

# CWWW

## A MATTER OF JUDGMENT: DECIDING THE FUTURE OF FAMILY COURT IN NYC

**T**he child welfare system, like the city it serves, is an organism in constant change. Organisms grow, elements become weaker or stronger. One organ becomes weary or sick and the entire system slows.

Multiple layers of oversight and constant information feedback help top-level managers be certain nothing is failing. Thus the redundancy of a tight hierarchy in child protective services: investigators, evaluation specialists, supervisors, child protective managers.

And yet, no evaluation works so clearly as hindsight after a tragedy.

The child abuse murder of Nixzmary Brown on January 11, 2006, revealed a confluence of several frightening misjudgments—those of school staff; of ACS case investigators, supervisors and a manager; of police; of family. None of them made moves that could have

protected the girl from her alleged killer, her stepfather.

In hindsight, her death and those of Dahquay Gillians and Quachaun Browne revealed the child welfare community's failure to pay enough attention to important trends and flaws in the system, including the often weak relationship between protective field office staff and preventive services providers; the surprising 20 percent decline in referrals to intensive preventive services last summer and fall [see "Before the Crisis," page 6]; and the steep decline in court-mandated services even as the foster care system grew smaller.

In a longstanding tradition of child welfare policy and practice, a spate of intense press cover-

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age and new attention from political leaders lead to a rapid jump in the number of abuse and neglect reports and more children placed in foster care. This happened in New York again this year, though we don't know yet if the scale is comparable to past eras. We do know with certainty that the number of abuse and neglect cases in Family Court has shot up dramatically since January 11.

Nixzmary Brown's death and others that preceded and followed it resulted from failures of individual judgment. But frantic public reaction threatens to undermine the integrity of the judgments we ultimately count on to keep a check on the child welfare system: those of Family Court. The recent flood of new cases, entering an already overwhelmed and broken institution, makes it even more difficult for judges to make well-informed and timely decisions about protecting children and supporting families.

As the articles in this issue of *Child Welfare Watch* describe, the city's troubled Family Court has been in the midst of a reform process for several years, climaxing in the new Permanency Law signed by Governor George Pataki last year. The law took effect just three weeks before Nixzmary Brown's death, after which the city dramatically increased the number of cases it brought to court for both foster care placements and court-ordered supervision of families. There was little time for the courts to adapt to the demands imposed by the law. And now, as judges and lawyers work overtime and parents wait even longer to appear in court, a full-blown crisis has superceded what should have been a period of careful adjustment.

While the Permanency Law streamlines the case process and provides for better sharing of information with parents and

their attorneys, it doesn't solve the far more difficult problem of inadequate government investment in the operations of Family Court, all of which is documented in these pages.

Last year, the Administration for Children's Services (ACS) leadership set out on a formidable effort to change the culture and training of its legal division, home of the attorneys that argue abuse and neglect cases in Family Court. The agency sought to make the lawyers a more integral part of the permanency planning process, confirming that the role of its legal services division is not simply to convince judges that certain children need to be removed, but to collaborate with others to determine the best permanent solutions in each of their cases. These changes, too, could too easily be swamped by the ramped up pressures of thousands of new cases in Family Court.

Family Court and ACS are under great stress right now. The urgent need to resolve the long-term flaws of the child welfare system is easily ignored in the midst of this chaotic upsurge of cases and intense public attention. But the current crisis is the direct result of those long-term challenges.

If we are to strengthen families and improve the lives of children, we need a far stronger network of community-based preventive services programs and better methods for making sure families can and do take advantage of those services. Schools will have to become a more fundamental part of the system of identifying and referring children and parents who could use help. Child protective services will have to more routinely collaborate with preventive providers. Attorneys at ACS will have to rise to their role in planning for the future of the children and families they engage in court.

The Family Court itself has yet to be transformed. The articles in this issue of the *Watch* spell out where the court and the legal side of the child welfare system stand today, and offer many insights from participants in the field—parents, attorneys, social workers, government officials and others—about where it will have to go, as quickly as possible, in the years to come.

Ultimately, the court is responsible for having the best, most well-informed possible judgment in every case that appears within its walls. Anything less is an injustice. ♦

— ANDREW WHITE

- The number of juvenile delinquency cases in Family Court increased 17 percent citywide between 2004 and 2005, and was up 23 percent since 2003. The sharpest increases have been in Brooklyn and Queens. (See "Juvenile Arrests Inundate Courts," page 7.)
- Even before the rapid increase in cases in Family Court after Nixzmary Brown's murder, the city's 190 ACS attorneys handled between 80 and 110 cases each. (See "From Prosecution to Permanency," page 14.)
- In January 2006, ACS took 559 families to court on abuse or neglect charges, up from 206 one year earlier. (See "Bringing Order to the Court," page 9.)
- Although the number of assigned-counsel attorneys for parents has increased roughly 20 percent since 2000 and their pay has improved, the quality of their representation remains highly uneven. (See "Parent Mis-Representation," page 18.)

The Child Welfare Fund is interested in supporting projects to implement the recommendations of the *Child Welfare Watch* Advisory Board. For application guidelines, please contact:  
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The Fund for Social Change  
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# Recommendations and Solutions proposed by *Child Welfare Watch*

**N**ew York City's Family Court is an institution overwhelmed by the requirements of its mandate. In a city where one-third of families with children live in poverty, the court is no exception among many overstressed institutions that primarily serve low income New Yorkers.

*Yet the court's inability to ensure fair representation and timely decisions in cases involving the most cherished and personal aspect of our lives, the relationship between a parent and child, is scandalous nonetheless.*

*The court's problems are not new. In 1999, when the fourth issue of Child Welfare Watch focused on Family Court, the situation was even worse. The court has seen some improvements. Today, parents are more likely than they once were to have one attorney for the life of their case. The court itself provides more detailed oversight of social services provided to children and families than in the past. Professionals who work each day in the courts show a greater spirit of innovation, creativity and collaboration. And the new Permanency Law, which took effect in late December 2005, is the latest important step in a series of reforms.*

*Yet these changes are far from adequate. The people of New York deserve a fair and functional Family Court. Following is a list of recommendations from the Child Welfare Watch Advisory Board.*

## **THE STATE AND CITY MUST INVEST IN A NEW SYSTEM OF INSTITUTION-BASED REPRESENTATION FOR PARENTS.**

New York City has for far too long tolerated a severe imbalance in the delivery of legal services in child welfare cases. Although the Administration for Children's Services (ACS), the Legal Aid Society and Lawyers for Children all are given a significant annual budget which allows these agencies to represent petitioners and children in Family Court, parents have never had an institutional legal provider. This unacceptable imbalance has unfairly served vulnerable families. Parents are deprived of attorneys who have supportive resources, such as investigators, social workers, paralegals and professional development programs. What's more, policy discussions in child welfare have lacked a strong institutional voice representing parents.

We strongly believe there is a relationship between the failure to fund a strong institutional defender for parents and the long-term inadequacies in Family Court practice which we highlight in this issue of the *Watch*.

As has been true ever since indigent parents were first given the right to court-assigned counsel, the overwhelming percentage of parents today are represent-

ed by individual practitioners who make up the assigned-counsel bar, known as 18b attorneys. Many of these lawyers are skillful and experienced. But they too rarely have the time or expertise to undertake the out-of-court work essential to first-rate lawyering. This includes spending long hours developing meaningful lawyer-client relationships as well as regularly participating in all-important case planning meetings and service plan review conferences conducted by agencies while Family Court cases are pending.

The state and city need to invest in the creation of institutional providers this year. Whatever additional costs in legal services this would entail will ultimately result in an overall savings to the city as the length of time cases remain in court and children remain in foster care is reduced. Nor is there any reason to fear that the excellent members of the assigned-counsel bar who wish to remain independent contractors will be denied an opportunity to keep their positions. There will always be a need for an 18b panel, even after the creation of institutional defenders. But the panel would become the alternative legal services provider, used when institutional providers are

unable to be assigned due to conflicts of interest or other factors.

## **JUDGES AND ACS MUST ENFORCE THE NEW PERMANENCY LAW GUIDELINES FOR INFORMATION SHARING.**

The new Permanency Law provides a long-overdue structure for sharing necessary information with all parties in a foster care case—including parents and their attorneys—well in advance of court hearings. Semi-annual reviews provide up-to-date summaries by caseworkers of the services offered and provided to parents; the services and care provided to children; and an overview of the child's well-being, including his or her health and educational status. This review is to be completed every six months and delivered to the various participants in a case at least 14 days before a scheduled hearing.

If the law is properly followed, judges will be clear about their expectations and ACS will streamline administrative systems so that foster care caseworkers can apply their time as efficiently as possible on case reviews and other court responsibilities. The more time caseworkers spend in court or on maintaining case records, the less time they have to spend with children and families.

Traditionally, case summaries have been available only to city attorneys in advance of a hearing. It is incumbent on ACS and its nonprofit contract agencies (who arrange care for 97 percent of the city's foster children) to ensure that these reports are done accurately and on time and distributed as required. It is up to the judges and the other professionals in the court to hold the administration and the foster care system accountable for compliance.

At the same time, state legislators and the governor must acknowledge that these new responsibilities imposed by the Permanency Law should be supported with new funds, and appropriate them this year.

## **THE COURT MUST DEVISE A SYSTEM TO RATE THE WORK OF ASSIGNED COUNSEL.**

There must be a well-defined set of standards of practice for 18b attorneys, who

represent most parents in Family Court. In addition, a routine customer satisfaction survey should be implemented to rate their work. While many of these practitioners pay considerable attention to the quality of their work, others are neither conscientious nor skillful, and their clients suffer. Although impoverished clients have little choice over who represents them, they should at least play a significant role in the independent assessment of their counselors' abilities. At minimum, information collected systematically from clients should influence court officials when they make decisions regarding the annual recertification of 18b attorneys.

#### **THE STATE OFFICE OF COURT ADMINISTRATION SHOULD IMPLEMENT A COMPREHENSIVE QUALITY CONTROL SYSTEM FOR FAMILY COURT.**

Five years ago the city put in place a system for tracking the performance of the its foster care providers. A comparable system for the performance of preventive family support services is under development. But there is no such tool for assuring the quality of the Family Court, which is at the very center of the child welfare system.

The Office of Court Administration recently established data systems designed to track when (and if) judges conclude that "reasonable efforts" have been made to provide services to families with children in foster care. The system will also track whether or not permanency goals have been achieved, and flag families that have multiple cases before the court.

This is a start, but it is far from the kind of transparent quality assurance that would hold judges and other partners in Family Court accountable for their performance. Data systems should also track adjournments—how many, when and why do they happen? How timely are hearings and dispositions?

A reliable system for assessing the court's performance would not only allow comparison between boroughs and judges, but it would also underline the tremendous need for greater resources for all parties in Family Court.

#### **THE FAMILY COURT'S CULTURE OF DEFERRED JUSTICE MUST BE CHANGED.**

Fact-finding hearings are the equivalent of a trial in Family Court. Too often, these hearings take place a year or more after a child has been removed from home. They are routinely deferred because of other urgent activities of the court, including emergency hearings to authorize removals. Other essential case hearings are adjourned repeatedly.

In the weeks following the death of Nixzmary Brown, judges reported a near tripling of the number of emergency hearings and described their inability to complete some of the routine and essential tasks of the court—including fact-finding—in a timely way. One judge told us the court would require at least twice as many judges, and many more attorneys and support staff, in order to hold most fact-finding hearings within three months of removals. Currently, 22 judges handle all of the city's abuse and neglect cases. Even before the recent flood of cases, each of these judges handled cases involving 35 to 40 children every day.

Nonetheless, the deeply ingrained culture of deferred justice in Family Court is unacceptable and must be changed.

#### **ACS LEADERSHIP MUST NOT BE DIVERTED FROM ITS AGENDA OF TRANSFORMING THE CULTURE OF THE AGENCY'S LEGAL SERVICES DIVISION.**

The closer collaboration of ACS legal services in permanency planning is essential and overdue. So, too, is the legal division's intensified focus on resolving cases, as opposed to the processing of foster care placements and extensions of placement. Recent training initiatives, which have newly hired attorneys spending time in the field with investigators and other frontline staff, will help shape this cultural shift—and should be extended to veteran attorneys as well. The extraordinary increase in court activity since the death of Nixzmary Brown should not be allowed to divert the agency from this effort.

#### **CITY HALL MUST GREATLY STRENGTHEN COMMUNITY-BASED FAMILY SUPPORT SERVICES AND AFTERCARE FOR FAMILIES AND YOUNG ADULTS.**

In its recent coverage of horrific child

deaths due to neglect and family violence, the press has illustrated how families can go off the rails. Stepfathers, fathers and boyfriends capable of extreme violence set upon a child; mental health and substance abuse issues go untended and some families never recover.

Many commentators have interpreted these stories as emblematic of failures in our child protection system, but the failure is far more substantial. In most of the cases described in the papers, there were signs of trouble early on, but little was done. Too many young low income parents are extremely isolated and hard to identify and help. Others are unable to find support when they know they need it. Community institutions, including schools, need to be far more proactive in reaching out to families in need and attempting to link them to support services—well before crises spiral to extremes of abuse and neglect. This requires planning and personnel.

Under the guidance of government agencies (including the Department of Education) and nonprofit leaders, New York must create effective networks of community-based institutions that tie together personnel from schools, nonprofit preventive services agencies, youth organizations, child care programs, health and mental health clinics, substance abuse programs, domestic violence and child protective services, among others. Information sharing must become systematic, and practitioners must be able to rely on one another to reach out to families in need before an extreme crisis occurs, help when possible and intervene when necessary.

Furthermore, well-designed family support programs must be available to reunified families for at least a year after foster care, and to young adults leaving foster care to live on their own. And aftercare providers must have ready access to the same network of community institutions—including child protective services—for consultations and triage when necessary.

The Family Court cannot do its job properly and safely if there are not high quality support services available for families in their communities. ♦

# FAILING CHILDREN

## Nixzmary Brown's guidance counselor took too long to report she was missing. But schools need to do more than call the child abuse hotline.

Little Nixzmary Brown missed 46 days of first grade at P.S. 256 in Bedford-Stuyvesant during the spring of 2005. When she was murdered in January 2006, allegedly by her stepfather, details emerged about her absences from school that shed light on a chronic disconnection between the city's public education system and the Administration for Children's Services (ACS).

After the murder, city case reviewers quickly realized the first and best chance government officials had to help the 7-year-old passed without great notice—and without effective action—eight months earlier. Those first calls from a school guidance counselor to the state child abuse hotline, near the end of the spring term, failed to bring the response they should have, officials say.

“At the minimum, we should have linked that family up with preventive family support services,” ACS Commissioner John Mattingly told a City Council hearing in late January. Nixaliz Santiago, Nixzmary's mother, “was ill, overwhelmed, unable to get her kids to school,” he added. “You cannot unfound an educational neglect case when the child misses 46 days of school.”

But interviews with public school staff, ACS officials, community leaders, and others indicate a breakdown in the way most schools report suspected abuse and neglect.

Nixzmary Brown's case first came to ACS in mid-May, after she had already missed more than two months of school. A guidance counselor from P.S. 256 had tried to visit the girl's home twice but failed to speak with anyone and finally called in the report to the State Central Register (SCR).

After a child misses between 10 and 20 days of school, school staff must attempt to visit the child's home, according to regulations issued six years ago by the Schools Chancellor's office. If they fail to make contact or to win the cooperation of a parent, they are required to call the abuse and neglect hotline. Why the school waited more than twice as long to make this initial report is not clear.

Schools follow these regulations with tremendous inconsistency. Some call the hotline too quickly. Reports of abuse and neglect by school staff tend to be numerous but far less accurate than those made by other mandated reporters, such as social services workers, physicians and police, according to city data. In fact, fewer than one-fourth of the hotline reports made by school staff in Bedford-Stuyvesant from 2002 through 2004 were determined to be “indicated,” meaning that investigators found credible evidence for the allegation.

“I'm quite sure some schools are using this as a bullying tool,” explains Charles Wood, a parent coordinator at P.S. 11 in the

Bronx. He and others say some officials feel the threat of a call to the hotline is a legitimate way to force a parent to comply with a plan to place a child in special education or on medication. “A lot of it is the overreaction of teachers, who are mandated reporters, but in many ways they are not clear about what exactly are mandated reporter issues,” he adds.

What's more, many school staff simply are not clear on their responsibilities under the regulations. “We don't have in place at the school level the culture that should exist where the roles and responsibilities for doing things are well understood and people really know how to react,” says Wood, who adds that parent coordinators can be a valuable resource for reform.

Some schools have partnered with community organizations that provide in-house social services to identify and reach out to families in crisis, while avoiding unnecessary calls to the hotline. In Red Hook, Brooklyn, Good Shepherd Services has staff at P.S./M.S. 27 to provide counseling and other support services to families and children. And in the Highbridge section of the Bronx, the Bridge Builders project—a collaborative partnership of local social service providers, ACS and three public schools—provides social workers and educates school staff about nearby family support services.

Meredith Levine, director of training at Citizens Advice Bureau, one of Bridge Builders' nonprofit partners, says this helps the schools get help for families long before a major crisis occurs. “If a child comes in without lunch one day, does the parent need a social service provider to go in and offer them food stamps?”

In many schools, such resources are simply not available. “If they are noticing those things, it doesn't always reach the level where it mandates a call [to the SCR]. But I think a lot of time schools use that option because that's the only thing they know how to do,” says Levine. “They know that's their one way of reaching out to get services for families.”

In the turmoil following recent child deaths, editorialists and politicians have called for more aggressive use of child protective services and police. But others say the schools need to serve as a first line of defense. “Before we emphasize police and breaking down doors, we need to emphasize better partnership with the education system and better collaboration with the teachers who work with these children,” says City Councilmember Miguel Martinez of Washington Heights. “All of this talk about police should be the last thing in prevention.” ♦

—DALIZ PEREZ-CABEZAS WITH ANDREW WHITE

# BEFORE THE CRISIS

## What do we know about the state of child protection on the eve of the Nixzmary Brown tragedy?

In the hundreds of newspaper articles written about the city’s child welfare system since the death of Nixzmary Brown on January 11, many reporters noted the steep decline in the number of New York City children placed in foster care over the last six years—but few illuminated other critical long-term trends in the system. Public data from both the state’s Office of Court Administration and the city’s Administration for Children’s Services (ACS) help reveal the child welfare terrain in the months and years before the recent crisis.

Some writers argue the current ACS leadership speeded reunifications and decelerated foster care placements last year. In fact, the opposite is true: city data show the pace of reunifications has slowed significantly. For first-time entrants to foster care, the average reunification took six months in 2001, but eight months last year.

The steepest declines in city abuse and neglect filings in Family Court took place in 2003 and 2004. By comparison, the number of court actions against parents dropped only slightly during 2005. And the Bronx saw a sharp increase in new child abuse court actions against parents last year.

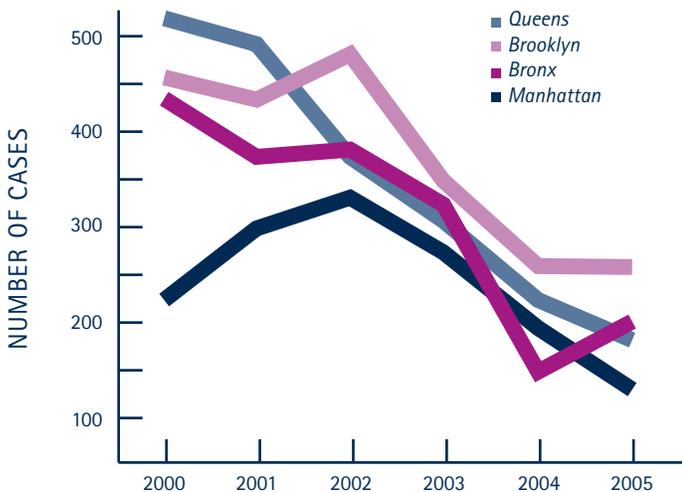
Meanwhile, Brooklyn—the borough where child protective services failed to bring an abuse case against Nixzmary’s mother or stepfather—had no notable drop in child abuse filings in

Family Court in 2005. Neglect filings, on the other hand, continued a steep downward trajectory that began during the last two years of the Giuliani administration.

There are other notable trends that probably should have sounded alarms, officials say. Between city fiscal years 2001 and 2005, the number of families receiving court-mandated, preventive social services slid by about 45 percent, from 4,371 to 2,424. The drop-off was reversed immediately after the Nixzmary Brown case came to light, when ACS Deputy Commissioner Ronald Richter announced that establishing court-ordered supervision of more families in preventive services cases had become one of the agency’s top priorities.

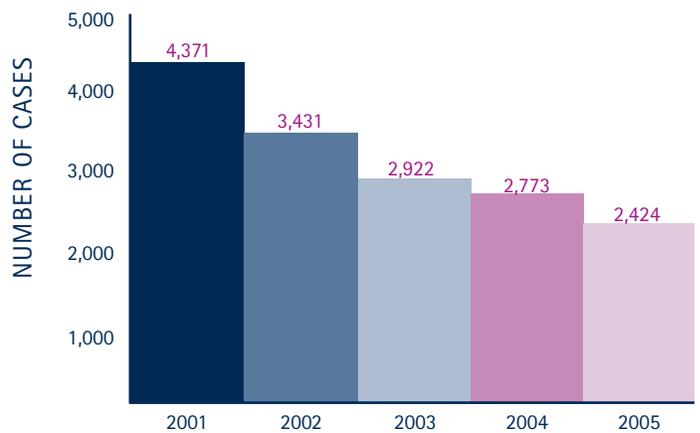
A very high percentage of confirmed child neglect cases in New York City involve a parent who is abusing drugs or alcohol and living in extreme poverty. In theory, as fewer neglect cases result in court action, more families should receive intensive preventive family support services. But in the summer and fall of 2005, the pace of referrals to prevention programs slowed. And the opening of new cases in some of the most intensive intervention programs—including the Family Rehabilitation Program, the Family Preservation Program and homemaking support services—all dropped by nearly one-fifth. ♦

### NEW CHILD ABUSE CASES OPENED IN FAMILY COURT



Source: NYS Unified Court System

### NUMBER OF CASES ASSIGNED TO ACS FOR COURT-ORDERED SUPERVISION OF PREVENTIVE SERVICES



Source: NYC ACS. Data are for city fiscal years (July to June).

# JUVENILE ARRESTS INUNDATE COURTS

Delinquency cases and juvenile arrests rose sharply in 2005, driven by robberies, assaults and incidents in the public schools.

**F**amily Court judges are dealing with a flood of young people entering their courtrooms, as a surge in new juvenile delinquency cases defies recent efforts to steer more young offenders away from the criminal justice system. This is happening even as the number of child abuse and neglect cases in New York City's Family Court has dropped to levels not seen since the 1970s—at least until the recent spate of cases following the well-publicized murder of Nixzmary Brown.

In 2005, the number of juvenile delinquency cases in Family Court was up 17 percent citywide over the previous year, and up 23 percent over 2003. Since 2000, the number of new cases has increased more than 27 percent, with the sharpest jumps in Brooklyn and Queens.

During 2005, the city's Family Court heard 6,867 new juvenile delinquency cases. In 2003, there were 5,585.

The spike is being driven by a sharp increase in the number of young people detained by the police. From January 2005 through the end of September, the NYPD had arrested 8,763 young people under age 16, a 12 percent increase over the previous year. At that date a year earlier, the total was 7,838. After declining from 1995 through 2001, juvenile arrests have increased for each of the last four years and are now rising back toward levels common in the mid-1990s.

**“WE SEE ARRESTS GOING UP A LOT,” SAYS LARRY** Busching, chief of the Family Court Division of the city's Corporation Counsel. His 83 attorneys prosecute juvenile offenders in Family Court. (The lawyers handle child support cases as well, where volume has also increased sharply in recent years.) While the cases run the gamut from graffiti to domestic fights, “we're seeing a lot of robberies and assaults,” Busching says. He points in particular to a wave of iPod and cellphone thefts perpetrated by teens on other teenagers.

Last year, more than 4,000 juvenile arrests were for the seven major felonies tracked by the NYPD—murder, rape, robbery, grand larceny, burglary, major assault and auto theft. The department says its database is currently unable to categorize and quantify the other specific crimes for which teenagers under age 16 have been arrested.

That leaves Patricia Brennan, Deputy Commissioner for Family Court Services at the Department of Probation,

guessing as to why her probation officers are seeing a surge of new delinquency cases. State law says nonviolent juvenile delinquents should go to Family Court only to obtain services and interventions they can't get through the probation intake system. It falls to Brennan's staff to determine whether a juvenile delinquency case goes to court in the first place or—with cooperation from victims or arresting officers—whether other alternatives are feasible.

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SINCE 2000, THE NUMBER OF NEW JUVENILE DELINQUENCY CASES HAS INCREASED MORE THAN 27 PERCENT, WITH THE SHARPEST JUMPS IN BROOKLYN AND QUEENS.

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She's certain only about the cellphones and iPods. Beyond that, Brennan says, “Some of it may be a result of more of a zero tolerance of school issues”—such as arrests for fights and other incidents that once would have been handled internally by school administrators as discipline issues. She also sees COMPSTAT-driven targeting of police officers in high-crime areas as a factor: “As always, when there's an increased police presence in the community, the more possibilities there are for juvenile arrests as well as adults.”

Defense lawyers agree that teenage robbery cases are booming. So are cases coming from the schools, where the NYPD supervises security. “We see school fights, incidents with school safety officers and weapons. Those are the three highest,” says Melanie Shapiro, a staff attorney with The Legal Aid Society in Queens.

Juvenile prosecutions have continued to increase following the January 2004 launch of the NYPD's “Impact Schools”

initiative, which targets the city’s highest-crime schools with special police details and extra school safety officers.

Shapiro also sees cases she says in the past would have been handled not as delinquency prosecutions but under Persons in Need of Supervision (PINS) guidelines, in which judges issue orders on behalf of parents seeking help with teenagers they feel they cannot control. Even when parents don’t want to follow through on charges against their own children, says Shapiro, prosecutors now routinely block Legal Aid lawyers’ efforts to change juvenile delinquency cases into PINS.

Other defense lawyers concur that the city’s Corporation Counsel is dogged about pursuing trials once they’re in court. Busching acknowledges that his lawyers typically wait until after they secure a conviction against a young person before seeking alternatives: “We have to make a recommendation to the court about what happens then. It could be a referral to a community-based treatment provider, or enhanced-supervision probation.”

**NONETHELESS, THE DEPARTMENT OF PROBATION**

continues to increase the number of cases it diverts into out-of-court supervision programs and away from prosecution. If a young person complies with an agreed-upon plan of action—which could include curfews, community service, restitution or other measures—and the probation department has the assent of victims and police, that case will never reach Family Court. In fiscal year 2005, the probation

department diverted 16 percent of cases, up from 10 percent in FY 2002. For the first four months of FY 2006, these adjustments are up to 20 percent. But because of the rise in arrests, the number of cases that aren’t diverted is rising, too, to 8,384 in FY 2005. (A minority of those are prosecuted in adult criminal court.)

The probation department is negotiating with the NYPD to secure a policy of default police cooperation with the diversion process except in cases where an officer specifically requests otherwise. Until now, each commanding officer has followed his own practices in dealing with arrests. At most precincts, says Kim McLaurin, the supervising attorney for Legal Aid in Queens, whether a teen goes home or goes to court depends on whether there’s a parent to pick him or her up from the station. “That’s where the foster kids suffer,” says McLaurin. “If no one picks them up, there’s no one to release them to. Those are the kids who are coming to court.”

The Administration for Children’s Services screens all detained juvenile delinquents in order to make sure those in foster care at the time of their arrest have agency representatives present at their court appearances. A Vera Institute study several years ago found that if a responsible adult is present for the initial hearing in Family Court, judges are far more likely to send a child home. Policy reformers also explored screening all juvenile delinquents upon arrest—so that foster care agencies could pick delinquents up at the police station and agree to a diversion plan if appropriate—but that effort proved impractical and was dropped. ♦

—ALYSSA KATZ

**FEWER FOSTER CHILDREN, MORE DELINQUENTS: NEW CASES IN FAMILY COURT**

	2002	2003	2004	2005
CHILD NEGLECT	7,758	6,046	4,809	4,273
CHILD ABUSE	1,595	1,265	848	786
JUVENILE DELINQUENCY	5,389	5,585	5,825	6,867
PINS	2,492	2,195	1,282	1,197
CHILD SUPPORT	21,291	23,712	28,955	28,666

Original filings only; courts also hear violations and modifications. This chart does not include several categories of Family Court cases, including adoptions, guardianship, custody, paternity and family offenses.

Source: NYS Unified Court System

# BRINGING ORDER TO THE COURT

New York has reconceived the way abuse and neglect cases move through a historically chaotic and dysfunctional Family Court. Do the reforms go far enough?

**R**ubbing his eyes, his voice fading in and out of a mutter, Judge Arnold Lim appears fatigued as the afternoon wears on in Kings County Family Court Part 16. He's on abuse and neglect intake duty this late Thursday in January, two weeks after the murder of 7-year-old Nixzmary Brown first shocked New York, and attorneys from the Administration for Children's Services are bringing a constant stream of new cases before him.

Judge Lim has two cases today the court probably wouldn't have seen a month earlier. One is a mother whose child has been missing school but is reported to be otherwise well cared for. Another mom gave birth in November to a baby who tested positive for drugs. On ACS' orders, she entered a treatment program and has tested clean ever since. "I don't know why they're bringing me in now," she remarks after the hearing. "I'm doing everything I have to do, because I really want to." She lost a child to adoption 15 years ago.

ACS lawyers request court-ordered supervision for both of the mothers—a measure that compels the women to follow judges' instructions and requires the city to make sure these services are indeed provided. But such an order stops short of putting the children into foster care.

During January and February, two powerful forces converged and changed the lives of judges, attorneys and families in New York City Family Court. The first, the implementation of the state's new Permanency Law, was expected and much planned for. The other was the sharp and substantial increase in abuse and neglect cases appearing in court as the news media focused the public's attention on the deaths of children whose families had been known to child welfare authorities. In January 2006, ACS took 559 families to court on abuse or neglect charges, up from 206 a year earlier and 250 in December 2005.

The chaotic aftermath of the Nixzmary Brown murder couldn't have come at a more complicated time—or, some say, a more fortuitous one. The new cases are flooding in on the crest of a sea change, years in the making, in how Family Court conducts business.

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## PERMANENCY AND THE LAW

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Two years ago, the U.S. Department of Health and Human Services, which provides the majority of funding for foster care,

gave New York's courts a failing grade. The agency's audit found that essential judges' orders were either sketchily detailed, issued after a one-year deadline or missing entirely. Judges also frequently failed to document that it was necessary to put children in foster care in the first place.

Spurred by the federal audit—and the prospect of severe penalties—the courts are today in the midst of a thoroughgoing reform that is changing the way cases are handled and families are served. Judges are expected to track cases much more closely, and ACS and the city's nonprofit foster care agencies have to provide the court and all stakeholders—including parents and their lawyers—with comprehensive, up-to-date reviews of each case every six months. "This court was really fatigued," says Judge Joseph Lauria, chief administrator for New York City's family courts. "Something needed to be done to revitalize it, and bring quality and accountability into proceedings."

Indeed, a second federal audit will commence this April, and if the state rates as poorly as it did in 2003, New York will lose roughly \$150 million of the \$450 million it receives each year in Title IV-E funding to pay for foster care programs and services. To avoid that catastrophe, advocates who usually oppose each other in court—including attorneys for parents, for children, and for ACS—worked with the court system, the legislature and the Pataki administration to rewrite the Family Court Act. The new Permanency Law was signed by the governor last June and went into effect December 21, 2005.

Within a matter of weeks, Judge Lim, a five-year veteran of the bench and a former ACS attorney, found himself managing a courtroom that was trying to cope with the guidelines of the new law as well as the flood of new cases.

That Thursday in January, one hearing was postponed while two caseworkers were occupied in another courtroom, and the whole afternoon got started late. At 2:30, Judge Lim had to hold a previously scheduled permanency hearing to track the progress of a 6-year-old whose mother was appealing the termination of her parental rights. But the hearing didn't quite work the way it was meant to. The attorney for ACS began by announcing he had only just received the required caseworker report on the child's status—a report that should have been delivered two weeks earlier to everyone involved. Responding to a judge's question, he referred to the report and noted the girl

was in kindergarten. “No!” the caseworker interjected. “She’s in first grade!”

At the intake hearing that followed, it was Judge Lim’s turn to flub. He gave ACS permission to remove children from a mother who had given one of them a black eye and been arrested on assault and weapons charges. After the hearing concluded, an ACS attorney whispered loudly but respectfully to the judge, “Permanency hearing?” Judge Lim winced. Under the new law, he was required to schedule the next hearing before moving on to another case—a critical technicality that had slipped his busy mind.

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## FAMILY COURT LAW, REVISITED

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Reformers have wrestled with the overwhelmed Family Court system for decades, pressing for institutional improvements including lower judicial caseloads, better parent representation and more qualified judges. Whether the structural changes imposed by the new reforms will truly improve outcomes for children and families won’t be clear for some time. But no one argues that the old system was well designed for efficiently moving cases toward a resolution—or children toward a permanent home.

In the past, ACS had to go to court once a year for each case, simply to renew its authority to keep a child in foster care. “The judge placed a child in care for a year and said, ‘Good luck to you, ma’am,’” recalls Stephanie Gendell, who lobbied for court reforms as special counsel at ACS. The old law served to limit agencies’ power to hold on to children indefinitely. In practice, though, it forced government lawyers to spend much of their time making and remaking their case against a parent rather than working toward a resolution. What’s more, these annual hearings were, until recently, the only opportunity judges had to evaluate parents’ and children’s progress and issue orders for whatever services they needed in order for the children to return home.

Judges had to rely on ACS legal briefs for information about how families were doing—even though the papers were notoriously thin and unreliable. Even in court, caseworkers couldn’t be counted on to produce timely information.

“They regurgitate the history of a case,” says Karen Simmons, attorney-in-charge for the Brooklyn office of Legal Aid’s Juvenile Rights Division. Often, she adds, they failed to discuss the issues that are most relevant at the time of the hearing. “The child’s been in care for a couple of years, and they’re still talking about the initial removal.”

Under the Permanency Law, families instead have their cases heard in a new and, court administrators hope, more effective forum: the permanency hearing. Eight months after children are placed in foster care and again every six months after that, the lawyers, caseworkers and parents in an abuse or neglect case

meet to report to the court about progress and give a judge the opportunity to make informed decisions, focused on moving children quickly out of foster care. “It not only increases judicial monitoring; it motivates all the players in the system,” says Judge Lauria.

In place of the annual legal petition, ACS must now supply a permanency hearing report that inventories efforts to plan for children’s eventual exit from foster care and reviews their progress, including updates on their education, health and visiting schedules. For parents, it tracks participation in mandated services, such as counseling, parenting classes and drug treatment. None of this was fully accounted for in the old court practices.

The new law also prevents ACS from showing up to court with an outdated report in hand, the way its lawyers frequently did with the old petitions. The report must now be in the mail 14 days before the scheduled hearing. It has to go not just to the lawyers for the children and parents, but to the parents themselves at their home addresses. Relatives who care for the children must receive them, too.

Many lawyers and judges believe requiring the court to keep a continuous watch on families will reduce the time it takes to settle cases—and children. “I think that we will see permanency being achieved for children in one direction or another more quickly, back with their families or adopted,” says Bobette Masson-Churin, acting director of child protective training for Legal Aid’s Juvenile Rights Division.

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## PREPARING FOR CHANGE

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Most children move in and out of foster care fairly quickly—the median length of stay is eight months for children who enter foster care for the first time and then return home. Yet a significant minority languish in care, bringing the mean length of stay for all foster children in care today to more than four years. These numbers have been relatively consistent for many years, even as the total number of children in foster care has declined steeply since 1999.

Whether children stay too long in foster care because of Family Court dysfunction is impossible to say. But the court does have a long history of unpredictability and chronic delay. As cases went through their cycles of annual renewal, parents often found themselves without an attorney or with a new one who was unfamiliar with their case. ACS routinely failed to file new cases before the one-year deadline and had to request a series of one-month extensions. (This was an improvement: until a few years ago it simply let such cases expire. The agency had to send kids home or ask parents to put their kids in care voluntarily. Sometimes no one even noticed a case had lapsed.) Judges constantly adjourned hearings and rescheduled them for

later dates, which proved hugely disruptive. “Usually after three adjournments, the caseworker has quit,” notes lawyer Len Lubitz, who represents parents in Brooklyn.

Today, parents have an attorney assigned to them for as long as their foster care case is in court. Scheduling glitches are being straightened out as well. Reformers invoke the words of Kathleen DeCataldo, an official of the state Office of Children and Family Services who represented her agency in the reform process: “Unless someone is hit by a bus, the hearing will go forward.”

A dress rehearsal in streamlined court choreography began three years ago in New York City as part of an experimental reform project overseen by the Permanent Judicial Commission on Justice for Children, chaired by the state’s Chief Judge Judith Kaye. Judge Lauria asked all city judges presiding over abuse and neglect cases to arrange for informal conferences in between the annual hearings, as frequently as once every couple of months. New hearings were always scheduled during the prior ones, so cases were never in limbo. Parents’ lawyers were also able for the first time to bill for their services after the initial trial was complete, allowing them to continue representing their clients.

At the conferences, a referee—employed by the court and authorized to handle certain matters on a judge’s behalf—met

with parents, attorneys and caseworkers to make sure parents and children were receiving the services they needed and parents were complying with court orders. Many practitioners found the extra meetings productive. “It’s helpful to have regular conferences because it gives responsibility to different players,” says Astraea Augsberger, a social work supervisor for Legal Aid in Brooklyn. “There are certain tasks that need to be accomplished by the next time you have a meeting.”

The experiment, reformulated and standardized, has now been made into the day-to-day practice of the court. The new semiannual hearings will take the place of periodic conferences, and, at the judge’s discretion, referees will be available to preside over conferences in between. Judge Lauria has ordered judges to preside through at least the second permanency hearing, or about 14 months into each case. After that, however, a referee may effectively take over.

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## A BURDEN TOO LARGE?

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Ultimately, Judge Lauria and other court administrators expect the new law to move children in and out of foster care more quickly, lightening the total workload on the courts.

*continued on page 13*

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## WHAT'S IN THE 'PERMANENCY LAW'

- When social service agencies seek to put a child in foster care, courts must schedule a hearing that same day.
- “Permanency hearings” are held eight months after a child enters foster care and then every six months until the case is complete.
- Social service agencies must file “permanency hearing reports” containing information on a child’s well-being, including health, education, foster homes and visits with parents. Reports must also include information on parent progress, services offered, and barriers to services, and must show the agency’s “reasonable efforts” to move children back home or into adoption.
- A single court-assigned “18b” attorney represents an indigent parent until children are back home or when appeals of terminations of parental rights are complete.
- Social service agencies must mail detailed permanency hearing reports to parents, children and parent lawyers, and related caregivers 14 days prior to each hearing.
- Parents who put children in foster care voluntarily must receive notice of their right to a court hearing and legal representation.
- Young adults 18 to 21 whose parents placed them in care voluntarily must have permanency hearings (court follow-up was previously not required).
- Services promoting independent living skills must begin when foster children are 14 years old.
- Social service agencies must assess children and families and develop service plans within 30 days of removal from home.
- Parents now have a limit of one year to challenge a “default judgment” after a judge concludes they failed to comply with orders.
- Social service agencies can ask the courts for permission to stop trying to reunify a child with his or her parent when a child is found to be abused within five years of returning home from foster care and the court determines neglect has taken place; an infant five days or younger is abandoned; or a parent swears that she or he will not accept services.
- Birth parents who want to maintain a relationship with their children after adoption now have the opportunity to set agreements with adoptive parents on the terms of future contact.

# CHILD ABUSE AND NEGLECT IN NEW YORK CITY FAMILY COURTS: HOW A CASE PROCEEDS

## NEW Permanency Law (as of December 21, 2005)

**SAME DAY AS REMOVAL:** "1022 hearing." If there isn't enough time to file an abuse or neglect petition but a child must be removed temporarily to ensure safety, a judge can grant ACS a temporary order for removal. (If a parent is not present or has no counsel, the court must hold a 1027 hearing by the following day. Otherwise, a 1022 hearing suffices to place a child in foster care.)

OR

**WITHIN ONE DAY:** If an emergency such as abandonment requires a child to be removed without a court order, the court has to hold a 1027 hearing no longer than one court day later.

OR

**WITHIN ONE DAY:** "1027 hearing." When ACS contends there is imminent risk to a child's life or health but does not seek an emergency removal, the agency will file a petition in Family Court charging a parent with child neglect. The petition requests a court order to remove the child from home. If a judge agrees, the child is removed and placed in foster care.

OR

**WITHIN THREE DAYS:** "1028 hearing." After a child has been ordered into foster care by the court, a parent may request a hearing to decide whether the child would be at risk if he or she returned home. By law, these hearings challenging the removal are available only to parents or caretakers who declined to argue their case in a 1027 hearing.

## OLD Family Court Act

**IN EMERGENCY:** "1022 hearing." If there isn't enough time to file an abuse or neglect petition but a child must be removed temporarily to ensure safety, ACS can obtain a temporary order for removal.

OR

**"AS SOON AS PRACTICABLE":** If an emergency such as an abandoned child requires a child to be removed without a court order, the court has to hold a 1027 hearing.

OR

**WITHIN ONE DAY:** "1027 hearing." When ACS contends there is imminent risk to a child's life or health but does not seek an emergency removal, the agency will file a petition in Family Court charging a parent with child neglect. The petition requests a court order to remove the child from home. If a judge agrees, the child is removed and placed in foster care.

OR

**WITHIN THREE DAYS:** "1028 hearing." After a child has been ordered into foster care by the court, a parent may request a hearing to decide whether the child would be at risk if he or she returned home. By law, these hearings challenging the removal are available only to parents or caretakers who declined to argue their case in a 1027 hearing.

*These events may take place either before or after the first "permanency hearing."*

**ADMISSION:** Parent acknowledges committing abuse or neglect.

OR

**FACT-FINDING:** A trial on whether abuse or neglect has taken place.

OR

**ADJOURNMENT IN CONTEMPLATION OF DISMISSAL:** All parties agree to drop the case provisionally and send children home provided that parents or guardians comply with conditions for a period of time, usually 6 to 12 months.

**DISPOSITION:** Judges' orders determining outcome of case. Can include placement in foster care, orders for services, release of child to parent or other measures.

- **8 MONTHS:**  
First permanency hearing. Hearing must be complete within 30 days.
- **14 MONTHS:**  
Second permanency hearing.
- **20 MONTHS (AND EVERY 6 MONTHS THEREAFTER):**  
Additional permanency hearings.

**AFTER COURT FINDS NEGLECT OR ABUSE & PLACES A CHILD IN FOSTER CARE:**  
With court permission and 10 day's notice to court and child's law guardian, ACS may return child home on "trial discharge."

**AFTER A CHILD IS IN CARE 15 OF THE PREVIOUS 22 MONTHS:**  
ACS must file a request to terminate parental rights, unless this would not be in a child's best interest or certain other circumstances apply.

- **EVERY TWO TO THREE MONTHS:**  
"Back end tracking" meetings with referee or judge to review case progress and compliance with services (NYC procedure beginning in 2002).
- **BY 12 MONTHS:**  
To keep a child in foster care, the social service agency must file a new "extension of placement" case against the parent.
- **12 MONTHS LATER (AND EVERY 12 MONTHS THEREAFTER):**  
Extension of placement.

**AFTER COURT FINDS NEGLECT OR ABUSE & PLACES A CHILD IN FOSTER CARE:**  
With court permission, ACS may return child home on "trial discharge."

**AFTER A CHILD IS IN CARE 15 OF THE PREVIOUS 22 MONTHS:**  
ACS must file a request to terminate parental rights, unless this would not be in a child's best interest or certain other circumstances apply.

INITIAL PROCEEDINGS

ANYTIME

LATER ACTIONS

But with full-fledged legal hearings two times per year on each case, the new system will at least initially require more work on the part of attorneys, judges and caseworkers.

“For us, it’s a big chunk of new paperwork,” says Mary Ellen McLaughlin, assistant executive director of Good Shepherd Services. “We’re concerned about how our staff will manage that.” ACS has not indicated what measures, if any, it will take to hold its contract agencies accountable for filing their permanency hearing reports on time, and judges and lawyers alike remain concerned that agencies will miss their deadlines.

Legal Aid attorneys see difficulties ahead as well. “It’s doubling your court time,” says Manhattan Legal Aid attorney Angela Tiffin, who has children from 118 families on her caseload. “In court, you’re presenting evidence and discussing children’s goals. There could be a disagreement. You may be calling witnesses.”

Tamara Steckler, attorney-in-charge of Legal Aid’s Juvenile Rights Division, which represents most children in Family Court, asks her attorneys to confirm the contents of all of ACS’ permanency reports. “When you walk into the court you have to know what’s been going on with your client in the last six months,” she explains. “You can’t just listen to the caseworker.” Legal Aid is asking the state for more funding to do the work. (Currently, New York State spends about \$25 million a year for children’s representation in the city, most of which goes to Legal Aid.) “There’s no way this permanency bill can be effective without an increase in funding for everyone around the table—including an increase for the judges,” says Steckler. She ventures that it would take twice the current level of funding to ensure adequate staffing all around.

Court administrators don’t deny the load will be a strain on everyone. “We’re now in the area of ‘Be careful what you wish for,’” says Judge Lauria. “The problem is getting resources to meet the needs.” Yet the state did not appropriate any additional funds to carry out the new law. In the 2005-06 budget, the legislature appropriated about \$236 million for Family Court operations statewide.

Even before the recent spike in cases, New York City’s 22 judges who handle child abuse and neglect were dealing with about 35 to 40 children’s cases a day, Lauria’s office reports.

“The need for additional resources is a problem throughout the system,” agrees Judge Lee Hand Elkins of Brooklyn’s Family Court. “You can’t just institute change without providing the infrastructure.”

Even when they have a specific court date, lawyers, caseworkers and families endure hours waiting for their hearings to begin. Most courts in New York City now schedule hearings for 9:30 a.m. or 2:30 p.m., no matter what time that morning or afternoon the hearing will ultimately take place. The problem is that Family Court attorneys frequently need to be in many courtrooms in a single day, and it’s unpredictable when all three

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## “THERE’S NO WAY THIS PERMANENCY BILL CAN BE EFFECTIVE WITHOUT AN INCREASE IN FUNDING FOR EVERYONE,” SAYS LEGAL AID’S TAMARA STECKLER.

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lawyers—for parent, child and ACS—will be available at the same time as the judge. Eight or nine people must be present at any hearing. “It’s a very hard task getting everyone together in one place at one time,” says Manhattan Judge Jody Adams. “It’s inevitable that some will be adjourned because someone is not going to be there.”

The sudden increase of new cases this winter only makes the scheduling logjam more intractable. “I don’t think any of us can assess the new legislation in the current climate,” says Ilana Gruebel, who serves as Judge Lim’s referee. She says this while waiting for a noon permanency hearing to begin. It doesn’t get started until almost 12:30 because the ACS lawyer on the case had been busy in another permanency hearing.

“Eventually, all hearings will be time-certain,” Judge Lauria promises, adding, “We’ll probably need more lawyers to do that.”

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## SHUFFLING THE DECK, OR MEANINGFUL CHANGE?

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None of this guarantees that children will more quickly reunify with their parents or be adopted out of foster care. In fact, the new law makes no provision for speedier trials in Family Court—which is where judges initially determine whether a parent has committed abuse or neglect. In Brooklyn, the Court Improvement Project recently found that cases inaugurated in 1999 took an average of 207 days before a judge ruled whether abuse or neglect had actually taken place. The timeline for one sex abuse case gives a sense of how sluggishly cases can proceed: The children went into foster care in May 2002. The trial didn’t begin until January 2003, and continued that March, June and August. When the judge finally determined the evidence didn’t support the charges, the children had been in foster care more than 15 months.

Cases take a long time to get to trial, judges say, because it’s difficult to block out an entire day for the lengthy hearing. Often, a new emergency case will come up that must be

*continued on page 22*

# FROM PROSECUTION TO PERMANENCY

City attorneys in Family Court have a new leader and a new vision. For the first time, they are at the center of New York's child welfare reform project.

Lawyers who work for the Administration for Children's Services are the closest thing to prosecutors on the front lines of child protection. Their job, traditionally, has been to prove to the court that many of the parents in Family Court are simply unfit to care for their children—and their training has long reflected that goal.

But the city's courtroom strategy has begun to change. After many years of reform in other divisions of the agency, ACS lawyers are, for the first time, the focal point of transformation as the city reconsiders the way it works with families in trouble and ensures that children are safe.

In 2004, shortly after John Mattingly became commissioner of ACS, he restructured what had been the agency's Division of Legal Services, established a new Family Court law unit and hired Ronald Richter, a longtime children's lawyer, to be its director. Together, they've begun to refocus ACS attorneys on pursuing solutions consistent with the larger goals of the child welfare system: finding safe, permanent homes for children, as quickly as possible—whether that means with parents, kin or an adoptive family.

"I don't want my lawyers to see themselves first and foremost as prosecutors," says Richter. "I want them to see themselves ensuring that children are being cared for."

In the weeks following the gruesome murders of 7-year-old Nixzmary Brown and 4-year-old Quachaun Browne, these changes have been threatened by mounting caseloads. Without warning, ACS attorneys have suddenly found themselves fielding scores of extra cases each day in Family Court—including, in the course of one week, 146 removals of children from their parents—and being asked to review hundreds of open cases to see if court-ordered supervision was necessary.

These hefty caseloads call to mind an earlier time at the agency, when the demands of the court could displace a child's best interests in the minds of agency lawyers. "We'd go into court and literally do thirty extensions [of placement] in a half-hour or an hour," says Joseph Cardieri, who started at the agency in 1990 and is now general counsel. Extensions of placement were, until December 2005, the annual renewal required by statute for every case involving a child placed in foster care. "It was about processing and moving the cases along and not really thinking all that much about what is the permanent goal for this case," he recalls.

This has at times been painfully apparent to the families involved. "They were more concerned with proving that I was

a bad parent than making sure the kids were safe," says Violet Rittenhour, 32, whose children entered foster care in 2001. "They were very degrading."

Chris Gottlieb, co-director of New York University Law School's Family Defense Clinic, remembers one case in which a judge chastised an ACS attorney for a particularly vicious cross-examination of a mother trying to win back her kids. In another, she says, "I remember feeling like the lawyer was more into the battle for the sake of the battle."

Nixzmary's death raised fears among advocates that the era of knee-jerk removals had returned, and that lawyers would once again feel pressured to err toward foster care rather than risk their jobs.

But that won't happen, Richter insists. "We've had some rough sailing lately," he says. "I can only ask people to ensure that they're making well-informed, thoughtful decisions. If you've made a thoughtful decision, there isn't going to be that backlash."

## JOINING ACS WASN'T AN EASY TRANSITION FOR

Richter, who spent most of his career on the other side of the courtroom representing children as a law guardian and then as head of the Juvenile Rights Division at The Legal Aid Society of New York. Richter still recalls his first day at ACS. "I remember there was a senior leadership meeting in the afternoon," he says. "I'd been in the commissioner's conference room before, but never as part of ACS. It was so strange to be on the inside."

His outsider status may prove an asset as he attempts to recast the role and reputation of ACS' legal staff. Over the past year, he's made several small changes likely to have a major impact.

For starters, Richter requires any lawyer assigned to a case to stay on it until it is resolved. That way, he says, they are "more invested" in moving as quickly as possible toward permanency—usually either adoption or reunification—instead of allowing children to languish in care.

The attorneys also began to shadow caseworkers to learn more about the entire child welfare system. And, under the new Permanency Law, they must now work closely with caseworkers on detailed, semiannual court reports for each case.

Observers say the transformation won't be easy. Richter is up against both a deeply ingrained culture and the limitations of a tight budget. Even after recently hiring 27 new staff, he still has

just 190 attorneys handling between 80 and 110 cases each. “It’s a very hard job,” Richter admits. “There’s no way to avoid it.”

An ACS paycheck isn’t exactly a great enticement: the agency’s lawyers start at around \$44,000 plus overtime and rise, with periodic performance-based raises, to a maximum of \$67,000, if funding permits. Lawyers starting at private firms routinely earn \$100,000 or more. Following Nixzmary Brown’s death, City Hall agreed to allocate an additional \$1.5 million to the legal division so that Richter could hire another 32 lawyers. Mattingly and Richter say they intend to significantly increase the number of families taken before a judge to seek court-mandated services. Over the next few months it will become clearer whether there has been a substantial long-term increase in court filings, and how that will affect the lawyers involved.

**BRAD NACHT, A FORMER ACS ATTORNEY WHO** now represents parents, says the agency was very different when he started working there in 1990. “We didn’t receive any training on philosophy,” he says. “It was just on how to present your case and cover your behind.”

Fresh from law school, Nacht says he was too young to truly understand what a family might be going through. He remembers once arguing, for instance, that a parent shouldn’t have taken a shower while a child was unattended, an argument he now considers absurd. “Any job requires a certain amount of life experience,” he says. “But it would be better, in that kind of job, if you have someone who’s older.”

The giant caseloads don’t help, he says. While his current caseload now varies, it’s never as high as the average at ACS. “I wouldn’t do that,” he says. “I just think it’s malpractice.”

Deputy General Counsel Nancy Thomson, who has worked at the agency for 21 years, says attorneys were often subject to what felt like shifting ground rules. One commissioner would push for foster care removals, and the next would emphasize speedy reunification. “There wasn’t a lot of telling us why and giving us the tools,” she says, recalling Mayor David Dinkins’ emphasis on keeping children in their homes. For attorneys trained to view parents as a potential danger, it was hard to suddenly start sending children home.

It was easier, she says, to avoid risk, even if that meant leaving children in foster care. “The mandate was, make sure the commissioner’s not held in contempt,” she says. “There was not the emphasis there is now on permanency, not a lot of thinking about what other services to put in place.”

The role of ACS attorneys began to change in 1997, when Congress passed the Adoption and Safe Families Act. Suddenly, it was no longer okay for the agency to leave kids in foster care for years on end. As caseloads dropped, lawyers could spend more time on their cases, and judges began to take a more active role in demanding services for parents. “Sometimes people feel

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## “FIRST AND FOREMOST WE MUST ENSURE CHILDREN ARE SAFE IN THEIR COMMUNITIES AND WITH FAMILIES,” SAYS ACS’ CHIEF LAWYER.

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like the judges are playing social worker,” says Thomson. “But it keeps pressure on the system to be accountable.”

At the same time, however, under then-Commissioner Nicholas Scoppetta, ACS lawyers presided over a surge in the number of children removed from home and placed in foster care. Only toward the end of his time at the agency did Scoppetta move away from his aggressive policy of placing more than 10,000 children in foster care each year.

Since 2002, under the leadership of Commissioner William Bell and then Commissioner Mattingly, ACS has substantially reduced the number of children placed in foster care while increasing the number of families taking part in community-based family support services that aim to prevent abuse and neglect.

Commissioner Nicholas Scoppetta had been a prosecutor, Richter explains. “If Mattingly were a lawyer, I don’t think he’d be a prosecutor.”

### **TRANSFORMING THE MOTIVES AND PERSPECTIVE**

of city attorneys is no simple task. “It’s very hard to change the culture,” Richter says. “The way to change the culture is to ensure that your managers are on the same page with you, supervising staff with those values in mind.”

And what are those values? “We believe first and foremost we must ensure that children are safe in their communities and with families. That’s a really important value we both share.”

Soon after he started, Richter replaced his supervisors in Bronx and Queens Family Court. “I needed to pick people I could work proactively with,” he says. He declines to comment on the former supervisors, both of whom still work for ACS. But he describes their replacements as “extremely proactive” and good at “attending to people’s professional development.”

To that end, Richter has instituted annual assessments of all staff by their supervisors. He has also changed the agency’s hiring practices, recruiting a more diverse staff and looking for attorneys with direct experience in child welfare. They’ve become easier to find in recent years, he says, because more law

schools now offer clinical training. While ACS once attracted would-be prosecutors, he says, the agency's recent reforms have attracted a wider range of bright, young lawyers.

Rather than stay cloistered in courtrooms, Richter's new attorneys are required to shadow caseworkers to observe every aspect of the child welfare system in play, including child protective investigations, family visits, case conferences and foster home assessments. Richter hopes a better understanding of the system will help lawyers relate to caseworkers.

The new Permanency Law requires ACS and caseworkers at nonprofit foster care agencies to fill out lengthy reports on the status of children in their care, which must be completed and distributed 14 days before a court date [see "Bringing Order to

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## RICHTER'S REFORMS

1. Aimed to transform the culture of ACS Family Court division to more strongly emphasize permanency planning, long-term solutions and child safety.
2. Assigned each lawyer to stay on a case until it's resolved.
3. Required new staff attorneys to shadow caseworkers in order to observe every facet of a foster care investigation and placement, and attend a two-hour workshop on the vision and philosophy of the agency.
4. Replaced supervising attorneys in Queens and the Bronx.
5. Hired 27 new attorneys, attempting to diversify staff in terms of ethnicity, background and professional experience. In the wake of the Nixzmary Brown case, the city will spend \$1.5 million to hire 32 more attorneys.
6. Mandated annual reviews for all staff, twice per year for new staff.
7. Trained foster care agency staff on requirements of the new Permanency Law, and facilitated collaboration in semiannual Family Court case reports.

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the Court," page 9]. While cumbersome, he says, the teamwork will ultimately be a positive innovation. "The report requires attorneys and case planners to be in sync," Richter says. "It's built-in case preparation."

There's one other piece to his new attorney training, Richter explains, and in some ways it's the most radical. He's added a two-hour workshop aimed at helping the lawyers consider how their own preconceptions factor into their judgments about families. "I want my people to think about where they come from," he says. "If you come from a two-parent house, you might think that's the way it should be. But not everybody does."

Neither of the new trainings is mandated for longtime ACS legal staff, though they were invited to shadow the caseworkers. "I'm trying to strike a balance," Richter explains. "I'm not trying to turn people's world upside down, but I am communicating that this is something that matters to the leaders of this organization."

Chris Gottlieb has already noticed the change. "There's real improvement," she says. "Many more of the ACS attorneys now seem interested in communicating. There's a willingness to try to figure out what the family really needs." Others have yet to see the difference. "If that's happening, I think it's great," says Nacht, upon hearing about Richter's reforms. But in his experience, he says, "it's very individual." Some ACS lawyers are harsh and prosecutorial, he says, while others are kind and helpful.

Similarly, notes Erik Pitchal, a former law guardian, not all ACS attorneys view their jobs the same way. Some see the agency as the client, while others are more responsive to individual caseworkers and will pursue whatever they request. Then, adds Pitchal, who is now director of the Fordham University Interdisciplinary Center for Family and Child Advocacy, there are those who don't seem to represent anyone.

## JUDGE JODY ADAMS ROLLED HER EYES WHEN

one young lawyer entered her courtroom in Manhattan family court on a recent Thursday morning. "Oh, this one is bad," she whispered, exchanging glances with her clerk. As if on cue, the young ACS lawyer fumbled with a thick stack of paperwork, glancing up helplessly at the judge. "Why are you here today?" she demanded. "I don't know," he mumbled into his chest, still rifling through his files. "Well you should know. It's your petition," she said. A few minutes later, the case is adjourned due to a scheduling glitch—not the lawyer's fault, but definitely not his strongest showing.

But later that day, in a Brooklyn courtroom, ACS attorney Kelly Alvord was far more polished. Waiting to be called, she conferred quietly with a law guardian and ACS caseworker. The case was tricky, involving a young mother accused of neglecting her infant son. The three worked out a resolution that allowed the baby to stay at home as long as his father was always present. By the time the case was called, everyone seemed relieved.

Yet Alvord seemed a bit anxious when asked about meeting the new deadlines imposed by the Permanency Law. "It's hard enough to get the report before the court date," she said. "Now we're talking about 14 days in advance."

For Richter, late nights at the office are common, stacks of files abound and he's virtually tethered to his BlackBerry. But he is clearly committed to the payoff: a better system for families in crisis.

"Do I think people are okay with the changes I've made?" he asks, then grins. "I think they will be." ♦ —CASSI FELDMAN

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## REPORTS AND HANDBOOKS ON NYC FAMILY COURT

"Adding Value to Families: The Potential of Model Family Courts," by Jane Spinak, *Wisconsin Law Review*, 2002.

The director of Columbia Law School's Child Advocacy Clinic analyzes New York's specialized Family Court experiments, assessing prospects for reforming the substance as well as the process of Family Court proceedings.

"Child Protective Proceedings in Family Court," *Legal Information for Families Today*. <http://www.liftonline.org/fact.html>

Part of a series of brochures advising parents and others with cases in Family Court.

"Justice Denied: Delays in Resolving Child Protection Cases in New York," by Chris Gottlieb and Martin Guggenheim, *Virginia Journal of Social Policy and the Law*, 2005.

A fuller discussion of issues addressed in "The Court v. Good Sense," page 21 of this issue of *Child Welfare Watch*.

"New York City Family Court: Blueprint for Change (Executive Summary)," Center for Court Innovation, 2006. <http://www.courtinnovation.org>

Recommendations for improving permanency planning, developed in collaboration with New York City Family Court and National Council of Juvenile and Family Court Judges.

"New York State Court Improvement Project Re-Assessment/Final Report," National Council of Juvenile and Family Court Judges, 2005. Available from Permanent Judicial Commission on Justice for Children, 140 Grand Street, Suite 404, White Plains, NY 10601, 914-824-5670.

Ideas for improving procedures in Family Court and the well-being of children in foster care.

Permanency Law Guide. <http://www.ocfs.state.ny.us/main/legal/legislation/permanency/>

"Report of the Family Court Advisory and Rules Committee to the Chief Administrative Judge of the Courts of the State of New York," January 2005.

<http://www.courts.state.ny.us/reports/fcarcrep-005.pdf>

Some of these proposals for reform were implemented in the Permanency Law.

"A Study of New York City's Family Assessment Program," by Claire Shubik and Ajay Khashu, Vera Institute of Justice, December 2005. <http://www.vera.org/publications>

How New York City's new intake system for "status offenders" is reducing the number of teens with Persons in Need of Supervision (PINS) cases in Family Court.

"The Survival Guide to the NYC Child Welfare System: A Workbook for Parents by Parents," Child Welfare Organizing Project, April 2005. <http://www.cwop.org>

## RECENT BOOKS FROM CHILD WELFARE WATCH ADVISORY BOARD MEMBERS

*Beyond Common Sense: Child Welfare, Child Well-Being, and the Evidence for Policy Reform*, by Fred Wulczyn, Richard P. Barth, Ying-Ying T. Yuan, Brenda Jones Harden and John Landsverk. AldineTransaction, 2005

The Chapin Hall Center for Children set out to measure child well-being as a distinct outcome for child welfare practice. This volume lays out methods to measure well-being and to establish evidence-based policies and practices that achieve it.

*What's Wrong With Children's Rights*, by Martin Guggenheim. Harvard University Press, May 2005.

The co-director of NYU School of Law's Family Defense Clinic assails the impact of advances in children's legal rights on the well-being of children and families.

## IN MEMORY OF JULIUS C.C. EDELSTEIN



Julius C.C. Edelstein, one of the founders of *Child Welfare Watch* and a beloved member of its advisory board, died November 18, 2005, at the age of 93.

Julius was a major figure in local, national and international efforts to improve government for the benefit of all, and especially to increase the rights of and resources for the marginalized, minorities, immigrants and the poor. As Vice Chancellor of the City University of New York, he was a primary architect of the university's open-admissions policy and fought until the end of his life to ensure its continuation. Early in his career, he was an aide to Admiral William D. Leahy and then to Paul V. McNutt, the high commissioner in the Philippines. He was chief of the legislative staff for Senator Herbert H. Lehman and then Deputy Mayor for Mayor Robert F. Wagner. During his time in national and local government, Julius helped craft legislation to welcome additional immigrants to this country, and to expand affordable housing in New York City.

In 1997, he worked with Andrew White, Kim Nauer, Neil Kleiman, John Courtney and myself to found *Child Welfare Watch*.

Julius came to be interested in child welfare late in his life but with the same zest, insight, indefatigable spirit and commitment to truth—and to the powerless—that informed more than seven decades of his fight for a more equitable society. His stature, wisdom and generosity were essential to making *Child Welfare Watch* the respected voice it is today.

We miss his wisdom, humor and gentleness, not only at the advisory board meetings and public forums which he attended well into his nineties, but in all of our efforts to improve the well-being of the people whose lives he championed.

David Tobis  
Chairman  
*Child Welfare Watch* Advisory Board

# PARENT MIS-REPRESENTATION

## Is the system of assigned counsel in Family Court fundamentally flawed?

**B**ernice Hill, a mother of five, has cycled in and out of Family Court for four years. Though she'll admit her parenting has been troubled—her children's placement in foster care began when she was jailed for six months for assaulting a neighbor—she says her court-appointed attorney has been a disaster.

She's had the same lawyer since her first appearance in Family Court, but Hill hasn't seen much of her. "I only talk to her when I go to court. When I leave her messages, she doesn't call back," says Hill. "I don't know who to complain to."

At one point, Hill's representation was so inadequate that a social worker from the Bronx Defenders, a legal services group, began helping her on the side. "It's an egregious situation," says Jenny Crawford, who oversees social work staff for the Defenders and advises a new family defense project.

"I'm not making judgment on whether or not Ms. Hill has been at fault, but the Family Court lawyers have done nothing but barely represent her in court," says Crawford. Yet that's largely par for the course, she adds. "I don't think her lawyer is trying to do a disservice to her. She's like most Family Court lawyers. They all are overwhelmed and have very large caseloads and have difficulty juggling the special needs of their clients."

Parents and advocates alike have long charged that parents' representation in Family Court has been unresponsive, slow-moving and subpar. Even administrators of the system have shared their concerns: a 2001 report from the state Appellate Division's First Department—one of the bodies responsible for overseeing court-assigned counsel, also known as "18b" attorneys—decried the poor quality and called for reform.

Since then, the assigned counsel system has seen one significant change: in 2004, attorneys received a raise to \$75 per hour, for time spent preparing cases and in front of the judge. Previously, pay rates had been \$45 for time spent in court, and \$25 out of court. For a time, caseloads dropped to more manageable levels. Prior to the flurry of cases following the deaths of Nixzmary Brown and Quachaun Browne, 18b panel administrators estimated caseloads to be around 40 to 80 per assigned attorney.

Yet this year, as Family Court enters a new phase of high pressure and rapidly rising caseloads, some longtime observers argue that any solution must go well beyond simply making the job more bearable for the independent lawyers who serve on the panel of court-appointed 18b attorneys. They say the current system of parent representation is fundamentally defective and should be reconceived.

"The greatest flaw...has always been the refusal by public officials to use an institutional provider of the kind that they use for children's lawyers and for ACS," says Martin Guggenheim, who heads the Family Defense Clinic at New York University Law School and is a national expert on family law. "The individual attorney arrangement is virtually certain to provide an inadequate arrangement for parents."

**A GOOD PARENTS' ATTORNEY WILL DO FIVE BASIC** things in Family Court, says Mimi Laver, director of legal education at the American Bar Association's Center on Children and the Law.

At minimum, a good attorney "sees their clients, knows what their client wants, counsels their client, advocates for services for their client and is prepared" for hearings before the judge, says Laver, who is currently authoring the first set of national

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**"PARENTS NEED HELP  
NAVIGATING THE SYSTEM.  
IF AN ATTORNEY IS WORKING  
WITH A SOCIAL WORKER,  
A PARENT HAS A GREATER  
CHANCE OF SUCCESS."**

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standards for parental representation. The importance of advocating for services can't be underestimated, she adds. "A lot of what parents need is help navigating the child welfare system. If an attorney is working with a social worker who has access to and information about services, a parent has a greater chance of success."

Careful outside research and help getting services are exactly what Teresa Sullivan had hoped for in her Family Court case. Sullivan's case, like many assigned to 18b attorneys, is complicated. It consists of multiple charges levied between the two parents, including domestic violence, and charges of neglect filed by the

city against her in the midst of a custody battle. She hasn't had much luck getting her attorney to follow her wishes; when she brought up the issue of domestic violence in her case, she says her first court-appointed attorney told her not to mention it.

But it's the more basic issue of communication that's frustrated Sullivan recently. She's had difficulty reaching her son for nightly phone conversations because his phone line has been cut off. But she says she hasn't been able to speak with her lawyer to try and fix it. "It's been three weeks and he hasn't reached me," she says. "I should be able to speak to my children every day at a certain time."

Court officials intended that higher pay for assigned attorneys—especially the big increase in pay for work outside court—would lead to more substantial case preparation and a more client-friendly approach. The pay hike was also supposed to help retain current attorneys and lure new ones to the panel. That's happened, but to a smaller extent than expected.

"We anticipated a flood of applicants, and we haven't gotten it," says Jane Schreiber, law guardian director of the Appellate Division's First Department. The number of 18b trial attorneys citywide has increased roughly 20 percent since 2000, from 279 that year to 339 in 2005; within Schreiber's department, covering Manhattan and the Bronx, it's been 10 percent. "We're in more or less the same position we were before, but the lawyers are getting a living wage now," says Schreiber. City tax dollars pay for parent representation in Family Court. Last year, the Bloomberg administration spent \$22.3 million to support this part of the assigned counsel system.

Several veteran observers say they've been encouraged by recent changes. "I would say that the quality of [parent] representation is slowly improving," says Karen Freedman, executive director of Lawyers for Children, a children's legal services group, adding that she sees more court-appointed attorneys making use of expert research from social workers and psychiatrists, usually referred to as forensics.

What's more, says Jill Zuccardy, an attorney at Sanctuary for Families and a longtime Family Court lawyer, the higher pay and lighter caseloads have made it easier for lawyers to engage in critical thought on complicated cases. "There's more professionalism, creativity and more collaboration," she says, adding that she was particularly heartened when an assigned lawyer sought her input on a termination of parental rights proceeding—and, with a referral to a domestic violence counselor from Zuccardy, defeated it.

**NONETHELESS, MOST INDEPENDENT ATTORNEYS** don't have the resources that a law firm or nonprofit organization can provide, explains Sue Jacobs, executive director of the Center for Family Representation, which also represents a small number of families in dealings with ACS and Family Court.

"Solo practitioners often do cases without the benefit of social work, paralegal support or other kinds of resources that institutional providers have, like training and supervision," she says. Those kinds of resources are crucial for handling the intensive work necessary to mount a case and to work closely with clients, ensuring they receive services and are able to visit their children regularly, among other things. Such supports are woefully rare among Family Court attorneys.

Working solo also means that whenever a client has a court proceeding, parent attorneys are stuck at the courthouse, often for most of the day. "You really don't have the opportunity to do as much office work as you need to," says Cheryl Solomon, an 18b attorney who carries a private practice outside of her

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## TERESA SULLIVAN'S LAWYER INSTRUCTED HER NOT TO MENTION DOMESTIC VIOLENCE. NOW SHE CAN'T GET HIM ON THE PHONE. "IT'S BEEN THREE WEEKS AND HE HASN'T REACHED ME."

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panel work. "If you practice primarily as an 18b in Family Court, you could be sitting in court seven hours, waiting for a case to be called."

That spells disaster for abuse and neglect cases, which demand intensive research, says NYU's Guggenheim. "That is the worst legal services delivery model imaginable for child welfare-related work," he says. "The most important thing is what goes on outside of court."

There's no easy way to track how much out-of-court work 18b attorneys perform, but one indicator—their use of experts like social workers, investigators and forensic researchers—suggests the pay increase has had a limited impact on practice. Such experts are available to court-appointed attorneys, who can request help through special motions known as 722-c's. Even with a rising number of attorneys and a modest decrease in cases, use of experts has not changed dramatically. In 2003, lawyers filed 1,045 such motions; during the first 11 months of 2005, with 60 more attorneys, there were 1,188.

The absence of organized legal support for most parents in abuse and neglect cases has repercussions beyond what happens

in court. The assigned-counsel system also poses a problem for vital reform efforts at the Administration for Children's Services.

Last year, ACS launched a pilot program in Harlem to head off unnecessary child removals by calling emergency meetings between parents, family members, ACS and their respective lawyers whenever a child's removal to foster care looks likely. "It's to get everyone together on very short notice, an hour or two, to see if there's a safety intervention or some other services that can

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**"YOU'VE GOT TO GET CONSTANT, REAL-WORLD FEEDBACK," SAYS KENTUCKY JUDGE RICHARD FITZGERALD. HIS COURT REQUIRED PARENT ATTORNEYS TO GET REFERENCES FROM JUDGES AND PARENTS.**

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prevent removal," says Nancy Thomson, associate commissioner of the agency's Family Court Legal Services division. The Center for Family Representation provides attorneys and parent-support staff for the Harlem pilot. But if the innovative strategy is extended to other neighborhoods, who will represent the parents? After all, 18b attorneys are only assigned once a family appears in court. And they don't have other key support staff.

"Institutional players often have social workers or paralegals who are more available to go to these conferences and can report back to the attorney," explains Thomson. "It's harder for solo practitioners to do that."

**ONE WAY OUT OF THE BIND, SAY MANY** observers, is to set up or vastly expand the organizations that provide parent representation to most families that need it. Legal services groups have staff who can fill in for each other at meetings, paralegals who can handle background case research, social workers who can help verify that clients are receiving the appropriate services they need to move their case along.

"There's no research on this, but my bias is, yes, institutional practice is better," says the ABA's Laver. "You have a system of supervision and mentoring, you have more seasoned attorneys who can help new ones, and people who already know the system and services available to parents."

New York's City Council introduced a bill in 2004 that would have created a hybridized system, expanding the role for institution-based parent representation without shutting out solo providers. Despite two hearings, the bill has remained in committee with only modest support.

As it stands now, the courts impose little in the way of quality control for assigned counsel. The city's two panel divisions are required to recertify 18b attorneys every year, seeking comments from judges on each lawyer's legal judgment, preparation for cases, vigor and advocacy. Yet administrators conduct no regular survey of the parents or children who depend on these lawyers, nor a routine assessment of case outcomes.

Some cities and counties have quality controls that include surveys of court participants and tracking of case data, says Judge Richard Fitzgerald, a national expert on child welfare and a former chief judge of Jefferson County Family Court in Louisville, Kentucky. Fitzgerald oversaw several studies tracking performance in that state's family court system.

"You've got to get constant, real-world feedback," he says. "I used to pull out a printout with the average length of time and outcomes." This allowed administrators to identify problems as they emerged, and move to remedy them. For example, parents' attorneys were required to keep in touch with the foster families caring for their children. One study found this seldom happened, so the court began to require written references from a judge and two foster parents to vouch for them.

Mundane as it may seem, such basic oversight is rare in any family court. And local administrators say they are confident that the quality of assigned counsel is adequate. "If we get complaints about lawyers, we always look into it," says Harriet Weinberger, the law guardian director of the Appellate Division's Second Department, which oversees 18b attorneys in Brooklyn, Queens and Staten Island. She estimates that of the cases handled by her panel each year—in 2004, it took over 60,000—she receives only about a dozen complaints per year.

Yet as Bernice Hill discovered in her dealings with the court system, parents have no clearly articulated complaint process. While administrators will take complaints, the courts provide no public education materials or instructions to alert clients that they have the right to present their concerns to the court.

Better than a complaint system, says Guggenheim, would be a court infrastructure that as a matter of course gives lawyers time to focus on the full breadth of their responsibilities.

"An ideal system would have lawyers going to court no more than two days a week, so they could spend the rest of their work week making sure the things that need to be done out of court actually get done," says Guggenheim. "That's what will determine whether parents are able to get their children back and raise them." ♦ —**TRACIE MCMILLAN**

## THE COURT V. GOOD SENSE

Two experts comment on the evidence revealing Family Court's inability to resolve cases at a reasonable pace and the damage caused by delay and dysfunction. An essay by Chris Gottlieb and Marty Guggenheim.

**S**ofia C. entered foster care when she was a month old. Over four and a half years later, she was reunited with her mother. For more than half the time Sofia was in foster care, no one—not the Administration for Children's Services (ACS), not the law guardian, not the judge—believed there was any good reason for her to be there. The delay was due neither to ACS, nor the foster care agency, nor to some failing of Sofia's mother. It was simply a matter of administrative dysfunction trumping good sense.

Sofia remained in foster care because her father, as was his right, asked for a hearing to challenge the allegations of neglect leveled against him, and the Family Court would not send Sofia home to either parent (they lived separately and each wanted custody) until after hearings were completed on the neglect allegations and on the disposition of the case. Unfortunately for Sofia, those hearings took the court four and a half years to complete.

Reformers have focused attention in recent years on speeding permanency for children in foster care. Yet if Martians visited New York City Family Court, they would conclude its purpose was to slow foster care cases so that neither family reunifications nor adoptions occurred quickly. The court system itself all too often inflicts incalculable harm on the children under its watch. This harm must be understood and addressed if courts are to serve the goals of our child welfare laws.

At the New York University School of Law Family Defense Clinic, our students represent parents who are accused of neglect and abuse. We have repeatedly seen how routine adjournments of two, three and even four months often stretch out contested hearings over the course of a year, sometimes several years. Our own experience and conversations with colleagues make clear the problem is widespread.

Delay at the appellate level is, if anything, even worse. We recently reviewed all the appellate decisions in New York City for a six-month period in 2004. The results were appalling. Of abuse and neglect cases that were appealed, only 16 percent were decided within a year. An astonishing 29 percent took two years or more. In termination of parental rights cases, the delays were even worse. Only about one in ten received a decision in less than a year. In the First Department, more than half the appeals took more than two years.

Most of the children involved in these cases awaited the results of these appeals in foster care. In one case, *In re Hyacinth Angela W.*, a child was placed in foster care when she was 10 years old. Three years later, Family Court ordered a termination of parental rights. Another five and a half years later, the Appellate Division reversed the order. By this time, the "child" was 19 years old and had been wrongfully deprived of her birthright to be raised by her mother.

Remarkably, these practices have become routine and accepted. None of the appellate court's decisions even comments on how the delays harm children and how deeply court inefficiency itself is to blame.

Among the first things our students notice when they go to Family Court is how commonly cases are adjourned without any progress made in court. They are always surprised by the length of these adjournments, and by how little anyone seems to care. With their fresh eyes, students are shocked, while practitioners and judges simply take delays for granted. Requests for shorter adjournments are met by judges with, at best, bemused smiles, and often with hostility and rebuke. Until this culture of delay is changed, we will never meet our goals of properly serving children and families.

The current reality of court scheduling belies any serious commitment to respecting children's sense of time. The federal Adoption and Safe Families Act encourages the permanent destruction of families through termination of parental rights when children have lengthy stays in foster care. Thus, children's interests are invoked to destroy family ties, but ignored when courts go about their daily business.

Delay in child welfare cases is unlike delay in most other areas of the law: it not only stalls, but frequently changes the substantive outcome of cases. Children's lives are constantly evolving; their attachments and needs shift over time. Even when all would agree that the best option for a child would originally have been to return her to her parents, many will later balk at this after the child has formed a deep emotional attachment to the "temporary" caregiver.

Those of us who work in Family Court, from judges on down, must take responsibility for changing the bureaucratic delays that keep children from their parents and extend their time in foster care. The state's new Permanency Law grants

judges ongoing jurisdiction over families with children in foster care and steps up the required level of court involvement. While aspects of the legislation are laudable and may eliminate some causes of delay, the law does not address the fundamental problem: that Family Court itself often creates or exacerbates delays in foster care cases. Unless implementation of the new law is accompanied by a shift in the culture of our courthouses, it will be a change in form, not substance.

Changing the institution's culture is possible. Courts should penalize lawyers and caseworkers who regularly miss court appearances, appear late or unprepared or fail to meet their legal obligations. When time is needed for settlement discussions or to obtain information, cases should be recalled later in the same day instead of adjourned to months later. Courts should also block out sufficient time to complete hearings in single or back-to-back court appearances.

Regardless of the size of a court's docket, it takes no more resources to concentrate the time spent on the record on any

case rather than spread it out piecemeal over numerous adjournments. In fact, spreading out hearings almost always expends greater resources. We might even want to begin to think the unthinkable: extend the court day.

These are just some possibilities. There have been improvements in court practice over recent years. Bringing in referees to share judges' dockets is a welcome improvement. Occasionally, some judges now schedule back-to-back hearing dates. The new legislation cuts out some of the bureaucratic steps in the appeal process. But unless the extent of the continuing problem is recognized, there is little hope of getting where we need to be.

We must be honest that we have come nowhere near meeting our obligations to the children and families we serve. ♦

*Chris Gottlieb and Martin Guggenheim teach the NYU School of Law Family Defense Clinic. This essay is based in part on "Justice Denied: Delays in Resolving Child Protection Cases in New York," their recent article in Virginia Journal of Social Policy and The Law.*

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BRINGING ORDER TO THE COURT *continued from page 13*

addressed immediately, and the trial has to be rescheduled for a later date. That means judges may well find themselves holding permanency hearings eight months after a removal—without yet deciding whether parents are legally responsible for any abuse or neglect. While most judges and lawyers are resigned to this as a necessary quirk, parent attorney Chris Weddle is concerned about the message it sends. "The client's sitting there, thinking: 'I'm not guilty yet. How can you put these conditions on me?'"

Jane Spinak, who runs the child advocacy law clinic at Columbia Law School and is a member of the Court Improvement Project commission, would like hard-and-fast rules—imposed by law or by court administrators—ensuring that trials commence within three months after cases are filed, "so you're actually responding to what happens to the family soon after it occurs, not six months or a year later, and then create a permanency plan."

Spinak notes that other civil courts are governed by strict rules determining the timing of hearings, and lawyers must file motions if extraordinary circumstances require a court date to be rescheduled. "This open-ended idea that [the trial] can just occur at any point is disturbing, and it has affected the way in which the court thinks about getting its work done," she says. "If everyone knows the case can be adjourned, it's easier for someone to say, 'Well I've got this on today and that on today, so can we reschedule this?'"

The new Permanency Law marks a first step for Family Court toward firm timelines. Permanency hearings must now take place within 30 days of the scheduled date. But there is still no deadline by which a trial must be held.

Some family advocates aren't convinced all the new reforms will produce better results. "The legislature over the

last 25 years has passed numerous laws requiring that Family Court hold hearings, and each time the language is stronger and stronger and says, 'We really, really mean it.' But it doesn't happen, because the court is overburdened and there's no one to enforce it," says David Lansner, a private attorney representing parents. "Without a change in personalities, attitudes and resources, there will be no change in the results. Just more meetings."

Steckler is hopeful the changes will at least bring some new accountability to the court, but she has her doubts about some of the personalities involved. "Most judges are middling. There are others where you shake your head and wonder how they got the appointment," she says. "Their feet have to be held to the fire. If their courtrooms aren't run well, if they're not ordering services and holding ACS accountable, the whole system falls apart." It also may be wrong to conclude the courts are the weakest link in the system. Lawyer Eileen Malunowicz, who represents children, says a shortage of services is often to blame for delays. "That doesn't mean the agency is not doing its work, or the mother didn't engage at her end," she says. "There's only so much the court can do."

Yet the Permanency Law is poised to at least ensure service providers, lawyers and judges alike focus, from the beginning, on making sure that families get every opportunity to stay together.

"The law raises our consciousness about the importance of permanency planning from the moment child welfare workers begin investigating allegations," says Ronald Richter, ACS Deputy Commissioner for Family Court Legal Services. "The law is a giant leap in the right direction." ♦ —**ALYSSA KATZ**

## WATCHING THE NUMBERS

A six-year statistical survey monitoring New York City's child welfare system.

	FY '00	FY '01	FY '02	FY '03	FY '04	FY '05
<b>Protective Services</b>						
• REPORTS OF ABUSE AND NEGLECT	53,540	57,224	55,925	53,894	51,477	50,251
<i>The number of reports made to the State Central Register dropped 14 percent in four years but will likely rise in 2006.</i>						
• REPORTS SUBSTANTIATED (%)	37.3	34.1	33.6	33.6	33.7	32.6
<i>Rate of substantiated reports remained relatively consistent.</i>						
• PENDING RATE	6.7	6.9	5.4	5.2	5.9	6.1
<i>Monthly average of new cases per child protective worker remained consistent.</i>						
• AVERAGE CHILD PROTECTIVE CASELOAD	13.3	13.2	11.6	11.2	12.1	12.1
<i>Average protective caseload remained stable.</i>						
• CHILD FATALITIES IN CASES KNOWN TO ACS	22	32	25	24	33	30
<b>Preventive Services</b>						
• FAMILIES RECEIVING PREVENTIVE SERVICES (CUMULATIVE)	25,564	27,399	30,313	31,692	31,215	29,174
• NEW FAMILIES RECEIVING PREVENTIVE SERVICES (ACTIVE)	11,991	13,990	14,552	14,978	14,417	13,921
<i>Number of new families receiving preventive services declined 3.5 percent.</i>						
• REFERRALS FROM ACS (%)	50	51	53	52	50	49.1
<b>Foster Care Services</b>						
• NUMBER OF CHILDREN ADMITTED TO FOSTER CARE	9,390	7,908	8,498	6,901	6,201	4,909
<i>Number of children admitted to foster care declined 20 percent in one year.</i>						
• NUMBER OF CHILDREN DISCHARGED FROM FOSTER CARE	12,954	12,072	10,538	9,594	8,854	7,572
<i>As the system shrinks, discharges continue to decline.</i>						
• TOTAL AVERAGE FOSTER CARE POPULATION	34,354	30,858	28,215	25,701	22,082	18,968
<i>At the end of 2005, there were 16,565 children in foster care.</i>						
• MEDIAN LENGTH OF STAY FOR CHILDREN BEFORE RETURN TO PARENTS (MONTHS)	6.4	5.9	6.9	6.8	7.6	8.2
<i>(For children entering foster care for the first time.)</i>						
• CHILDREN WITH REUNIFICATION GOAL (%) (PREVIOUS CALENDAR YEAR)	52.2	47.4	46.3	43.8	44.0	44.3
• PERCENTAGE OF SEPARATED SIBLINGS (PREVIOUS CALENDAR YEAR)	54	52.1	51.6	52.4	51.4	50.7
• RECIDIVISM RATE (%) (PREVIOUS CALENDAR YEAR)	11	12.1	13.8	13.6	12.8	13.6
• PERCENTAGE OF FOSTER CHILDREN IN KINSHIP CARE (%)	27.2	26.2	25.7	26.1	26	24.6
<i>For several years, about one-fourth of foster children have been in kinship care.</i>						
• PERCENTAGE OF CHILDREN PLACED WITH CONTRACT AGENCIES	86	88.3	90.4	92	94.5	95.2
<i>City-run foster care continues to shrink as a percentage of the system.</i>						
• PERCENTAGE OF FOSTER BOARDING HOME PLACEMENTS IN BOROUGH OF ORIGIN	44.9	57.5	64.6	74.9	72.0	76.0
• PERCENTAGE OF FOSTER BOARDING HOME PLACEMENTS IN COMMUNITY DISTRICT	7.7	13.7	18.2	22.1	23.0	21.1
<b>Adoption Services</b>						
• PERCENTAGE OF CHILDREN WITH ADOPTION AS A GOAL (PREVIOUS CALENDAR YEAR)	34.4	38.6	40.3	39.4	38.8	39.8
<i>The percentage of children with this permanency goal continues to increase.</i>						
• NUMBER OF FINALIZED ADOPTIONS	3,148	2,715	2,694	2,849	2,735	2,314
<i>Finalized adoptions dropped about 15 percent in one year.</i>						
• AVERAGE TIME TO COMPLETE ADOPTIONS (YEARS)	3.9	3.5	3.6	3.6	3.5	3.4

All numbers above reported in NYC fiscal years unless otherwise indicated.

Sources: NYC Mayor's Management Reports, New York State Office of Children and Family Services Monitoring and Analysis Profiles, NYC Administration for Children's Services Updates



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The Center for an Urban Future is a policy institute committed to improving the overall health of New York City for its residents and businesses. The Center combines journalistic-style investigative research with traditional policy analysis to develop innovative and achievable agendas for policy change.

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