

A REPORTER AT LARGE AUGUST 7 & 14, 2017 ISSUE

# WHEN SHOULD A CHILD BE TAKEN FROM HIS PARENTS?

*In family court, judges must decide whether the risks at home outweigh the risks of separating a family.*

By Larissa MacFarquhar

July 31, 2017





*Mercedes, a mother of four, has spent eight years trying to regain custody of three of her kids at the Bronx Family Court. Illustration by Anna Parini*

What should you do if child-protective services comes to your house?

You will hear a knock on the door, often late at night. You don't have to open it, but if you don't the caseworker outside may come back with the police. The caseworker will tell you you're being investigated for abusing or neglecting your children. She will tell you to wake them up and tell them to take clothes off so she can check their bodies for bruises and marks. She will interview you and your kids separately, so you can't hear what she's asking them or what they're saying. She opens your fridge and your cabinets, checking to see if you have food, and what kind of food. She looks around for unsafe conditions, for dirt, for mess, for bugs or rats. She takes notes. You must be as calm and deferential as possible. However disrespectful and invasive she is, whatever awful things she accuses you of, you must remember that child protection has the power to remove your kids at any time if it believes them to be in danger. You can tell her the charges are not true, but she's required to investigate them anyway. If you get angry, your anger may be

taken as a sign of mental instability, especially if the caseworker herself feels threatened. She has to consider the possibility that you may be hurting your kids, that you may even kill one of them. You may never find out who reported you. If your child has been hurt, his teacher or doctor may have called the state child-abuse hotline, not wanting to assume, as she might in a richer neighborhood, that it was an accident. But it could also have been a neighbor who heard yelling, or an ex-boyfriend who wants to get back at you, or someone who thinks you drink too much or simply doesn't like you. People know that a call to the hotline is an easy way to blow up your life. If the caseworker believes your kids are in imminent danger, she may take them. You may not be allowed to say goodbye. It is terrifying for them to be taken from their home by a stranger, but this experience has repercussions far beyond the terror of that night. Your children may hear accusations against you—you're using drugs, your apartment is filthy, you fail to get them to school, you hit them—and even if they don't believe these things they will remember. And, after your children see that you are powerless to protect them, this will permanently change things between you. Whatever happens later—whether the kids come back the next week, or in six months, or don't come back at all—that moment can never be undone.

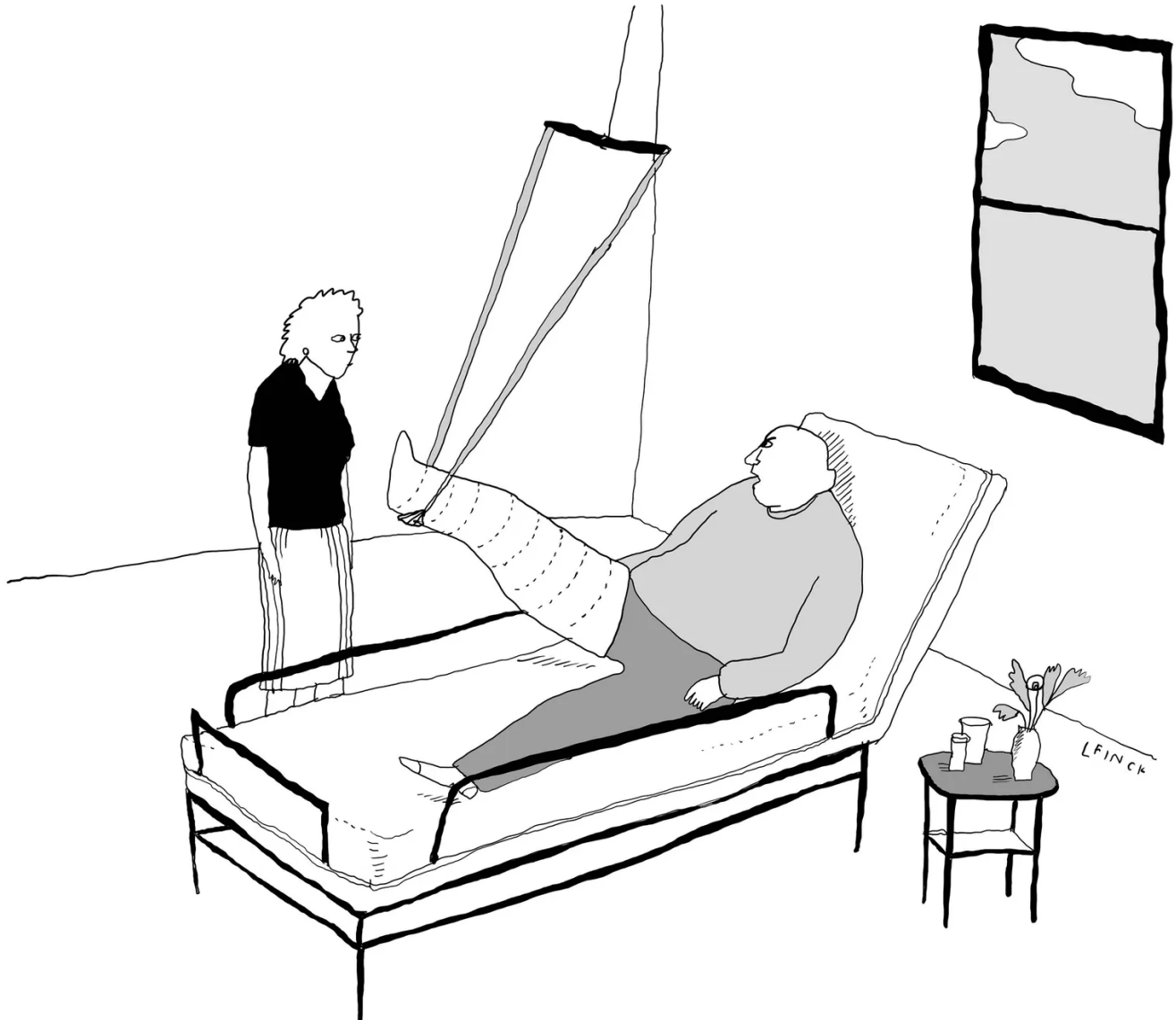
The caseworker has sixty days to investigate the charges against you. She will want you to admit to your faults as a parent, and you should, because this tells her you have insight into your problems and that you have a sincere desire to accept her help and change your life. But you should admit only so much, because she is not just there to help you: she is also there to evaluate and report on you, so anything you say may be used against you in court. The Administration for Children's Services—A.C.S., as child-protective services is known in New York City—has to prove its allegations against you only by “preponderance of the evidence.” It can bring in virtually anything as evidence—an old drug habit, even if you've been clean for years; a D.U.I.; a diagnosis of depression. While the court case is proceeding, you may be asked to submit to drug testing or a mental-health evaluation, to attend parenting classes or anger-management classes or domestic-

violence classes and some kind of therapy. These services are intended to help you, but, if you want to get your kids back, they are not really voluntary, even though they may be so time-consuming and inflexibly scheduled that you lose your job. The more obedient you are, the better things will go for you. Even if you are innocent and can prove it, it could be more than a year before you get a hearing, and during those crucial months your compliance and deference are the currency that buys you visits with your children.

**W**hen should you take a child from his parents?

You must start your investigation within twenty-four hours of the hotline call. Go at night—people are more likely to be home. As you look around, you have to be very, very careful, because if you miss something it will be partly your fault if a child ends up hurt, or dead. You may be shocked by the living conditions you encounter, but you're not allowed to remove children solely because of poverty—if, for instance, there's no food in the kitchen because the parent's food stamps have run out—only for “imminent risk” due to abuse or neglect. But it's often difficult to draw a line between poverty and neglect. When a child has been left alone because his mother can't afford childcare and has to go to work, is that poverty or neglect? What if the child has been injured because there wasn't an adult there to prevent it? Unless you've become desensitized through repetition, emergency removals are awful. Parents may scream at you and call you terrible names. Sometimes a parent will get violent. When you suspect in advance that a situation is going to be dicey, you can bring a colleague or a police officer, but sometimes things turn very fast and you're on your own. If you remove the children that night, you will take them to a processing center to be assigned to a temporary foster home. Once you get there, it could take a long time for a home to be found—many hours. The children sit and wait, along with other children in the same situation. They may be crying, but it's unlikely you will be able to comfort them, because you may never have met them before, and you have just

separated them from their parents. If the children ask you where they're going next, or when they'll go home, or if they'll stay together with their brothers and sisters, you can't answer them, because you don't know.



*"This time, I'll ask them to write 'Not a Piñata' on it in bigger letters."*



After that first visit, you have sixty days to investigate the charges. You should interview the child's teacher, his pediatrician, and anyone else you think relevant. You should seek out neighbors and relatives; they may be too wary to talk to you,

or else so eager to talk that you suspect they're trying to get the parent in trouble. You must also draw out the parent herself; this is tricky, because you must play two conflicting roles—helper and investigator. Even if you feel for the parent and believe her kids should not be taken away, that is not the end of the story, because the final decision to ask in court for the removal of children is not yours to make; your supervisor, or your supervisor's manager, will make it. Even though this manager has likely never met the parent or her kids, she may override your recommendation and take what she believes to be the safer course of action. Many at A.C.S. believe that taking kids from their parents is the cautious thing to do. Nobody wants to end up on the front page of the *Daily News*. You are working to protect children, and you will remind yourself of that when your job gets really difficult. Maybe once or twice a parent will thank you, and tell you that the services you provided made a difference in her life, and you will feel that those thanks make up for all the other parents who cursed at you and called you a baby snatcher. But that's unlikely. The turnover among A.C.S. caseworkers is very high.

This is how Mercedes describes what happened. She was running a bath for her children. It was 2009, so Leslie was eleven months old and Camron was two. (To protect her kids' privacy, Mercedes provided pseudonyms.) She plugged in her curling iron, because she was planning to curl and wrap her hair while they were in the tub. The kids were playing with toys in the living room. She left the curling iron on the side of the sink and went to fetch towels. She heard crying and, running back to the bathroom, she saw that Leslie had pulled the hot curling iron off the sink by its dangling cord, and it had fallen on her legs and burned them. She looked at the burns and they weren't blistering, so she figured they were O.K.

The next day, at her cousin's house, she saw that the burns had blistered, and announced that she was going to take Leslie to the E.R., but her aunt told her,

Do not go to the E.R. If they see those burns, child services will take your kids. So she didn't. The next day, she went to her mother's house. She and her mother started fighting, as they usually did, and she left the apartment with Leslie and sat with her outside. It was a warm night. She saw two women she didn't know walk past her and into the building. Her mother called her phone and told her to come upstairs. The two women were in her mother's apartment; they told her they were from A.C.S., and had come to see what happened to the baby.

She answered a few questions, growing increasingly outraged, and then, guessing her mother had called A.C.S. to get back at her, began cursing at her and screaming that she would never see her grandchildren again. She started putting on Leslie's clothes to leave, but the A.C.S. women told her that first they had to take photographs of Leslie's burns. Mercedes said no, she was going, and one of the women said, Miss, you are making me real nervous right now. The women left, but a few minutes later they came back, accompanied by a couple of policemen. Mercedes sat on the floor crying, holding Camron and Leslie and begging the women, Don't take my kids, please don't take my kids. But her mother, believing it was best to comply, picked up Camron and then Leslie and gave them to the women, both kids wailing, and the women took them away.

Mercedes grew up in Brooklyn. Her father was a drunk, who beat her and her mother. One time he nearly killed them, trying to run their car off the road as they fled from him on the Belt Parkway. When Mercedes was old enough to understand what was going on, she started calling the cops on him. When she was older still, she started running away, at which point her mother called the authorities on her. When she was a teen-ager, her mother sat the kids down and they voted on whether they should kick their father out of the house. Mercedes's younger brother, who was six, voted no, but Mercedes and her older brother and her mother voted yes, so her father left. Mercedes got pregnant when she was fourteen, but her boyfriend beat her up and she lost the baby. When she was

eighteen she got pregnant again. Her father turned up and beat her, but she didn't miscarry, and in 2007 she had her first baby, Camron.

Camron's father had told her to get an abortion, and was violent with her, too, so her mother came and brought her home. "She told me, 'I'm going to help you with the baby, I got you,' " Mercedes says. But although Mercedes and her mother were best friends when they weren't living together—they talked every day on the phone, spent every weekend together—when they were in the same house they fought constantly, and when Camron was eight months old Mercedes's mother threw her out, so Mercedes and the baby moved into a shelter. When she got pregnant again, with Leslie, the same thing happened: she moved in with her mother and then ended up in a shelter again six months later. It was in this second shelter that the incident with the curling iron occurred.

At the Bronx Family Court, A.C.S. argued that Mercedes had burned Leslie with the curling iron on purpose, but the judge was not persuaded. Rejecting the charges of abuse, she issued a lesser finding of neglect, because Mercedes had failed to supervise her children properly and had not taken Leslie to the hospital. The children were put into foster care with Mercedes's cousin, and Mercedes set about doing what A.C.S. told her she had to do to get them back—going to parenting class, submitting to inspections by a caseworker. By this time, she was pregnant again. "The first thing that caseworker said to me when she met me was not 'Hello' but 'Oh, you're pregnant again? They ain't going to do nothing but take that baby, too.' That was the first thing that came out of her mouth." But the caseworker was wrong: shortly before Mercedes gave birth to her third child, Tiana, the judge gave Camron and Leslie back to Mercedes, on the condition that she live with her mother.

A.C.S. was still uneasy about Mercedes, however. Right after Tiana was born it requested that the court find "derivative neglect" of Tiana by Mercedes, on the ground that she had been found to neglect Camron and Leslie, and argued that all three children should be taken into foster care. It pointed out that Mercedes's



home had been observed to be unsanitary on at least two occasions, that she had refused to participate in drug treatment despite admitting that she smoked marijuana “whenever I get the urge,” and had missed two child-safety conferences, and therefore posed an imminent risk to Tiana’s life or health. But the children’s attorney argued that Mercedes should be allowed to keep the baby, and the judge agreed.

Six months later, A.C.S. filed another petition to remove the children: Leslie had cellulitis and eczema, and Tiana was seriously underweight, and A.C.S. argued that the persistence of these problems suggested that Mercedes was failing to care for them properly. The judge pointed out that since Tiana had not gained weight even during a two-week stay in the hospital, it was not clear that Mercedes had anything to do with it. (Years later, Tiana was given a diagnosis of growth-hormone deficiency.) Moreover, she said, there was a strong bond between mother and infant, the disruption of which would only make things worse. Three months after that, A.C.S. tried to remove Tiana a third time, but again the judge said no.

---



*"I'm going to level with you, Tom. The rest of the marketing team wasn't sent upstate to live on a farm."*



Mercedes fought with her mother and moved with the kids to a shelter again, but there were bedbugs, so she left. The next day she took Leslie and Tiana to the doctor, and he told her they were so sick he wanted to admit them both to the hospital. For a couple of nights she and Camron slept in the girls' hospital room, but the hospital kicked them out. Then, soon afterward, Mercedes's mother and a

woman friend of hers from church turned up at the hospital, along with a caseworker from A.C.S. The caseworker told Mercedes that since she didn't have anywhere for Camron to go she had to give him to either her mother or the friend, or else A.C.S. would take all three kids. As Mercedes understood the arrangement, the caseworker promised her that, if she gave up Camron temporarily, then when the girls were released from the hospital A.C.S. would get the family on a priority list for proper housing and she would get Camron back. Mercedes desperately needed housing, and she didn't have anywhere else for Camron to go, so she said O.K. Because she was still angry with her mother, she told the caseworker that Camron could go with the friend. That turned out to be the wrong decision.

Leslie was released from the hospital a few days later, and she was given to the friend, too. Mercedes kept calling A.C.S., asking when she was getting her kids back. Tiana was still in the hospital—were they waiting for her to be released? Why did she not have Leslie? When was she going to get her housing? What was going on? But now a caseworker was telling her that she had given up all three children of her own free will.

The judge on Mercedes's case was Carol Sherman, who had worked in family court in various capacities for nearly forty years. As a law student, she had studied reformatories in Massachusetts and was appalled by what she saw—children being held in prisonlike conditions, with only the most rudimentary attempts at education—so when she graduated she looked for an organization that defended children in court. She found only one, the Juvenile Rights Division of the Legal Aid Society in New York, and went to work there in the summer of 1971. The reason she could find only one such organization was that, until a few years before, juvenile defense had not been thought necessary. The Progressive Era creators of family court had imagined its judges as quasi-parents, helping rather than punishing, ruling benevolently in a child's best interest. But, in 1967, the Supreme Court ruled that it was irrelevant whether a judge felt benevolent or

not: family court had the power to deprive citizens of their liberty, and that kind of state power had to be restrained by the law, so a juvenile delinquent was entitled to an attorney.

The mission to protect children, combined with the excitement of creating a whole new field of law, made the Juvenile Rights Division in the early seventies a thrilling place to be. Martin Guggenheim, now a professor of law at N.Y.U., arrived at the same time that Sherman did, and together they felt themselves to be part of a righteous crusade on behalf of their underage clients. “We defended murderers and muggers with zeal,” he says. “And if our client was found guilty and sent away, we’d say, That fucking judge. We were warriors!”

When Sherman and Guggenheim started out, their caseload was almost all delinquencies. But then growing awareness of “battered-child syndrome”—an awareness that the abuse of children at home was not a rare pathology but a frequent occurrence that demanded attention—led, in 1974, to the Child Abuse Prevention and Treatment Act. The Juvenile Rights Division saw more and more abuse and neglect cases, and as this happened a divide opened among the warriors. To Sherman, it seemed clear that these new cases were very different—that whereas in the delinquency cases children accused of crimes had to be protected from the state, in the neglect and abuse cases the state itself was protecting children, from their parents. But to Guggenheim the child-welfare cases and the delinquency cases looked all too similar: in both, the state possessed the fearsome power to remove children from their homes, and so in both that power had to be kept in check.

By the time Sherman became a judge, in 2008, a great deal had changed in family court. In the eighties and nineties, putting children in foster care was very common: in 1991, there were nearly fifty thousand children in care in New York City. But study after study had shown how harmful foster care could be, and judges had become leery of it; by 2005, the number had dropped to eighteen

thousand. (It is now under nine thousand.) But this didn't mean that all the children who were no longer in foster care had stayed with their parents: many experts in the field had come to believe that the solution to the problem of children spending years in foster care was to speed up adoption. In 1997, Congress passed the Adoption and Safe Families Act, which required states to file for termination of parental rights in most cases when a child had been in foster care for fifteen of the previous twenty-two months. This gave parents far less time to satisfy child-protection agencies that they had adequately reformed, and made it far more likely that they would never get their children back.

Sherman knew that foster care could be harmful, so she felt more comfortable removing children if there was a relative who could pass a background check and take them—she believed that children almost always did better with family.

SHERMAN: Did the father sign the birth certificate at the hospital?

A.C.S.: I believe so.

SHERMAN: Does the mother have contact with the child?

A.C.S.: The mother attended the child safety conference but she became upset and walked out and told the father it was his baby now.

She worked tirelessly, aware that she now had more power than ever to affect children's lives. She read every report in advance, she took detailed notes and reviewed them, she interrogated.

SHERMAN: I'd like to see the police report, this makes no sense. Where is the child?

A.C.S.: With the paternal grandmother.

SHERMAN: And what are you asking for today?

A.C.S.: The removal of the child to A.C.S.

SHERMAN: Based on the mother leaving the child alone on one occasion *for thirty minutes?*

A.C.S.: This is a very young child, less than seven months old, he cannot fend for himself.

MOTHER'S LAWYER: The very age of the child suggests that he should stay with the mother. She is breast-feeding, she has been his mother since birth.

SHERMAN: How do you know the child was left alone for thirty minutes?

A.C.S.: The child was found alone by the father's brother.

MOTHER'S LAWYER: The child was *left* with the uncle.

SHERMAN: Wait, the father's brother was home with the child?

A.C.S.: The brother stated that he came home and found the child.

SHERMAN: But why do you believe the brother over the mother? What do we know about him?

When it came to abuse, she tried to parse the different sorts of violence. Was the parent whipping with a belt, which was painful but not usually dangerous, or choking, which was? And why was the parent doing these things in the first place? "Is there mental illness?" she asks. "Is there so much anger that this person really can't control it? It may be that this parent has every reason in the world to be angry, not at the child but at a whole host of experiences he's had in his life—

I'm not here to judge that. But how does that impact his ability to deal with his child? Young children can be really frustrating—the constant crying, not doing what you tell them to do.” Did the parent have an unrealistic idea of how well a young kid could be expected to behave? Or did he simply believe that hitting was the right way to raise a child? It was difficult to draw a line between corporal punishment and abuse, and judges drew that line in different places.

SHERMAN: The court does find that A.C.S. has met its burden. J. testified that his father beat him, punched him, and stomped on him, that he had been beaten by his father since he was two years old, and that he has seen his father hit C. This court is aware of Mr. A's issues with anger control. The court is also aware that Mr. A cares very much for both of his children.

Some of the hardest cases were those in which a doctor did not believe a parent's explanation of how a child had been hurt. It could be incredibly difficult to know what to do. “Often the injury can be horrific,” Sarah Cooper, another judge at the Bronx Family Court, says. “A skull fracture, a broken femur, retinal hemorrhaging, which is typical of a shaken baby. When there are these horrific injuries, everybody's on edge. Who broke the baby? Somebody broke the baby. And often there are multiple caretakers—maybe two parents in a home, maybe a grandmother, an aunt, a babysitter. You have four people in front of you who are all held accountable, and the likelihood is one, maybe, did something, and two or three other people are just roped into it. But how do you say, O.K., take your baby home with their unexplained skull fracture? Nine months down the road we're looking at a trial—medical experts come in and start lecturing about the ribs, genetic metabolic anomalies, brittle-bone disease, rickets—and that takes years. For a baby, that's a lifetime—it's all of the bonding, all of the early-life attachment. And ultimately perhaps we never know what happened.”

But abuse, in fact, made up only a small percentage of the cases that came through Sherman's courtroom. The vast majority of child-protective cases involved neglect, and these could be even trickier. In a neglect case, it was a matter less of stopping something obviously terrible from happening than of

filling in the deficits in a child's life, and the question of what constituted a deficit big enough to count as neglect was difficult to settle. It was also hard to tell when neglect suggested that something more worrying was going on. "The question is, what else is this parent doing that their living conditions look like this?" Sherman would ask. "That they're so filthy dirty, the children are filthy dirty, the food is rotting—what else is going on here? Is the parent depressed? Does the parent have developmental disabilities? Is there drug use? Or is it none of those things and we just have to teach her how to keep a clean home?" Figuring out what was really going on was hard, because she had no firsthand knowledge of the situation and was forced to rely on the testimony of caseworkers, whose skill and diligence varied considerably. She scolded them when their work was sloppy, but in the end she usually sided with A.C.S.

Sherman became known in family court for examining the tiniest of details. When inquiring how a child was doing, she wanted to know everything there was to know about him. "I want to see every report card, and if the child isn't doing well in school I order tutoring in the home," she says. "I will order P.S.A.T. and S.A.T. review courses. Information about scholarships. My experience is that unless I give a very detailed order the things that need to be done won't necessarily get done." She was notorious among caseworkers for her obsession with summer camp: if a child was not enrolled by the middle of spring, she would issue an order requiring it. She found out that one boy loved science but had never been to the natural-history museum, so she issued a court order requiring his foster mother to take him there. When he was adopted, she bought him a book about atoms and tickets to the planetarium to celebrate. Although she issued dozens of orders in every case, she kept track of all of them, and excoriated the caseworkers when they weren't carried out. Some judges seemed to be concerned chiefly that their cases proceeded according to schedule; Sherman was not one of them. "Judge Sherman cares very deeply for children," Mary Anne Mendenhall, Mercedes's lawyer, says. "That is something you can never doubt."



Sherman would often say, “All the children before me are entitled to everything that my child’s entitled to.” To her, this was a matter of social justice: she believed that it was not right for poor children to be deprived of the after-school activities and therapy and evaluations and tutoring and domestic orderliness that middle-class children had, so when a child came into her purview she did her utmost to insure that the child’s life and prospects were substantially improved before she was done with him. The trouble was, what to her seemed like helpful services could feel to a parent like intrusion, and the high standards she set could become barriers to reunification. “It moved into social control very quickly, in her courtroom,” Emma Ketteringham, the managing director of the Family Defense Practice at the law firm the Bronx Defenders, says. “I will never forget one case where a case planner had put in her report that there was a lot of stuff in the crib. Judge Sherman issued an order that nothing be allowed in the crib except the baby.”

MOTHER’S LAWYER: My client did not accept the cleaning service because she’s about to be evicted so she didn’t see the point.

Sherman knew that services didn’t always work, and that parents often resented them, but her job was to protect children, so she did the best she could with the tools she had. What else could she do? “Mental-health services, drug treatment—sometimes they’re beneficial, sometimes not,” she says. “There are old studies on batterers’ programs which said they did not have much of an impact. People are trying to figure out what can we do—we have to change people’s behavior. I think just being brought to court and having a child removed has a very sobering effect. But some parents are willing to say, I’d like to learn a better way to do it, and others are not.”

“Carol does not see intervention as a terrible cost,” Guggenheim says. “She sees it as a price to pay to avoid what is for many in this field the thing to avoid above all else: wrongfully failing to protect a child. She really has a Progressive mind-set, in that she sees herself as the instrument of power to improve children’s lives. But,

on the privileged side of town in all parts of America, children are raised by drunks, by drug addicts, by violent people. We don't care how privileged children are raised, because we've arranged our world around the fundamental principle that the state doesn't intrude on the family. Equality requires that we give the same freedom to underprivileged children as we give to privileged children—to be raised by crappy parents.”

For a long time after she lost her children, Mercedes was homeless. She couldn't sleep at her mother's anymore, and she didn't have close friends, so she floated from place to place, staying in each as long as her host would let her, sometimes staying with someone she had met that day. She refused to go to a shelter for single women—she had heard there were fights in those places, and people stole things. She was used to this. Her life had been this way since she was sixteen—staying with her mother, getting thrown out, staying with a friend, getting in an argument, moving on. Besides, she didn't have her kids, so she barely cared what happened to her. “When they take your kids, it's like everything stops,” she says. “Your heart stops. Everything stops. Then you're trying to figure out what the hell to do next. What do I do? Once they take them, you don't have no reason to be here no more. Your kids give you purpose.”

She was permitted to see her children each week in a room at the foster-care agency, but she came to dread these visits, because they were so short and saying goodbye was awful for everyone, and because someone from the agency would watch them, taking notes on how she and the kids behaved together. But mostly she dreaded them because the kids had started saying things about her. They said that their foster mother had told them that Mercedes was bad, that she was a drug addict, that she didn't want them back. Mercedes started coming late to visits, and sometimes she wouldn't show up at all, and the kids would get very upset. Sherman ruled that if Mercedes was late for a visit it would be cancelled, and Mercedes was late. She was late for court dates, too. "Mercedes has no sense of time," her mother says. "I tell her, Don't leave when you feel like it, stop getting up when you feel like it, you got to be in court at twelve, how dare you get there when it's over?" The foster agency warned the foster mother not to disparage Mercedes in front of the children, but she continued to do it. (A.C.S., Judge Sherman, and the foster agency all have a policy of not discussing open cases.)

Before she took in Mercedes's kids, the foster mother had been earning a little money cleaning houses and watching people's children, but now she began receiving foster-care benefits. Mercedes's children were medically complicated, so the payments were higher than usual. For "special children" in New York, foster parents are paid up to \$1,289 a month; for "exceptional children," the payment is \$1,953; so to take care of all three of them the foster mother was likely being paid between forty-six and sixty-two thousand dollars a year, plus up to seventeen hundred dollars a year in clothing allowance. If she ended up adopting the children, she would receive benefits until each child turned twenty-one.

She wanted to adopt them. In the past, foster parents often did not want to adopt, so if a parent's rights were terminated the children were forced to go to yet another home. To overcome this problem, the foster agency that was supervising Mercedes's children had a policy of encouraging foster parents to consider

adoption. The trouble with this solution was that foster parents were prompted from the start to form attachments to the children, and their hopes were pitted against those of the biological parents.

While the case dragged on and Mercedes drifted, the agency was helping the foster mother with housing. “They done moved this lady three times, and every time the apartment’s getting bigger,” Mercedes said bitterly. “But you can’t help the biological mother who’s showing you that she wants her kids? If they would have done that for me in the first place, I wouldn’t be in the situation that I’m in now, and I’d have my kids.” Between constantly moving from place to place and feeling that A.C.S. had it in for her, and wasn’t going to return her kids no matter how hard she tried or how many parenting classes she enrolled in, Mercedes had started to fray. “By this time, I’m tired. I love my kids, but I’m tired. My mind is tired. My body is tired. I keep getting—excuse my language—dicked around by A.C.S. They’re lying to me, they’re being disrespectful. So I start to disappear for a while.”

Every time she came to court she felt surrounded by people who were convinced that she was a bad mother and a bad person, although they barely knew her. “At one point, we had a court date when the lawyer for the foster-care agency first came on,” she says. “And when we met outside he kept saying, ‘Oh, you’re really clean.’ What the fuck does that mean? ‘I don’t see nothing wrong with you, you look clean.’ Because I’m black I’m supposed to be dirty?” She would sit in the courtroom resentfully listening to the caseworker note when she’d been late to a visit, or missed a therapy appointment, but not mention when the foster mother was late, or when she missed the kids’ doctors’ appointments, or that she had been telling the kids terrible and untrue things about their mother. The lawyers only ever brought up the bad stuff about her, she felt; never the good. One time when she was at a conference at the foster-care agency, Leslie burst into the room and said, “I have an announcement to make—I love my mommy”; and then next time they were in court there was Leslie’s attorney advocating against reuniting her

with her mother, and there was no mention of what Leslie had said until Mary Anne Mendenhall, representing Mercedes, brought it up.

The judge kept saying she understood Mercedes, because they had been encountering each other in court for years, but she knew only a few things about her life. “It always bothered Mercedes when Judge Sherman would look at her and say, ‘I know you very well,’ ” Mendenhall says. “Mercedes would walk out crying and say, ‘She doesn’t know me! She only knows what they say about me! She’s never talked to me, she doesn’t know anything about who I am.’ Just because of the number of pages she’d read about Mercedes, to feel entitled to look her in the eye and say, ‘I know you very well.’ I don’t think Judge Sherman recognized what that meant to Mercedes. And how wrong it was. And how many times she said it.”

Mary Anne Mendenhall worked at the Bronx Defenders, on East 161st Street, a few blocks from the courthouse. She and her colleagues represented parents in family court, and so they often found themselves at odds with A.C.S. and the foster-care agencies. They believed that A.C.S. frequently drew the line between neglect and poverty in the wrong place—that parents lived in unsafe apartments without enough food and left their children home alone because they had no choice. What was required much of the time, the defenders believed, was not parenting classes but material assistance—housing, childcare, medication, food. They also believed that family court was racist. Why, when the Bronx was forty per cent white, were nearly a hundred per cent of their clients black or Latino? Why was the percentage of the population in foster care twice as high in the Bronx as it was on Staten Island? They believed that child protection had become for black women what the criminal-justice system was for black men.

New lawyers at the Bronx Defenders are asked to stay for three years, and many of them leave as soon as that time is up. A defender in family court will have between seventy-five and ninety clients at a time; each of these clients is in the middle of one of the most painful crises of her life and is depending on her lawyer to get her out of it, and much of the time the lawyer will fail. Almost all desperately want their children back, but some can't seem to do even the simpler things that A.C.S. requires of them, like being on time for appointments. The defenders ask their clients to do these things—they explain that, even if they may not have anything to do with being a good parent, they are what the system demands and are the quickest way to get their kids back—but if their clients still don't do them they have to accept it. "Many of these people have been supervised their whole lives, threatened their whole lives," Mendenhall says. "If you don't da-da-da, you're going to get kicked out of class. If you don't da-da-da, I'm going to suspend you. And they don't care. So when I say, If you would just stop smoking marijuana we'd be done with this, they're probably thinking something like, Do your job—you know I'm not hurting my kids." There is a saying at the Bronx Defenders: You can't work harder than your client, and you can't want it more.

Some clients are constantly in touch, texting, calling, pleading for help. Others disappear and have to be tracked down—they don't have a fixed home, their

phones run out of minutes, they get a new number and forget to mention it. Bronx Defenders who previously worked in criminal court are befuddled by this: they usually knew where their clients were—in jail.

In criminal court, defense lawyers have an established function that everyone understands, but in family court a parent's attorney who puts up a real fight is still a novelty. Ten years ago, most parents were represented by individual public defenders who were too harried to get to know their clients and often deferred to A.C.S. Even now, the old assumptions of benevolence persist. Although judges know in principle that hearings are adversarial, they may feel that in practice they and the lawyers should be on the same team—after all, everyone wants what's best for the family. So they may feel affronted when a lawyer clearly doesn't feel that way, or even seems to believe that other actors in the courtroom are taking their positions because they don't understand—or don't sympathize with—what it's like to be poor. Judges and lawyers for A.C.S. and the foster-care agencies often complain that the Bronx Defenders are too aggressive, apt to make the whole process so nasty. But they are not the only aggressive ones. There's a lot of yelling in family court—judges telling lawyers to shut up and sit down; judges scolding caseworkers for not doing their job; lawyers sniping at one another in barbed, formal language; parents shouting that accusations are untrue, or about the unfairness of the system.

Sometimes the Bronx Defenders worry that their aggression is bad for their clients. A contentious family court reinforces the belief that the interests of children and their parents can be separated, and this belief usually works to the detriment of the parents. The defenders feel that a large part of what the court and A.C.S. require from parents is compliance and deference, so will it harm their cases if their lawyers show neither? “There certainly are times when judges complain to me, ‘Why can't you people get along with everybody? You're doing your clients a disservice by not helping them to do what we're asking,’ ” Emma Ketteringham says. “And I remind myself, We are not a nonprofit with a mission

of reforming the system; our mission is to represent the parents. Now, that is always tricky, because we are members of this system which we all strongly believe is racist and classist and doing harm to the families it claims to serve. But, when it's an individual client, the conversation must always be: If you invite that caseworker in who is so condescending and rude to you, doesn't remember your children's names and has everything wrong about you—if you invite her in and serve her food rather than give her attitude, your children will come home more quickly. It's unlawful for us to prioritize fighting the system over advocating for our clients, because we have a duty of loyalty." On the other hand, Ketteringham believes that the small fights they pick are, year by year, having a cumulative effect. "You will now hear judges turn to A.C.S. and say, 'A parenting class? Really? Wait, domestic-violence therapy *and* regular therapy?' That's from us pushing. Ten years ago it was so much worse, in terms of the cookie-cutter services that everybody rolled their eyes about."

So much about working in family court was maddening, it was small wonder that people got on each other's nerves. It had always been that way, and it seemed it always would be, since, each time a solution to a problem was found, that solution seemed to generate new and worse problems of its own. A few years ago, everyone with a court date was told to show up at 9 A.M. and wait. Since it was unpredictable how long the earlier cases would take, a person might wait all day without seeing a judge and be told to come back the next day, which might mean losing his job; and, once started, a hearing would continue until it was finished, even if it took till eight or nine at night. This was bad for the people who worked at the court, bad for the people whose cases weren't heard, and bad for the city's budget, because it required so much overtime. So the court instituted "time certains," so you could be reasonably sure that your case was going to be heard at a particular time, and it started shutting down promptly at four-thirty every day. But in order to keep to the time certains while moving each case along on the schedule mandated by law, hearings and trials had to be scheduled in short time slots—half an hour, an hour—spread out over the course of many months. In fact,



most of the half-hour slots were closer to twenty minutes, because nearly ten minutes was spent trying to agree on a slot to meet the next time, with the judge and three or four lawyers and caseworkers all consulting their scheduling books and calling out when they could and couldn't make it. And all those months spent piecing together the few hours required for a hearing or trial were months that removed children spent in foster care.

Then, there were the times when family court was even more tense than usual: after a gruesome and highly publicized murder of a child, people in child protection got very jittery and very cautious. More calls came in to the hotline, A.C.S. filed for more removals, and judges were more likely to grant them. What in normal times seemed like a small, ordinary mistake—forgetting to take a child to a doctor's appointment, bringing him to school late, getting drunk in his presence—could, in the wake of a death, seem like a portent of danger. And you never saw headlines accusing caseworkers of removing children when they didn't have to. Last October, the month after six-year-old Zymere Perkins died, allegedly at the hands of his mother and her boyfriend, foster-care placements increased by thirty per cent. Newspaper accounts of child deaths often suggested that A.C.S. workers had too many cases to do their jobs properly, but caseloads had been reduced over the years to a reasonable number—usually between eight and fifteen. It wasn't that caseworkers had too many clients, but that what they were required to do—change human behavior, predict the future—was very hard.

With so many serious and intractable issues to deal with in family court, the Bronx Defenders found it particularly infuriating when A.C.S. would argue for removal based on something they felt was relatively trivial, like marijuana. “I remember one case where I was struggling with whether I was going to make a finding of neglect,” Ronald Richter, who was a family-court judge from 2009 to 2011, before serving as the A.C.S. commissioner, says. “The mother was smoking marijuana in the shelter bathroom while her baby was on the bed in the next-door room, and I just didn’t feel that the agency had proved harm to the child. The record was so spare. There was nothing to show that this mother—they wanted me to make all these inferences! And I struggled and struggled and struggled. Then the mother didn’t show up to court, and her lawyer had nothing to say, so I was able to draw a negative inference and I made a finding and I was so relieved that that settled it.”

It had become rare for a child to be removed solely because the parent was smoking marijuana, but if kids had already been removed and the parent tested positive it was often a reason not to give them back. This seemed to Mendenhall so grossly unreasonable that she would sometimes lash out at the A.C.S. lawyers in the hallway afterward. “Never say ‘marijuana’ again in this courthouse until you call the police on your friend from college who dares to smoke it when he has children at home,” she fumes. “One guy said to me, ‘My own friends’ and family’s marijuana use is neither here nor there.’ And I said, ‘How can that be? *How can it be?* If you really believe in what you’re saying.’” It was this double standard that galled her the most. Blaming parents for the side effects of poverty was bad enough, but to censure them for doing what middle-class people did all the time without any fear of prosecution was too much. There was no leeway, no give, no mercy at all, if you were poor. “I’m not in favor of corporal punishment,” she says. “I don’t plan to hit my children, if I ever have them. I assume I will at some point, though, because that’s how I was raised. I will be shocked at myself, and I will have the comfort and the privilege within my family of processing how I failed,

and saying to my child, 'I lost it, I'm really sorry.' Our clients never have that privilege."

She knew that A.C.S. lawyers and caseworkers had jobs to do, and that those jobs were necessary to protect children. But there was a certain personality type that inclined toward that kind of work. "One of the A.C.S. lawyers, a couple years ago I saw her on the train, and I had a dog at the time. My dog was sixteen and I kept her alive till she was seventeen—doing O.K. First thing that lawyer did was stick her finger in my dog's collar and say, 'It's a little tight, Ms. Mendenhall.' "

**B**ecause A.C.S. continued to complain in court about Mercedes's marijuana use, and because she hoped that a dramatic demonstration of compliance and sacrifice might convince them that she was determined to reform, in 2012 she enrolled in a yearlong in-patient drug-treatment program called La Casita. At first, it was hard. "I didn't have no phone," she says. "You got to get rid of everything—no nails, no hair, no makeup, nothing, you're in there Plain Jane. I didn't really understand the logic of why you got to take my weave out, or why I can't wear earrings. I cried about my hair. They said, 'To strip you down to nothing and build you back up.' But you already feel like shit because your kids are in the system. Why would you want me to feel like nothing? I already feel like nothing." She couldn't believe she was there in the first place—she looked around and saw dope fiends and crackheads, and all she'd done was smoke some pot.

But then she grew close to a couple of the counsellors; she felt they understood her and gave her good advice. They believed in her and thought she should get her children back. Little by little, she started to unfurl. "Like most women that enter treatment, she didn't trust, she came from a broken home, she was always fighting," Yolanda Stevenson, one of the counsellors, says. "She was angry at herself, and at the system. I also think that she suffered from some form of depression, which was taboo for her. For a lot of African-Americans, we feel it's taboo—we're not crazy, why should we have therapy? But when you're fighting

with your mother like boxers, that's a little off." Mercedes felt that, after months of shutting down and running away from her life, this was her last chance, and she seized it.

Judge Sherman saw how hard she was trying, and how far she'd come, and said that the kids could visit her on weekends. She said that soon they'd be able to come for overnight visits, so La Casita moved Mercedes to a bigger room, with enough beds for all the kids to sleep there. Tiana was being fed through a tube into her stomach now, and Mercedes studied up on it so she would know how to take care of her. "I knew how to flush it, I knew how to mix it, I knew how to put the milk and cereal together and put the tube in and everything," she says. Mendenhall argued that the only remaining barrier to reuniting the family was housing, and Sherman charged the foster-care agency with arranging it. The agency resisted—it believed that the children should be adopted by their foster mother—but she ordered it to comply. Now it was only a matter of finding an apartment: after three and a half years, it would be just a few more months before the family could be together.

That year—2013—Mercedes brought her kids to Thanksgiving dinner at her aunt's house. "Thanksgiving was beautiful," she says. "My aunt and my grandfather hadn't seen Leslie, Camron, and Tiana since they were babies. We ate, we laughed, we talked. My aunt has one of them big dummies with no arms that they have in defense classes, and Camron was fighting that—they put boxing gloves on him and he went at it and had a ball. He was play-wrestling with my brother. Tiana, she was playing with toys with my cousin. Leslie was eating, talking to my mother, talking to my aunt."

Then, two days later, the agency told Mercedes that Camron had said that during the Thanksgiving dinner she had taken him into the bathroom and punched him in the stomach while her mother held his shirt up. More accusations followed: Leslie said that she had been abused, sexually and otherwise, by Mercedes and other people in her family. Later, Camron admitted to Mercedes and a caseworker

at La Casita that the punching at Thanksgiving hadn't happened, that his foster mother had told him to say that, and the caseworker recorded his statement, but the foster-care agency said the statement sounded coerced.

A.C.S. investigated each of these reports but pursued none of them in court. But as soon as one was closed another accusation would be made, and no reunion could take place before the new report was properly looked into. It seemed that nobody really believed that Mercedes had abused her children, because she was never arrested, and during this period she gave birth to a fourth child, Amaya, and Amaya was never taken away. But the reports continued. "I wish I could have helped Mercedes fight more, the way she was treated by the foster-care agency and the foster mother," Yolanda Stevenson says. "I've been in this field for twenty-three years, and I get that her children were traumatized. But I think her kids were coached by the foster mother to say these things—'Mommy beat me,' or whatever." Leslie started saying she'd been hit by any number of people in addition to her mother—by children on the school bus, by a teacher, by a teaching assistant in a school bathroom, by her foster parents. Sherman stopped the children's unsupervised visits at La Casita, so Mercedes saw them at the foster-care agency again. But the foster mother reported that Mercedes sexually abused the children during those supervised visits.

Reports started coming in against the foster mother and her husband, too. There were several calls to the hotline from mandated reporters—people, such as teachers and social workers, who were obligated to report suspected abuse—accusing her or her husband of mistreating the children. “There were allegations of her hitting the son,” Stevenson says, “but they didn’t remove the kids, which blew my mind.” At first, Sherman didn’t hear of the accusations against the foster mother, because the foster agency didn’t mention them in court, and they were all ultimately deemed unfounded. When Sherman did hear, she berated the agency for not telling her sooner, but she decided that since it still seemed likely that the children would be reunited with their mother, they should not be moved to yet another home.

Even the agency was worried about what was going on. The agency itself had called in one of the maltreatment cases against the foster mother; it was concerned about her habit of filming the children when they were having tantrums. It also felt that her husband was not behaving enough like a father. When the caseworker visited, he would be in another room. She would tell him he had to come out and engage with the kids, especially since they wanted to adopt them, but he would say, “My wife does that.” The agency testified in court that there were incidents where the foster mother and her husband were very harsh with the children.

Mercedes had started missing visits again and turning up late, and after several warnings Judge Sherman became so concerned about the traumatizing effect her behavior was having on the children that she cancelled visits altogether. Mercedes was so far gone in despair by that point that she almost gave up. “They already made up in their mind that they’re not going to give them back,” she says. “I feel as though they want me to say, ‘Fuck it, let me just sign, take ’em.’ I get to that point. I get there. That’s why I’ve been late. I can be on time; but when I’m at home getting ready, I don’t see an end to this tunnel, I don’t see a light, it’s just pitch black, this is a fricking routine that is never going to fucking end, and I feel

like I'm drowning all the time. Lord knows, I love my kids. But, at the end of the day, it's only so much one person is willing to take." She started crying. "I've dealt with everything. Everything they threw at me, I dealt with. After I busted my ass to make sure I got where I needed to be, they just snatched it back like it was nothing."

The children grew worse and worse. Camron threatened to kill his foster mother and her husband, and the month after the Thanksgiving dinner, when he was six, he ended up in a psychiatric hospital. Later on, he started threatening to kill himself, too, and he was hospitalized again and again. When Camron was nine and in a psychiatric ward, his foster mother took the girls and went on a vacation that she had planned, so he was all alone. In previous years, Sherman had seemed to agree with the foster-care agency that Camron's frightening behavior might be due to anxiety surrounding the visits with his mother, but now he hadn't seen his mother in more than a year and he was far sicker, and she was growing skeptical that Mercedes could still be blamed for what was happening. Since she wasn't allowed to visit Camron in the hospital, Mercedes called him on the phone the first day he was there, and he asked her to call him every day. She called the next day, and the next, but then the foster-care agency told the hospital that she was not allowed to have contact and her calls were blocked.

Camron reminded Mercedes of herself—he was angry and difficult, and she knew he was going to have a rough adolescence, as she'd had. "What I kept telling their foster mother is 'You forget those are my kids,' " she says. " 'My blood is running through them. My attitude is running through them. I gave my mother hell. You ain't never been through no shit like that, so you ain't going to understand, you're not going to get it. I will get it, because I been there. These are *my* kids.' " It seemed to Mercedes that the foster mother didn't really want Camron—what kind of mother left a nine-year-old alone in a mental hospital and went on vacation? "I felt the foster mother treated the daughters better than the son," Stevenson says. "When the kids would come to visit, you could tell he needed a

haircut, his clothes were shabby, he didn't smell the cleanest, so nobody was teaching him hygiene, but the girls looked like fashion models." At one point, Mercedes wondered whether she could make a devil's bargain with A.C.S. to give up Leslie and Tiana if they'd give her Camron—she thought that the foster mother seemed genuinely attached to the girls—but she just couldn't do it.

By the spring of 2017, Mercedes hadn't seen her children in nearly two years. She was living with Amaya in a shelter in Manhattan, near the F.D.R. Drive. "So much time has gone past, I don't even know what my kids look like right now," she said. "I look at them old pictures, I know Camron looks older. He's taller. I know Leslie looks older and she's taller. I don't know what they look like." The foster-care agency was advocating strenuously for adoption. The point of no return was getting closer.

The agency asked the court to place Camron in a long-term residential treatment facility. Mercedes went there and asked for a tour, and she emerged feeling it wasn't as bad as she'd feared. When the foster agency gave her a stack of medication-consent forms to sign, she first Googled each of the drugs they wanted to give him. There were four or five of them, and she looked up the side effects, the tics he might develop if he missed a dose, the withdrawal symptoms he would go through if he stopped taking them. Some of the antipsychotics sounded scary to her, especially for a kid as young as Camron. "They want to put him on Risperdal—I won't let them do that. That give boys breasts. Abilify? That's fine, it calms you. They wanted to do the Ritalin for the A.D.H.D. Fine. The closer I can get to the organic stuff, I try to. I've seen him in the hospital after he's woken up after they give him the shot to calm him down, and I don't like what I see. He's not responsive quick enough for me. He just sit there, his mouth open. He's talking, but it's like the lights is on but nobody's home. And I'm, like, no. Unh-unh. No."



For Mercedes, spring was the hardest time of year, because of birthdays. Camron's was March 21st, Tiana's March 30th, Leslie's May 5th. Each year, she braced herself for this dark period by going all out for Amaya's birthday, in January. She would spend her food stamps on a birthday cake and they would celebrate together. "Your birthday is special," she would tell her. "That's the day you changed me. That's the day you made me feel like I need to be here. Because I didn't feel like I needed to be here for a long time. They always made me feel like my kids never needed me, they didn't want me, they was better off with this lady. I just lost the will to live. It was like, whatever happened to me happened to me, I'm on the streets until whatever. But, when I saw Amaya, that was my purpose—to make sure she didn't go into care. I made sure that that baby stayed with me, and I'm going to continue to make sure that my baby stay with me. I refuse to lose her. I fucking refuse to. They will have to kill me."

“**T**he reckless destruction of American families in pursuit of the goal of protecting children is as serious a problem as the failure to protect children,” Martin Guggenheim, Sherman's former colleague, says. “We need to understand that destroying the parent-child relationship is among the highest forms of state violence. It should be cabined and guarded like a nuclear weapon. You use it when you must.” He believes the tide is turning in his direction—nine

thousand children in foster care in New York City compared with fifty thousand, changing views on drugs—but each time a child is murdered by a parent some gain is lost. After the death of Zymere Perkins, last year, Mayor de Blasio spoke on the radio about the case. “Our mission is to save every child,” he said. “Unlike pretty much any other area in government—we do not set a standard for perfection in policing or so many other areas—in this case we do set a standard of perfection.” He said, “Our job is to get there first and intervene and stop it.”

In Dostoyevsky’s novel “The Brothers Karamazov,” Ivan asks his brother Alyosha to consider the murder of a child and what price he would pay to avert it.

“Imagine that you are creating a fabric of human destiny with the object of making men happy in the end, giving them peace and rest at last, but that it was essential and inevitable to torture to death only one tiny creature—that baby beating its breast with its fist, for instance—and to found that edifice on its unavenged tears, would you consent to be the architect on those conditions? Tell me, and tell the truth.”

“No, I wouldn’t consent,” said Alyosha softly.

Children are killed all the time. But when confronted with one particular dead child and asked if there is no limit to what we should do to prevent another from dying like that—if perfection should be the goal of child-protective services, and if the state should intervene before bad things happen, just in case—it is very difficult to say no, even if the price is other children and parents suffering while alive.

Mercedes knows that, at this point, she has very little chance of getting her kids back. She knows that they will probably grow up without her, and that she may not even be allowed to see them. The foster mother and Mercedes’s mother aren’t friends anymore. The photographs she has will get more and more out of date, and Camron, Leslie, and Tiana will become people she doesn’t know. What she hopes for now is that when they’re grown, when they’re adults and can do as they like, one day they will come and find her. “I will always be looking for that phone

call, for that hit up on Facebook: ‘Mommy, what happened?’ ” she says. It will be years till then, but it’s been years already, and she’ll survive as long as she has Amaya. “I’m waiting for it,” she says. “I got time. Camron, that’s eight more years till he’s eighteen. Leslie is, what, nine more years. Tiana is six now. So I’m waiting for it. I’m waiting for it.” ♦

*Published in the print edition of the August 7 & 14, 2017, issue, with the headline “The Separation.”*



*Larissa MacFarquhar, a staff writer at *The New Yorker*, is the author of “Strangers Drowning: Impossible Idealism, Drastic Choices, and the Urge to Help.”*

More: [Child Protective Services](#) [Administration for Children’s Services](#) [Parents](#) [Children](#) [Parenting](#)  
[Child Abuse](#) [Families](#)

## THIS WEEK’S ISSUE

Never miss a big *New Yorker* story again. Sign up for This Week’s Issue and get an e-mail every week with the stories you have to read.

E-mail address

Your e-mail address

Sign up

By signing up, you agree to our [User Agreement](#) and [Privacy Policy & Cookie Statement](#).

Read More

---

VIDEO

## THE YOUNGEST ELECTED OFFICIAL IN NEW YORK CITY

Ritchie Torres, who is twenty-eight years old, represents the Central Bronx in the New York City Council. His mantra is “If you do nothing, nothing will change.”

AMERICAN CHRONICLES

## THE CHILDREN OF STRANGERS

Sue and Hector Badeau adopted twenty children who needed a home—but there were always more.

**By Larissa MacFarquhar**

A REPORTER AT LARGE

## WHAT MAKES A PARENT?

A brutal custody battle between two women raises questions about who has a right to rear a child—and could redefine the legal meaning of family.

**By Ian Parker**

DAILY-SHOUTS

## YOUR PERSONALITY, EXPLAINED BY YOUR ANNOYING HOUSEHOLD HABITS

You leave a swig of orange juice in the bottle because you're too busy with your own life to think about anyone else's.

**By Nicole Rose Whitaker**

[Cookies Settings](#)