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Cover Page Footnote

Ann Moynihan, Esq., is an Associate Clinical Professor of Law at Fordham University School of Law and Co-Director of the Fordham University Interdisciplinary Center for Family and Child Advocacy. Mary Ann Forgey, M.S.W., Ph.D, is an Assistant Professor at Fordham University Graduate School of Social Service and Co-Director of the Fordham University Interdisciplinary Center for Family and Child Advocacy. Debra Harris, Esq., M.S.W., is an Associate Director of Fordham University Interdisciplinary Center for Family and Child Advocacy. The Authors thank Professor Lyn Slater of Fordham University Graduate School of Social Service for her assistance in providing statistical information on the child welfare system.

FORDHAM INTERDISCIPLINARY CONFERENCE

ACHIEVING JUSTICE: PARENTS AND THE CHILD WELFARE SYSTEM

FOREWORD

Ann Moynihan,* Mary Ann Forgey,** & Debra Harris***

INTRODUCTION

In April 2001, professionals and parents familiar with New York City's child welfare system convened at a working conference ("Conference") to address the legal and social service crises that parents often faced as they attempted to keep their children with them and meet their family's needs. The Conference resulted in recommendations for systemic change in the delivery of services by the courts, the judiciary, lawyers, social workers, the Administration for Children's Services ("ACS"), New York City's child welfare agency, and psychologists. The purpose of the recommendations was to better achieve justice for parents—and therefore families—in the system.

Part I of this foreword provides background to the Conference proceedings by reviewing the work that had already been done to identify and describe the problems of parents involved with the child welfare system. It provides information on the reform efforts being undertaken by ACS and the continuing need for immediate and fundamental change in the way ACS interacts with parents. Part I also summarizes the crises in legal representation and the courts

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confronted by parents. Part II of this foreword highlights how some of the solutions policy makers are considering to remedy these problems are not taking into account the way the systems combine to affect parents and their families. Part III describes the organization of the Conference, highlights the Conference recommendations, and provides a reflection on the Conference—in particular, the importance of interdisciplinary collaboration between professionals of different fields to improve the way families are served overall.

The recommendations of the Conference, working group reports, and key responses to the Conference follow this opening commentary. Additionally, the *Fordham Law Review* website contains a transcript of the keynote speech and parents panel discussion, as well as additional responses to the Conference.

I. PARENTS AND CHILD WELFARE IN NEW YORK CITY

As the Conference convened, growing concern for parents involved in the child welfare system in New York City led to an increase in calls for substantial changes within each of three systems that significantly impact parents: (1) the City's child welfare agency, (2) the family courts, and (3) the framework for providing legal representation to parents whose children are removed, or are in danger of being removed, from their care. This part sets out the identified ways in which each system fails to meet the needs of parents and their children in New York City. It also looks at the degree to which proposals for change fail to take into account the limited intersection between the systems and the lack of attention to the ways in which the three systems worked in combination.

A. *New York City's Child Welfare Agency and Access to Justice for Parents*

Characterized in 1995 as having “perhaps the most dysfunctional child welfare system in the country,”¹ New York City in 1996 created a new child welfare agency, ACS, and issued a plan to reform many of the agency's policies and practices.² At the end of 1998, the City agreed to institute additional changes to the agency pursuant to a court-approved settlement in *Marisol ex rel. Forbes v. Giuliani*,³ a

1. Complaint for Declaratory and Injunctive Relief ¶ 4, at 1, *Marisol ex rel. Forbes v. Giuliani*, 185 F.R.D. 152 (S.D.N.Y. 1999) (No. 95-Civ. 10533), *aff'd sub nom. Joel v. Giuliani*, 218 F.3d 132 (2d Cir. 2000) [hereinafter *Marisol Complaint*], available at <http://home.rica.net/rthoma/marisol.htm> (last visited Sept. 19, 2001).

2. N.Y. City Admin. for Children's Servs., *Protecting the Children of New York: A Plan of Action for the Administration for Children's Services* (Dec. 19, 1996) [hereinafter *Plan of Action*], available at http://www.ci.nyc.ny.us/html/acs/pdf/reform_plan.pdf.

3. 185 F.R.D. 152 (S.D.N.Y. 1999), *aff'd sub. nom. Joel v. Giuliani*, 218 F.3d 132 (2d Cir. 2000).

lawsuit that had been filed in 1995 by child advocates seeking, among other things, to place the child welfare agency into receivership.⁴ That settlement set up a short-term reform process under the direction of an advisory panel (“Marisol Panel” or the “Panel”),⁵ which issued a final report in December 2000 on the progress of the reform,⁶ just four months before the Conference convened.

The City had, in the Panel’s opinion, made a “sustained, intelligent effort to change a complicated and difficult system,” and its reform efforts compared “favorably to similar efforts [the Panel had] seen elsewhere in the country,” encompassing as it did “such widely different challenges as civil service reform, training, improved management controls, evaluation of contract providers, neighborhood-based services, family case conferencing, reimbursement systems, and the addition of substantial new resources, among other changes.”⁷ The Panel particularly pointed to the City’s self-initiated development of “family case conferences” and a “neighborhood-based service delivery system.”⁸

The Panel also concluded, however, that work with parents was “not yet the focus of practice in New York City,”⁹ and identified as a necessary next phase of work for the child welfare agency the “building [of] a framework for better engaging and partnering with parents” in order to “improve [the] prospects for permanency for children.”¹⁰ This was essentially a call for a fundamental shift in the approach to child welfare taken by the City in its original 1996 Reform Plan. That plan had emphasized the agency’s care of children and de-emphasized the agency’s duty to assist parents in caring for children. It had done so pursuant to a mayoral mandate to “stop the killing, abuse, and neglect of children in New York City”¹¹ and to “first, last, and always” protect its children.¹² Consequently, the agency adopted as its first operating principle the use of “all available means to be certain that children do not live in danger of abuse or neglect” and promised that “[a]ny ambiguity regarding the safety of

4. Marisol Complaint, *supra* note 1, ¶ 354(e), at 107.

5. See *Marisol*, 185 F.R.D. at 157-58 (noting that the Panel was to consist of four “nationally respected child welfare experts,” selected and approved by the plaintiffs and City defendants, who were to study and report on specified areas of agency operations, prepare periodic reports to determine ACS’s good faith in making efforts toward reform in those areas, and seek judicial relief in the event the agency was found not to be proceeding in good faith).

6. Special Child Welfare Advisory Panel, Final Report (Dec. 7, 2000) [hereinafter Final Report], available at <http://www.aecf.org/child/finalrpt.pdf> (last visited Aug. 26, 2001).

7. *Id.* at 4.

8. *Id.*

9. *Id.* at 39.

10. *Id.* at 42.

11. Plan of Action, *supra* note 2, at 5.

12. *Id.*

the child will be resolved in favor of removing the child from harm's way."¹³ Far from seeing parents as clients or partners, the city's reform plan had cast parent and agency as adversaries, placing on parents alone the onus of establishing their ability to care for their children: "Only when families demonstrate to the satisfaction of ACS that their homes are safe and secure, will the children be permitted to remain or be returned to the home."¹⁴ The agency sought to align itself with community members—but not with parents—as it embarked on what it described as a "focused, integrated, relentless effort to secure the safety and well-being of the children of New York."¹⁵ To achieve this goal, the agency promised to restructure its management into one geared to protect children, and to:

[G]alvaniz[e] the City—including all its residents, neighborhoods, houses of worship, and community-based organizations—to discover and report every instance of child abuse and neglect, and to become partners in the drive to make certain that every child is safe and has a loving and supportive home; and engage[e] every organization and government entity interested in the welfare of children to create, for the first time, a simplified, coordinated, child-focused system that will protect all the children of New York.¹⁶

This focus on child removal continued to characterize the City's reform efforts through 1999, at which point the agency began to shift "toward a recognition that child safety could often be better served by preventing the trauma of foster care placement in the first place."¹⁷ The Marisol Panel in its Final Report urged the City further in this direction. While acknowledging the City's significant improvements in many of its child protection practices, the Panel cautioned the agency that "unless there is equal emphasis on assisting birth parents, and an understanding that parents are necessary and legitimate recipients of services, the child's needs for both safety and permanency cannot be adequately met."¹⁸ Characterizing the role of the parent as "absolutely essential,"¹⁹ the Panel emphasized that most children who become involved with the child welfare system remain with one or both of their parents, or, if placed in foster care, leave it by returning to their families.

As the Panel's recognition of the lack of effective work by the agency with birth parents indicates, parents had yet to see much actual

13. *Id.* at 6.

14. *Id.*

15. *Id.* at 7.

16. *Id.* at 7-8.

17. Nina Bernstein, *Head of Children's Services Says He Won't Stay in the Job Under a New Mayor*, N.Y. Times, Sept. 7, 2001, at B3 (reporting on an interview with ACS Commissioner, Nicholas Scoppetta, who credited the work of the Marisol Panel with bringing about this shift in emphasis).

18. Final Report, *supra* note 6, at 39.

19. *Id.*

improvement in the way the child welfare agency was dealing with them. The following paragraphs attempt to describe a parent's likely experience, as he or she moved through the child welfare system at the time the Fordham Conference was organized.

A parent's involuntary involvement with the child welfare agency begins when the agency receives a report of suspected child neglect or abuse, which triggers an investigation.²⁰ As part of an investigation, a parent is likely to encounter sudden requests made by caseworkers to enter the parent's home, numerous inquiries being made at the children's schools and doctors' offices, requests for the parent to bring the children to meetings with caseworkers and supervisors at governmental offices, and demands for the parent to grant interviews with other family members or service providers. These requests and demands are made of a parent under the looming threats that the children may be removed from the parent's care and that the information gained may be used, rightly or wrongly, to form the basis of civil child protective proceedings and, in some cases, referral to the district attorney for the initiation of criminal proceedings.²¹

An investigation results in the caseworker's finding that the suspicions against the parent are either "unfounded" or "indicated,"²² triggering in the latter instance a right of the parent to challenge the agency's determination through a state-run administrative hearing process.²³ In indicated cases, the agency has the discretion to choose

20. In New York City, 5.7% of the reports in 1999 involved allegations of suspected abuse. See Citizens' Comm. for Children of N.Y., Inc., Keeping Track of New York City's Children: A Citizens' Committee for Children Status Report 126 (2000) [hereinafter Citizens' Committee Report] (reporting that in 1999, 2878 reports were categorized as raising suspicions of abuse, while 50,790 fell into the category of possible neglect).

21. See N.Y. Soc. Serv. Law § 424(10) (McKinney 1992 & Supp. 2001) (providing that the agency is to advise the family that it has no authority to compel the family to accept services); *id.* § 424(11) (permitting the agency to initiate Family Court or Criminal Court action in cases in which an appropriate offer of service is refused and the agency determines that the best interests of the child so require).

22. Local social service agencies are responsible for determining whether the report is "indicated" or "unfounded." *Id.* § 424(7). A report is "indicated" if "some credible evidence of the alleged abuse or maltreatment exists." N.Y. Comp. Codes R. & Regs. tit. 18, § 432.1(g) (1995). An "unfounded" report is "any report made, unless an investigation determines that some credible evidence of the alleged abuse or maltreatment exists." *Id.* § 432.1(f). In 1999, 37.5% of the 53,750 reports in New York City were "indicated." See N.Y. City Admin. for Children's Servs., Progress on ACS Reform Initiatives Status Report 3, at 20 (Mar. 2001) [hereinafter Status Report 3].

23. See N.Y. Soc. Serv. Law § 422(8)(b) (providing for the right to a fair hearing at which the subject of an indicated report may move to have the report amended); see also *Valmonte v. Bane*, 18 F.3d 992, 1004 (2d Cir. 1994) (noting that the procedures, which permitted inclusion of individuals alleged to have abused or mistreated their children on the New York State Central Register of Child Abuse and Maltreatment only by virtue of "some credible evidence" of such abuse, created a high risk of error); In the Matter of Lee TT. v. Dowling, 664 N.E.2d 1243 (1996) (concluding that the statutory scheme regulating the Central Register violates constitutional standards and requiring that a report of abuse must be substantiated by a fair preponderance of the

not to remove the children and offer instead services, which the parent must accept or face the possibility that the agency will prompt Family Court involvement.²⁴ Ideally this service plan should respond to the needs of the parents and children and provide services to avoid the need for removing children.²⁵ However, the agency's goal of providing such services as a means to prevent placement is still unrealized, in part because it is still not capable of delivering an adequate supply of such services.²⁶

In other indicated cases, caseworkers may decide to remove the children from a parent's care, and will most likely do so on an "emergency" basis,²⁷ without prior application to a court.²⁸ At this point, the parent whose children are subject to removal may not receive an "adequate explanation of why [his or her] child[ren are] being removed,"²⁹ as caseworkers rarely provide parents with "a court order . . . or any documentation of the reasons for removal" or "written information about their rights and responsibilities . . . or about the process for challenging the removal in Family Court."³⁰ The parent sometimes does not even know "the name of the agency with responsibility for the[] child[ren]'s placement, leaving [the] parent[] and [the] children without any contact for weeks (or even months) at a time."³¹

evidence when that report will be disseminated to future employers).

24. See N.Y. Comp. Codes R. & Regs. tit. 18, § 432.2(b)(4)(iv) (discussing the provision of rehabilitative services to families subject to indicated reports and providing for an assessment of the need to resort to Family Court in the event services are refused).

25. See Final Report, *supra* note 6, at 25-26, 40 (emphasizing the need for an ACS reform plan).

26. See *id.* at 6 (describing a slight decrease in the number of families provided with preventive services in fiscal year 2000 as appearing to be attributable to processes involved in getting new programs up and running); *id.* at 25-26 (describing ACS as still involved in the process of revising its models for some preventive services delivery and designing evaluation instruments).

27. N.Y. Fam. Ct. Act § 1024 (McKinney 1999 & Supp. 2001); see also N.Y. Soc. Serv. Law § 417.

28. See Mark Green, Pub. Advocate for the City of N.Y. & C-PLAN: Child Placement and Advocacy Now, Accountability Project, Inc., Justice Denied: The Crisis in Legal Representation of Birth Parents in Child Protective Proceedings 19 (May 2000) [hereinafter Green, Justice Denied], available at <http://pubadvocate.nyc.gov/documents/18bweb.pdf> (last visited Aug. 26, 2001) (noting that "emergency removal without court order . . . is the usual practice in New York City"), see also *Tenenbaum v. Williams*, 193 F.3d 581, 591 (2d Cir. 1999) (finding an "emergency" basis removal unconstitutional where there is reasonable time to safely obtain a court order, and relating an agency caseworker's statement that a decision to proceed with an "emergency" removal, rather than one based on parental consent or a court order, was not aberrational but "standard office procedure").

29. Mark Green, Pub. Advocate for the City of N.Y., The Child Welfare Scorecard 26 (Apr. 1998) [hereinafter Green, Scorecard].

30. *Id.*

31. *Id.*

If the children remain in foster care, the parent will have to deal with new caseworkers at the “voluntary agencies”³²—agencies with which the city contracts to carry out the dual role of overseeing a child’s foster care and working with the family toward reunification.³³ In *Marisol*, the complaint stated that at that point in the process parents were completely ignored, as “caseworkers frequently cease to work with the child’s family members to address the problems that led to the placement and prepare for the child’s return home.”³⁴ As it ended its oversight, the *Marisol* Panel noted that while the agency had made dramatic changes in the hiring, quality, and training of its own child protective workers, it had done little to change the practices of caseworkers in the voluntary agencies:

ACS has been able to make major improvements in the base upon which it builds its efforts to keep children safe. Most people who work in protective services in New York City are significantly better trained and better compensated than was the case five years ago, and ACS is rightly proud of the impact of these changes. *The same is not yet true for the large majority of the people whose work is focused on permanency – those in preventive services and foster care programs. ACS’s success in capturing additional resources to bolster its contract providers is therefore an essential element of its work to further permanency for children in New York.*³⁵

As the parent meets the foster care agency caseworker, he or she may still find that the caseworker’s main focus is on the needs of the child and the foster parent, rendering it difficult for the parent to obtain even something as basic, and legally required,³⁶ as an appropriate visitation schedule with his or her children:

Parents report difficulty traveling to visits which are usually scheduled at the foster care agency far away from their home, and sometimes they lack the necessary carfare. Parents also express frustration about the length of visits, which are rarely more than one hour, and the artificiality of visiting their children in a small room at the agency, usually with no privacy.

Birth parents report that many visits get canceled, often at the last minute, and usually because of a problem the foster parent is having getting to the visit. Birth parents feel that some caseworkers are more concerned about accommodating the needs of the foster

32. See *Wilder v. Bernstein*, 49 F.3d 69, 70 (2d Cir. 1995) (describing “voluntary agencies” as private, nonprofit agencies, many of which are operated under sectarian auspices, entering into contracts with the City to perform the foster care tasks of placing children into foster boarding homes or congregate care facilities, monitoring placements, and providing essential services specific to each child’s needs).

33. Final Report, *supra* note 6, at 49-50.

34. *Marisol* Complaint, *supra* note 1, ¶ 265, at 80.

35. Final Report, *supra* note 6, at 49-50 (emphasis added).

36. See N.Y. Comp. Codes R. & Regs. tit. 18, § 428.6(b)(6)(vii) (1995) (requiring that case records reflect a visiting plan and the required contents of that plan).

parent than they are about ensuring that parent/child and sibling visitation occurs.³⁷

Indeed, agency practice regarding visitation between parents and children may well “impede, rather than further[,] permanency”³⁸ for children.

Parents also encounter delays in gaining responses to their inquiries about their children and their cases, due in part to the transfer of cases among different caseworkers, who “almost never meet face to face, and often have trouble reaching each other on the phone.”³⁹ Substantial amounts of information are often lost in the course of such case transfers.⁴⁰ A parent can do little but wait, as critically important time is wasted by a new worker “start[ing] over, gathering information that may already be known to protective staff and acting without the insight they have gained into the family.”⁴¹

As a parent moves from one worker to another, he or she may also experience a marked difference in the way he or she is treated because the caseworkers themselves have no clear and uniform view of the nature of their responsibilities. As the Marisol Panel observed:

We were struck by the absence of a common working understanding about the nature of a caseworker’s responsibilities; the mission, values, and purposes that define her work; and the core outcomes for which she should be held accountable In some foster care agencies workers speak of a commitment to work with birth families, while in others they appear primarily focused on attending to the needs of children and foster parents. In some programs workers largely make referrals, in others they spend a great deal of time accompanying and advocating for their clients, and in still others they do therapy. A shared notion of what a caseworker is trying to accomplish, and how, may not in itself be sufficient to bring

37. Green, Scorecard, *supra* note 29, at 29.

38. Special Child Welfare Advisory Panel, Advisory Report on Front Line & Supervisory Practice 7 (Mar. 9, 2000) [hereinafter Front Line & Supervisory Practice], available at <http://www.aecf.org/child/frontline.pdf> (last visited Aug. 26, 2001) (pointing to improvements in caseworker practice regarding visitation as one of the more important improvements needed in the child welfare agency’s front line practice).

39. Special Child Welfare Advisory Panel, Periodic Report #2, at 17 (May 19, 2000) [hereinafter Periodic Report #2], available at <http://www.aecf.org/child/report.pdf> (last visited Aug. 26, 2001); see generally Final Report, *supra* note 6, at 31 (noting that while ACS has “prioritized personal contact for case planning transfers,” foster care workers attend only about half of the planning meetings with protective service workers and that contact between protective and preventive services workers “rarely happens”); Front Line & Supervisory Practice, *supra* note 38, at 39 (recognizing a main complaint of parents and children “that new workers ask for all the same information they’ve already provided”).

40. Front Line & Supervisory Practice, *supra* note 38, at 7.

41. Periodic Report #2, *supra* note 39, at 17.

about major change in the quality of front line practice in this system, but it is an essential step towards improving this system.⁴²

Furthermore, as indicated above, a parent with a child in care may be subjected to service plans that will not actually meet the family's needs. Claims were made in the *Marisol* complaint that service plans were "doled" out under a "cookie cutter" approach:

Most plans contain the same two service referrals—"parenting skills" and "therapy"—without regard to the individualized needs of the families for whom the plans are prepared. It is not unusual for case plans to refer mentally ill parents to "general counselling" [sic], or to refer parents who simply lack housing to a parenting class.⁴³

Five years later, little had changed, and the *Marisol* Panel noted that "[m]echanical referrals to substance abuse treatment and parent training classes were at the heart of far too many plans," while "other critical services seem to be provided far less often than would be desirable."⁴⁴ Noting that "[s]ervice planning is too rarely tailored to individual needs, and the implementation of service plans is often limited to making referrals,"⁴⁵ the Panel stated:

[W]orkers sometimes seemed honestly puzzled when asked to describe what it would really take to re-unite a family or to best meet the needs of a child in care. In most instances they are not accustomed to thinking so broadly, and they do not believe that they have it in their power to put together flexible service packages that would make a significant difference for their clients.⁴⁶

A parent with a child in care also may deal with workers who fail to adjust service plans in response to the changing needs of the parent and his or her children,⁴⁷ because "[t]oo many front line workers are insufficiently skilled at assessing family and child needs and in engaging clients to seek and accept help, with insufficient follow-up."⁴⁸ He or she may be dealing with caseworkers for whom it is *not* basic practice to meet "[v]ery soon after placement" or to evaluate "the strengths and needs of the family and the child[,] actions which must be taken by the family to effect reunification . . . and the case plan

42. Front Line & Supervisory Practice, *supra* note 38, at 15.

43. *Marisol* Complaint, *supra* note 1, ¶ 232, at 72.

44. Front Line & Supervisory Practice, *supra* note 38, at 10.

45. *Id.* at 7.

46. *Id.* at 10.

47. *Marisol* Complaint, *supra* note 1, ¶ 236, at 73.

48. Front Line & Supervisory Practice, *supra* note 38, at 7. To assist caseworkers and supervisors in accessing certain systems (e.g., those dealing with substance abuse, mental health, domestic violence, and medical services), ACS is planning to hire clinical consultant teams in each of these areas to provide training and individual case consultation. Final Report, *supra* note 6, at 28. However, the *Marisol* Panel does not report on any plans by ACS to hire consultants to assist caseworkers with accessing more concrete services for parents such as public assistance and housing.

goal.”⁴⁹ Indeed, his or her caseworker may be one of the “[m]any workers” who “lack the necessary knowledge about such key issues as . . . how to access other systems to get help for families and children”:⁵⁰

Caseworkers report high levels of frustration in helping their clients deal with other public systems, with public assistance a particular source of concern. In preventive services programs, we repeatedly heard of cases in which clients lost benefits as a result of administrative problems that required long and often unsuccessful efforts at resolution. In foster care, the stories were of discharges delayed when children were returning to their parents but public assistance benefits could not be restored. Similar issues exist with regard to services such as housing, substance abuse treatment, and even day care, which is administered by ACS itself. In some cases supervisors and even program directors feel themselves as unable as their caseworkers to access systems or get them to respond.⁵¹

A parent also may not get the administrative procedural protections that might help identify and address some of these service failures. Federal- and state-mandated administrative processes exist to ensure that appropriate goals have been set for a child and, where a child is to be reunified with his or her family, that services are delivered to that end.⁵² These goals, and the plans that implement them, are subject to a formal conference procedure, or service plan review.⁵³ Pointing to

49. See Douglas W. Nelson et al., *The Annie E. Casey Found. Panel, Advisory Report on Family Permanency Issues in the New York City Child Welfare System* (Initial Report) 7 (Feb. 11, 1999) [hereinafter *Initial Report*], available at <http://www.aecf.org/child/famperm.pdf> (last visited Aug. 26, 2001) (outlining standards that would achieve the goal of a safe and early family reunification).

50. *Front Line & Supervisory Practice*, *supra* note 38, at 7.

51. *Id.* at 18. The frustration experienced by caseworkers in accessing services has not been attributed solely to a lack of knowledge and skills, but also to larger organizational and structural issues, which ACS is attempting to address by reconfiguring child welfare services along community district lines. In its final report, the Marisol Panel expressed hope that this reconfiguration might alleviate the agency's problems associated with getting families to services, stating:

ACS has reconfigured most child welfare services along community district (CD) lines. Contracts for foster care, preventive, and homemaking services are now issued by CD, and ACS's protective service workers are also assigned by community. . . . We believe that it is likely to produce many benefits for families and children, by increasing the likelihood that parents will be connected to culturally responsive support services they can readily access, in languages other than English when necessary; helping children in foster care remain in the same school and near parents, relatives, and friends; promoting regular visiting between parents and their children in foster care; and building positive working relationships between the ACS and contract agency staff who serve each neighborhood.

Final Report, *supra* note 6, at 5.

52. 42 U.S.C. §§ 671(a)(16), 675(5)(B) (1994); N.Y. Comp. Codes R. & Regs. tit. 18, § 428.3(d) (1998).

53. N.Y. Comp. Codes R. & Regs. tit. 18, § 430.12(c)(2)(b) (2001).

failures in the service plan review process, the *Marisol* complaint asserted:

Service plans are not reviewed in the manner required by law. Although parents are to be included in the review, they often are not invited, do not receive copies of the plans, and do not sign the plans indicating that such plans have been explained to them and that they are in agreement with the plans' contents. Because of their exclusion, parents frequently do not know what is required of them under the plan and what tasks they must accomplish to facilitate their child's discharge from foster care.⁵⁴

Five years later, the *Marisol* Panel still observed "little meaningful participation of parents and older children in the development of service plans" and urged the City to continue with its planned improvements for conducting service plan reviews.⁵⁵ As part of its own reform plan, the City created yet another layer of formal process, in addition to service plan reviews, to address problems with service delivery, promote parent involvement in service planning and ensure better communication among caseworkers. Under this framework, conferences bringing together parents with all service providers are scheduled to occur immediately after a child had been placed into foster care ("Child Safety Conference"),⁵⁶ thirty days after placement of the child ("Family Permanency Case Conference"),⁵⁷ and as a child leaves care ("Discharge Case Conference").⁵⁸ More recently, an "Elevated Risk Conference,"⁵⁹ which would be held before placement in the hope of averting the need for foster care, was also added. Upon considering how parents fare at service plan reviews and these various case conferences, the *Marisol* Panel concluded:

In practice . . . these settings are too rarely used to their full potential. They too rarely start from the parents' strengths; too rarely ask what their goals are and what kind of help they think they need to achieve those goals; too often shy away from the difficult emotional content that must be addressed; and too often present parents with a predetermined set of services to be agreed to and complied with, rather than using the conference itself as an opportunity to craft an individual plan. In short, these are too rarely settings in which real decisions are made and parents have a voice in shaping those decisions, and too often places in which administrative requirements are complied with.⁶⁰

54. *Marisol* Complaint, *supra* note 1, ¶ 237, at 73.

55. *Front Line & Supervisory Practice*, *supra* note 38, at 10.

56. *Final Report*, *supra* note 6, at 5.

57. *Id.* at 6.

58. *Id.*

59. *Id.* at 17.

60. *Id.* at 40.

Recognizing that ACS has a significant effort underway to increase the proportion of parents who actually attend service plan reviews, and that many contract agencies are now working to achieve this result, the Panel noted, nevertheless, that a number of factors combine to make service plans in the child welfare system look nearly identical to one another:

[I]t was rare in the reviews we observed for parents to be more than relatively passive observers. We were told in several instances that plans were developed by staff ahead of time, and simply reviewed with the parent at the conference. This perfunctory approach may be especially likely when there are language barriers making it difficult for clients to participate fully.⁶¹

Finally, a parent involved in court proceedings may be deprived by the agency of the opportunity to be meaningfully heard before the courts. The complaint in *Marisol* pointed to the agency's failure to connect properly with the administrative and judicial reviews meant to ensure oversight of the agency's actions.⁶² Notwithstanding recent reform efforts, failures to file for such critical proceedings in a timely way are still occurring,⁶³ and even where timely filings are made, caseworkers pay little attention to the ensuing proceedings. In connection with these problems, the *Marisol* Panel pointed to "[u]nacceptable lapses in professionalism [that] are evident in the failure to appear, late appearance, lack of preparation, and lack of compliance with court orders that too frequently characterize[d] the child welfare system's performance in Family Court."⁶⁴

The description above of the likely interaction between a parent and the child welfare agency indicates that there is still no true partnership between parents and the agency. A parent having trouble caring for his or her children, whether resulting from a loss of housing, domestic violence, or drug abuse, will still often be unable to get the services needed to avoid placing the children into foster care, or to facilitate their return, if the children are already in care.⁶⁵ Instead, a parent involved with the child welfare system is still likely to find that "placement into foster care, not an offer of preventive services," is the agency's first response to the needs of his or her family.⁶⁶ As the *Marisol* Panel stated in its final report after having reviewed the way in which caseworkers and their supervisors work with parents:

[W]e think it fair to conclude that on the front line, where parents encounter caseworkers and caseworkers encounter supervisors, not enough has changed with regard to permanency. Our conversations

61. Front Line & Supervisory Practice, *supra* note 38, at 10.

62. *Marisol* Complaint, *supra* note 1, ¶ 6, at 4.

63. Green, *Justice Denied*, *supra* note 28, at 5.

64. Front Line & Supervisory Practice, *supra* note 38, at 7.

65. Final Report, *supra* note 6, at 39-40.

66. Green, *Scorecard*, *supra* note 29, at 5.

with parents, advocates, attorneys, caseworkers, and supervisors; our own observations of family case conferences and Service Plan Reviews; the data we have reviewed concerning services to parents, parent-child visits, and parent participation in service planning; the absence of effective legal representation for parents—all of these factors, taken together, have convinced us that this is the area in which major efforts are most needed and are most likely to make real, compelling changes in the lives of the families and children in this system.⁶⁷

B. Family Court, Judges, and the Lack of Access to Justice for Parents

Parents become involved with Family Court when their children are removed, or are about to be removed, from their care and remain involved for as long as the children continue in foster care or under the supervision of ACS. Family Court has the duty both to protect children and to ensure that parents receive due process.⁶⁸ As it first intervenes in a case before trial, and as it enters post-trial dispositional orders, Family Court has the duty to ensure that the children's placement is in their best interests and that services are being provided to both the children and the family.⁶⁹ Family Court, however, has been seen by many observers as ill-equipped to carry out these responsibilities. Describing it as a "deeply troubled" institution, New York City's Public Advocate noted that Family Court has become the "step-child" of the legal system, with "courthouses severely underfunded and overcrowded, judges and lawyers overworked and overwhelmed by excessive caseloads, massive backlogs and insufficient resources."⁷⁰

Parents viewing the court as a means to oppose governmental claims alleging that they have neglected or abused their children quickly learn that it may take six months or more to try the case at a "fact-finding" hearing.⁷¹ Parents go on to win "only 1.6% of the [child protective] cases" tried in Family Court⁷² and pursuing a case to trial,

67. Final Report, *supra* note 6, at 38.

68. N.Y. Fam. Ct. Act § 1011 (McKinney 1999 & Supp. 2001).

69. *Id.* §§ 1028(b), (d), 1052(b)(i)(A).

70. Green, Justice Denied, *supra* note 28, at 1.

71. See *Special Report on Family Court, in Front Line & Supervisory Practice*, *supra* note 38, at 44 [hereinafter *Special Report*] (describing the court as one in which the "pace seems fast and the atmosphere hurried," while "actual resolution of cases" proceeds slowly, and that a "family that becomes the subject of an abuse or neglect proceeding in these courts can expect to return to court repeatedly and to remain involved in litigation for many months, and sometimes for years").

72. See Green, Justice Denied, *supra* note 28, at iv-v (citing John Courtney et al., Ctr. for an Urban Future & the N.Y. Forum, *Families in Limbo: Crisis in Family Court*, Child Welfare Watch, Winter 1999, No. 4, at 6) (noting that due to the ineffective representation of parents, children are deemed to be neglected in eighty-eight percent of the "child protective hearings," while the remainder of the petitions filed by ACS are dismissed).

in all likelihood, will be a painful exercise in futility and frustration. Whether a parent litigates or settles at the fact-finding or trial stage of the case, the parent will eventually face the remedial or "dispositional" stage of the adjudication process, a phase that will involve repeated returns to court over another extended period of up to six months or more.⁷³ For a parent whose children are in government custody, the emotional cost of going to trial is embodied in the fact that the parent must await disposition, if the court is going to return the children to him or her. Given the delays in the courts, the parent feels tremendous pressure to simply admit neglecting or abusing the children, and accept the services considered by the child welfare agency as necessary to permit the children to return home.

In March 2001, the Marisol Panel issued a "Special Report on Family Court,"⁷⁴ which signified a substantial shift in its focus from the child welfare system to Family Court, and from children to parents. The Panel stated:

The courts are characterized by crowded dockets, long adjournments, and not enough attorneys to represent parents and children A family that becomes the subject of an abuse or neglect proceeding in these courts can expect to return to court repeatedly and to remain involved in litigation for many months, and sometimes for years. A single fact-finding or dispositional hearing may require four to six separate dates and extend over six months or more.⁷⁵

Contrasting New York with many other states in which "it [was] routine for fact finding and disposition to be completed within sixty to ninety days after placement," the Panel noted that "[i]t [was] not uncommon for children to be in care for a full year, at which point an [Adoption and Safe Families Act] permanency hearing [was] required, without having had a disposition of the original protective proceeding."⁷⁶ Pointing to a lack of attorneys and judges, "primitive information systems," and "inefficient work flow processes,"⁷⁷ the Panel described a court process comprised of "multiple, routine 'adjournments' of virtually every case."⁷⁸ The Panel further noted:

When a hearing must be continued to a future date, that date is almost always two to four months later. Even hearings which are anticipated to take one or more days to conclude are rarely

73. *Special Report*, *supra* note 71, at 44.

74. *Id.* 44-52.

75. *Id.* at 44; *see also* Green, Justice Denied, *supra* note 28, at iv (describing an average period of six to seven months before the court completes the "fact-finding" hearing to determine whether the child was, in fact, neglected or abused).

76. *Special Report*, *supra* note 71, at 44-45.

77. *Id.* at 45.

78. *Id.*

scheduled on consecutive days, but rather handled piecemeal, in short hearings which are often several weeks or months apart.⁷⁹

The Marisol Panel also emphasized the vast amount of time spent by parents and others waiting in Family Court,⁸⁰ attributing such delays to a failure by the court to schedule cases for particular times.⁸¹ The Panel described how families wait all day in crowded areas, only to be forced, if given the opportunity at all, to consult with their lawyers in public.⁸²

As an example of apparent “insensitivity” shown by the court toward families,⁸³ the Panel described a former practice of the court requiring parents to stand behind a line of duct tape behind the counsel tables during their court appearances,⁸⁴ while attorneys and “court insiders” freely walked in and out of the courtroom and “converse[d], even while hearings [were] in progress.”⁸⁵ Unlike the leniency extended to others, court officers strictly instructed parents on decorum, ordering parents, for example, to take their hands out of their pockets.⁸⁶ The Panel also recognized that the main focus of the court was on parental behavior and “guilt,” rather than on the children’s needs and best interests.⁸⁷ At the same time, the court paid insufficient attention to the “critical legal dictates” imposed on the child welfare agency to provide appropriate services to parents and children in order to avoid placing or keeping children in foster care.⁸⁸

Parents could not, according to the Panel, look to judges for the help they needed in dealing with a system spinning out of control, as “[j]udges [saw] themselves as powerless victims of the system rather than as powerful change agents.”⁸⁹ While frustration with the inability of the child welfare agency to provide adequate services to parents had led to some court action (e.g., court initiatives to provide such services to families directly), the Panel still noted a general failure of the court system to effectively bring about the provision of services through the application of legal process.⁹⁰ The Panel stated:

Even in Manhattan’s Model Court and Family Treatment Court, there is a sense that the solution to the lack of ACS accountability is to install enough support staff so that many social work activities can be conducted from within the courthouse. This may prove effective

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* at 46.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 47.

89. *Id.* at 48.

90. *Id.*

in producing better outcomes for those families fortunate enough to come under the jurisdiction of these courts, but one must question its utility as an approach to broader reform of the system.⁹¹

In its final report, the Marisol Panel concluded: “The court system itself is, through overcrowded dockets, pervasive delays, insufficient representation of parents, and insufficient attention to permanency, itself [sic] more likely to be an impediment than an impetus to good practice.”⁹² Moreover, the appellate courts do not provide the degree of oversight of Family Court that might constitute a source of relief for parents:

Today appeals from orders issued in Family Court on behalf of children are typically handled by an institutional law guardian. However, there are few appellate lawyers to appeal on behalf of adults In the entire First Judicial Department there are 13 lawyers who regularly represent adults in Family Court appeals. In 1999, there were approximately 40,200 dispositions involving substantial rights of adults in New York and Bronx Counties. . . . However, that year the Appellate Division decided only 79 appeals in those categories of Family Court matters.⁹³

C. Inadequate Legal Representation for Parents in Child Protective Matters

The Fordham Conference was held amidst the growing demand for reform of yet another system in New York City which impacts parents dealing with child welfare matters: the system for providing legal representation to the poor in Family Court. Bluntly characterizing it as “thoroughly inadequate,”⁹⁴ a court-appointed committee on legal representation of the poor concluded one month before the Conference that the “entire system”⁹⁵ through which the poor were being provided legal representation was in crisis. A year prior to that report by the committee, New York City’s Public Advocate stated:

There is nearly unanimous agreement among Family Court practitioners, judges and child welfare advocates that the current system for providing legal counsel to indigent parents accused of abuse and neglect in New York City neither protects the rights of parents nor serves the best interests of children. It denies parents

91. *Id.*

92. Front Line & Supervisory Practice, *supra* note 38, at 7.

93. Comm. on Representation of the Poor, Appellate Div. First Dep’t, Crisis in the Legal Representation of the Poor: Recommendations for a Revised Plan to Implement Mandated Governmentally Funded Legal Representation of Persons Who Cannot Afford Counsel 13 (Mar. 23, 2001) [hereinafter Comm. on Representation of the Poor], available at <http://www.courts.state.ny.us/1AD-rep-poor.htm> (last visited Aug. 26, 2001).

94. *Id.* at 1 (emphasis omitted).

95. *Id.*

due process, profoundly disrupts family life, and leads to inappropriately lengthy and costly foster care stays for children.⁹⁶

Consistent with these views expressed by the committee and the Public Advocate, the Marisol Panel considered the need for effective representation for parents in legal proceedings as critical “not only to the fundamental fairness of this [child welfare] system, but to children’s prospects for permanency.”⁹⁷ The Panel further stated that “[e]ffective legal counsel can help to ensure that parents do not go without services they need, [are not] kept from visiting their children as frequently as they should, [and do not] have their children’s return home from foster care unnecessarily delayed.”⁹⁸

Parents relying on the government to provide legal representation in connection with the removal or placement in foster care of their children are, by definition, poor,⁹⁹ and most are members of minority communities.¹⁰⁰ Most have had their children removed from their care without having had an opportunity to be heard in court before the removal. A parent who wishes to challenge the government’s removal, or proposed removal, of his or her children, but who is unable to afford a lawyer, must wait for the government to file a child protection petition in Family Court before the parent can appear and exercise the right to have counsel assigned.¹⁰¹ It may take days for the government to file a case,¹⁰² and moreover, since attorneys in New York City are becoming increasingly unavailable to take assignments to represent parents in child protective proceedings, the parent may appear in court only to wait all day, sometimes not being called into the courtroom at all.¹⁰³ If the parent is called, he or she may enter the courtroom only to learn that the case is being adjourned to a later date for assignment of counsel.¹⁰⁴ Consequently, the parent may have

96. Green, *Justice Denied*, *supra* note 28, at i.

97. Final Report, *supra* note 6, at 42.

98. *Id.*

99. See Green, *Justice Denied*, *supra* note 28, at 9 (quoting studies that link median income levels to percentage of parents involved in child protective proceedings).

100. See Andrew White et al., Ctr. for an Urban Future & the N.Y. Forum, *Special Issue: Race, Bias & Power in Child Welfare*, Child Welfare Watch, Spring/Summer 1998, No. 3, at 1; see also *Report of the Race, Class, Ethnicity, and Gender Working Group*, 70 Fordham L. Rev. 411, 411 (2001) (stating that minority children are much more likely to be taken away from their parents).

101. N.Y. Fam. Ct. Act § 1033-b(1)(c) (McKinney 1999 & Supp. 2001).

102. See *id.* § 1024(b)(iii) (McKinney 1999) (describing lengthy procedures for giving notice to the parent of a removed child).

103. See, e.g., Chief A.L.J. Jonathan Lippman & Deputy Chief A.L.J. Juanita Bing Newton, *Assigned Counsel Compensation in New York: A Growing Crisis* 7 (Jan. 2000) [hereinafter *A Growing Crisis*], available at <http://www.courts.state.ny.us/18b.html> (noting numerous cases of parents that were never called in New York courts because assigned counsel were not available).

104. See Green, *Justice Denied*, *supra* note 28, at 14-15 n.71 (pointing to reports of at least ten to twenty cases a week in which parents and children had to return to

to make repeated trips to court until an attorney is assigned, even as his or her children remain in government custody.¹⁰⁵

When an attorney is finally available for assignment, the parent may well meet that attorney for the first time in the courtroom and, without anything more than a quickly-whispered discussion, may stand by silently and in confusion as critical decisions regarding the immediate placement of his or her children are made, including whether to have an immediate hearing to have those children returned and questions concerning visitation and services.¹⁰⁶

The parent attorney will be one assigned by the court from an assigned counsel panel, who is a private practitioner, most likely working alone.¹⁰⁷ If the attorney is indeed a solo practitioner, he or she may well be one of the many assigned counsel panel members who practice "out of their briefcases,"¹⁰⁸ and who, for all practical purposes, work out of the courthouse,¹⁰⁹ far removed from the parent's home and community. The parent may well experience difficulty in getting the lawyer to spend time discussing the case even in the courthouse, no doubt due in part to the fact that the attorney will not have access in the courthouse to an office or interviewing space¹¹⁰—or, for that matter, even to a coat rack¹¹¹ upon which to hang his or her coat. The attorney may not have access to an office or support staff elsewhere, in which case he or she must work without a receptionist, paralegal,¹¹² or established system of "out-of-court case management."¹¹³ As a result, calls by the parent to his or her attorney may go unanswered,¹¹⁴ and the parent may not have an opportunity to speak with the assigned attorney, or anyone working with that attorney, before the case is next due in court.¹¹⁵

court on a subsequent day in order to be assigned counsel, and describing survey results indicating that as many as thirty-one percent of those responding had not been assigned counsel upon their first appearance in court).

105. *Id.* at 14-15.

106. *See id.* at 19-21; *see also* N.Y. Fam. Ct. Act § 1028(a) (stating that a parent may request a hearing to take place within three days to determine if the child should be returned).

107. *See* Green, Justice Denied, *supra* note 28, at 10 (stating typical characteristics of court-appointed attorneys).

108. *Id.* at 29.

109. *See* Comm. on Representation of the Poor, *supra* note 93, at 11 (noting that assigned counsel do not have access to necessary resources at the courthouse).

110. *See* Green, Justice Denied, *supra* note 28, at 30 (describing the limited interviewing space available in Family Courthouse in the Bronx and the denial of a request that interviewing space be included as part of the plans for the new Queens Family Courthouse).

111. Comm. on Representation of the Poor, *supra* note 93, at 11.

112. Green, Justice Denied, *supra* note 28, at 30.

113. *See* Comm. on Representation of the Poor, *supra* note 93, at 8.

114. *See* Green, Justice Denied, *supra* note 28, app. G at 3 (quoting a survey that indicates fifty-six percent of indigent clients respond that their attorneys failed to return their phone calls).

115. *Id.*

Increasingly, a parent returning to the court on subsequent dates may find that the parent attorney is overloaded with other assigned cases and unable to appear. The parent again will leave the courthouse without being heard.¹¹⁶ Even if the attorney does appear in court, he or she may be unprepared to represent the parent's views¹¹⁷ and, in all likelihood, will have paid little or no attention to the parent's procedural or substantive legal rights because motion practice is the exception rather than the rule among attorneys on the assigned panel.¹¹⁸ This may be attributable, at least in part, to the fact that the attorney may also be working without access to computer resources,¹¹⁹ telephones,¹²⁰ or photocopiers.¹²¹ Indeed, the parent may have an attorney who lacks the resources necessary to do legal research and keep up with current legal developments.¹²²

It follows that such an attorney will, in all likelihood, not have had the time to obtain and review records and will not have sought out and interviewed family members, friends, or professionals involved with the parent and children. The attorney will not have applied to the court for the assistance of an investigator to develop the factual questions in the case. Nor will the attorney have applied for the services of a social worker, psychologist, or other expert to help the parent and the attorney collectively assess the psychological and social issues raised by the proceeding and aid the parent in grasping the emotional and family issues raised by the removal of his or her children.¹²³ The lawyer also will not have arranged for access by the parent to resources that would help address needs in related areas like housing and public benefits, and issues of family law.¹²⁴

116. See Comm. on Representation of the Poor, *supra* note 93, at 8-9 (noting the shortage of assigned counsel and its relationship to inadequate parent representation).

117. See Green, Justice Denied, *supra* note 28, app. G at 5 (quoting a survey of indigent clients that indicates court-appointed attorneys were only rarely able to express their views in court).

118. See Comm. on Representation of the Poor, *supra* note 93, at 8 (describing a study by the Vera Institute of Justice in which only five percent of Family Court case files reviewed in the Bronx, and fifteen percent of those reviewed in Manhattan, contained at least one motion made by a parent attorney).

119. *Id.* at 10-11.

120. See Green, Justice Denied, *supra* note 28, at 30 (commenting that, until recently, assigned counsel in Manhattan Family Court shared one telephone).

121. See Comm. on Representation of the Poor, *supra* note 93, at 11 (suggesting that the court should provide coin-operated copiers).

122. See *id.* at 10 ("Assigned counsel representing victims of domestic violence, for example, usually does not have the resources to research the legal precedents in this very quickly evolving area of the law.").

123. See Green, Justice Denied, *supra* note 28, at 13 ("This resource for experts, however, is greatly underutilized. . . . [L]awyers report that judges often question the need for such experts, thus undermining strategic legal decisions of the attorneys.").

124. See, e.g., *id.* at 30 (stating that court-appointed attorneys do not have access to social services).

Representation for indigent adults in New York City's Family Court has been provided through a structure unchanged since its establishment in 1966,¹²⁵ which was originally intended as a vehicle to provide representation to defendants in criminal matters.¹²⁶ In that year, the Legal Aid Society was chosen to provide criminal defense services in New York City,¹²⁷ and a panel of individual practitioners was created to handle assignments in homicide cases and other criminal cases in which the Society could not provide representation.¹²⁸ The Society was also chosen to provide representation for children in Family Court proceedings under the State's separately enacted law guardian program to effectuate children's rights to be represented in such proceedings.¹²⁹ In the ensuing years, the Legislature established a statutory right to counsel for indigent parents in a range of Family Court proceedings, but no modifications were made to the assigned counsel model used to provide representation to defendants in criminal cases to accommodate the particular demands of providing representation in civil family matters.¹³⁰ Nor was any institution similar to The Legal Aid Society provided the funding necessary to create an entity devoted to the particular representational needs of parents.

By statute in New York, court-appointed lawyers in Criminal Court and Family Court have been paid \$40 an hour for work done in court and \$25 an hour for work done outside the courtroom,¹³¹ with the total fees chargeable for each case related to Family Court matters capped at \$800.¹³² These rates and the cap have not been raised since 1986,¹³³ and calls to improve the representation of the poor in both Criminal and Family Courts typically have focused on the need to provide fees at a level that would attract, and enable the retention of, private attorneys for these practices.¹³⁴ Noting that "the fees are now at a lower level than that paid by all but one other state in the nation," a

125. N.Y. County Law § 722 (McKinney 1991 & Supp. 2001); *see also* Comm. on Representation of the Poor, *supra* note 93, at 5 ("This 1966 Plan remains in place today and has not been amended.").

126. *See* Comm. on Representation of the Poor, *supra* note 93, at 5 (outlining the evolution of section 722 of the County Law (also known as article 18-B)).

127. *See id.* (discussing Executive Order No. 178, which assigns to the Legal Aid Society the function of furnishing counsel to indigent persons charged with a crime).

128. *See id.*

129. *See* N.Y. Fam. Ct. Act § 241 (McKinney 1999).

130. *See* Comm. on Representation of the Poor, *supra* note 93, at 5.

131. N.Y. County Law § 722-b (McKinney 1991 & Supp. 2001).

132. *Id.* Exceptions to the rates and caps may be made only in "extraordinary circumstances" upon application to the court. *Id.*

133. *Id.*

134. *See, e.g.,* A Growing Crisis, *supra* note 103, at 1 (stating that the "reason for this crisis [in legal representation] is clear—the compensation paid to attorneys for assigned counsel work is now woefully inadequate"); *see also* Green, Justice Denied, *supra* note at 28, at iv (stating that "fees are completely disproportionate to the cost of maintaining" a New York law practice).

court-issued report highlighted the “dramatic impact” that such a low fee schedule had on the justice system by causing “the exodus of attorneys from the assigned counsel panels.”¹³⁵ New York State Chief Judge Judith S. Kaye stated: “The panels are getting smaller, appreciably smaller, because it is hard to pay the rent and feed a family [with the current compensation]. There are fewer lawyers to handle a growing caseload, and that means that the lawyers who are qualified have to take more cases.”¹³⁶

The lower number of attorneys willing to accept court appointments has led “to an increasing inability of the courts to adjudicate pending matters with the result that families remain disrupted, children remain in foster care and persons accused of crimes languish in detention.”¹³⁷ According to Family Court officials in New York City, up to fifty indigent parents are being sent home each week because assigned private counsel cannot be found to represent them.¹³⁸ The shortage of counsel has led to “serious delays” in court proceedings,¹³⁹ and higher caseloads have led to assigned counsel being “increasingly absent, late, or unprepared for routine court appearances and hearings.”¹⁴⁰

Criticism has also been directed at the payment of lower fees to assigned counsel for out-of-court work than in-court work, a differential which has been seen as discouraging lawyers from carrying essential work outside the courtroom,¹⁴¹ including such basic lawyering tasks as the following:

[M]eeting, interviewing, and counseling their clients; conveying basic information to their clients about the nature and purpose of upcoming court proceedings; spending adequate time reviewing their clients’ files; conducting necessary legal and factual research; preparing witnesses to testify; filing evidentiary and procedural motions; and otherwise preparing their case for trial.¹⁴²

135. A Growing Crisis, *supra* note 103, at 1 (emphasis omitted).

136. John Caher, *Chief Judge Kaye, Others Speak on Children’s Issues*, N.Y. L.J., May 2, 2001, at 1 (alteration in original).

137. Comm. on Representation of the Poor, *supra* note 93, at 2.

138. See David Rohde, *Critical Shortage of Lawyers for Poor Seen*, N.Y. Times, Dec. 12, 1999, at 59.

139. Complaint ¶ 49, at 17, N.Y. County Lawyers’ Assn. v. Pataki, No. 102987/00 (N.Y. Sup. Ct. Jan. 16, 2001) [hereinafter N.Y. County Lawyers’ Complaint], available at <http://www.nycla.org/publications/18bcomplaint.pdf>.

140. *Id.* ¶ 49, at 17-18 (quoting A Growing Crisis, *supra* note 103).

141. See, e.g., Green, Justice Denied, *supra* note 28, at iv (noting that the “dual rate system, coupled with high caseloads, has created a strong disincentive for assigned counsel to perform the out-of-court work which is critical to any lawyer’s effective representation of his or her client”); see also Comm. on Representation of the Poor, *supra* note 93, at 21 n.22 (“[T]he present rate structure, which mandates that a lower rate be paid for out-of-court work than in-court work discourages attorneys from spending sufficient time on case preparation such as interviewing, research, trial preparation and motions and negotiations.” (citing letter sent from Carol Sherman of the Children’s Law Center on June 13, 2000)).

142. N.Y. County Lawyers’ Complaint, *supra* note 139, ¶ 48, at 17.

In addition to focusing on the “shamefully low”¹⁴³ rates paid to lawyers representing the poor, critics have pointed to a lack of basic resources available to assigned lawyers as a factor contributing to the deprivation of the poor of their right to meaningful and effective representation.¹⁴⁴ This lack of basic resources has been attributed both to the low rates and to the absence of a strong, institutional presence in providing representation for parents:

New York provides professional representation of the children involved in Family Court proceedings, backed by an extensive social work staff, through the Legal Aid Society or Lawyers for Children. By contrast, the very large majority of parents are represented by independent practitioners . . . who work without institutional support.¹⁴⁵

Observers have called for the courts to provide assigned counsel with resources in the courthouse, such as interviewing space, telephones, and even legal research tools,¹⁴⁶ which would be a marked change in the role of the courts. Whereas institutional providers like the Legal Aid Society have been funded to provide services to defendants in criminal cases or children in Family Court,¹⁴⁷ based on contracts that take into account (however inadequately) the need for support staff, special litigation units, investigators, and social services, panel attorneys, as private practitioners, have always been left to provide their own support. When the system of representation for parents in child protective matters was established, most of the assigned lawyers had private practices, of which cases assigned by Family Court constituted only a limited part.¹⁴⁸

Calls for “institutional resources” for assigned counsel have undoubtedly been spurred by the Legislature’s failure to increase the fees paid for the work done by assigned attorneys. Considering how the assignment system has evolved into one in which a shrinking group of panel lawyers must absorb all assignments and how those assignments have come to constitute the mainstay of their practices, the resulting fees have been insufficient to run the law offices capable of providing even minimally adequate representation to families.¹⁴⁹

143. Comm. on Representation of the Poor, *supra* note 93, at 1.

144. *Id.*

145. Front Line and Supervisory Practice, *supra* note 38, at 46.

146. *See, e.g.*, Comm. on Representation of the Poor, *supra* note 93, at 10-11 (discussing potential improvements at the courthouse to assist court-appointed attorneys).

147. *See* Green, Justice Denied, *supra* note 28, at 6-7 (explaining the contract between the Office of Court Administration and the Legal Aid Society).

148. *See* Comm. on Representation of the Poor, *supra* note 93, at 4-7 (describing the history of article 18-B).

149. Michael A. Riccardi, *Class Action Lawsuit Challenges 18-B Fee Structure*, N.Y. L.J., Jan. 25, 2000, at 1.

However, there also has been a growing recognition that child welfare matters require lawyers to engage in significant out-of-court work, intervene affirmatively at different points during the parents' involvement with the child welfare system, and facilitate ongoing consultation with social workers, psychologists, and other professionals in cases that contain issues beyond the scope of the lawyer's expertise. The implementation of the Adoption and Safe Families Act,¹⁵⁰ through which federal pressure has been exerted to move children out of the foster care system more quickly, has placed increased emphasis on the need for lawyers to work quickly and effectively with parents:

The need for an institutional provider for parents has been exacerbated by the passage of the Adoption and Safe Families Act which provides that if a child is in foster care for 15 of the last 22 months, the agency may be required to terminate parental rights. The commendable purpose of the bill was to shorten stays in foster care—but it places parents at risk of losing their children. In New York the average stay in foster care is four years.¹⁵¹

Such concerns have led observers to call for the creation of an institutional provider of legal representation to parents, which would function alongside the current court-assignment system. It has been urged that such an institutional provider would be "constantly alert to the consequences of inaction or delay in the resolution of child welfare cases."¹⁵² The creation of such an institutional provider has also been seen as a means of addressing what has been identified as parents' unmet need for continued representation by counsel once Family Court becomes involved with their cases.¹⁵³ Problems have been identified relating to both the timing¹⁵⁴ and duration¹⁵⁵ of assigned counsel's present work with parents. Observers point out that "[a]ssigned counsel are currently appointed for a specific proceeding rather than for the duration of a family's involvement in

150. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.).

151. Comm. on Representation of the Poor, *supra* note 93, at 12-13.

152. *Id.* at 13. Federally funded legal services offices in New York City do have a handful of experienced lawyers providing representation to indigent parents in selected cases in Family Court, and have centralized backup and training on Family Court practice. However, the resources available to these offices have been too small to provide the institutional presence necessary to impact significantly the day-to-day practices of Family Court and ACS.

153. Green, *Justice Denied*, *supra* note 28, at 40 ("Assignment of counsel for respondents in child protective proceedings should not end until the matter is completed; that is, until the child is returned to the home and the period of ACS supervision has ended, or the child is freed for adoption.").

154. *Id.* at 19.

155. *Id.* at 21.

the child welfare system; thus, there are critical periods when parents are often left without an advocate."¹⁵⁶

A parent has counsel assigned for a period that is co-extensive with his or her involvement with a Family Court child protective proceeding. A parent first gets assigned counsel when he or she appears in court in response to an agency petition filed when a child has been, or is about to be, removed. Unless the case is dismissed, the parent will have access to counsel through the trial or "fact-finding" hearing, and where the parent is found to have neglected or abused the child, the parent will have access through the point that the judge enters a dispositional order. If the judge decides to give the child welfare agency temporary care and custody of the child, the dispositional order will grant that custody to the agency for a period of up to one year.¹⁵⁷ At that point, both Family Court involvement and counsel's assignment to represent the parent ends.

Generally, the parent will not again have access to assigned counsel unless and until the child welfare agency later institutes new proceedings to either extend its temporary custody of the child or to terminate the parent's rights to the child.¹⁵⁸ In such event, the court will again assign a lawyer, who is likely not to be the lawyer who represented the parent originally.¹⁵⁹

In the period between the disposition of the child protective proceeding and the time that the child welfare agency takes the case back into court, the parent has ongoing contact with the agency and must successfully carry out the agency's plan to secure the future welfare of his or her child. In this connection, the parent may be required to identify and participate in services, only to discover that they are either unavailable¹⁶⁰ or do not relate to the needs of his or her family.¹⁶¹ The parent may have visitation schedules with his or her child that do not comply with legal requirements and do not meet the

156. Comm. on Representation of the Poor, *supra* note 93, at 14-15.

157. See Green, Justice Denied, *supra* note 28, at 21 (pointing out that while the "[t]ermination of the appointment of counsel for the parent is not mandated by law, [it] is standard practice in Family Court"). However, nothing in the New York Family Court Act expressly requires the court to assign counsel beyond the point of disposition.

158. See N.Y. Fam. Ct. Act § 1055 (McKinney 1999 & Supp. 2001) (governing proceedings to extend the temporary placement of children in foster care); *id.* §§ 611-634 (McKinney 1999) (governing proceedings to terminate parental rights). During the period between proceedings, the only way a parent might have counsel assigned is if he or she makes a *pro se* motion to terminate the child's placement with the agency pursuant to § 1062 of the Family Court Act. See Green, Justice Denied, *supra* note 28, at 22.

159. See Green, Justice Denied, *supra* note 28, at 22 (noting that "[w]hile a request to be provided the same lawyer may be granted, it is more typical that the parent is appointed a different attorney").

160. See *supra* Part I.A.

161. See *supra* Part I.A.

needs of the family.¹⁶² Indeed, the agency may be failing to comply with aspects of the court's dispositional orders, yet the parent will not have access to assigned counsel to discuss such problems. Noting the lack of representation available to parents during this period, the Committee on the Legal Representation of the Poor endorsed the ideal of continuity in representation for parents, stating:

In the child welfare area, often the most important parental advocacy must be done between formal court hearings and after the dispositional hearing. Parents may need advocates to help obtain proper visitation and obtain the mandated services that are necessary for reunification of the family. Currently it is not easy for the indigent parent who is seeking to get back a child removed from the home and in foster care to obtain legal representation.¹⁶³

Observers were also attempting to address a parent's need for help with a range of collateral legal issues, the resolution of which will significantly impact the parent's experience in dealing with the child welfare system. The parent may need to testify as a witness in criminal proceedings against a spouse or other family member, pursue divorce, defend against eviction proceedings, resolve immigration issues, or pursue a range of government benefits in connection with housing, financial, or medical needs.

Calls for change in this area have considered both creating new institutional providers and expanding the responsibility of the assigned counsel system to meet this need. Thus, for example, the Committee on Legal Representation stated:

[I]n the area of family law, child abuse and neglect cases may be closely associated with divorce, custody, child support, domestic violence, or criminal matters. For many women charged with neglect, domestic violence may be an issue. By assisting mothers in obtaining orders of protection, attorneys can enable them to regain custody of their children and provide a safe home environment. . . .

. . . .

Reunification of a family may require attention to entitlement issues, landlord-tenant issues, as well as domestic violence or other family related issues that are collateral to the proceeding for which counsel has been assigned. Both institutional providers and assigned counsel should be equipped to counsel with respect to drug treatment programs and the availability of other social services that may have a bearing on the successful outcome of the proceeding for which counsel was provided.¹⁶⁴

162. See *supra* Part I.A.

163. Comm. on Representation of the Poor, *supra* note 93, at 12; see also Green, Justice Denied, *supra* note 28, at 21-22 (noting that the duration of legal representation afforded to parents is inadequate).

164. Comm. on Representation of the Poor, *supra* note 93, at 14-15.

Finally, calls for change in the system of providing legal representation to parents have emphasized a more prominent role for social workers:

The proper resolution of Family Court cases, particularly those involving abuse and neglect, foster care reviews, and termination of parental rights, needs, at a minimum, the services of both an attorney and social worker. Child advocates maintain that one can not properly practice in Family Court without the vital services of a social worker.¹⁶⁵

Little interdisciplinary representation has been provided in New York City.¹⁶⁶ The case for making some combination of interdisciplinary services available to the parent is suggested by the complicated nature of the tasks the parent is facing. The parent must make decisions that will impact his or her own life and the lives of his or her children and other family members. The process of making carefully considered and fully informed decisions about family issues may involve consultation with family members and helping professionals with whom the parent has been involved. This decision-making has to be undertaken in a difficult context. Dealing with a governmental intervention that by its nature puts into question the future of the relationship between a parent and child is highly stressful, and parents have to make very difficult decisions while in great emotional pain. These decisions also have to be made within what are, in terms of emotional resolution, the relatively short time-frames imposed by the legal system.

In addition, actions taken by government in the child welfare context may often be seen as requests for the parent to change his or her behavior or situation. As noted by the Marisol Panel:

[T]he *fundamental* intervention this system can make to improve the lives of most of the children it serves is to help make it possible for

165. *Id.* at 12; see also Green, *Justice Denied*, *supra* note 28, at 42-44 (calling for expansion of pilot projects providing interdisciplinary representation and the replication and expansion of model court projects using social workers); Sara P. Schechter, *Family Court Case Conferencing and Post-Dispositional Tracking: Tools for Achieving Justice for Parents in the Child Welfare System*, 70 *Fordham L. Rev.* 427 (2001) (describing the operation and results of one of the models using social workers in the courtroom).

166. Comm. on Representation of the Poor, *supra* note 93, at 14 (describing a handful of such programs including: Legal Services of New York, which takes "an interdisciplinary approach to foster care, domestic violence, housing, and public assistance issues"; the Family Reunification Justice Project, Inc., located in Bronx Family Court, which "provides social work services to clients represented by assigned counsel"; and, in support of a pilot project started by Judge Lee Elkins in Brooklyn Family Court, pairing assigned counsel with social workers). The need for interdisciplinary representation also has spurred the Interdisciplinary Center at Fordham University to work through its Law School Clinical Program to provide parents with representation teams composed of law and social work students, and often, graduate students in developmental psychology.

their parents to overcome the barriers that have kept them from providing a safe and nurturing home. Usually that will involve change in the parent—for example, getting off drugs, or learning more appropriate ways to provide discipline and structure, or getting more connected to neighbors and community supports. Often it will also involve change in the parent's circumstances—for example, finding a more adequate apartment and a route to economic self-sufficiency. To be successful in promoting permanency, a child welfare system must work with parents to facilitate change on both of these fronts.¹⁶⁷

If parental behavior is in fact at the core of the child welfare case, the nature of the proceedings changes from being a primarily legal one—asking whether something happened—to one that is not primarily legal—asking how a parent can bring about the physical, psychological, social, or emotional changes necessary to secure the future safety and needs of the child.

For those parents who are raising their children alone or have inadequate financial support, the decision-making process may also turn on the availability of other resources that might include housing, a support network, day care, employment, benefits, medical care, and psychological care. For those parents with substance abuse problems, successful participation in rehabilitative programs may be equally as critical.

As Janet Weinstein has stated, child maltreatment cases touch on “numerous psychosocial issues about the welfare of the child and the parents . . . including concerns about development, relationship and self-esteem.”¹⁶⁸ A social worker working with an attorney is in a prime position to collaborate with the parent and the attorney in considering such issues and is equipped to evaluate the assessments, plans, and services of the child welfare agency in relation to such issues.¹⁶⁹

II. A FINAL UNMET NEED OF PARENTS: COHERENCY IN APPROACHES TO CHANGE WITHIN THE CHILD WELFARE AGENCY, FAMILY COURT, AND ASSIGNED COUNSEL SYSTEMS

This part looks more closely at three of the areas of parental need that were sparking proposals for change within either the child welfare agency, Family Court, or the system for providing legal representation. Those areas are: (1) the lack of advocacy for parents *throughout* their involvement with the child welfare agency; (2) the

167. Final Report, *supra* note 6, at 39.

168. Janet Weinstein, *And Never the Twain Shall Meet: The Best Interests of Children and the Adversary System*, 52 U. Miami L. Rev. 79, 108 (1997).

169. The interdisciplinary clinic effort underway at Fordham University has also identified important roles for developmental psychologists in helping parents consider issues relating to the developmental needs of their children.

lack of advocacy and representation on matters collateral to, but essential for, the proper resolution of child protective cases; and (3) the lack of effective means of giving parents a meaningful voice in the child welfare agency decision-making process. Proposed changes in these areas provide examples that place in stark relief what may fairly be characterized as yet another overarching need of parents: their need to have proposals for change in a particular system considered in light of both the imperfect way the systems actually intersect and the way change to one system actually will combine with the operation of the other systems to impact the lives of parents.

A. Proposals on Advocacy Throughout the Parent's Involvement with the Child Welfare Agency

As discussed earlier, observers have identified a lack of continuity in legal representation provided to parents for the full period of their involvement with the child welfare system. To solve this problem, proposals have been made to create an independent institutional provider and to expand the role of the assigned counsel panel in order to provide representation to parents continuously from the point where the parent enters Family Court until the point the child returns home or the parent's rights to his or her children are terminated.¹⁷⁰

Proposals to address parents' lack of legal representation *throughout* their involvement with the child welfare agency by providing for an expanded role for assigned counsel are seriously hampered by the very limited degree to which the work of Family Court, and therefore assigned counsel, intersects with the work of the child welfare agency and its supervising state agency. An assigned counsel system that is tied to, and based in, Family Court cannot meet significant areas of a parent's need for legal representation in connection with his or her interaction with the child welfare agency. In many cases, assigned counsel enters a case at a relatively late stage in the relationship between the parent and the child welfare agency, and even after entering the case, such counsel is not assigned to pursue remedies available under the State's administrative system.

Assigned counsel is not available to parents *before* Family Court becomes involved. Yet, by the time a parent appears before Family Court, he or she already may have suffered numerous adverse consequences as a result of interacting with the agency without the benefit of legal counsel. The parent may have been improperly denied preventive services; may have endured an investigation by the child welfare agency that erroneously resulted in the entry of an adverse finding against the parent into the State's Central Child Abuse and Maltreatment Registry; may have been forced to engage in inappropriate services in an attempt to keep children at home; and

170. *See supra* text accompanying notes 152-58.

may have, to his or her disadvantage, participated in case conferences at which the child welfare agency made vital decisions on the removal of the children, the scope of service plans, the placement of the children while in the agency's custody, and the nature of the visits between the parent and the children.

These interactions between the parent and the child welfare agency precede the involvement of Family Court and are governed by a combination of state and federal requirements¹⁷¹ regarding the reporting and investigation of suspected child abuse and neglect, and the provision of preventive services to avert or limit the need for the placement of children in foster care.¹⁷² In New York State, these child welfare agency functions are overseen by the New York State Office of Children and Family Services ("State Agency").¹⁷³ If a parent wishes to challenge a local child welfare agency's actions with respect to investigations or service provision, the parent must do so pursuant to this statutory scheme by first appealing to the State Agency through an administrative "fair hearing" process.¹⁷⁴ Decisions rendered after such hearings can then be challenged through a relatively complex process that involves the filing of a special proceeding in New York State Supreme Court,¹⁷⁵ which will then be automatically transferred to the court's appellate division.¹⁷⁶

Even where Family Court eventually becomes involved and assigns counsel for the parent, that attorney will not be able to pursue before Family Court those remedies that the parent still has available through or pending before the State Agency. While Family Court

171. See 42 U.S.C. §§ 620-628 (1994) (authorizing the Secretary of Health and Human Services to cooperate with state public welfare officials to establish, extend, and strengthen child welfare services); N.Y. Soc. Serv. Law § 406 (McKinney 1992) (authorizing the state agency to administer child welfare funds received from the federal government).

172. N.Y. Soc. Serv. Law § 409-a (McKinney 1992 & Supp. 2001).

173. The functioning of the State Agency itself has been problematic. The *Marisol* litigation included claims that the State Agency had failed in its duty to supervise the City's child welfare agency, leading to a settlement agreement in which the State Agency agreed to institute measures to monitor more closely the activities of the City's child welfare agency. See Settlement Agreement at 12-14, *Marisol ex rel Forbes v. Giuliani*, 185 F.R.D. 152 (S.D.N.Y. 1999) (No. 95-Civ. 10533), *aff'd sub nom.*, *Joel v. Giuliani*, 218 F.3d 132 (2d Cir. 2000).

174. See N.Y. Comp. Codes R. & Regs. tit. 18, § 358-3.1(b)(1), (b)(2), (b)(6), (b)(3), (b)(13) (2000) (providing respectively for hearings to consider challenges of parents to denials of service, failures of the agency to act on requests for service, inadequate provision of service, the discontinuance of services, or the requirement of participation in services by parents); see also N.Y. Soc. Serv. Law § 422(8) (providing for the right of a parent to demand a hearing to challenge as inaccurate a finding by the agency that the report of suspected child abuse or neglect is "indicated").

175. N.Y. C.P.L.R. 7803(4) (McKinney 1994) (providing for a review of whether decisions after the initial hearing are supported by substantial evidence).

176. *Id.* § 7804(g) (providing for transfer in cases presenting a question as to whether substantial evidence supports the State Agency's decision after the initial hearing).

does have the power to direct the child welfare agency to provide specific services to the parent, the State Agency also continues to play a role in overseeing adequate service provision to parents. Family Court and the State Agency each exert their influence directly and separately on the child welfare agency,¹⁷⁷ and neither has jurisdiction over the other's functioning or decision-making. Thus, for example, if the State Agency and the court take differing approaches to service provision, issuing conflicting instructions to the child welfare agency, those conflicts cannot be resolved by, or in, Family Court. Besides illuminating a parent's need for legal counsel, the sheer complexity of the relationship between Family Court, the child welfare agency, and the State Agency suggests that providing complete representation for a parent in connection with his or her relationship with the child welfare agency cannot be achieved through the use of the assigned counsel system as now constituted. Effective change in this area requires a closer look at the degree to which the assigned counsel system and a parent's needs actually intersect. A solution may require the uncoupling of the assigned counsel system and Family Court, or some other approach that will align more closely the availability of counsel with a parent's needs.

B. Advocacy and Representation on Matters Collateral to Child Protective Cases

As discussed earlier,¹⁷⁸ parents often have legal needs related to housing, government benefits, and family relationships that must be met if a child welfare matter is to be promptly and effectively resolved. To meet a parent's need for advocacy and representation on matters collateral to his or her involvement with the child welfare agency, observers have again looked to the creation of a new institutional provider of legal services for parents and to an expansion of the responsibility of the assigned counsel system in order to meet this need.¹⁷⁹

However, proposals to meet parents' collateral legal needs by expanding the role of assigned counsel pose for parents some of the same problems as those raised by suggestions that continuity of representation be provided through assigned counsel. Family Court does not have jurisdiction to resolve problems that a parent is having in obtaining housing, welfare, and medical benefits. It cannot decide questions of eviction from housing, immigration, or divorce. Resolution of these and many other issues faced by parents require either litigation or advocacy in forums other than Family Court. A

177. Once Family Court proceedings are initiated, a parent has no right to challenge through the State Agency questions related to services ordered by the court. tit. 18, § 358-3.1(b)(13).

178. See *supra* notes 163-64 and accompanying text.

179. See *supra* text accompanying note 164.

counsel assignment system that is dependent upon and controlled by one particular court—in this case Family Court—cannot function to provide representation across a range of proceedings that occur in other forums.

Furthermore, a parent's need for advocacy on critical collateral matters requires representation by lawyers or, where permitted, advocacy by non-lawyers, at the point when a parent first comes into contact with the child welfare agency. Such assistance may constitute the difference between a parent's being able to care for his or her children and losing them. If a parent must await the involvement of Family Court before obtaining legal assistance with collateral matters, that help will have come too late because the children will have already been removed or placed in imminent danger of removal. Again, the limited nature of the intersection between Family Court and the child welfare system suggests that providing counsel for collateral matters through Family Court cannot succeed. Effective change here may mean that a closer look must be taken at the structural relationship between the assigned counsel system and the child welfare agency. A solution may require, for example, consideration of the fact that the system that has the earliest and most extensive contact with a parent is the child welfare agency itself. This suggests that consideration could be given to meeting a parent's collateral advocacy and legal representation needs by assigning to the child welfare agency, rather than the court system, the responsibility for ensuring that such needs are met.

C. Voice of Parents in Addressing Service Needs of the Family

As the Conference convened, the child welfare agency, supported by the Marisol Panel, was internally addressing the lack of meaningful participation by parents in service provision. As discussed earlier,¹⁸⁰ the agency was setting up a series of case conferences at which parents could meet with caseworkers and service providers on issues of removal, service planning, and child placement. The newly-created case conferences are not a formal part of, or subject to, any direct review by either Family Court or the State Agency, and instead, they operate parallel to, and in some ways, in conflict with, the Family Court, and assigned counsel systems.

The child welfare agency's Child Safety Conference and Family Permanency Case Conference¹⁸¹ require a parent's involvement in discussions of removal, service, and child placement issues. Both of these conferences are scheduled within a month of a child's removal from the parent. The first takes place within days of the child's removal. At precisely this heavily-charged point in the parent's life,

180. See *supra* text accompanying notes 55-60.

181. See *supra* text accompanying notes 56-57.

he or she is also required to respond to the initiation by the agency of a Family Court proceeding. Within days of the removal, the parent will be before the court, deciding whether to have a hearing to challenge the removal. At the hearing, the same issues as those discussed at the conferences will be before the court. The participation of the parent, along with the child welfare agency and its service providers, is needed in each of these parallel processes if they are to work as planned. The parent will have access to assigned counsel in connection with the court proceeding, but not at the conferences. Specifically, even if the parent were to have access to a lawyer, the child welfare agency presently does not permit a parent to have a lawyer present at the conferences.

As additional layers of conferencing are being implemented by the child welfare agency, little attention is being paid to the competing demands of the conference system and Family Court for the parent's participation. Nor is attention being paid to the possible difficulties a parent would experience in accessing meaningful information and advice before choosing to participate in the conference process.¹⁸² On the one hand, the parent may consider whether participation in the conferences without a lawyer or trained representative will use up limited resources that would be better used to assert his or her legal rights in the courtroom. On the other hand, the parent may ponder whether full participation in the conference system, even despite the absence of his or her lawyer, can be used to avoid unnecessary litigation in the courtroom. In sum, multiple attempts to give a parent an opportunity to be heard in service planning through Family Court, ACS's conferencing system, and the State Agency's service plan review and fair hearing processes, if uncoordinated and unaccompanied by an opportunity to make informed decisions, may have the effect of actually diluting rather than enhancing the voice of the parent.

In conclusion, Conference participants convened amidst many proposals for the reform of the three complex systems mentioned above. Some of the systems such as the Family Court and assigned counsel systems are primarily "legal" systems, while others such as the child welfare agency, the voluntary agencies, the State Agency, and the myriad of service providers providing social service and psychological and other types of treatment, are primarily "social service" or "mental health" systems. Yet, the legal systems have major remedial responsibilities in the area of providing services to parents, even as they work to ensure that parents' rights are protected.

182. ACS continues to uphold an agency policy that prohibits its caseworkers from communicating with parent lawyers, even though communication between ACS caseworkers and lawyers for the parent's children is permitted. See Nanette Schorr, *ACS's Interpretation of the "No Contact Rule" Impedes the Reunification of Families*, 70 *Fordham L. Rev.* 441, 442 (2001).

The social services systems, too, have the responsibility of ensuring that the parents they serve are not enduring illegal and inappropriate governmental intervention, and are not being subject to inappropriate service and treatment in what is, by definition, a coercive context. If these responsibilities are carried out through parallel rather than intersecting processes, parents may end up receiving no assistance in protecting their rights to a fair process and, where needed and appropriate, their rights to effective service delivery and treatment. The imperfect way in which the systems intersect suggests that parents may benefit immensely from changes based on consideration of their full experiences with government, rather than those partial experiences that can be seen from limited vantage points within one of the systems. This suggests that an understanding of the *full* experience of a parent as he or she interacts with each of the systems may provide an important entry point into the discussions on reform.

III. DESCRIPTION OF THE CONFERENCE PROCESS

The Conference on Achieving Justice: Parents and the Child Welfare System represented a unique combination of educators and practitioners, mainly from the disciplines of law, social work, and psychology, together with parents and parent advocates. The common denominator among all the participants was a shared concern with the current treatment of parents within the New York City child welfare system as a whole. The parent participants, as a result of their personal involvement, brought to the Conference their experiences within each of the individual systems, as well as their experiences in dealing with the intersection of those systems. For many of the professional participants, their particular focus of concern varied, often depending on the system within which they were working. For example, some came with specific concerns about how to ensure that parents have competent legal representation when their rights as parents are threatened. Others came with more of a focus on how the system of services can better address and meet the service needs of parents. Despite this division of concerns, a result that often occurs when professionals operate in parallel universes, all participants—parents and professionals alike—came with a strong desire to fix what they had observed in each of their own experiences as broken.

A. Conference Planning

Within Fordham University, the idea for the Conference was initially proposed by the University's Interdisciplinary Center for Family and Child Advocacy and the Law School's Louis Stein Center for Law and Ethics. The Interdisciplinary Center is a joint undertaking by the Graduate School of Social Service, the School of

Law, and the Department of Psychology within the Graduate School of Arts & Sciences. The Interdisciplinary Center seeks, as part of its mission, to provide a forum in which schools within the University can work collaboratively with each other and with the professional community to develop and promote the delivery of interdisciplinary services, both legal and non-legal, to better meet the needs of at-risk children and their families. The Louis Stein Center for Law and Ethics has, as part of its mission, a commitment to professional service that facilitates the integration of ethical perspectives in legal practice, legal institutions, and the development of the law generally.

When the Centers proposed the idea of the Conference to a range of organizations involved with the child welfare system, they were quickly joined by advocates and service providers for both children and parents. Active planning for the two-day Conference at Fordham began in September 2000. At the first planning meeting there was general agreement on the Conference theme, which was to look at best practices—from a short-term and long-term perspective—for providing legal, social work, and psychological services to parents facing, or possibly facing, involvement with the child welfare system. The Conference objective was to arrive at a concrete result—to be a “working conference,” not an educational conference. Ideally, Conference participants would identify the best and most promising practices and recommend standards for these practices, both minimum as well as ideal. Publication of the Conference recommendations was also deemed as critical.¹⁸³

These initial sponsors of the Conference worked to broaden the scope of the planning committee to include people who had experience with the child welfare system in New York City from a variety of areas and professions: law, social work, psychology, and psychiatry. To ensure that the voice of parents would be heard from the beginning, the committee agreed to invite parents and parent advocates who had experience with the system to participate in the Conference planning. At each Conference-planning meeting, participants were asked to identify additional people who could be asked to participate in the Conference planning.

The planning participants agreed that because this was to be a working Conference, participation would be by invitation only. Although the plan had been to keep the Conference to approximately eighty participants, so that the working groups would be small,

183. The format for the Conference was a modification of conferences organized by the Louis Stein Center for Law and Ethics of Fordham University School Of Law in 1994, 1996, and 1999. Symposium, *The Delivery of Legal Services to Low-Income Persons: Professional and Ethical Issues*, 67 Fordham L. Rev. 1713 (1999); Symposium, *Ethical Issues in the Legal Representation of Children*, 64 Fordham L. Rev. 1281 (1996); Symposium, *Ethical Issues in Representing Older Clients*, 62 Fordham L. Rev. 961 (1994).

approximately 150 people actually participated in the Conference, resulting in working groups of eighteen to twenty people.¹⁸⁴

The planning committee began to work on scheduling the two-day Conference. The committee agreed to have only one keynote speaker and a parents panel on "Day One," with "Day Two" devoted entirely to working group discussions and a plenary session. The committee selected Professor Dorothy Roberts from Northwestern School of Law as the keynote speaker. The committee also decided to have a "Statement of Shared Understanding" that all Conference participants were acting in good faith and that there would not be any retaliation for the expression of diverse views, especially against parent participants.¹⁸⁵

The committee also struggled with the concept of focusing on parents rather than entire families, with some fearing that continuing to divide issues of justice for children from issues of justice for parents would continue to present a barrier to viewing the family as a single unit entitled to justice. Some were concerned that there might be a perception that the Conference was focused on justice for parents at the expense of justice for children. Ultimately, the group agreed that the focus on parents was critical, given the lack of attention and resources provided to them, and that they would keep in the forefront of their minds that justice for parents is justice for entire families.

In organizing an *interdisciplinary* conference, attention was also focused on identifying the various working group themes. First, to truly carry on an interdisciplinary dialogue, both legal and social service delivery issues needed to be explored. Therefore, three working group themes were formulated: (1) the practice of lawyers in representing parents ("Parent Representation Working Group"); (2)

184. This was due, in large part, to the unusually high number of acceptances by those invited to attend.

185. The Statement of Shared Intent, drafted by Sue Jacobs of the Legal Action Center, was as follows:

STATEMENT OF SHARED UNDERSTANDINGS OF CONFERENCE PARTICIPANTS:

We recognize that persons attending this Conference are often participants in child welfare cases in the City, including people who may be parties to litigation and may be on different sides of individual cases or decisions regarding families. We also recognize that we come together at this Conference in order to honestly and fully examine the system that serves and represents parents and to contribute to the improvement of this system. In order to do this, we must all be able to speak and to be heard without fear of our participation being used in some other context. Therefore, we declare the following shared understandings as Conference participants:

*Our work together is based on mutual respect and recognition of the right of all participants to express their opinions.

*We believe that honest and open communication between participants is key to achieving true change for the system of representation.

*What we say and discuss as participants at this Conference will not be used against any participant in any other setting.

the practice of social workers and caseworkers working with parents in the protective service system (“Case Management Working Group”); and (3) the practice of judges and court personnel in working with parents who come before Family Court in a child protective proceeding (“Judiciary and the Courts Working Group”). Each of these groups focused on what the identified group of professionals could do to better achieve justice for parents. In addition to these three professionally focused groups, a fourth working group theme emerged on what parents could do to more effectively advocate for themselves and other parents (“Parent Self-Advocacy Working Group”).

Several cross-cutting group themes, not focused on the practice of any particular discipline within the child welfare system, were also identified. These four working group themes were: (1) funding; (2) education; (3) ethics and professionalism; and (4) race, class, ethnicity, and gender.¹⁸⁶ Each working group was given a basic charge.¹⁸⁷

To stimulate dialogue that was truly diverse and interdisciplinary in nature, each of the working groups, to the extent possible, was composed of a judge, social workers, lawyers, parents, parent advocates, psychologists, ACS representatives and voluntary agency representatives. Therefore, invitees were asked to serve on particular working groups, often outside their own disciplines (e.g., lawyers serving on the Case Management Working Group). In sum, the working group themes identified above, taken together with the principle of including in each working group parents and representatives of the diverse practices of law, social work, and psychology, allowed the participants to conduct a full interdisciplinary exploration of justice issues for parents.

To guide the substance of the working group discussions, materials relevant to the working groups were sent to all participants in advance of the Conference. Working group facilitators and reporters were encouraged to communicate with their respective groups in advance of the Conference to make sure everyone was “on the same page” as to the focus of their group.

On the first day of the Conference, after the keynote speech delivered by Professor Dorothy Roberts and the parents panel discussion,¹⁸⁸ the working groups went to work. After the first day, the reporters and facilitators wrote a first draft of the

186. Although it was hoped that issues of race, class, gender, and ethnicity would be a part of *all* working group discussions, the creation of a specialized group on just these issues ensured that such issues would be addressed.

187. See the collection of reports of the various working groups in the Conference in 70 *Fordham L. Rev.* 363-420 (2001).

188. Transcripts of the parents panel and Professor Roberts’s keynote speech are on file with the *Fordham Law Review*, and are also available on the law review’s website, at <http://law.fordham.edu/publications/pubhome.ihtml?pubID500>.

recommendations made by their respective groups. Early the next morning, each working group report was distributed to that group's participants for review before work resumed to finalize the recommendations. By noon of that second day, a first draft of each group's recommendations was distributed over lunch to all participants. After lunch, a plenary session was held, where each group presented the highlights of the group's recommendations to the entire body of Conference participants. Although there was time for comment and discussion on the recommendations, time constraints made it impossible to have the participants vote on all the recommendations that day.

After the Conference, the working groups continued to work by telephone and e-mail on finalizing and clarifying their recommendations. All members of each working group were then given the opportunity to vote for or against the recommendations of their group. While full consensus for the working group recommendations was the goal, only a majority vote was needed for a group to adopt a recommendation. Therefore, mere membership in a working group does not signify agreement with all recommendations proposed by that working group.

All working group recommendations were then converted into ballot form and mailed to all Conference participants. All of the Conference recommendations, with one exception, passed, thereby becoming recommendations of the entire Conference and not solely those of the working groups.¹⁸⁹

The facilitators and reporters of the groups wrote working group reports, included in this Conference publication, with the assistance of volunteer editors. The working group reports were then sent to each participant of that working group to give anyone who wished to consider publishing a response to, or dissent from, a report the opportunity to submit his or her piece to the *Fordham Law Review*.¹⁹⁰

B. Conference Recommendations—Highlights

As expected, overlapping themes emerged across multiple working groups. Due to the pressing nature of some of the issues related to parents and the child welfare system, groups often made recommendations outside the scope of their charges. Therefore, we

189. To pass, a recommendation required a majority of votes cast on that recommendation. Only the elimination of mandatory reporting did not pass, with approximately forty-five percent of respondents voting in favor of it. Most recommendations passed by a large majority, and all but two other recommendations received at least two-thirds support.

190. For some responsive articles, see Schechter, *supra* note 165, and Schorr, *supra* note 182, as well as other articles on file with the *Fordham Law Review*, and also available on the law review's website, at <http://law.fordham.edu/publications/pubhome.ihtml?pubID500>.

recognize that there is duplicated content among some of the recommendations passed by various working groups, but view such duplications as indications of the importance of those recommendations.

As recognized by Professor Bruce Green in his summary of conference recommendations from the 1996 Conference on Ethical Issues in the Legal Representation of Children, “[t]he Recommendations deserve to be read closely by lawyers, judges, policy makers, and others who are concerned about children and the law. One cannot summarize the Recommendations without doing them an injustice. Nonetheless, [a number of] broad themes deserve to be highlighted.”¹⁹¹ The same is true for the recommendations of this Conference.

First, parents who have been through the system need to be heard and used as a resource for other parents. Many times, the experiences of parents who have been at the center of the child protective system give them a unique ability to evaluate the usefulness of various ideas on parents’ interactions with the child welfare system and exclusive knowledge about whether existing reform efforts are likely to make their way down to the parent level. The Conference recommendations highlight the need for continued and increased involvement of parents in all reform efforts.

However, for parents to work as effective advocates on behalf of themselves and other parents, and for systemic change, they need *access to information*.¹⁹² Every one of the working groups recognized the continuing and critical need for parents to have meaningful access to information about their legal and other rights, the roles of professionals, available services, and the limits of confidentiality. A myriad of players were identified as sources of information, including: the local and community-based ACS offices,¹⁹³ Family Court,¹⁹⁴ the appellate divisions,¹⁹⁵ the child welfare agencies,¹⁹⁶ the city and state governments,¹⁹⁷ and lawyers.¹⁹⁸ Resources such as a hotline and companion websites, comparable to domestic violence hotlines, could also increase parents’ access to information.¹⁹⁹ Thus, the urgent need for the dissemination of more information to parents by all child

191. Bruce A. Green & Bernardine Dohrn, *Foreword: Children and the Ethical Practice of Law*, 64 *Fordham L. Rev.* 1281, 1294 (1996).

192. *Recommendations of the Conference on Achieving Justice: Parents and the Child Welfare System*, 70 *Fordham L. Rev.* 337, 357 (2001) [hereinafter *Recommendations*] (section 7.5) (Parent Self-Advocacy Working Group).

193. *Id.* at 337 (section 1.1.1) (Case Management Working Group)

194. *Id.* at 345 (section 3.4.3) (Ethics and Professionalism Working Group); *id.* at 352 (section 5.1.7) (Judiciary and the Courts Working Group).

195. *Id.* at 345 (section 5.3.11) (Judiciary and the Courts Working Group).

196. *Id.* at 357 (section 7.6) (Parent Self-Advocacy Working Group).

197. *Id.* at 359 (section 8.5.2) (Race, Class, Ethnicity, and Gender Working Group).

198. *Id.* at 355 (section 6.2.1) (Parent Representation Working Group).

199. *Id.* at 357 (section 7.5.1) (Parent Self-Advocacy Working Group).

welfare system participants stands out as a major priority in improving the experiences of parents involved in the system.

Making parents who have been through the child welfare system an integral part of educating other parents can also help break down existing barriers to communication of information. Parents who have been through the system should be included in assisting other parents in a variety of ways. The child welfare system could facilitate this goal by: (1) increasing funding for the development of independent parent self-help and advocacy organizations in all five New York City boroughs;²⁰⁰ (2) funding independent parent advocacy offices, housed in Family Court and run and staffed by parents who have been through the system;²⁰¹ (3) requiring publicly funded child welfare agencies to establish advisory boards, councils, and committees, which include parents with critical and dissenting views;²⁰² and permitting parent advocates to participate in all court proceedings; (4) employing parents in community-based parent law offices and by the assigned counsel panel;²⁰³ and (6) creating a career track for parents to work in the child welfare system.²⁰⁴

Educational initiatives for parents should be encouraged.²⁰⁵ To enable service providers to better serve parents, parents also need to be involved in curriculum development related to child welfare services. Parents should be involved in both educational initiatives established by universities that train lawyers, social workers, psychologists, and other professionals, and in training programs for child welfare agency workers and foster parents.²⁰⁶ Extensive parental input in the evaluation of services is also needed.²⁰⁷

Parents presently involved in the system need to be more involved in decision-making. For example, the courts should support the development of family service plans that reflect genuine consultation with parents by caseworkers in choosing the types of services upon which the plans will be based.

Second, parents need to be viewed differently by professionals and the public at large. The way that professionals and society at large view parents also needs to change for real reform to occur. The

200. *Id.* (section 7.3) (Parent Self-Advocacy Working Group).

201. *Id.* at 349-50 (section 4.7) (Funding Working Group); *id.* at 357-58 (section 7.7) (Parent Self-Advocacy Working Group).

202. *Id.* at 357 (section 7.1) (Parent Self-Advocacy Working Group).

203. *Id.* at 356 (section 6.2.4) (Parent Representation Working Group).

204. *Id.* at 340 (section 1.3.10) (Case Management Working Group).

205. *Id.* at 342 (section 2.3.4) (Education Working Group).

206. *Id.* at 339 (sections 1.2.7, 1.3.3) (Case Management Working Group); *id.* at 357 (section 7.4) (Parent Self-Advocacy Working Group).

207. *Id.* at 357 (section 7.2) (Parent Self-Advocacy Working Group) (“Child welfare agencies should develop, with extensive parent input, evaluations that allow parents as consumers to participate in the evaluation of services. Parent evaluations should be one of the sources of information used by child welfare agencies in decisions regarding agency performance when making contract renewal decisions.”).

Funding Working Group suggested one way to educate the public about parents and the child welfare system:

There should be funding to design and develop a media campaign to inform and educate the general public about what is really happening to children and families involved in the public child welfare system and the role and means by which the public child welfare system disrupts families. The goal of this media campaign is to dispel the myths surrounding these families and to promote a positive and realistic image of parents and communities.²⁰⁸

The public also needs to be educated on the “disproportionate rates of families of color in the system,” and there is a need to “examine the role that racial discrimination plays in this stark imbalance.”²⁰⁹

Professionals and others working with parents also need to emphasize the *strengths* of parents, rather than focusing only on their deficits. This means “focusing on personal and interpersonal resources the family brings to the situation that can be mobilized and built upon.”²¹⁰ ACS and Family Court should shift the current emphasis from proving or disproving allegations of parental abuse or neglect in both the casework investigation and Family Court processes to an emphasis on finding ways to strengthen the family through the provision of services.²¹¹ As part of this strengths-based approach, Uniform Case Record formats should be changed to require more information about family strengths.²¹²

Those responsible for organizing ACS trainings can contribute to the development of a child welfare system that is more strengths-based by instituting programs through which caseworkers in all parts of the system would be trained to see themselves as change agents who can make a positive difference in the lives of families.²¹³ At the same time, schools of social work, psychiatry, and psychology should support and offer programs geared to teaching a strengths-based perspective.²¹⁴ Training must be provided to child welfare professionals on techniques for researching strength qualities, as opposed to pathologies, of black and Latino families.²¹⁵

208. *Id.* at 350 (section 4.10.1) (Funding Working Group).

209. *Id.* at 360 (section 8.9) (Race, Class, Ethnicity, and Gender Working Group).

210. *Id.* at 342 (section 2.1.6) (Education Working Group).

211. *Id.* at 338 (section 1.2.2) (Case Management Working Group).

212. *Id.* at 339 (section 1.3.5) (Case Management Working Group).

213. *Id.* at 340 (section 1.4.2) (Case Management Working Group).

214. *Id.* at 342 (section 2.1.6) (Education Working Group).

215. *Id.* at 360 (section 8.7) (Race, Class, Ethnicity, and Gender Working Group). “Stories of families who have been in the child welfare system should be documented and distributed to those who work in the child welfare system. The stories must include the voices of children, mothers, fathers, and workers at local and grassroots organizations who work with families.” *Id.* (section 8.8) (Race, Class, Ethnicity, and Gender Working Group).

Third, issues of race, class, ethnicity, and gender need to be brought to the forefront of reform efforts. Conference participants overwhelmingly agreed that:

Those who work in the child welfare system (ACS, NYC's voluntary foster care agencies, and courts) must begin to look at how issues of race, class, ethnicity, and gender impact decision-making, or any attempt to reform the child welfare system and improve the lives of children and families will continue to fail.²¹⁶

City and state government agencies should issue community data profiles which include statistics on: the number of reports of suspected child abuse or maltreatment; the results of investigations of reports of suspected child abuse or maltreatment (e.g., the number of "indicated" and "unfounded" reports); who gets "indicated," the mother or father or both; the number of children removed from their homes by ACS, with breakdowns by race and ethnicity; the amount of money spent on preventive services in the community; and the amount of money spent on maintaining children in foster care.²¹⁷

ACS and Family Court should conduct long-term studies to track, by race, ethnicity, and socioeconomic origin, children in foster care who have been freed for adoption, including in these studies the following information: whether children are adopted and, if so, the length of time spent in foster care before adoption; the number of children ending up back in the Family Court system either via PINS ("persons in need of supervision") or delinquency cases; and the number of children being returned to foster care via voluntary placements or involuntary removals.

Ongoing mandatory training should be provided by each agency or organization in the child welfare system to all players in the system, including, but not limited to, law enforcement, judges, lawyers, social workers, psychologists, medical professionals, and mandatory reporters, on how racial and ethnic stereotypes and sexism can impact decision-making.²¹⁸ Training should include research and information on the unique situation created for parents raising children with extremely limited finances and limited local services. Training also should include information and discussion on how to distinguish parents struggling because of poverty from parents who genuinely neglect their children.²¹⁹ Graduate schools should integrate issues of class, race, culture, and gender into all curricula and help students explore the ways in which those issues may impact the accessibility of

216. *Id.* at 358 (section 8.1) (Race, Class, Ethnicity, and Gender Working Group).

217. *Id.* at 359 (section 8.5.1) (Race, Class, Ethnicity, and Gender Working Group).

218. *Id.*; see also *id.* at 354 (section 5.4.1) (Judiciary and the Courts Working Group).

219. *Id.* at 341 (section 2.1.3) (Education Working Group).

justice to parents in the child welfare system.²²⁰ In addition, each graduate school should develop mechanisms to help students recognize and appreciate the impact of their race, class, ethnicity, and gender on their work with clients.

The child welfare system has historically focused on mothers. Those who work in the child welfare system must include fathers when making case assessments, recommending services, and handling court matters involving families.²²¹

*Fourth, interdisciplinary collaboration among professionals is critical to achieving justice for parents involved with the child welfare system. "Effective interdisciplinary work providing legal, social, and psychological services to families requires the collaboration of members of different professions with specialized training."*²²²

Any system of legal representation for parents must include access to interdisciplinary resources, whether in the form of an institutional provider or an assigned panel counsel.²²³ Ideally, legal representation in Family Court proceedings for parents who are unable to afford an attorney should be provided by a non-profit, legal assistance agency with specially trained attorneys and social workers, as well as other clinical (i.e., psychologists and psychiatrists) and investigative support resources.²²⁴

As part of their representational duties, attorneys for parents should talk directly with caseworkers from ACS . . . and voluntary agencies, which deliver services to parents and children. . . . Because of the multiple parties involved and the need for direct communication on a regular basis, ACS, in consultation with other legal professionals, should develop a protocol that allows attorneys for parents to speak with ACS and other agency caseworkers regarding service planning issues.²²⁵

Furthermore, "[f]oster care agencies should encourage and facilitate attendance at service plan reviews of parents, the child placed in foster care (if the child is ten years or older), the child's law guardian, and counsel for, or a representative of, the parents."²²⁶

Social workers for parents are an integral part of parent representation and should be appointed by the courts as a rule, rather than being treated as the exception to the rule.²²⁷ The courts should allocate funding to provide each judge with a social worker employed

220. *Id.* (section 2.1.3) (Education Working Group).

221. *Id.* at 361 (section 8.12) (Race, Class, Ethnicity, and Gender Working Group).

222. *Id.* at 343-44 (section 3.2) (Ethics and Professionalism Working Group).

223. *Id.* at 356 (section 6.3.1) (Parent Representation Working Group).

224. *Id.* at 344 (section 3.2.1) (Ethics and Professionalism Working Group).

225. *Id.* (section 3.2.4) (Ethics Working Group); *see also* Schorr, *supra* note 182, at 448-50 (encouraging communication between parent lawyers and caseworkers).

226. *Recommendations*, *supra* note 192, at 347 (section 3.7.3) (Ethics and Professionalism Working Group).

227. *Id.* at 353 (section 5.2.3.1) (Judiciary and the Courts Working Group).

by the court system. Roles for this social worker should include presiding over conferences in which service plan issues can be reviewed, fostering communication between social workers for parents and other parties, including ACS and agency workers, and assisting in family reunification efforts.²²⁸ "A social worker working with the parent's attorney is the ideal representative for the parent at service plan reviews."²²⁹

Ethical codes for interdisciplinary collaboration need to be developed to enable professionals from diverse disciplines to work together on behalf of parents.²³⁰ Thus, the organizations that set ethical codes and standards of practice for the legal, social work, and psychology professions should ensure that each of their respective codes and standards of practice address the issues that would arise from interdisciplinary representation.²³¹ Of particular import is that the National Association of Social Workers ("NASW") develops a section in its Code of Ethics for social workers working in legal settings or otherwise collaborating with attorneys.²³²

Graduate educational institutions can contribute to achieving justice for parents by teaching interdisciplinary collaboration. "This may include team teaching, interdisciplinary field placements (clinics, internships, or externships), interdisciplinary colloquiums, and cross-registration between graduate schools."²³³

C. Reflections on the Conference Process

The Conference process of bringing together professionals, mainly from the disciplines of law, social work, and psychology, with parents to address the broad range of justice issues for parents, was unique. What benefits were achieved in having this type of diversity among the participants? The following contains some reflections on the Conference process in response to this question.

Throughout the Conference process, parents who had been involved in the child welfare system played an invaluable role. When the committee became bogged down in minutiae, the parent participants constantly brought the group back to the immediacy of the crisis at hand. Parents were able not only to suggest recommendations for change, but also to tell the planning committee whether the recommendations being discussed would in fact lead to improved experiences for parents involved with the system. The presence and active participation of parents in the Conference itself allowed the representatives from the different disciplines to hear first-

228. *Id.*(section 5.2.6) (Judiciary and the Courts Working Group).

229. *Id.* at 347 (section 3.7.3) (Ethics and Professionalism Working Group).

230. *Id.* at 343 (section 3.1) (Ethics and Professionalism Working Group).

231. *Id.*(section 3.1.2) (Ethics and Professionalism Working Group).

232. *Id.*(section 3.1.3) (Ethics and Professionalism Working Group).

233. *Id.* at 341 (section 2.1.1) (Education Working Group).

hand from parents what kinds of injustice they had experienced from within each part of the system, as well as across the parts of the system.

Members of the parents panel expressed their need for competent legal representation and described to the professional audience their intimate experiences of having dealt with the inadequacies of the current system of representation available to them.²³⁴ One parent stated:

When I arrived at court that morning, I was told this is my lawyer. My lawyer sat down with me five minutes, asked me a couple of things, and told me to admit to my drug addiction. I didn't know anything about a fact-finding hearing. I wasn't told what my rights were. I wasn't told the procedure of court. I didn't have any idea what was happening, and I was very much afraid, because the most important thing in my life had just been lost.²³⁵

As far as my lawyer, I've never really talked to my lawyer, maybe but for three to five minutes at a time. This lawyer never wanted to go into my background to see what I have done in the last past [sic] fifteen years with my children, with the community, with God children, nieces, nephews. It was just, "Okay, did you hit the child? Go ahead and admit that you did it, so maybe we can get the children back faster," which is a lie.²³⁶

I would love for the lawyers and the law guardians to get an understanding of their clients, to find out who you're getting involved with. I would have loved to run all the proof and necessary things that I had to prove that I am not a monster. I am a mother, a single black mother trying to raise four children basically on her own, with no father.²³⁷

The parents on the panel also made it very clear to the professional participants that receiving competent legal representation did not necessarily have to result in keeping them out of the child welfare system, even though they were in an adversarial relationship with this very system. Rather, it often meant getting the system to respond in a non-punitive way to the needs they recognized they had.²³⁸ A parent stated:

There is no help when you let me go. You know, my children have a whole city system behind them. . . . But, when I call and say, "I can't do this or I can't do that"—oh, I have to watch what I say because I might be labeled. . . . What happens to me if I need to make a phone call? Who is there for me? Who is there to back me

234. See Panel: Parents Speak (Excerpts), on file with the *Fordham Law Review*, and available at <http://law.fordham.edu/publications/pubhome.ihml?pubID500>.

235. *Id.* at 3.

236. *Id.* at 10-11.

237. *Id.* at 11.

238. *Id.* at 12-13.

up, without accusing me of not being ready or not being able to take my children, and to take my children away from me again because I don't have the proper help?²³⁹

Housing. Children go into care; there was adequate housing. They come home; there's a housing issue; there is no housing support; there are no programs for children returning home to the families. The family is back in foster care for another year while they found [sic] housing, when their allotted amount for housing is \$360 for a family of three.²⁴⁰

If the police would have come [sic] and gave me help when I was saying I was being abused, and the . . . domestic violence [workers] would have done something and helped me, my son wouldn't have been in care. . . . Why? Because there's no preventive services in the community. In the minority community, in the poor community, there is no access to this.²⁴¹

Parents on the panel also described their need for competent legal representation, often simultaneous with their need for services that respond to their concerns. One parent described her perception of an apparent lack of understanding and collaboration between the various parts of the child welfare system upon which she was dependent.²⁴² Her legal and services problems were very integrated, and yet from this parent's perspective, the professionals involved with these parts of the system seemed to operate in isolation from each other:

Family Court is telling me I have to do A, B, and C, and Welfare is telling me . . . "If you don't [comply with our work programs], we're sanctioning you." They sanctioned me for almost over a year, which made me have to battle with Housing Court to keep my apartment. If I would have lost that apartment, I would have had to start all over again from the beginning, and I would have never gotten my children back.²⁴³

I think that, instead of having a family stand in front of a judge like they're a criminal . . . [there should be] a table setting [where] a lawyer and the people who are involved in the case sit down and discuss what's going on with the family . . .²⁴⁴

Hearing from the parents on the panel, the professional participants at the Conference had an opportunity to listen first-hand to the parents describe their experiences of having been left alone with the impossible task of making sense of, and integrating, the different parts of the system. The involvement of parents in this conversation from

239. *Id.*

240. *Id.* at 17.

241. *Id.* at 7 (alteration in original).

242. *Id.* at 12.

243. *Id.*

244. *Id.* at 3.

the beginning served as a constant reminder to the professional participants about the realities of parents' lives, lives in which their rights and needs are, more often than not, inextricably intertwined.

Having parents as well as the diverse professionals present in the working groups also facilitated the process of identifying areas where the parts of the system intersected poorly for parents, and ultimately, the discussion resulted in participants taking a more holistic view of the reform strategies planned within each part. For example, partly as a result of this dialogue, questions were raised about the number and type of case conferences being planned independently within the court and social service systems. How are all of these various case conferences serving parents' interests? Will parents be overwhelmed with the different system case conferences? Are parents, in addition to the professional case conference participants, clear as to the purpose of each of the conferences? Is there any duplication of effort that could be reduced? What is the possibility of parent attorneys attending the various conferences being planned?

Questions also began to emerge about how the increased use of social workers as part of interdisciplinary teams in parent representation models, as well as in the specialized Family Court models, will impact the reform demands being placed on ACS to build a "framework for better engaging and partnering with parents."²⁴⁵ If all these reforms within each system are successfully implemented, what will the relationship be among all the various social workers from each system working on the same case? What will each of their roles with parents be, and will these roles differ? How will the parents know who does what?

Another benefit realized from the kind of conversations that occurred in the working groups is that all the participants, academics, professionals, and parents alike, were able to learn from each other about the planned reforms, provide reaction to them based on their varying experiences, and use this dialogue as the basis for making jointly-supported reform recommendations. For example, lawyers in one working group who represented parents described the need for parents to be able to visit more frequently with their children. In response, ACS representatives described policies already in place that are intended to induce more liberal and flexible parent visitation. Both parents and lawyers representing parents then provided feedback to ACS that these policies are not being instituted consistently on the practice level. Parent advocates described experiences where caseworkers were unaware of new policies. In response, ACS representatives spoke about the frustrations involved in getting new policies implemented and getting staff acquainted and compliant with the new policies. Recommendations were then

245. Final Report, *supra* note 6, at 42.

focused on improving the application and dissemination of new policies on such critical issues as visitation.

Many of the professional participants also heard about the extent of the crisis in the systems other than the ones in which they worked, and got more details about the reforms being planned within those systems. For example, some social service and mental health professionals at the Conference were exposed more directly to the crisis in the system of legal representation for parents and the steps being taken to address the crisis. Likewise, many legal advocates were getting more details about the service needs of parents and the planned reforms within the protective service delivery structures. The potential benefits from this type of interchange were two-fold. First, additional cross-system constituencies were formed to support reform efforts across systems. Second, it increased the accountability of reform efforts within each of the systems, since additional people became educated as to what is supposed to be happening in those systems.

The principle followed at the Conference that every working group would have participation from the diverse perspectives of law, social work, psychology, and parents, had in essence an effect, or potential effect, that was greater than the sum of its parts. All participants had an opportunity to share their own knowledge and learn from each other based on their professional and personal experiences with the child welfare system. As a result of this kind of sharing among the various disciplines in association with the parents at the Conference, new parental justice issues related to the functioning of each system within the child welfare system, combined with issues related to the intersection of the individual systems, have been further illuminated, and recommendations have been formulated accordingly.

D. Future Directions

Conference planning members and other Conference participants met after the Conference to determine how to proceed in light of the Conference recommendations. There was a broad and enthusiastic consensus that this type of interdisciplinary dialogue and movement for reform was critical. Therefore, the planning committee decided to continue functioning as an interdisciplinary task force, working together on issues unique to the intersection of the three segments of the child welfare system. The members also maintained their commitment to working with parents on reform efforts and on having parents participate fully in the task force's reform efforts.

CONCLUSION

The Conference recognized the particular intersection of the professions of law, social work, and psychology in providing services

to parents involved with the child welfare system. However, due to differing academic training and service delivery structures, the areas of law, social work, and psychology too often serve parents in vastly different and, sometimes even, antagonistic ways.

The Conference was an opportunity to increase the understanding and facilitate the negotiation of such gaps between these professions, with the purpose of improving the overall treatment of parents involved with the child welfare system. The Conference succeeded in drawing together practitioners and educators, mainly from the disciplines of law, social work, and psychology, with parents, to discuss access to justice issues for parents involved in child welfare matters and to make joint recommendations with respect to those issues. This, in itself, was an accomplishment, given the long-standing barriers to interdisciplinary collaboration that have existed between the professions—particularly, between the disciplines of law and social work.

In 1927 Reginald Haber Smith wrote in his introduction to John S. Bradway's book, *Law and Social Work*: "For a dangerously long period these two groups [law and social work] both of whom can justify their existence only by real service for individual and public welfare, have been held apart by ignorance, misunderstanding, and distrust."²⁴⁶ He took as self-evident the need to find a way to "work out solutions for problems which are troubling the state and sorely vexing individuals, and for which neither profession has been able to offer anything but a half-way solution."²⁴⁷

This Conference was an attempt to go beyond "half-way solutions" in achieving justice for parents in the child welfare system. The Conference process also supported an integration of not only legal and social work viewpoints, but psychology viewpoints, to further the achievement of justice for parents. If the Conference left the participants with a sense that this kind of conversation might lead to different ways of thinking about change, then it was a successful beginning.

To have a real and lasting impact, however, these kinds of conversations must continue not only when sparked by sponsored conferences, but when stirred by each individual's sense of professionalism. Individual professionals must come to believe that it is part of their ethical responsibility to find ways to collaborate with professionals from other disciplines, especially when the effective provision of services to parents demands it. Additionally, professionals from law, social work, and psychology should broaden their interpretation of their professional value of client involvement in decision-making. A broader interpretation of this value would require

246. John S. Bradway, *Law and Social Work* vii (Univ. of Chicago Press 1929).

247. *Id.*

professionals to actively seek parent participation not only in the parent's individual situation, but in areas such as program planning, policy development, research, and training. Parent participation on these levels may be the only way to ensure that problems within systems, as well as across systems, are identified and addressed.

Notes & Observations