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Providing Parents Multidisciplinary Legal Representation Significantly Reduces Children's Time in Foster Care

By Martin Guggenheim and Susan Jacobs

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In 2013, we wrote an article on the state of parental representation in the United States. [1] We reported that in too many places across the country parents' attorneys were underpaid and overworked. As a result, they were often less than ideal advocates for their clients. We now are thrilled to report on remarkable developments which should focus the field on the importance and ability of providing high-quality legal representation to parents in dependency cases. We have long believed two things about parental representation in child welfare cases:

- Despite its importance in terms of the consequences poor parents and children suffer from coercive intervention in their families, the field has been undervalued for far too long.
- Lawyering really matters and providing parents the right kind of legal representation in child welfare cases can mean the difference between preserving a family and seeing it permanently destroyed.

The second belief – that high-quality legal representation really can make a difference in these cases – is something we committed the greater part of our careers to proving. Until now, we could rely only on personal experiences and anecdotes. No longer. In May 2019, [a study](#) commissioned by Casey Family Programs and jointly investigated by Casey, New York University, and Action Research was published validating this belief.[2]

About the Study

The multiyear study of child welfare cases in New York City courts evaluated whether the kind of legal representation provided to parents can make a difference in case outcomes. It is the largest study of parental representation in family court ever conducted, tracing the outcomes of 9,582 families and their 18,288 children through a four-year follow-up period. The study compared case outcomes based on whether parents were represented by solo practitioners who are experienced lawyers appointed to the Assigned Counsel Panel (panel lawyers) or by professionals who are part of a multidisciplinary law office that includes lawyers, social workers, and parent advocates (multidisciplinary representation).

The study was possible because in 2007, New York City awarded contracts to three public interest law offices – Bronx Defenders, Brooklyn Defender Services, and the Center for Family Representation – to supplement the panel form of parental representation in New York City family courts. Until then, parent representation was provided exclusively by experienced solo practitioners who had to apply to an assigned counsel panel to be eligible for court assignment and were paid by the hour. Since 2007, the family courts in New York City have assigned parents in child welfare cases either to a panel lawyer or a staff lawyer employed by one of the family defender offices.

The study's most important quality was its rigor in developing a statistical design that effectively compared outcomes and screened out potential distortions. This meant carefully matching cases based on more than 20 variables, including age, race, number of children involved, county, judge, severity of allegations, and prior involvement with the child welfare system. By isolating the kind of legal representation the parents received from among the many variables that distinguish the cases, the researchers concluded that any difference in case outcome between the two groups was attributable to the kind of legal representation the parent received.

Key Findings

The key findings are:

- **Reduced time in care:** Multidisciplinary representation reduced children's time in foster care by nearly 4 fewer months during the 48 months following the petition filing, through faster early reunification outcomes, compared to panel representation. This amounts to up to nearly \$40 million annual savings in foster care board rates for New York City.

- **Child safety:** Children were just as safe with multidisciplinary representation. Representation type did not impact whether children experienced a subsequent substantiated report of child maltreatment during the 24 months following the petition filing.
- **First-Year Reunifications:** Giving parents the right kind of legal team means families are reunited significantly sooner than would otherwise happen. The multidisciplinary family defense offices secured the safe return of children to their families approximately 43% more often in the first year than the solo lawyers.
- **Second-Year Reunifications:** The multidisciplinary family defense offices secured the safe return of children to their families 25% more often in the second year.
- **Higher Rates of Kin Placement:** The family defense offices allowed children to be permanently released to relatives more than twice as often in the first year of a case and 67% more often in the second year. These families may otherwise have been permanently dissolved or the children may have spent their childhood separated from their family and aged out.
- **First-Month Reunifications:** 17 percent more children would be reunified within a month if their parents had multidisciplinary representation than if represented by panel lawyers.
- **First Six-Month Reunifications:** 27 percent more children would be reunified with their families within six months if their parents had multidisciplinary representation than if their parents had been assigned panel attorneys.
- **Guardianships:** Of those children who could not be returned to their families, 40% more children ended up with a permanent disposition of guardianships when their parents had multidisciplinary representation than children whose parents were represented by panel lawyers.

Practical Significance

The study has broad implications for the entire field of child welfare. Two implications stand out:

1. Providing parents a team with legal and social work experts creates plans that allow parents to safely parent their children. The New York City study focused on the *models* employed, not the *professionals*. The solo practitioners' cases did not fare worse because the staff attorneys are

better educated, or more motivated; they fared worse because they are solo practitioners, who lack time to do many of the tasks covered by other members on the multidisciplinary team, such as attend agency meetings, meet with their clients out of court, help clients comply with the many services imposed on them, and strategize with clients on the surest way to achieve the speedy return of their children from foster care.

What all New York City family defense offices have in common, besides employing staff attorneys whose salaries are not based on the number of cases they carry, is the offices employ social workers and often parent advocates who partner on teams with the lawyers to offer their clients a broad range of support well beyond the courthouse. The lawyer member of the team provides legal representation in court. The social worker helps the client access stabilizing services, such as housing, employment training, drug treatment, and domestic violence counseling. Parent advocates -- trained professionals who have personally experienced the child welfare system and can empathize with vulnerable families -- give emotional support and help parents engage in services. This team model can be implemented in all jurisdictions and does not require an institutional setting as we have in New York City. Social workers and parent advocates can work with lawyers through contracts or as employees of individual lawyers.

2. Too many children are kept in foster care longer than necessary for their safety. Giving parents free representation by lawyers does more than advance social justice. It is a smart investment because it furthers the state's goal of reducing the time children spend in foster care. The study showed, for example, that fully using defender offices in New York City would reduce the foster care population by 12 percent compared to exclusively using panel lawyers. In New York City, this amounts to an annual savings of about \$40 million. But these foster care reductions were accomplished in a city with an outstanding record of reducing foster care. Consider, for example, that New York City's foster care population shrank from 17,000 in 2007 when the defender offices first began to slightly under 8,500 at the end of 2018.[3] We certainly do not suggest that these numbers have shrunk to this degree solely because of the defender offices. New York City's foster care population began dropping around 2002.[4] Rather, it is even more remarkable that the defender offices have proven so effective in securing the safe return of children from foster care since New York City has prioritized reducing the number of children in care.

In jurisdictions where foster care rates have increased or remained historically high, we anticipate the impact of this new version of family defense would have an even greater impact on reducing the foster care population. Based on the 12% reduction in the study's results, we estimate

multidisciplinary legal representation would produce a nationwide reduction in the foster care population of around 50,000.[5]

Reimagining Family Defense

New York City is not the only jurisdiction in the country employing a modern, innovative approach to parent representation. Several states and some countywide pilot programs are participating in this growing movement of reimagining family defense.[6] But most jurisdictions in the country have not changed how they provide parent representation in child welfare cases. We hope this study will spur them to action.

Recognizing parent lawyers as system allies. We may now recognize a properly conceived family defender program as an evidenced-based service which should be embraced everywhere. We are long past the time of regarding a parent's lawyer as an antagonist to be tolerated only because the statute requires one. It's now time to recognize parents' lawyers and other members of the multidisciplinary legal team as allies to the system, committed to the identical values that drive it: *Keep no child from his or her parents, for even one night, except when necessary to protect the child from a risk of serious harm.*

Replicating multidisciplinary parent representation models. We look forward to replicating the results in New York City throughout the country by encouraging local and state jurisdictions to familiarize themselves with the study and take its fundamental lessons to heart. Every jurisdiction should begin to develop a legal services system which uses social work and parent advocates as well as lawyers and which provides all of those professionals with reasonable caseloads, reasonable compensation, and the support of other experienced professionals for training and supervision. This is a propitious time to reconceive the parent representation system throughout the country especially because the federal government has now made costs of parental defense reimbursable as a IV-E expense.[7] Our colleague Mimi Laver, Director of Legal Representation at the ABA Center on Children and the Law and it's [National Alliance for Parent Representation](#), can help those interested in developing such services.

We now know many children are kept in foster care simply because their parents are not afforded appropriate representation. If that isn't a reason to change, what would be?

The study can be found here:

<https://www.sciencedirect.com/science/article/pii/S019074091930088X>

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Endnotes

[1] Guggenheim, Martin & Susan Jacobs. "A New National Movement in Parent Representation." *Clearinghouse Review* 44, May-June 2013 (part of a review of the state of America's legal delivery system 50 years after the Supreme Court decided *Gideon v. Wainwright*, 372 U.S. 335 (1963).)

[2] Gerber, Lucas et al. "Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare." *Child and Youth Services Review* 102, 2019, 42.

[3] *New York City ACS Report on Youth in Foster Care*, 2018.

<https://www1.nyc.gov/assets/acs/pdf/data-analysis/2018/ReportOnYouthInFC2018.pdf>

[4] New York City Mayor's Office of Operations. *Mayor's Management Report* 34, Sept. 2007.

<http://on.nyc.gov/1lhgJQn>.

[5] The most recent numbers from the federal government report that on September 30, 2016 there were nearly 440,000 children in foster care in the United States.

<https://www.acf.hhs.gov/cb/resource/afcars-report-24>. A 12 percent reduction is about 53,000 children with a savings of hundreds of millions of dollars.

[6] California, Colorado, Massachusetts, Mississippi, Oregon, New Mexico, Pennsylvania, Washington, among others, have at least one county or judicial district piloting or implementing the multidisciplinary model.

[7] Hardin, Mark. "Claiming Title IV-E Funds to Pay for Parents' and Children's Attorneys: A Brief Technical Overview." *Child Law Practice Today*, February 26, 2019.



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