or that parental rights should be terminated can lead to the unnecessary destruction of the child's most important family relationships."

This tightrope referred to by Judge Shoob is one that you walk regularly, and that might sometimes be worrisome to you. You might have legitimate concerns that your zealous advocacy not bring a family further harm, that instead you are able to affect positive results. The only way to feel comfortable walking this tightrope between doing too much and not doing enough is to have thorough knowledge of the applicable laws and policies before advancing a course of action.

When you are successful in making the state do its job, you have often played a part in reunifying a family with services and needed protections in place. And many if not most children want to go home to their parents no matter the circumstances. You can make that happen with assurances of safety. You can also play a major counseling role for the parent if you see the case is not heading toward reunification, such as steering toward other family members for permanency or preserving some degree of contact between parent and child if a child is going to be adopted. What a wonderful legacy of work for a lifetime.

Let's talk about some #s. For the past 2 years, our Supreme Court Committee on Justice for Children, which is chaired by my colleague Justice Harris Hines, has been reviewing child welfare data. I should also mention that the Committee is part of the larger Commission on Children, Marriage and Family Law created by our Chief Justice, Leah Sears.

The data reviewed by the staff at the Administrative Office of the Courts is being shared by DFCS with the courts. You are going to hear more about this data later, but I'm going to hit the highlights. We can see that the majority of child deprivation cases involve removal from a child's home into foster care because of neglect. Neglect. Not physical abuse (another category), not sexual abuse (another category). Neglect. In fact, by their own reporting DFCS categories some 60% of their cases are list neglect being the primary reason for a child's removal from the home. We have over 13,000 children in foster care today. 60% represents a lot of children.

Neglect can often be remedied and you can play a crucial role in such a case. Neglect can mean drug problems, depression, mental or physical illness, immaturity and more. Ensuring that tax dollars are spent on services for these families instead of foster care can bring a lot of these families back together.

We also know from data that the rate of child removals varies across the state. In some of our counties, a child is 12 times more likely to be removed from their homes than other counties. Why is this?

What is the dynamic driving children to be removed at a higher rate in some counties than in others? Is it poverty? Is it drugs? Is it lack of preventive/supportive services for families? Is it difference in practices? Philosophy? Our staff hopes to spend the next few years trying to figure this out. We need you to know about these differences so you can help us with this too.

Do you think children are removed from their parents for reasons of poverty alone? Are children removed because of a lack of services available to support a family staying together? This common scenario makes your job more important.

I hope you spend some time over the next 2 days talking about evidence standards in juvenile court. Many people talk a lot about the "best interest of the child" standard. You know that is not the standard to remove a child from his or her home. The state's parens patriae authority to intervene in a family's life to protect children is limited by the parents' constitutional rights to direct their children's upbringing and to family integrity. The state must show action that either harms or poses by clear and convincing evidence a substantial likelihood of harming the child (see below) before a child can be removed. And the state must also show a reasonable level of assistance to help the family resolve the risk before removing the child.

If best interest was the standard for a child to be removed from his or her home, then many children should be removed and raised by Bill Gates and his wife Melinda. Arguably, the Gates family can provide more in their best interest than most families. Our standard from removal to foster care is whether the child is **safe from harm**. . Children should be removed from their homes when the parent falls below a minimum standard of parenting and causes harm to a child OR presents such a high risk of harm that removal is required. Would we want government intervention justified by any lesser standard?

I also hope you also spend some time talking about reasonable efforts. The law requires that whenever "the court places custody of a child in the Division of Family and Children Services…the court shall…determine as a finding of fact whether reasonable efforts were made…to preserve and reunify families prior to the placement of the child in the custody of the Department…, [whether reasonable efforts were made] to prevent or eliminate the need for removal of the child…, and [whether reasonable efforts were made] to make it possible for the child to return safely to the child's home. Such findings shall also be made at <u>every</u> subsequent review of the court's order." [OCGA 15-11-58(a)]

Are these findings always given due consideration? Is sufficient evidence always put forth to support the court's finding? And what exactly are reasonable efforts?
Drug treatment? Medical treatment? A nurse or professional visiting the home teaching child care, safety, and medical needs of children? Is offering these services too much for government to do? If a child has a specific need that is too great for a low-income family to meet, should we require the state to meet that need? Does that child have to come into foster care in order to get the services and support to meet that special need? What is the greater good for our state, for our country? Think about this when you read in the newspaper about government dollars being spent to send men and women to space or to promote fishing holes within the state of Georgia.

We always need to be careful not to assume that the state can do a better job of raising children. Many successful people, writers, lawyers, doctors and so many more have

come from financially deprived backgrounds. How often have we read about a hard life that created the drive for success?

When you have cases in front of you, think carefully about whether reasonable efforts have been made to keep this family together.
If not, then argue for them zealously. There is a lot of money and energy in the child welfare system. DFCS' budget last year was over one billion dollars and that does not include county dollars. Harness those resources for the families you serve.

Finally and again, the key to success in this area and to serving families best is to know the law. Know it cold. Know the state policies. Be certain of what you can do. Stick to the standards of practice and recognize that the families you serve have constitutional rights that must be protected. The bureaucracy within government can do good things, but we know from history it can also go awry.

You alone may be the check on the system. Doing your job well not only serves the families in front of you but it serves the judiciary and society. Your good performance allows all of us to believe in the fairness and justness of the process that we have built to protect children.

I thank you again for all that you do and for inviting me to be here today because you represent what I think the legal system should be all about.

Case law support for the statement made above

In the Interest of D. S., 217 Ga. App. 29, 29-32 (Ga. Ct. App. 1995)

This is an appeal by the natural mother of three children, ages six, three, and two, from an order of a juvenile court finding the children to be deprived and placing temporary custody of the children with the Heard County Department of Family & Children Services ("DFCS"). This is the second appearance of this case before this court. See In the Interest of D. S., 212 Ga. App. 203 (441 S.E.2d 412) (1994). Previously, we granted the mother's application for discretionary appeal to review the juvenile court's order finding the children to be deprived and awarding temporary custody to DFCS. We found [*30] that the facts set forth in the trial court's order did not constitute "clear and convincing [***2] evidence of deprivation under O.C.G.A. § 15-11-2 (8)." Id. at 204. However, because the order did not contain explicit findings of fact and conclusions of law in accordance with O.C.G.A. § 9-11-52, the judgment was vacated and the case was remanded for entry of the proper findings and a new judgment.

We granted the mother's application for discretionary appeal from the court's new order affirming the deprivation to determine whether the evidence supported the finding of deprivation.

1. Appellant contends the evidence was insufficient to support the juvenile court's order because there was no evidence of harm to the children and the DFCS caseworker failed to establish that she was an inappropriate parent. She argues the trial judge's initial comments on the evidence also demonstrate its insufficiency. At the conclusion of the initial detention hearing to determine whether the children should be detained or released to their mother pending a hearing on the deprivation petition, the court stated its early impression that the circumstances did not warrant

permanent removal of the children and that the case could be remedied by close supervision of the parties. In that hearing, the court heard [***3] all of the evidence regarding the condition of the mother's home.

HN1"'When contemplating taking custody of a minor child from his parent or parents and awarding it to a third party, the court must initially face the presumption, firmly embedded in our law, that it is in the child's best interest to be with his natural parent or parents. In order for this presumption to be overcome, there must be a clear and convincing showing that the child is abandoned, deprived, or abused, or that the parent is unfit to receive or retain custody. Thus, in order to take custody from the natural parent or parents and award it to a third party, the court must consider not simply the "best interest of the child," which is the appropriate standard when the contest is between the parents, but the narrower criterion of parental unfitness to have the child in his or her custody. . . . A parent may lose (her) right to custody of (her) child or children if (she) is found to be unfit or if there is found to exist one of the conditions specified in O.C.G.A. § 19-7-1. . . **. Custody may also be lost if the child is found to be . . . deprived and likely to be harmed thereby**.' . . . [Cit.]" In the Interest of M. [***4] A. V., 206 Ga. App. 299, 300 (1) (425 S.E.2d 377) (1992). " O.C.G.A. § 15-11-2 (8) defines a deprived child as a child who 'is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health or morals. . . .'" In the Interest of E. R. D., 172 Ga. App. 590 (323 S.E.2d 723) (1984). The trial court's finding of deprivation was based on evidence that the children were living in unsanitary conditions which the court [*31] deemed a significant threat to the health and welfare of the children. The [**717] court's order sets forth the following findings of fact: "The kitchen was littered with dirty dishes, hardened liquid soiled the kitchen floor, and food which had been left on the counters was rotted.

There were also live and dead roaches in the kitchen cabinets, on the counters and in the refrigerator. . . . The carpeting in the house was soiled and emanated a strong odor of animal discharge, and . . . there was a dead rat in the bathroom that had been there so long that only the skull remained." The court also found that the home was without gas or other means to heat water for bathing or cleaning; that [***5] the mother was not gainfully employed; and that drug paraphernalia was discovered in a night stand on the day the children were taken into custody.

HN2"'The appropriate standard of appellate review . . . is "whether after reviewing the evidence in the light most favorable to the appellee, any rational trier of fact could have found by clear and convincing evidence that the natural parent's rights to custody have been lost." This standard of review safeguards the high value society places on the integrity of the family unit and helps eliminate the risk that a factfinder might base his determination "on a few isolated instances of unusual conduct or idiosyncratic behavior." (Cit.) ". . . Only under compelling circumstances found to exist by clear and convincing proof may a court sever the parent-child custodial relationship." (Cit.)' [Cit.]" In re S. E. H., 180 Ga. App. 849, 850-851 (350 S.E.2d 833) (1986).

The evidence recited above is virtually the same evidence we previously determined did not constitute "clear and convincing evidence of deprivation under O.C.G.A. § 15-11-2 (8)." In the Interest of D. S., supra at 204. However, the evidence has been rendered less compelling by [***6] the notable deletion of the references to a drug raid on the home and the presence of a large quantity of drugs which were accessible to the children.

Moreover, the trial court's order contains no finding of fact with respect to the

condition of the children. While the evidence showed that the family was living in filthy surroundings, there was no evidence of how the environment adversely affected the children, i.e., evidence of physical neglect, medical problems, malnourishment, emotional harm or mental inadequacies. Compare Vermilyea v. Dept. of Human Resources, 155 Ga. App. 746 (272 S.E.2d 588) (1980). Thus, there is no evidence upon which a determination can be made that the children were without "proper parental care or control, subsistence, education as required by law, or other care or control necessary for [their] physical, mental, or emotional health or morals" under O.C.G.A. § 15-11-2 (8).

Furthermore, HN3"a showing of parental unfitness is required in [*32] cases of temporary custody sought by a third party. [Cit.] Parental unfitness is '"caused either by intentional or unintentional misconduct **resulting in abuse or neglect of the child, or by what is tantamount to physical [***7] or mental incapability to care for the child**."' [Cits.]" In re J. C. P., 167 Ga. App. 572, 575 (307 S.E.2d 1) (1983). **There was no evidence of neglect or abuse of the children**. With respect to the mother's fitness, the DFCS caseworker assigned to her testified, "I don't have an opinion as to whether she's an appropriate mother or not. I don't have any reason to have one one way or the other; okay? I mean, I don't have any reason to believe that she's not or that she is."

"'The right to the custody and control of one's child is a fiercely guarded right in our society and in our law. It is a right that should be infringed upon only under the most compelling circumstances.' [Cit.] Our review of the record fails to unearth the clear and convincing proof that any rational trier of fact could have found that [appellant] had conducted [herself] in such a way as to abuse or neglect [the children] to the extent that [her] parental right to custody should be terminated." In re S. E. H.,

supra at 851-852. **Other than seeking to have the children declared deprived, there is no evidence that DFCS has provided any support services to this mother which would eliminate the necessity [***8] of resorting to the drastic measure of state intervention into this family unit.** Compare Vermilyea, supra. Nor is there evidence that the mother would be uncooperative. We do not condone her neglectful housekeeping, but "we cannot say [**718] as a matter of law that the situation is such that [she] should be condemned as an unfit parent and stripped of [her] parental right to custody of [her children]." 180 Ga. App. at 852. See also In the Interest of M. A. V., supra at 302.

2. In light of our holding in Division 1, we need not address the remaining enumerations of error.

Judgment reversed. Blackburn, J., concurs. Birdsong, P. J., concurs in the judgment only.

In the Interest of D. S., 217 Ga. App. 29, 29-32 (Ga. Ct. App. 1995)

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Very similar finding in the D.E.K case.

In the Interest of D.E.K., 236 Ga. App. 574, 577 (Ga. Ct. App. 1999),