

# How Family Defender Offices in New York City Are Able to Safely Reduce the Time Children Spend in Foster Care

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MARTIN GUGGENHEIM\*

## Introduction

This is the third in a series of articles discussing the results of child welfare cases in which parents in New York City were represented by a new form of legal services provision: family defender offices whose staff include social workers, parent advocates, and lawyers. The first article, *Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, was published in 2019.<sup>1</sup> It described the results of a multiyear study in New York City that compared the outcomes of child welfare cases in which parents were represented by multidisciplinary family defender offices with cases in which parents were represented by

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\* Martin Guggenheim is the Fiorello LaGuardia Professor of Clinical Law at New York University School of Law. He gratefully acknowledges the outstanding research assistance provided by Sean Eagan, New York University School of Law Class of 2019, and also thanks Luke Gerber, Chris Gottlieb, Sue Jacobs, Peter Pecora, and Tim Ross for their support and the careful attention they gave to this Article. This Article is dedicated to the outstanding professionals who work in the family defense practices at the Bronx Defenders, the Brooklyn Defender Services, the Center for Family Representation, and the Neighborhood Defender Service of Harlem. There are too many heroes in those offices to name here; this Article is a celebration of the remarkable work they do every day supporting and fighting for justice for the many parents living in poverty who have to endure the coercive intervention of the child welfare system. Special thanks go to Caitlin Becker, Michelle Burrell, Michele Cortese, Emma Ketteringham, and Lauren Shapiro for making it possible for this Article to have been written.

1. Lucas A. Gerber et al., *Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, 102 CHILD. & YOUTH SERVS. REV. 42 (2019), <https://doi.org/10.1016/j.childyouth.2019.04.022> [hereinafter *Effects of an Interdisciplinary Approach*].

solo practitioners assigned from a rotating panel of lawyers.<sup>2</sup> The outcomes were dramatically better in cases handled by these offices, as measured by the reduced amount of time children were kept from their parents' custody as compared with parents whose lawyers were solo practitioners.<sup>3</sup> The second article was a qualitative analysis that described the interviews conducted of a wide group of professionals and former clients who work closely with the two different kinds of legal representation models that were compared.<sup>4</sup> That article revealed the opinions of a broad range of professionals working in the courts on what distinguishes the family defender offices' practice from the work done by panel lawyers.<sup>5</sup>

This Article serves to provide the reader with a deeper understanding of how the family defender offices actually do their work, in order to better explain how they achieve the results found by the quantitative study. The Article proceeds in five parts. Part I provides a brief history of parental representation in New York. Part II briefly describes the findings in the quantitative analysis. Part III briefly describes the findings in the qualitative study. Part IV, the heart of the Article, describes accounts of actual cases undertaken by this new breed of family defenders, to help explain their superior ability to achieve the objectives of keeping children safely with their families. This is written both to clarify why this kind of representation is so successful and to help export the model to jurisdictions that have yet to embrace it. Finally, in Part V, the Article clarifies the leading characteristics of successful parent representation in child welfare cases with a particular emphasis on proactive representation out of court. The Article ends with the conclusion that those committed to a child welfare system that avoids the needless separation of children from their families should embrace the new family defender model exemplified by the New York City offices whose work is described and celebrated in the Article.

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2. *Id.*

3. *Id.* at 52.

4. Lucas A. Gerber et al., *Understanding the Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, 116 *CHILD. & YOUTH SERVS. REV.* 105163 (2020), <https://doi.org/10.1016/j.childyouth.2020.105163> [hereinafter *Understanding the Effects of an Interdisciplinary Approach*].

5. *Id.* at 4–9.

## I. A Brief History of Parental Representation in Child Welfare Cases in New York City<sup>6</sup>

In 1972, New York's highest court ruled that parents have a constitutional right to counsel in child welfare proceedings.<sup>7</sup> In 1975, the legislature codified the ruling and created a statutory right to counsel for indigent parents in child welfare proceedings.<sup>8</sup> The legislation delegated authority for funding and managing parental representation to the counties.<sup>9</sup>

Once parents had the right to counsel in child welfare proceedings, it fell to the local New York City court administrators to design the legal services delivery system to meet this new constitutional and statutory right. But no one in the court administration or local government positions in New York had any experience designing or maintaining a legal services delivery system for parents in the child welfare field. Instead, in New York City, the task was given to the Mayor's Office of the Criminal Justice Coordinator, which had deep knowledge of the criminal justice system but no experience with the child welfare system. As we will see, the lack of anyone in that office with substantive knowledge of family court or child welfare deeply disadvantaged parents and families for the next forty years.

These criminal justice-oriented officials gave the role of representing parents in child welfare cases to solo practitioners from an assigned panel of available lawyers.<sup>10</sup> These lawyers, known colloquially as "panel lawyers," were already being used to represent parties eligible for court-assigned counsel in juvenile delinquency proceedings, among a number of

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6. Unless otherwise noted, the discussion in this Article concerning the history and practice of parental representation in New York City is based on my own experience and knowledge from almost fifty years of working in this area as a litigator, clinical professor, scholar, policy advocate, and board member and advisor for government agencies and nonprofit organizations. My professional experiences in New York City include founding and co-directing the Family Defense Clinic at New York University School of Law; serving as a Founding Board Member for the Center for Family Representation; being a member of the Board of Advisors for the New York City Administration for Children's Services from 1996 to 2013; and, most recently, since 2017, serving as a member of the New York State Commission on Parental Legal Representation.

7. *In re Ella B.*, 285 N.E.2d 288, 290 (N.Y. 1972).

8. *See* N.Y. FAM. CT. ACT §§ 261, 262 (McKinney 2020).

9. *See Id.* § 262(c); MERRILL SOBIE, PRACTICE COMMENTARIES (McKinney 2020).

10. *See* N.Y. COUNTY LAW § 722(3) (McKinney 2020). To be eligible for assignments from the panel, lawyers must have a certain number of years of experience in the field and apply to be placed on the panel by a committee that reviews applications. In addition, they must be reviewed periodically and formally retained to remain active members of the panel.

other specialized areas of the law.<sup>11</sup> These lawyers generally did not work in an interdisciplinary way. In 2003, a New York State Supreme Court Justice found that the payment rates for assigned counsel resulted in a shortage of panel attorneys and deprived litigants of effective assistance of counsel.<sup>12</sup> Panel lawyers would rarely engage the services of a social worker and have their fees paid by the court.<sup>13</sup> These lawyers spent virtually their entire professional time in the courtroom, waiting either for a new assignment or for their cases to be called.<sup>14</sup> As a result, they were rarely available to their clients out of court.<sup>15</sup> Half of court-assigned lawyers billed for less than five hours of out-of-court work in family court proceedings.<sup>16</sup>

Between 1975 and 2007, this was the kind of representation most parents were able to receive when they were eligible for court-assigned counsel.<sup>17</sup> In 2007, the then-named Mayor's Office of Criminal Justice agreed to engage in an experiment that had a dramatic impact on child welfare practice in New York City: it offered contracts to three offices to become the primary lawyer assigned to represent parents in child welfare cases. Beginning that year, the Office funded a new model of public defense for families facing charges of abuse or neglect in three counties in New York City.

Beginning cautiously, New York City first awarded separate contracts for three of its five counties to three different not-for-profit organizations, each one authorized to accept court assignments in one county. Each office was expected to accept approximately half of the new case assignments to represent parents charged with abuse or neglect of their children (what this

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11. Panel lawyers may be assigned to represent adult parties in a large range of other types of family court cases, including custody and visitation disputes, paternity proceedings, child support contempt proceedings, and cases involving domestic violence, in which the represented party might be the accused batterer or the alleged victim. See N.Y. FAM. CT. ACT § 262.

12. See N.Y. Cty. Lawyers' Ass'n v. State, 763 N.Y.S.2d 397 (Sup. Ct. 2003).

13. See N.Y. COUNTY LAW § 722-c (allowing judges to authorize counsel assigned through the 18-b panel to engage social workers to assist in the representation of indigent clients); *N.Y. Cty. Lawyers' Ass'n*, 763 N.Y.S.2d at 407 (finding that "because of the rate levels assigned counsel do not . . . make applications for investigators or other experts where appropriate . . . [or] ensure that clients receive necessary services and prepare appropriate service plans . . .").

14. See *N.Y. Cty. Lawyers' Ass'n*, 763 N.Y.S.2d at 401–02, 407.

15. *Id.*

16. *Id.* at 401–02.

17. See COMM'N ON PARENTAL LEGAL REPRESENTATION, INTERIM REPORT TO CHIEF JUDGE DiFIORE 12–15 (2019), [http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR\\_Commission-Report.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf) (discussing history of parental representation in New York State).

Article calls “child welfare cases”).<sup>18</sup> The remainder of the filings were to be assigned, as before, to panel attorneys.

The three offices—Brooklyn Defender Services (Kings County), The Bronx Defenders (Bronx County), and the Center for Family Representation (New York County)—are each structured somewhat differently.<sup>19</sup> The characteristic all three offices have in common is that they are multidisciplinary: they employ lawyers on their staff along with social workers and/or parent advocates (individuals who themselves experienced the child welfare system as a parent accused of neglecting their child).<sup>20</sup> Each office spends considerable time on their cases out of court, working closely with their clients and advocating for and with them at child welfare agencies’ meetings.<sup>21</sup> Several years later, a fourth office—the Neighborhood Defender Service of Harlem—was awarded a contract to share the representation of parents in Manhattan with the Center for Family Representation, using their community-based model to represent

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18. The Bronx Defenders was awarded the contract in The Bronx. Legal Services of New York was awarded the contract in Brooklyn. The Center for Family Representation was awarded the contract in New York. In Queens and Richmond County (Staten Island), no change to the legal representation landscape occurred at that time. In those counties, the only legal representation afforded to parents in these proceedings was the assignment of solo practitioners who were members of the assigned counsel panel of attorneys eligible for court assignment. Each of the three offices had a distinct corporate structure. The Brooklyn Office—the Brooklyn Family Defense Project—was a project of the largest civil legal services organization in New York City, Legal Services for New York, now Legal Services NYC. The parent organization employs a large number of poverty lawyers who represent clients in a broad swath of legal matters, including housing, immigration, social security benefits, and custody and divorce, among others. In 2013, the Legal Services NYC contract ended, and the South Brooklyn Services Office that was handling the Brooklyn Family Court caseload merged with Brooklyn Defender Services, a preeminent public interest law office with contracts to represent indigent defendants in criminal cases as well as immigration and other matters. The Bronx Office was part of a larger organization whose principal work was indigent criminal defense. Bronx Defenders began as an organization that only did criminal defense. It added over the years an immigration practice and, in 2007, with this new contract, a family defense practice as well. The third office, the Center for Family Representation (CFR), was a relatively new start-up 501(c)(3) office whose only purpose was to provide legal representation for parents in child welfare cases. Unlike the other two offices, which were part of larger organizations that secured income from multiple sources, CFR’s only work was in parent representation. There are still other differences between the offices, including the number of staff employed and the various positions each office created. For current information on these offices, see *Family Defense Practice*, BRONX DEFENDERS, <https://www.bronxdefenders.org/our-work/family-defense-practice/> (last visited Oct. 18, 2020); *Family Defense*, BROOKLYN DEFENDER SERV., <http://bds.org/practice/family-defense/> (last visited Oct. 18, 2020); *Family Defense Teams*, CTR. FOR FAMILY REPRESENTATION, <https://www.cfny.org/our-work/team-model/> (last visited Oct. 18, 2020).

19. See *supra* note 18.

20. *Effects of an Interdisciplinary Approach*, *supra* note 1, at 45.

21. *Id.*

families living in Harlem zip codes.<sup>22</sup> In 2011, the Center for Family Representation was awarded a second contract to provide parental representation in Queens County.<sup>23</sup> To date, these four providers handle the vast majority of parental representation in New York, Kings, Queens, and Bronx Counties.

Since it began, the Brooklyn Defender Services' Family Defense Practice has represented nearly 11,000 parents involving more than 20,000 children.<sup>24</sup> The Center for Family Representation represents approximately 1,300 new clients each year in child welfare cases and between 2007 and 2018 has represented more than 7,000 parents with more than 15,000 children.<sup>25</sup> Between 2007 and 2017, the Bronx Defenders represented more than 11,000 parents and, as of 2018, had a staff of more than 50 attorneys, social workers, and parent advocates. In fiscal year 2018, the office was assigned to represent more than 1,500 parents with approximately 3,500 children.<sup>26</sup> The Neighborhood Defender Service has represented over 1,600 parents between 2014 and 2017.<sup>27</sup>

This arrangement, assigning a portion of new filings to a family defender law office and the remainder to panel lawyers, created an opportunity to study which kind of representation works best. Funding for the study was secured from Casey Family Programs,<sup>28</sup> one of the leading child welfare foundations in the country committed to supporting practices designed to ensure that children are able to be raised safely in their families of origin.<sup>29</sup> An important question the study hoped to learn was whether the kind of

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22. See *Family Defense*, NDS: THE POWER OF PUB. DEF., <https://neighborhooddefender.org/services/family-defense/> (last visited Sept. 19, 2020).

23. *Effects of an Interdisciplinary Approach*, *supra* note 1, at 45.

24. *N.Y. Unified Ct. Sys. Comm'n on Parental Legal Representation Pub. Hearing* (Aug. 16, 2018) (written testimony of Lisa Schreibersdorf, Exec. Dir., Brooklyn Defender Serv. & Lauren Shapiro, Dir., Family Def. Practice, Brooklyn Defender Serv., at 2), <http://bds.org/wp-content/uploads/2018.08.16-BDS-testimony-to-the-Commission-on-Parental-Representation-FINAL.pdf> [hereinafter Schreibersdorf & Shapiro written testimony].

25. *N.Y. Unified Ct. Sys. Comm'n on Parental Legal Representation Pub. Hearing* (Sept. 27, 2018) (written testimony of Ctr. for Family Representation, at 1).

26. *N.Y. Unified Ct. Sys. Comm'n on Parental Legal Representation Pub. Hearing* (Aug. 16, 2018) (written testimony of Emma S. Ketteringham & Caitlin Becker, at 2) [hereinafter Ketteringham & Becker written testimony].

27. *N.Y. Unified Ct. Sys. Comm'n on Parental Legal Representation Pub. Hearing* (Aug. 16, 2018) (written testimony of Michelle Burrell, at 2).

28. *Effects of an Interdisciplinary Approach*, *supra* note 1, at 53.

29. See *About Us*, CASEY FAM. PROGRAMS, <https://www.casey.org/who-we-are/about/> (last visited Oct. 18, 2020).

legal representation made available to parents would have any impact on reducing the time children spend in foster care.<sup>30</sup>

## II. Quantitative Findings

The quantitative study was a multiyear study of child welfare cases brought in the New York City courts to determine whether the kind of legal representation provided to parents can make a difference in the outcome of cases.<sup>31</sup> The researchers examined child welfare cases filed in New York City Family Court between 2007 and 2014; the final sample involved 9,582 families with 18,288 children.<sup>32</sup> They used “Propensity Score Matching” as the statistical design, which equalized the groups of families compared on nearly twenty factors or covariates split into variables.<sup>33</sup> This methodology allowed the researchers to attribute differences in outcomes between the two groups to the type of representation the parents received.<sup>34</sup>

The study compared the outcome of cases based on whether parents were represented by panel lawyers and parents who were represented by one of the family defender offices.<sup>35</sup> Ultimately, the researchers traced the outcomes of nearly 10,000 families and their more than 18,000 children through a four-year follow-up period.<sup>36</sup>

The study found that the kind of representation afforded to parents makes a dramatic difference in the length of time children spend in foster care.<sup>37</sup> Giving parents the right kind of legal team results in families being

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30. *Effects of an Interdisciplinary Approach*, *supra* note 1, at 43.

31. *Id.* The study was the first of its kind ever conducted, although two previous studies were undertaken in Washington State that compared cases in which parents were represented by a new Parent Representation Program with the outcomes of cases in which parents were represented by traditional parent lawyers. But those studies included comparisons between counties (some of which had the program and some of which did not) in addition to comparisons within counties (pre- and post-implementation of the new model). See Mark E. Courtney & Jennifer L. Hook, *Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care*, 34 CHILD. & YOUTH SERVS. REV. 1337, 1338–39 (2012). See also JASON A. OETJEN, NAT’L COUNCIL OF JUV. & FAM. CT. JUDGES, IMPROVING PARENTS’ REPRESENTATION IN DEPENDENCY CASES: A WASHINGTON STATE PILOT PROGRAM EVALUATION (2003), [http://www.opd.wa.gov/documents/0047-2003\\_PRPEvaluation.pdf](http://www.opd.wa.gov/documents/0047-2003_PRPEvaluation.pdf) (presenting results of an earlier study of pilot programs in two juvenile courts in different settings and locations).

32. *Effects of an Interdisciplinary Approach*, *supra* note 1, at 45–46.

33. These factors included demographic characteristics of parents and children, family size, severity of allegations and types of allegations, judge, court borough, and prior involvement with the child welfare system. *Id.* at 46–48.

34. *Id.* at 46.

35. *Id.* at 43.

36. *Id.* at 46.

37. *Id.* at 52.

reunited far sooner than would otherwise happen.<sup>38</sup> The family defense offices were able to secure the safe return of children to their families 43 percent more often in their first year than panel attorneys, and 25 percent more often in the second year.<sup>39</sup> Giving parents lawyers from family defense offices allowed children to be permanently released to relatives more than twice as often in the first year of a case and 67 percent more often in the second year.<sup>40</sup> These families may otherwise have been permanently dissolved or the children may have spent their childhood separated from their family. Of those children who could not be returned to their families, 40 percent more children ended up with a permanent disposition of guardianship when their parents had multidisciplinary representation than children whose parents were represented by panel lawyers.<sup>41</sup>

The study concluded that family defender office representation also saves an enormous amount of money that would otherwise have been spent on children remaining unnecessarily in foster care.<sup>42</sup> The study found that full implementation of a multidisciplinary representation model in New York City would reduce the foster care population by 472,000 bed days per year and annually reduce foster care costs by \$40 million as compared with exclusive reliance on panel lawyers.<sup>43</sup>

### III. Qualitative Findings

The qualitative findings in the study were equally impressive.<sup>44</sup> Not only did former clients praise the kind of representation and support they received from the new offices, the professionals working in the court system also indicated significant satisfaction with the new kind of representation the offices provide.<sup>45</sup> Of the three categories of professionals interviewed in the qualitative study, two were unequivocally positive in describing the important contributions the new offices had on practice in the courts.<sup>46</sup> These groups were the judges and court attorneys who serve as the judge's trial-level law clerks and children's lawyers employed by The Legal Aid

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38. *Id.*

39. *Id.*

40. *Id.*

41. Martin Guggenheim, *New Study Shows Providing Parents with Multidisciplinary Legal Representation in Child Welfare Cases Furthers Everyone's Interests*, 20 CHILD.'S BUREAU EXPRESS no. 6, July/Aug. 2019, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=208&sectionid=2&articleid=5378>.

42. *Effects of an Interdisciplinary Approach*, *supra* note 1, at 52–53.

43. *Id.*

44. *Understanding the Effects of an Interdisciplinary Approach*, *supra* note 4, at 9–10.

45. *Id.* at 5–6.

46. *Id.* at 4–11.



Society who appear in most child welfare cases as the attorney for the child.<sup>47</sup> The third group, the lawyers prosecuting the cases, also expressed very positive things about the contributions made by the new offices but, perhaps expectedly, some attorneys in this group also complained that lawyers in these offices were too litigious and fought too hard on cases that did not deserve it.<sup>48</sup>

The study found that the professionals in the court system regarded the critical tools the family defender offices introduced into the practice as an insistence that the court conduct evidentiary hearings when the agency seeks a court order that children be placed into foster care, combined with filing motions to ensure that judges oversee case planning decisions promptly.<sup>49</sup> Court stakeholders unanimously described a dramatic increase in motion practice, most commonly brought to challenge the agency's request to remove children from their families, to seek the return of children home, and to request other specific orders from judges.<sup>50</sup> The study concluded that the increased use of these motions played a significant role in the offices' success in securing court orders returning children to their families.<sup>51</sup> Using each court appearance to advance the parent's case, filing motions to seek better services or eliminate needless ones, and asking for more visits and for the return of children from foster care promptly are leading characteristics of the family defender office model.<sup>52</sup>

The qualitative study also found that the stakeholders identified out-of-court advocacy undertaken to be a significant, and distinctive, characteristic of the family defender offices.<sup>53</sup> This includes accompanying clients to out-of-court case conferences held at the childcare agencies.<sup>54</sup> Finally, the qualitative study found that the multidisciplinary offices achieve distinctive results in part because they attend much better to their client's well-being than the panel lawyers do throughout the time the case is active in court.<sup>55</sup> The study found that the family defender offices place a premium on attending to the emotional well-being of their clients.<sup>56</sup> Emotional supports that help parents believe in their abilities are crucial,

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47. *Id.* at 4.

48. *Id.* at 6.

49. *Id.* at 5–6.

50. *Id.*

51. *See id.* at 6.

52. *Id.*

53. *Id.* at 6–7.

54. *Id.* at 7.

55. *Id.* at 8–9.

56. *Id.*

since the outcomes of many cases depend on the parents bearing up well during the process, engaging in required services, maintaining a regular visitation schedule with their children when they are in foster care, and otherwise satisfying the requirements of service plans.<sup>57</sup>

#### IV. How the Offices Do Their Work

The previous studies limited their focus to quantitative outcomes achieved at court or to reporting the views of stakeholders focused on the differences between the two kinds of representation made available to parents in New York City.<sup>58</sup> This Article starts where the prior two articles left off. What the previous articles did not disclose in any depth is what is actually involved in representing parents in child welfare cases and what the staff do in individual cases. This Article is designed to bring to life the proactive nature of the multidisciplinary practice. Because the qualitative study focused so much on what the new family defender offices did in court, the case descriptions that follow focus on the out-of-court work that is crucial to the holistic model employed by the offices.

A goal of this Article is to lay the groundwork for leaders in child welfare throughout the United States to embrace the work new family defenders do.<sup>59</sup> There are many ways to reform child welfare practice and policy in this country. Many of those changes need to happen upstream from the time and place children are reported to child welfare officials as being at risk of harm. But among the most important reforms needed in child welfare once investigations into families are started is to offer the family the services of a committed preventive and reunification service, precisely what the family defenders in New York are. What follows is their story.

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57. *Id.*

58. *See Effects of an Interdisciplinary Approach, supra* note 1; *see also Understanding the Effects of an Interdisciplinary Approach, supra* note 4.

59. The national family defender movement is based at the American Bar Association's Center on Children and the Law under the leadership of Mimi Laver. The Center houses the National Alliance for Parent Representation, a leadership group of more than thirty professionals committed to upgrading the quality of legal representation made available to parents in child welfare proceedings throughout the country. *See National Alliance for Parent Representation, AM. BAR ASS'N*, [https://www.americanbar.org/groups/public\\_interest/child\\_law/project-areas/parentrepresentation/](https://www.americanbar.org/groups/public_interest/child_law/project-areas/parentrepresentation/) (last visited Oct. 19, 2020). Among jurisdictions other than New York City that have been national leaders and innovators in parent representation is Washington State under the leadership of Joanne Moore. In addition, major improvements have been made to parental representation systems in a number of other states, including Colorado, New Mexico, New Jersey, and North Carolina.

The essence of the kind of representation offered by the three offices that were part of the study (as well as the template for the work done by the Neighborhood Defender Service of Harlem, the fourth office doing this work in New York City) is that clients receive a team of advocates, commonly including an attorney, a social worker, and a parent advocate. This kind of advocacy can only be implemented by multiperson offices. It requires more professionals and more room than solo law practices. The offices also are likely to have expertise in immigration, housing, and criminal court practice, areas of the law in which their clients are likely to become involved. The defender offices employ a wide range of professionals on each client's legal team, including social workers, parent advocates, interpreters, specialized attorneys, experts, and investigators. These team members support the families they serve in everything from applying for public benefits to representing a client in criminal court to finding employment training, mental health counseling, and substance abuse treatment.

Clients benefit enormously from having a team represent them.<sup>60</sup> Not only does it mean they will not be obliged to attend important meetings alone, but it also means that it is considerably more likely that there will be someone available to speak with them between court appearances and to return their phone calls timely. The staff lawyers also benefit by having access to motions previously filed by colleagues in other cases and an administrative staff to help them efficiently file motions with the court.<sup>61</sup> These offices have developed a deep knowledge of the communities their clients live in and strong ties with local resources and service providers. That knowledge commonly results in the offices' achieving better, faster results for their clients than the child welfare agency is capable of, with considerably less disruption of the family, eliminating or significantly shortening the time children are forced to live apart from their families.

It also is important to appreciate how the offices support the professionals emotionally. As Chris Gottlieb explained:

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60. Succinctly summarizing the advantages of the multidisciplinary offices to clients, Chris Gottlieb wrote: "For clients, being represented by organizations rather than solo practitioners means having a team on your side: an advocate you can reach on the phone when your lawyer is in court; another lawyer from the office available to step in when yours is on leave or stuck in a different courtroom; the benefit of a brief bank so your lawyer doesn't have to draft every motion from scratch; and office space where your kids can play while you meet with your lawyer." Chris Gottlieb et al., *Discovering Family Defense: A History of the Family Defense Clinic at NYU School of Law*, 41 N.Y.U. REV. L. & SOC. CHANGE 539, 559 (2017).

61. For new lawyers, the existence of these organizations means not only jobs, but jobs one can get straight out of law school that come with the kind of training and supervision only larger offices can provide.

Perhaps most important for staff, these organizations offer the emotional support and grounding needed to do extremely hard work in the trenches: a professional home to go back to after a difficult day in court; knowing your colleagues will listen and understand; being part of a team. They provide the opportunity to enter a field with an ambitious social justice vision.<sup>62</sup>

Child welfare cases are prosecuted along two tracks: the judicial and the administrative. On the judicial side, petitions are filed in family court and the allegations in the petitions are (sometimes) resolved through contested evidentiary hearings. Along the path of the case, courts typically order that parents perform various services<sup>63</sup> and ultimately order that children be allowed to remain with their families or be placed in another arrangement. But, arguably even more importantly, there is an administrative process that, in many cases, begins before the court proceedings and, in all cases, continues on a separate path during the court process.

In the agency process side of the case, parents are obliged to meet with caseworkers, supervisors, and other employees of the agency responsible for monitoring the parent's actions throughout the life of the case. It would be difficult to overstate the importance of these agency meetings. One might reasonably suggest they are much more important than what happens in the courtroom itself. In many cases when parents are well-represented at the administrative level, what happens in court is anti-climactic—the outcome of all that went before at the agency meetings.

Ultimate success in many cases can be achieved by creating and developing plans designed to keep children safely at home—or to return them home as soon as can safely be accomplished—and by pushing hard for the plan's prompt implementation. These plans are best developed out of court in conjunction with the agency overseeing the case.<sup>64</sup> No good lawyer can afford to ignore the administrative process, which commonly begins when a family comes to the attention of an investigating caseworker following a report of suspected maltreatment made to the child protection agency.

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62. Gottlieb et al., *supra* note 60, at 559.

63. Such services might include attending parenting skills or anger management classes, or participating in therapy, counseling, or drug treatment programs.

64. *See, e.g.*, N.Y. SOC. SERV. LAW § 409-e(2) (McKinney 2020) (mandating preparation of case plans by the social services district in active consultation with the child's parent or guardian). *See also id.* § 384-b(7)(f)(1).

Over the many years of doing this work, the four offices that have contracts to represent parents in child welfare cases in New York City have developed and refined innovative approaches to secure the safe return of children from foster care. The leading characteristic of the offices' method of representing parents is to participate actively in the case conferences held at the agency where the case plan for each case is established.<sup>65</sup> These plans set the stage for all that follows and are often the single most important factor in a case's outcome. They specify the steps an agency must undertake to reunify a family and the tasks the parent must perform as the condition for keeping or regaining custody of his or her child. When parents are unrepresented at these conferences, the plans are more likely to be boilerplate, requiring parents to do things of little value. Even worse, when parents are unrepresented, the plans may fail to identify services the agency should be providing for the particular needs and circumstances of the family.

Among the reasons it is crucial that parent defenders actively participate in these conferences is that when an inappropriate case plan is developed, that plan may be in place for many months even before a court might review it. Moreover, in my experience, judges rarely overrule (or reconsider) the agency's assessment of what services are appropriate. Parent lawyers who fail to participate in the development of a case plan and who wait until going to court to advocate for their clients often discover that the original plan developed at the case conference will remain in place throughout the proceeding.<sup>66</sup>

Wholly apart from holding conferences during the time a case is being prosecuted in court, an even more critical component of the administrative process is ongoing. Caseworkers visit parents in their homes and talk to them and their service providers on a regular basis. Caseworkers are a critical player in each case. Ignoring them as part of the defensive strategy is only a tiny step away from ignoring the case conferences.

With this in mind, as the following case examples will reveal, the family defenders in the interdisciplinary offices devote considerable attention to all that is happening outside of court. They communicate frequently with

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65. N.Y. COMP. CODES R. & REGS. tit. 18, § 428.6 (2020). Federal law requires states to have written case plans for every child in care in order to ensure that an appropriate long-term plan is identified for each foster child. 42 U.S.C. § 675(1). These reviews are essential to the success of reunification efforts. *See generally* Subha Lembach, *The Right to Legal Representation at Service Plan Reviews in New York State*, 6 U.C. DAVIS. J. JUV. L. & POL'Y 141 (2002).

66. These plans are routinely included in the reports agencies are required to submit every six months whenever children remain in foster care. *See* N.Y. FAM. CT. ACT § 1089 (McKinney 2020).

caseworkers to rearrange meetings and services, to plan for the next steps, and for many other reasons. Agencies too often offer parents little help or guidance in obtaining services, commonly doing little more than providing a parent an address and expecting the parent to find the service, make the appointment, and wind his or her way through a maze of confusing requirements. The offices help parents negotiate all aspects of the process throughout the life of the case. They help their clients persevere what is otherwise a long, lonely, and frightening journey by staying in close, regular contact with them.

The in-the-weeds work holistic practices undertake often leads to outcomes that are invisible when all that is described are data in categories of “return to parent,” “dismiss,” and the like. Quite often, the family defender offices in New York City achieve results for their clients that meaningfully advance children’s interests that could not have been achieved without spending considerable amounts of time out of court. In sharing some of these accounts, the reader should pay particular attention to the frequency with which investigators from the child welfare agencies make mistakes, get facts wrong, fail to show up for critical meetings, or base recommendations on faulty information that is either flatly wrong or materially incomplete. It is here, at the exquisite level of facts, that the defender offices make their greatest difference.

In order for the reader to appreciate fully the contribution of these offices, and the critical need for them to spread throughout the country, it is vital that the reader grasp a fundamental truth about the child welfare system in the United States: it far too commonly makes fateful decisions about children and families that are based on errors that, in the absence of a significant check and balance provided by holistic family defenders, would never come to light. When these errors are not revealed, the official record supports the erroneous conclusion that a child was removed from a parent’s home for a substantial reason. The true meaning of the findings in the quantitative study that these offices secure the return of children to their families significantly sooner than would happen without them is that child welfare practice without the kind of oversight accomplished by the offices wrongfully separates children from families in a significant percentage of cases.

What follows are case examples of how the offices achieved great success for their clients.<sup>67</sup> They are offered both to bring to life how the

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67. These case summaries were provided by the professionals employed by various family defender offices in New York City. Each of the cases described took place between 2015 and 2018. The notes of the interviews are on file with the author.

offices do their work and why everyone committed to a better-functioning child welfare system should want offices like this practicing throughout the country.

### ***A. A Case Involving “Mental Illness” and “Cognitive Disability”***

In late 2016, Ms. Barrow, the parent of a ten-year-old child and a one-year-old child, was charged in family court with neglect resulting from her struggle to manage the challenges of mental illness and a cognitive disability.<sup>68</sup> The petition was filed shortly after she was discharged from a short-term hospitalization for mental health treatment. The court ordered the children to be placed in foster care at the first court appearance and limited the mother’s access to them to twice-weekly visits supervised at the agency.

Ms. Barrow was assigned a family defender office. Her defense team at first consisted of a family court lawyer and a social worker. The team met with Ms. Barrow and began the task of coordinating the substantial support needed in managing Ms. Barrow’s mental illness and disability. Ms. Barrow and the defense team jointly developed a new plan for her that included referring her to a therapist, a psychiatrist who was able to prescribe new medication, and a medication management provider. The medications began working after only a few weeks and Ms. Barrow quickly regained her focus. When this happened, not only did she visit her children regularly, her defense team succeeded in persuading the judge (over the agency’s objection) to permit unsupervised visits, commonly a necessary interim stage before courts will return children to a parent’s custody.

As Ms. Barrow and her defense team were making these strides, two intervening actions were taking place, either of which had the potential to negatively impact the prospects of a successful outcome. The first was that Ms. Barrow was in jeopardy of being evicted from her apartment. Had Ms. Barrow been evicted from her apartment, she would have had to enter New York City’s public shelter system. But because she would be applying for shelter housing at a time when her children were not in her custody, she would be counted as a single person living alone and would be eligible only for a studio-sized apartment, unsuitable for children. Once Ms. Barrow was living in an apartment too small for her children to live in with her, a new barrier to the children’s return would be to secure suitable housing, which would certainly extend the children’s stay in foster care. This catch-22 problem made preventing Ms. Barrow’s eviction vital on

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68. All names used throughout this Article are fictitious.

multiple fronts. The office added one of its attorneys with expertise in housing court to the case.

She was facing eviction after she had fallen into rental arrears for six months because she was under the mistaken understanding that the rental subsidy she recently secured from New York City covered her entire rent.<sup>69</sup> In fact, she was responsible for the portion not covered by the subsidy. Before going to housing court, the defender office's housing specialist contacted the City office that was providing the rental subsidy to explain the problem and was able to get the office to write an additional check to her landlord to eliminate all arrears on her rent. When Ms. Barrow went to housing court, her housing attorney presented a letter showing the City's commitment to pay the arrears, and the case was settled in Ms. Barrow's favor.

With the housing crisis abated, the rest of the family defense team could keep its focus on the family court case. But then, a second intervening event occurred, dramatically changing the entire picture. Ms. Barrow disclosed to her defense team that she was pregnant. This meant the team not only had to work towards regaining the custody of her two children; it would have to prepare for the possibility that the agency would seek the removal of her newborn. As her due date neared, the defense team turned its focus to planning with Ms. Barrow for the baby's arrival.

Because of Ms. Barrow's concern that continuing her medication during her pregnancy was dangerous for the fetus, she stopped taking the medication that was court-ordered. Disclosing the news of her pregnancy and her decision to stop taking the court-ordered medication was an extremely delicate action risking not only her right to continue visiting with her children but losing custody of the newborn upon birth. The team's social worker met with Ms. Barrow's medication management provider to develop a plan for re-engaging with her medication upon the birth of the baby. Then the team strategically planned with Ms. Barrow how to share the information with the agency and the court.

Most importantly, the team also began planning for the "Initial Child Safety Conference" that the agency would certainly convene when the baby was born.<sup>70</sup> Unfortunately, the New York City child protection

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69. This program, known as "City FHEPS," is administered by New York City's Human Resources Administration. See N.Y.C. HUM. RES. ADMIN., THE CITYFEPS RENT SUPPLEMENT PROGRAM FACT SHEET, <https://www1.nyc.gov/assets/dhs/downloads/pdf/CITYFEPS/CITYFEPS-fact-sheet.pdf>.

70. See *Will ACS Take My Child?*, N.Y.C. ADMIN. FOR CHILD.'S SERVS., <https://www1.nyc.gov/site/acs/child-welfare/will-acs-take-my-child.page> (last visited Oct. 6, 2020).



agency would not conduct the conference before the child was born (because New York does not recognize fetuses as within the purview of child welfare law). Instead, the agency has conducted the conferences within a day or two after a newborn's birth, at a time when the mother is not in a position to participate effectively. Nonetheless, Ms. Barrow's defense team ensured that it was fully prepared for the conference, having secured letters from Ms. Barrow's mental health providers laying out her treatment plan and documenting her increased engagement in services and subsequent progress in her mental health. When the conference took place one day after the baby's birth, the defense team's social worker and parent advocate attended with Ms. Barrow. The team successfully persuaded the agency to agree to release the newborn to Ms. Barrow's care with court-ordered supervision.

In child welfare cases, victories often prove to be short-lived. It turned out the agency's support for releasing Ms. Barrow's newborn did not last one week. Several days after Ms. Barrow was permitted to bring her baby home with her from the hospital, the agency removed the infant and placed her in foster care after a caseworker visited the apartment and found it to be excessively dirty and filled with cockroaches. Once again, Ms. Barrow's defense team went into action. First, the social worker went to the home to assess for herself the conditions in the apartment. Then she engaged a cleaning service to address the roaches and the condition of Ms. Barrow's home. The team's lawyer then filed a motion for an immediate court hearing to determine whether removal was necessary to protect the child's safety. The clogged court's calendar, however, meant that the court could not conduct the evidentiary hearing immediately. Instead, her lawyers requested that the court order an "Imminent Risk Assessment" with the court's mental health clinic once the defense team was convinced that Ms. Barrow would be evaluated to present no risk to her newborn.

The strategy worked. Once the report was provided to the court, the judge ordered that the newborn be returned to Ms. Barrow's custody in light of the risk assessment and proof that the conditions in her apartment were vastly improved. Then the team moved forward on expanding Ms. Barrow's access to her older children. With the positive evaluation from the court mental health clinic and letters the team gathered from Ms. Barrow's service providers, the judge agreed to allow the children to return home for overnight visits, commonly a crucial step that leads to the eventual return of children to their parent's custody. Three months later, the two children in foster care were reunited with their mother and the family has lived together without further intervention by the agency.

As this case discussion reveals, the amount of out-of-court advocacy involved is well beyond what panel lawyers generally are able to provide or have ever been able to provide in New York City's history of parental representation. Yet it was the out-of-court advocacy that made all the difference. Without the office's housing advocacy, Ms. Barrow would have had no home for her newborn to return to. Without the defense team's constant communication with Ms. Barrow and her providers about her service plan, she would not have had the support necessary to achieve the progress in her mental health treatment. Even these remarkable efforts would have been insufficient. Had Ms. Barrow not had a team committed to being with her when she gave birth, to preparing assiduously for the conference held when the baby was born, and to being ready to fight for her when the baby was removed less than a week later, her case would surely have come out differently. Instead of the family being reunited, the case might have resulted in a termination of parental rights. The representation she received simply would have been impossible for most individual panel attorneys to match.

### ***B. A Case Involving "Child Abuse"***

Ms. Green was a single parent of an eight-month-old daughter, Sophia. One day, Ms. Green noticed a bump on Sophia's head that concerned her. She asked her mother to take Sophia to see a doctor because Ms. Green had to be at work. Her mother took Sophia to the emergency room. An X-ray revealed that Sophia sustained a skull fracture. The examining doctors asked Ms. Green's mother what may have happened to Sophia and her mother was unable to provide them with a satisfactory answer. The hospital then called Ms. Green and asked her what she could tell them. Ms. Green did not provide a clear answer, and she said she wondered whether it happened when Sophia fell off a bed. Because the bump did not immediately appear on Sophia's head, Ms. Green could not be certain how the injury was sustained. Because Ms. Green was unable to provide a clear explanation for the injury, the hospital called the child protection agency, which immediately began an investigation.

When the agency interviewed her, Ms. Green told the investigators the same thing she told the doctors at the hospital. Because she was unable to provide a satisfactory explanation for the injury, the agency removed Sophia from Ms. Green's custody at the hospital, placed her in foster care, and filed an abuse petition in family court the following day. The petition alleged that the skull fracture could only have been the result of child abuse and Ms. Green's failure to provide a sufficient explanation for the injury justified placing Sophia in foster care.

Very commonly, abuse petitions involving physical injuries to children are filed in the absence of direct evidence concerning how the injury was sustained. New York law does not require that the agency prove how certain injuries were sustained.<sup>71</sup> Instead, when the injuries appear to be the result of abuse, it is sufficient for the agency to allege that the child sustained an injury that most likely was the result of child abuse, creating a rebuttable presumption where the parent may present evidence either proving how the injury was sustained or why the parent should not be held legally accountable for the injury.<sup>72</sup> When a petition alleges no direct evidence of abuse, but rather that the nature of the injury is such that it must have been the result of abuse, parents and attorneys are placed in a difficult position.

The family defender office assigned to represent Ms. Green handles many of these cases each year and has become expert both in cross-examining medical experts called by the agency and at engaging and communicating with knowledgeable physicians able to provide their expert medical opinion on whether an injury is more likely to be the consequence of abuse or an accident. As soon as this case was assigned to Ms. Green's counsel, her team of attorneys and social work professionals began to put in place a strategy to try to have Sophia returned to her care as soon as possible.

Because Ms. Green could not say with certainty what caused the skull fracture, the defense team relied on an expert who analyzed the X-rays and determined that they were fully consistent with an accidental fall, thus providing the needed evidence that Sophia's injury was not necessarily the result of abuse. Ms. Green's attorneys used this knowledge to start planning their settlement and trial strategy.<sup>73</sup>

Simultaneously, Ms. Green's attorneys and the social work staff worked closely together to help Ms. Green navigate the agency's service and

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71. See, e.g., *In re Philip M.*, 624 N.E.2d 168 (N.Y. 1993). See also N.Y. FAM. CT. ACT § 1046(a)(ii) (McKinney 2020) (“[P]roof of injuries sustained by a child or of the condition of a child of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or other person responsible for the care of such child shall be prima facie evidence of child abuse or neglect, as the case may be, of the parent or other person legally responsible.”).

72. See *In re Philip M.*, 624 N.E.2d at 172.

73. For an excellent recent article describing the sophisticated family defense practice The Bronx Defenders has established when representing parents charged with child abuse based on unexplained serious injuries sustained by children, see Jessica Horan-Block & Elizabeth Tuttle Newman, *Accidents Happen: Exposing Fallacies in Child Protection Abuse Cases and Reuniting Families Through Aggressive Litigation*, 22 CUNY L. REV. 382 (2019) [hereinafter *Accidents Happen*].

visitation policies. Even though Sophia's injury was an accident, court calendars are so backed up that it takes many months from the date of a filing to get to a trial on the facts. Generally, two of the most important factors in securing the return of a child to parental custody are participation in agency-recommended services and favorable foster care agency reports about parent visits with the child.

Based on the allegations alone, the agency believed that Ms. Green needed to complete both anger management and a parenting class to secure the return of her daughter. The social workers on Ms. Green's defense team tapped into their knowledge of local community resources and helped Ms. Green find accessible services that would fit into her busy school and work schedule. Within nine months, Ms. Green had completed both the anger management and parenting class, all while working full time and finishing her GED.

In addition, the social work staff helped Ms. Green coordinate and expand visitation. Generally, family court judges look most favorably upon parents who attend visits frequently and are able to work with the foster care agency to gradually increase the independence of visits from those supervised at the foster care agency to unsupervised overnight visits in the home of the parent. Unfortunately, the foster care worker assigned to Ms. Green's case proved to be very difficult for Ms. Green to work with. The parent advocate from the defense team working with Ms. Green's case provided an invaluable role in buffering the relationship with the caseworker, acting as a bridge and facilitating communication between the two.

When the case was first filed in court, the judge only permitted Ms. Green twice-weekly supervised visits at the foster care agency—a sterile environment un conducive to an engaging opportunity for parents and children to maintain ties. In response to persistent advocacy, the agency agreed to permit the visits to take place in a more hospitable environment so long as the visits were supervised by Ms. Green's mother. But the team was unable to secure the agency's support for unsupervised visits. After waiting two additional months, the team filed a motion for enhanced, unsupervised visits, arguing that the agency's refusal to grant unsupervised visits was arbitrary and damaging to the long-term purpose of child protection.

Unfortunately, a complication temporarily derailed the effort just when the team was hopeful for a satisfactory resolution of the visitation motion and the underlying petition itself. Sophia sustained a new facial injury after tripping on a door frame when attending a birthday party at Ms. Green's sister's home while under Ms. Green's supervision. Even though Ms. Green had completed all required services and her visitation rights

had been substantially expanded, the agency was now arguing that this new injury proved that Ms. Green lacked the capacity to raise her child safely.

To counter this concern, the team asked that the court order an additional service calculated to provide the best opportunity to demonstrate that Sophia should be in Ms. Green's care. It requested that Ms. Green participate in dyadic therapy with Sophia, in which a licensed therapist participates in visits between parents and children to develop a healthy attached relationship. The goal was to secure evidence from an independent, well-respected therapist that Ms. Green possessed the temperament and capability of raising her child safely. Once the judge could be persuaded of this, the prospects of significantly increasing the amount of time Ms. Green could spend with her child were greatly advanced. And once the amount of visits was increased, the next step eventually would be returning Sophia to Ms. Green's custody.

The strategy worked. Over the course of five months, Ms. Green fully engaged in therapy and her therapist wrote enthusiastic letters of support that her defense team was able to present in court. Once these favorable reports were introduced, the team focused on settling the case instead of undergoing a highly contested trial focused on whether the original injury was sustained as a result of an accident. The agency agreed to settle the case and allow Sophia to be returned to her care if Ms. Green accepted responsibility for the original injury sustained by her daughter (as an act of neglect instead of abuse) with a plan to end entirely supervision of the case in six months if nothing untoward happened during that time. At the end of the six months, the case was dismissed.

### ***C. A Case Involving Late-Stage Pregnancy***

Among the most unsettling aspects of child protection intervention in New York City is the practice of the local child protection agency removing newborns from their mothers' custody at the hospital. This sometimes happens when the mother has no prior involvement with the child welfare system but behaves at the hospital in a manner that leads hospital personnel to call in a report of suspected child abuse. In these cases, the agency has never met the mother and is brought in to begin a fresh investigation. But often the agency seeks to remove newborns from the hospital in a case in which the agency has an ongoing involvement with the mother. The ongoing relationship may mean the mother became pregnant during the pendency of an ongoing court case (a frequent occurrence). Other times, the agency has been involved with the person in other ways, for example,

when a young woman in foster care becomes pregnant. In most of these cases, the mother is already represented by a lawyer.

Despite a formal agency policy known as “Child Safety Alert 14,”<sup>74</sup> which called for the agency to conduct a meeting prior to the birth in every case,<sup>75</sup> “agencies routinely fail to hold pre-birth planning conferences with pregnant women unless a client or her legal team advocates for or requests the court to order its convening.”<sup>76</sup> Even when such conferences do take place, experienced practitioners complain that “the discussion and recommendation from the pre-birth conference is, in reality, largely irrelevant to whether the baby will be taken after delivery.”<sup>77</sup> Instead, the really important meeting takes place at the hospital, within hours of the baby’s birth. For most parents, this conference, occurring at one of the most emotionally laden moments of their lives, and which will fatefully determine whether they will be allowed to bring their child home with them from the hospital, is something they endure alone without representation or support. This may contribute to unwarranted requests by the agency for the hospital to place a “social hold” on the baby, preventing the mother from taking the baby home.<sup>78</sup> This practice is opposed by the family defenders in New York as causing inappropriate disruption of parent–infant bonding and imposing unnecessary stress and anxiety on parents and families at a precious moment in their lives, often resulting in the needless and wrongful separation of children from their families.<sup>79</sup>

One of the family defender offices responded to this practice by creating a special unit assigned to handle cases of this kind.<sup>80</sup> The special unit is

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74. John B. Mattingly, *Safety Planning for Newborns or Newly Discovered Children Whose Siblings Are in Foster Care: Child Safety Alert #14 (Revision)*, N.Y.C. ADMIN. FOR CHILD.’S SERVS. (June 5, 2008), <https://perma.cc/L2CZ-Z64X>.

75. *Id.* at 1.

76. Emma S. Ketteringham et al., *Healthy Mothers, Healthy Babies: A Reproductive Justice Response to the “Womb-to-Foster-Care Pipeline”*, 20 CUNY L. REV. 77, 105 (2016).

77. *Id.*

78. N.Y.C. COMM’N ON HUM. RTS., YOUR RIGHTS WHILE PREGNANT, BREASTFEEDING, OR CAREGIVING: A REPORT ON THE 2019 COMMISSION PUBLIC HEARING ON PREGNANCY AND CAREGIVER DISCRIMINATION 14 (2019), [https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy\\_Report.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_Report.pdf). “‘Social hold’ is a colloquial term used to describe the practice of a hospital separating new parents from their child immediately following birth while a report to the State Central Register of Child Abuse and Maltreatment or an ACS investigation is pending. *See Paredes v. City of New York*, No. 40592/88, 1989 WL 1715714 (N.Y. Sup. Ct. Apr. 19, 1989). Social holds may result when a safety planning conference does not happen until after birth.” *Id.* at 23 n.179.

79. The practice was recently the focus of a critical report issued by the New York City Commission on Human Rights. *See id.* at 14.

80. Each of the four family defender offices in New York City has created specialized projects of one sort or another.

designed to better represent pregnant mothers who become enmeshed with the child welfare system. It is used whenever the office is representing a mother who becomes pregnant during the course of the case, whether she already is court-involved or not. The office created a community intake program, allowing residents in the community to secure legal representation before they have been charged in court with neglect and before they are legally entitled to court-assigned counsel.

The unit is staffed by trained social workers with deep experience negotiating the complexities of child welfare investigations during the time a woman is pregnant and immediately after she gives birth. By planning carefully with the mother during the pregnancy and preparing for the child to come home with her, the team ensures that living arrangements are set and baby paraphernalia (cribs, diapers, food) are at the ready. The unit's signal distinction is making sure that someone from the defense team is present at the hospital when the baby is born and is available to participate in all meetings the agency will arrange to discuss the plan.

That is what it prepared for when it represented Ms. Anderson. Ms. Anderson grew up in foster care, moving through over 20 foster homes as a child. Several years earlier, she gave birth when she was still in foster care. The father abused her after the baby's birth and the agency brought a case against Ms. Anderson for failing to protect her child. Her child was placed in foster care. After three years, the agency successfully prosecuted a termination of parental rights case against her. The final order terminating her parental rights was entered a mere six weeks before Ms. Anderson, now in the late stages of her pregnancy, met with social workers at the unit.

Recognizing that as soon as the baby was born, the agency would conduct a child safety conference at which it would make fateful decisions involving the family, the new team immediately started planning with Ms. Anderson. The team's social workers worked with Ms. Anderson to identify what she needed to support her child and advised her on what the agency and family court judge would want to see. Through these discussions, they connected her to a social services organization in the community. Ms. Anderson began therapy that was designed to address her history of physical and sexual abuse in foster care and her previous relationship, helping her to understand how those experiences had shaped her adult life and her approach to parenting. They also prepared for the birth of the baby, finding a trauma-trained doula and helping Ms. Anderson to set up her home with all the essentials for a baby.

After the baby was born, the agency convened the anticipated child safety conference. Without Ms. Anderson having the team working with her, she would be expected to attend this conference alone with agency

caseworkers and supervisors. Although the agency does not permit lawyers to attend these conferences, it does allow parents to bring anyone else to be present. At her conference, Ms. Anderson was accompanied by a parent advocate who had lived the child welfare experience and a social worker from the defender office who carefully laid out the details of the efforts Ms. Anderson had undertaken in recent weeks. Although impressed by all the work Ms. Anderson and her team had begun, the agency nonetheless was unwilling to allow Ms. Anderson to go home with her baby. Because Ms. Anderson's parental rights to her older child had only recently been terminated, the agency took the position that it was premature to allow her to take custody of her newborn child. Instead, the agency staff members told Ms. Anderson and her team that they would not allow Ms. Anderson to leave the hospital with her baby and to prepare to go to court the next day when they would be filing a petition alleging neglect based on the allegations in the case of Ms. Anderson's previous child.

Undeterred by failing to achieve success at the conference, the defense team looked toward the first court appearance as a new opportunity to argue for the newborn to remain in Ms. Anderson's custody as well as the first opportunity to leave the judge with a positive impression of the mother. At this appearance, Ms. Anderson's lawyer presented the arguments supporting the application that the baby be allowed to remain in Ms. Anderson's care, highlighting all the work she had done and providing the court with stacks of supporting documentation. Similar to the agency's response at the pre-court conference, Ms. Anderson's advocates were unable to persuade the judge to order the baby's return to Ms. Anderson. Instead, the judge told Ms. Anderson that it would be in her interest for her to agree to undergo a mental health evaluation and to cooperate with the agency over the coming weeks.

Accepting these conditions, Ms. Anderson's lawyer requested that the court hold a status conference for the case within the following month to be convened by the judge. These conferences are expected to take place in front of the judge's court attorney, rather than the judge, and are commonly used to provide a forum to resolve issues and move toward settlement. However, the defense team knew that having this conference in front of the judge provided another advocacy opportunity to build on the judge's favorable impression of Ms. Anderson. The plan was to update the judge on Ms. Anderson's progress and to request that the court schedule a formal hearing to determine if it still was necessary to keep the baby in foster care. The team's strategy was to have two opportunities to present the judge with positive impressions of the mother even before conducting the formal hearing seeking the baby's return to her custody.



The strategy worked even better than expected. In the weeks leading up to the status conference, Ms. Anderson and the team worked to ensure she was able to attend all visits with her daughter, that she completed the mental health evaluation the judge requested, and that her service providers were serving her well. The team's social workers attended many visits with Ms. Anderson and her daughter to ensure a member of the team was there to witness the successful interactions for reports back to the judge. All of this was reported to the judge at the status conference. After hearing these positive developments, the judge set a hearing to be held in one month, signaling that if things continued to go well, the judge would likely return the child then.

However, Ms. Anderson progressed so well that the hearing never needed to be conducted. On the morning the hearing was to be held, the agency attorney agreed that there no longer was a risk to returning the baby to her mother. The parties agreed to a settlement, where Ms. Anderson's daughter would be returned to her care immediately. The defense team not only was able to achieve the return of Ms. Anderson's daughter to her custody, it resolved the entire case, eliminating further need for court appearances. In exchange for Ms. Anderson consenting to a finding that she neglected her child, the parties agreed to what is known in New York as an adjournment in contemplation of dismissal.<sup>81</sup> The parties agreed to a settlement order that ensured that Ms. Anderson would have custody of her daughter and be subject to supervision for nine months on the understanding that the finding of neglect would be vacated and the petition dismissed in nine months unless the agency could show that Ms. Anderson placed her daughter at risk in the interim. At the end of the nine-month period, the case was dismissed. Altogether, Ms. Anderson was separated from her baby for less than nine weeks.

### ***D. A Case Involving “Medical Neglect”***

“Medical neglect” is a common charge brought against parents in child welfare cases.<sup>82</sup> Depending on the severity of the claimed neglect, the local child welfare agency may be seeking to place the child in foster

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81. See N.Y. FAM. CT. ACT § 1039 (McKinney 2020).

82. Under New York law, the definition of “[n]eglected child” includes “a child less than eighteen years of age (i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care (A) in supplying the child with adequate . . . medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so . . .” *Id.* § 1012(f).

care to protect the child from the parent's failure to provide the child with adequate treatment or, less drastically, to secure court authorization to require that a child have a medical procedure it believes is necessary but that the parent refuses to allow. American law protects a parent's constitutional rights to make critical decisions concerning a child's upbringing, including decisions involving medical care for their children.<sup>83</sup> But in my experience, it frequently happens that poor parents are deprived of the same rights accorded to wealthy parents and are charged in court with failing to provide a specific kind of medical care for their child even when the parent is not entirely ignoring his or her child's health needs.

One such case involved the representation by one of the family defender offices. In this case, the office was assigned to represent Carlos Sanchez, after a petition was filed by the local child welfare agency accusing him of neglecting his son by failing to consent to what the agency asserted was "necessary" surgery. Even when the outcome of cases like this do not involve termination of parental rights or placement for an extended period in foster care, these cases should be viewed as an extremely important example of a clash between the right of parents to make the important decisions regarding their children's upbringing and the state's independent power to make decisions for children over a parent's objection. Mr. Sanchez was charged with medical neglect after the agency learned that he refused to consent to surgery to fix his son's hip disorder. His son, Eduardo, suffers from a genetic hip disorder and, as a consequence, he is highly prone to injury. In the year before the petition was filed, Eduardo sustained an injury that required medical attention. Mr. Sanchez brought Eduardo to a public hospital for medical attention. After consulting with an orthopedic surgeon at the hospital, Mr. Sanchez opted for a nonsurgical option to be secured in Mexico. Mr. Sanchez took his son to Mexico and completed the treatment. They then returned to their permanent residence in New York. Less than a year later, Eduardo sustained another injury in his hip. Mr. Sanchez again brought his son to the hospital and, again, Mr. Sanchez informed the treating physician that, rather than consenting to surgery, he intended to take Eduardo back to Mexico for more nonsurgical treatment. When Mr. Sanchez told the surgeon that he would not consent to the recommended surgery, the surgeon made a call to the New York Statewide Central Register of Child Abuse and Maltreatment, which

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83. See *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Wisconsin v. Yoder*, 406 U.S. 205 (1972). See also *In re Hofbauer*, 393 N.E.2d 1009 (N.Y.1979).

resulted in an investigation being commenced by the local child protection agency.<sup>84</sup>

The agency sent an investigating caseworker to meet with Eduardo's teachers at school. The investigator also met with Eduardo's primary care physician, but not with the orthopedic surgeon. The caseworker, her supervisor, and the investigating team concluded that Eduardo required surgical treatment and his father's failure to consent to it constituted medical neglect. The agency then filed a neglect petition in family court charging Mr. Sanchez with failing to provide his son with medically necessary treatment and seeking an order that the agency be granted permission to consent to the required surgery.

At this point, the court appointed one of the family defender offices to represent Mr. Sanchez. When Mr. Sanchez met with his lawyers and social worker, he provided the fuller picture. After the second injury, he explained, he brought Eduardo back to the same surgeon with whom he met the year before. He explained that even though the surgeon recommended that Eduardo undergo surgery to repair the hip, the surgeon also acknowledged the risks associated with the surgery. Mr. Sanchez further explained that he did not rule out giving his consent to the surgery, only that he wanted one more time to see if it could be avoided by securing alternative treatment.

The defense team then went into action. It set up a meeting with the surgeon and invited the child protection agency to attend so that it could hear the more complete picture. Despite agreeing to attend the meeting, however, the agency caseworker never came to the meeting. The social worker from the defense team examined the extensive x-rays of Eduardo's hip with Mr. Sanchez and the surgeon. The social worker, fluent in English and Spanish, also served as a translator for Mr. Sanchez whose primary language is Spanish and whose command of English is limited. The social worker helped facilitate a more complete understanding between Mr. Sanchez and the hospital's medical team. After the social worker advocated for Mr. Sanchez with the medical team at the hospital, and after thoroughly going through the options available, the medical team better understood why Mr. Sanchez preferred to choose the less-invasive nonoperative treatment one more time before performing an invasive surgical procedure that does not carry with it any guarantee of ameliorating the hip condition.

When the meeting ended, the surgeon continued to recommend surgery, but he now acknowledged that there are many children with this hip condition who can participate in sports, live happily, and never receive

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84. N.Y. SOC. SERV. LAW § 424 (McKinney 2020).

surgery. When the surgeon understood that Mr. Sanchez was willing to consent to the surgery if the next round of nonsurgical treatment in Mexico did not prove helpful, the surgeon concluded that Mr. Sanchez's choice was perfectly reasonable.

Because the agency caseworker failed to attend this medical conference, however, the agency continued to insist in court that the surgery was required and assert that the surgeon considered Mr. Sanchez's refusal to consent to the surgery as placing Eduardo at serious risk of harm. In an effort to settle the case promptly, the defense team requested a court conference where they explained to the agency attorney and caseworker, as well as Eduardo's court-appointed lawyer, what transpired since the petition was filed. The agency was unwilling to accept the defense team's claims without doing its own investigation. As a result, a second meeting was scheduled with the surgeon, Mr. Sanchez's defense team, and the agency. By now, two additional months had passed, and the surgeon thought it wisest to order a new series of x-rays before making any decision that day. When the doctor requested more x-rays, the caseworker explained that she could not remain for the conference after the tests came back. Before she left, the defense team's social worker called the caseworker's supervisor requesting that she be permitted to remain in the conference because the x-ray results were due in another half hour. The supervisor denied the request, approved the caseworker's leaving the conference, and explained that the agency had all the information it needed.

When the new tests were made available to the surgeon later that day, he continued to support Mr. Sanchez's plan for treating his son. Appreciating the likelihood that the agency's failure to hear this information in person would, at minimum, severely delay a resolution of the case, the defense team's social worker requested that the surgeon write a letter to the court explaining that, although he recommended that Eduardo have the surgery, the surgery was not medically necessary and Mr. Sanchez's preference to give nonsurgical treatment one more try was an appropriate exercise of parental discretion. At the next court date, the defense team presented the letter to the agency and the court. Mr. Sanchez was permitted to take his son to Mexico for the treatment he preferred.

This case reveals the amount of time and attention the holistic offices give to their clients and reveals what is needed to serve parents well when they become enmeshed in the child welfare system. Mr. Sanchez needed a champion for his cause, one who would persuade the surgeon that he was making a reasonable choice that parents have the lawful authority to make. That was the critical step that led to the successful resolution of the case. But it simply could not have happened without an interdisciplinary

team assigned to the case. If Mr. Sanchez's lawyer had been a very good solo practitioner from the court-assigned panel, he would have advised Mr. Sanchez to get the surgeon to write a letter saying that Mr. Sanchez's preference to take his son to Mexico for another try at nonsurgical treatment was reasonable.

The problem, of course, is that the surgeon would not have written that letter without the very effective advocacy Mr. Sanchez's team brought to the meeting with him. This is among the distinguishing characteristics of this kind of daily defense advocacy these offices employ. Without the surgeon's letter, the case almost certainly would have ended with the court ordering the surgery in a legal proceeding that would have lingered for months. The defense team was able to dispose of it in less than three months. Moreover, the amount of time the lawyer put on the case was a minor fraction of the time and attention the social worker gave the case. The team's successful representation of Mr. Sanchez began with a careful, nuanced interview with him allowing the social worker, who was fluent in Mr. Sanchez's native language, to grasp that he never was unalterably opposed to the surgery but merely wanted one more opportunity to see if it were preventable.

A case like this would not even show up in the results found in the quantitative study, which focused on the length of time children remain in foster care and other outcomes of cases. This case, however, reveals how meaningful efforts by the parent's defender team to understand the family and the child's medical condition changed the case's course, without the need to litigate, to call witnesses, or to rely on the court to do anything more than enter an order that all parties ultimately preferred, once the full details of the case were exposed. In addition, by being such a careful listener and advocate, the defender team also ensured that Mr. Sanchez felt supported during an especially challenging time in his life when he was forced to divert his attention from taking care of his son to defending his right to remain his son's parent. Keeping families together requires striving to establish understanding and ensuring that the parent's voice is heard through support and advocacy.

## **V. The Importance of Proactivity, Out-of-Court Work, and Paying Careful Attention to the Needs of Clients**

The case examples described in the previous section were provided to give the reader some sense of how the defender offices are able to achieve dramatically better results for their clients as compared with the panel members assigned to represent parents. In every example, the key to this

success is the extraordinary amount of out-of-court time spent on each case and the proactivity engaged in by the defense team.<sup>85</sup>

The critical characteristics of each of the cases described in the previous section concern the defender team's proactive planning, anticipating next steps, and developing a plan for success calculated to persuade either the agency caseworkers investigating the case or the court. None of this work is possible when parents are assigned panel attorneys who work as solo practitioners on their cases. As the qualitative study revealed, solo practitioners who were interviewed "explained that they do not work with their clients out of court and, if matters involving their service plan ever arise, they will speak with the ACS attorney to look into the matter."<sup>86</sup> When one solo practitioner was asked, "'is there any other type of out of court support you provide to your clients, like talking to their landlords or helping them maintain childcare,' the simple answer was 'No, to be honest, no.'"<sup>87</sup>

Two people who were the subject of child welfare proceedings in the New York City courts and were represented by several different panel attorneys over the course of several years testified before the New York State Commission on Parental Representation in 2018. One parent told the Commission she attended between twelve and fifteen conferences over a three-year period, and in every instance, she attended them alone.<sup>88</sup> The second parent testified that she attended between twelve and eighteen such conferences over a longer period of time.<sup>89</sup> She, too, was never accompanied by anyone to a conference.<sup>90</sup> By way of comparison, the social work director at one of the family defender offices testified at the same hearing that her office has a team of nineteen parent advocates and

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85. A detailed description of strategic uses of court appearances, including the opposition of out-of-court removals; the filing of motions for discovery, for visitation, and for early release from foster care; and the conducting of contested evidentiary hearings, is provided in *Accidents Happen*, *supra* note 73, at 406–24. There is no question that the in-court advocacy engaged in by the family defender offices is of a much higher order than that practiced by the panel lawyers, as the qualitative study attests. See *Understanding the Effects of an Interdisciplinary Approach*, *supra* note 4, at 5–6. To provide even a sense of the breadth of this work, the Brooklyn Defender Services Family Defense Practice litigates more than forty emergency hearings each month (or about 500 a year) to keep children home or have them returned from foster care sooner than the agency is prepared to allow. Schreibersdorf & Shapiro written testimony, *supra* note 24, at 5.

86. *Understanding the Effects of an Interdisciplinary Approach*, *supra* note 4, at 7.

87. *Id.*

88. *N.Y. Unified Ct. Sys. Comm'n on Parental Legal Representation Public Hearings* 38 (Sept. 27, 2018), [http://nycourts.gov/ip/Parental-Legal-Rep/PDFs/NYCPublicHearing9-27-18\\_F.pdf](http://nycourts.gov/ip/Parental-Legal-Rep/PDFs/NYCPublicHearing9-27-18_F.pdf) (oral testimony of Jeanette Vega, Training Dir., RISE).

89. *Id.* at 17, 38–39 (oral testimony of Angeline Montauban, parent).

90. *Id.* at 39.

social workers who attended nearly 1,000 conferences with parents in fiscal year 2018.<sup>91</sup>

The lack of out-of-court work that characterizes panel attorney legal representation in New York City goes well beyond leaving parents to fend for themselves in emotionally challenging meetings such as family team conferences and case planning conferences. It also means that parents represented by panel attorneys almost never are able to benefit from creating pushback by their legal team to reshape a proposed case plan to better address the particular needs of each client.

If the study discussions in the previous section show anything, it is that being at the table when the agency fashions the case plan is a critical stage in the proceeding with profound long-term implications for all that follows. An ill-advised case plan not only wastes money; it wastes the most precious commodity in the field: time. Being involved at the earliest stages of a case in designing a case plan, or in accurately assessing the needs (if any) of a parent, is a critical step in minimizing the amount of time children need to spend in foster care because the most important factor courts consider when deciding whether to return children from foster care to their family is whether the circumstances that led to the placement have sufficiently changed. This, in turn, most commonly means focusing on how parents have changed since the case began. What insights have they gained? What services have they completed? How, if at all, have they addressed the concerns that led to the initial placement? When parents' lawyers are entirely uninvolved in shaping these plans, the fate of children and families is left to the skill and ability of the agency alone to identify correctly the critical needs of the family.

The family defender offices in New York City do not settle for inadequate plans, nor do they encourage their clients to engage in services that are unlikely to ameliorate the barriers to regaining the custody of their children. In this sense, family defenders make child welfare work better. And by so doing, these defenders improve child welfare practice for everyone: the agencies, the court, and, of course, the families who are brought into the system.

The cases described in the previous section go well beyond demonstrating the importance of helping shape the services parents will be required to complete as a condition to regaining the custody of their children. They also reveal the critical importance of addressing the needs of clients concerning matters beyond the child welfare system itself.

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91. *Id.* at 39–40 (oral testimony of Caitlin Becker, MSW, Managing Dire., Soc. Work Prac., The Bronx Defenders).

For better or for worse, preventing a parent from becoming homeless is not within the portfolio of the agency caseworker (even if it should be). Similarly, preventing a parent from being removed from the country for an immigration-related reason is also beyond what agency caseworkers do.<sup>92</sup> But real-life events such as these must be given the highest possible priority if parents are to achieve their objective of regaining the custody of their children from foster care.

Above all else, what characterizes the differences between the family defender offices and their solo practitioner counterparts in New York City is the purposeful assembly of a holistic team designed to work closely with clients throughout the proceedings. The offices, unlike the panel lawyers, do not think solely in terms of when is the case next in court. For most panel lawyers, if a matter is continued on the court calendar for six weeks, the lawyer is able to put the case in a folder and reopen it one or two days before the next court date. Even when these lawyers are skilled courtroom advocates, their advocacy is too frequently hamstrung by antecedent deficits engaged in by the agency when, for example, it proposed and implemented an inadequate case plan. Although the courtroom remains an important site for excellent representation of parents in child welfare cases, no less important legal work needs to occur elsewhere. The family defender offices organize themselves around the real-world needs of their clients and continue to work closely with them even when the next court appearance is not scheduled in the immediate future.

## Conclusion

Family defense has been transformed in New York City. By 2014, five family defender offices had contracts to represent parents.<sup>93</sup> In some parts of New York City, family defender offices handle the vast majority of new

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92. All of the family defender offices in New York City either have special units to represent parents in housing-related matters, in immigration proceedings, and/or in criminal proceedings, or have made alliances with legal offices that do that work. Approximately 20 percent of the Brooklyn Defender Services' Family Defense Practice clients are immigrants, and many do not speak English as their first language. The office's social work team, along with the Brooklyn Defender Services' immigration practitioners, "have developed close relationships with community-based programs serving New York's immigrant communities and [are] able to connect clients to culturally competent service providers and access to services in their native language." Schreibersdorf & Shapiro written testimony, *supra* note 24, at 9.

93. *See supra* note 18. Neighborhood Defender Services of Harlem shares cases in New York County with the Center for Family Representation, and the Center for Family Representation has a second contract to provide parental representation in Queens.



cases filed. As the field continues to improve, all parents should be given lawyers working in an interdisciplinary practice.

The prior quantitative and qualitative studies focused exclusively on outcomes of cases and on the views of professionals who see the work of the family defenders in family court. But, as the examples in this Article show, the offices undertake significant out-of-court work that dramatically impacts the child welfare practice in New York City. As impressive as the results of the quantitative findings are in showing a significant deduction of unnecessary days children spend in foster care in New York City, this Article strongly suggests that the defender offices have a far greater impact on the reduction of foster care.<sup>94</sup>

Missing from the quantitative study are the number of times out-of-court advocacy persuades the local child welfare agency not to file a court case in the first place. When that happens, the impact of the defender offices is invisible. No case is filed; no court time is taken up; no court personnel are assigned to the matter. Add to those situations the countless cases where, even though the out-of-court advocacy failed to dissuade the agency from filing a petition, the agency was persuaded not to seek a removal of the child. In those situations, there is no way to give credit to the kind of legal representation the parent was given when comparing outcomes of cases between those handled by panel lawyers and multidisciplinary offices. But the offices nonetheless prevented foster care entirely because of out-of-court advocacy.

In countless cases over the past decade in New York City, pregnant parents have had the benefit of representation by one of the family defender offices before any case was brought against them. Even when the defenders were unsuccessful in preventing a case from being filed in court, the defender office was already familiar with the facts of the case

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94. In testimony presented to the New York State Commission on Parental Representation, Bronx Defenders presented fiscal year 2018 data concerning the outcomes for 381 parents the office advised during their ACS investigations:

Of those parents, 164 (43%) were never charged with abuse or neglect in the Family Court. For another 82 (22%) parents, the investigations are ongoing but to date ACS has not filed a case alleging neglect or abuse. Of the 135 (35%) cases filed in Family Court, 61 families remained together throughout the investigation and subsequent court filing, the children never removed from their homes. In 41 cases, the children were placed with one of their parents, and in 17 cases children were placed with relatives of their parents' choosing. In only 16 of the 381 cases—*four percent*—were children placed in foster care with strangers.

Ketteringham & Becker written testimony, *supra* note 26, at 8 (emphasis in original).

and had a relationship with the parent. In those cases, the parent would not have had anyone to attend the child safety conference with her at the hospital. Instead, she would have met her lawyer for the first time minutes before her first hearing, and that lawyer would have to make the argument for the return of her baby knowing only what could be learned in that short time. In contrast, the family defender office attorney who worked with the parent during the late stages of her pregnancy is well prepared to advocate on the parent's behalf from day one.

The family defender system characterized by the work performed by the New York City offices is a significant contribution to the child welfare field. Child welfare has long been in search of evidence-based programs designed to keep children safely in their own homes. Because the new offices' ethical duty is to strive to accomplish their clients' objectives, and because almost all of their clients want to keep or regain custody of their children as quickly as possible, family defender offices are in the business of trying to achieve the identical objective everyone else in the child welfare field has: keeping children safely with their families and avoiding the needless placement of children into foster care.<sup>95</sup>

The interdisciplinary approach is recognized as a best practice.<sup>96</sup> In 2019, a panel commissioned by Judge Janet DiFiore, the chief judge of the Court of Appeals in New York, recommended an expansion of interdisciplinary law offices from New York City throughout the state of New York due to their success.<sup>97</sup>

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95. Additional data from The Bronx Defenders presented in testimony to the New York State Commission on Parental Representation indicated that of the 81 children born to clients who already had children in foster at the time they gave birth to the newborn, the office was successful in ensuring that 58 (72 percent) remained at home with their mothers and 17 (20 percent) were placed with caretakers of their mothers' choosing. Only six babies (8 percent) were placed in foster care with strangers. Ketteringham & Becker written testimony, *supra* note 26, at 8–9. This figure, eight percent placed in foster care, compares with the most recent data maintained by New York State, indicating that 64 percent of newborns born to women with children already in foster care in 2015 were placed in foster care. *See id.* (citing N.Y. STATE ADMIN. FOR CHILD. SERV. OFFICE OF RESEARCH & ANALYSIS, EMERGENCY REMOVALS SUBCOMMITTEE (Sept. 16, 2015).

96. *See* CASEY FAMILY PROGRAMS, HOW DOES HIGH-QUALITY LEGAL REPRESENTATION FOR PARENTS SUPPORT BETTER OUTCOMES? 2 (updated July 2019), [https://caseyfamilypro-wpengine.netdna-ssl.com/media/SF\\_Quality-parent-representation\\_fnl.pdf](https://caseyfamilypro-wpengine.netdna-ssl.com/media/SF_Quality-parent-representation_fnl.pdf); *see also* Martin Guggenheim & Susan Jacobs, *Providing Parents Multidisciplinary Legal Representation Significantly Reduces Children's Time in Foster Care*, CHILD L. PRAC. TODAY (A.B.A., June 4, 2019), [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/january---december-2019/providing-parents-multidisciplinary-legal-representation-signifi/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/providing-parents-multidisciplinary-legal-representation-signifi/).

97. COMM'N ON PARENTAL LEGAL REPRESENTATION, INTERIM REPORT TO CHIEF JUDGE DiFiore 26–29 (2019), <http://www.nycourts.gov/ip/Parental-Legal-Rep/PDFs/InterimReport-FINAL.pdf>.

The impact created by high-level law offices devoted to representing parents in child welfare cases goes well beyond the statistics from the study. Since the family defender offices opened in 2007 in New York City, the community whose children have been wrested from poor families has had a collective voice in the form of lobbying efforts by the newly created family defender advocates. The family defender offices met regularly over the first decade of practice to strategize how to challenge unacceptable practices engaged in routinely by child welfare agencies. Instead of striving to win on a case-by-case basis in court, the defender community insisted on securing a seat at the table to discuss poor practices with the officials in charge of child welfare in New York City. Countless aspects of practice have been improved through these macro advocacy efforts, none of which had ever been undertaken twenty years ago.<sup>98</sup> To provide some perspective, without intending to give the defender community too much credit for the results, the foster care population in New York City has shrunk to an astonishing degree over the past twenty years (a trend not followed nationally). Consider this: In 2003, there were over 28,000 children in foster care in New York City; at the end of 2019, there were approximately 7,800.<sup>99</sup>

The active family defender community cannot take full credit for this dramatic shrinking of the foster care population. Every administrator of New York City's child welfare system in this century has been committed to the principle of eliminating the unnecessary placement or

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98. One such example involves what should happen when a parent is required to perform a certain service that is covered by Medicaid or other programs when the service provider will not commence the service until the funds are made available to it. This problem, known as "gap of payment for services," meant that parents were substantially delayed in beginning a service because of poverty, resulting in extending the time children remained in foster care. After family defender offices complained about the problem and lobbied for a solution, the New York City Administration for Children's Services changed its policy in 2019 in an announced All Staff Bulletin clarifying that "If the parent is eligible for coverage, or assistance that they are not receiving, such as Medicaid or private insurance, the CPS or case planner must assist the family with applying for such assistance. Until such assistance is available, the CPS or case planner must ensure that appropriate services are provided, including payment for such services." N.Y.C. ADMIN. FOR CHILD.'S SERVS., ALL STAFF BULLETIN (July 16, 2019) (on file with the author).

99. *Compare* CHILD WELFARE WATCH, TOUGH DECISIONS: DEALING WITH DOMESTIC VIOLENCE 15 (2003), <https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/54138debe4b037d2d5803f6b/1410567659179/CWW-vol9.pdf> [<https://perma.cc/P79M-8T6A>], *with* N.Y.C. ADMIN. FOR CHILD.'S SERVS., CHILDREN IN FOSTER CARE BY BOROUGH/CD OF FOSTER CARE PLACEMENT (Dec. 31, 2019), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2020/incarefostercare.pdf>. It is impossible to wholly disentangle the many interrelated factors that affect how many children are in foster care at any given time, but there is little doubt the outstanding work of the family defenders, both in the courtroom and at high-level policy meetings, has contributed to the continued shrinking of New York City's foster care population.

retention of children in foster care. But the defender community maintains meaningful pressure on the system to live up to this rhetoric. And when trouble brews and the local newspapers criticize government officials for failing to protect a child from harm (an unavoidable part of this work), the defender community actively participates in supporting the relatively low foster care population.