

TESTIMONY

The Council of the City of New York
Committee on General Welfare
Bill De Blasio, Chair

“The Crisis in Family Court”

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Brianna was born to a nineteen year old mother who had been raped by her godfather and beaten by her alcoholic mother. As a teenager her mother was addicted to drugs, depressed and attempted suicide. She moved from boyfriend to boyfriend and ultimately ended up in a homeless shelter. By this time Brianna was 6 years old. When evaluated at the shelter Brianna was found to be weepy, clingy and preoccupied with her body. Although a full evaluation was recommended it never occurred because the shelter worker soon realized that she was being left in the care of other shelter residents while her mother was out doing drugs with her boyfriend. Unable to locate her mother, the Administration for Children's Services removed Brianna from the shelter and put her in stranger foster care.

Initially, there was no history for Brianna and she was unable to provide one herself as she suffered from selective mutism. She fared poorly in foster care and had difficulty bonding with her foster parent. She cried continually and would wake up in the middle of the night screaming. After further evaluation it was discovered that she had been sexually abused repeatedly and had contracted a venereal disease as well. Her mother appeared in court occasionally always with a promise to participate in a drug program but never successfully completing one. Additionally, it was found out that the godfather that had raped her mother was actually Brianna's biological father. Brianna was shuttled from foster home to foster home, but her lack of ability to form a connection and her mutism made it difficult to find her a permanent home. She is presently the subject of a termination of parental rights proceeding and has still not been placed in a pre-adoptive home.

“[E]ach child must be valued as a unique human being, regardless of race, ethnicity, religion, age, social class, physical or mental disability, gender or sexual orientation. Each child is vested with certain fundamental rights, including a right to physical and emotional health and safety. In order to achieve the physical and emotional well-being of children, we must promote legal rights and remedies for children. This includes empowering children by ensuring that courts hear and consider their views in proceedings that affect their lives.” **National Association of Counsel for Children Recommendations for Representation of Children in Abuse and Neglect Cases** page

100 The representation of children is a unique and highly specialized area of practice that is increasingly sophisticated and complex in both the law and the underlying interdisciplinary perspective required to handle these cases effectively. Yet, there still seems to be an alarmingly lack of clarity as to the resources necessary to handle such matters.

Good morning. I submit this testimony on behalf of the Legal Aid Society, and thank the Committee on General Welfare for inviting our thoughts on how to help solve the crisis in New York City’s Family Courts. We applaud the Council for tackling this important subject, and look forward to the valuable contributions that we are sure the Committee will make in this area of vital concern to our City’s children and their families.

The Legal Aid Society is the nation’s largest and oldest provider of legal services to poor people. Legal Aid’s Juvenile Rights Practice provides comprehensive representation as

law guardians to children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 29,000 children, almost 90% in the context of child protective proceedings. Our perspective comes from our daily contacts with children and their families, and also from our frequent interactions with the courts, social service providers, and State and City agencies. In addition to representing many thousands of children each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

It is beyond argument that children are the heart and soul of who we are as humans, and our treatment of them reflects everything both good and bad about us. When I began this work 20 years ago no one could have convinced me how complicated and nuanced this work would be, experience has shown me otherwise. All day long in Family Court, parents, judges, attorneys and child welfare workers confront the difficult and emotional task of trying to keep families together whenever possible and separating them when necessary. This is often a very fine line. And recent events have conspired to make this work even more difficult.

Briana's case, summarized above, while disturbing, represents only one of the complicated situations that are addressed in family court every day. Clients like Brianna require high quality services, rendered by a well trained group of professionals and paraprofessionals who are able to maintain a strong and continuous relationship with them. Additionally, the services for these children must cover a wide spectrum of needs

and must not be routinized but must developed taking into consideration the diverse needs of each individual client. Moreover, there needs to be recognition that to best serve the child it is often incumbent on the professionals involved to serve the family as well. These clients must feel that the professionals they are dealing with respect them, care about them and empathize with them at every juncture of the case. They are the heart of Family Court and it is the children we are answerable to at the end of the day.

Already facing a workload crisis prior to the current fiscal year, in 2006 Juvenile Rights staff, as well as all family court practitioners and judges, faced the unanticipated increase of petitions being filed as well as the problems created by the new permanency legislation. The tragic deaths of several children at the end of 2005 and beginning of 2006 created a groundswell of calls into the New York State Central Registry. In addition, the deaths of these children, some under Administration for Children's Services supervision, resulted in a reevaluation of all ACS families in which a child remained with a respondent on an abuse or neglect petition. This increase in filings resulted in a critical mass of new matters before the Family Court that neither the court, ACS nor the Juvenile Rights practice were prepared to handle.

In order to address this issue in early 2006, ACS devoted over 16 million dollars towards improving service provision, including increasing their legal staff by 32 attorneys. Likewise, the court saw the need to add an additional "temporary" judge to each large borough to assist with the burgeoning workload. The damage done to the families, courts and practitioners was all too clear. Emergency hearings were at an all time high, causing

courts to adjourn previously set hearing dates. Existing cases and families were put aside until the new matters could be addressed. In turn, Juvenile Rights staff worked furiously to prepare for the emergency hearings, while juggling to fit adjourn dates into their already flooded calendars. With no additional assistance, triaging both new and old cases became necessary, causing significant strain on an already stressed system. In an environment where the law guardian often holds the key to the resolution of a case, the desperate need to be prepared in each and every matter before the court reached crisis levels in the Juvenile Rights practice.

This problem was compounded by the fact that no one practicing in the Family Court was adequately prepared for the implementation of the extensive and worthwhile new permanency law. While it was understood that each case would be required to undergo an additional hearing each year, the mechanics of how that was going to occur were not as clear. Judges practitioners alike spent 2006 scrambling to complete all the required permanency hearings in the mandated 30-day period. The chaotic nature of the courthouse caused by the increase in filings and the lack of support sufficient to implement the permanency legislation added significantly to the workload crisis already experienced by the Family Court practitioners, including law guardians.

Furthermore, the law guardian practice in New York City, already complicated by the sheer volume of matters, is also made more difficult by the complexity inherent in dealing with hundreds of different attorneys, agency workers and community service providers. Moreover, Juvenile Rights clients and their families come from the largest

city in the country with some of the poorest neighborhoods and are students in one of the most seriously beleaguered educational systems, making the practice extraordinarily complicated and fraught with difficult issues.

Despite the serious problems listed above, the Juvenile Rights staff continued to remain extraordinarily committed to providing their clients with the best overall services possible. Juvenile Rights staff stayed late into the night to ensure their client's issues were addressed and that much needed services were put in place. They continued to represent the interests of some 29,000 clients in court proceedings; still remaining the one stakeholder the judiciary relies on for critical and truthful information.

The reality is that the Juvenile Rights practice offices continue to be understaffed, while the workload continues to impact the representation of children and overwhelm all staff -- attorneys, social workers, paralegals and support staff.

Intake Numbers

In the first five months of 2005, 1,690 original neglect or abuse petitions were filed. In the same time period in 2006, 4,029 petitions were filed, a 139% increase. With the advent of the new permanency law, these new petitions will remain calendared every six months for a permanency hearing. Almost 40% of these new clients are 10 and older, a population with significant needs and less chance of achieving permanency "quickly." While the delinquency numbers have remained consistent compared to last year, the borough of the Bronx has had an increase of almost 35% in original filings.

In 2005, extension of placement petitions filed once a year were used to indicate the reappearance of a family into a law guardian's workload. Since the new permanency law, extension petitions will not be filed. Numbers now need to be tallied utilizing the filing of permanency reports and hearings scheduled. Those cases for which a permanency report and hearing were held in the first half of the year will reappear for another permanency hearing for a second time before the year is completed. This law virtually doubles the number of times a family will reappear per year in Family Court and in the workloads of practitioners.

While a cursory glance at the court's filings for 2006 may indicate a significantly lower number than the 2005 filings of just over 26,000, this is simply because the court has yet to find an accurate way to record permanency hearings. Since these hearings are not being counted as "new" filings of petitions, the court's numbers for 2006 create the superficial impression that the Family Court's workload has decreased. In fact, the permanency hearings actually double the supplemental petition numbers recorded in the neglect and abuse cases for 2005 since these cases are now heard, not once a year for an extension of placement, but twice a year for a permanency hearing. Therefore, the 2005 neglect and abuse supplemental petition number of 11,021 will effectively be doubled in 2006 to 22,000 permanency hearings. Looking at the 2005 filings of 26,000 and projecting 2006 accurately, including the permanency hearings, it is clear that the total number of projected "petitions" for 2006 should be approximately 38,000, a significant

jump in filings that require a considerable increase in both court time and non-court work.

Clients

A client count for Juvenile Rights practice attorneys presents the impact on law guardian workload of the increase in filings and the new permanency law. In total 120 attorneys represent over 26,000 clients in a variety of matters. For the attorneys in this practice for less than one year, many of them already have client counts over 100, with some representing more than 150 clients each. These are newly admitted attorneys or attorneys with some experience but not in the field of child welfare.

Attorneys at Juvenile Rights employed between one and five years paint a starker picture. In this group 35% carry client caseloads above 200, with than half carrying 250 plus clients each. Almost 58% of these attorneys carry between 100 and 200 clients, with 38% of those attorneys carrying over 150. The remaining two attorneys carry just fewer than 100 clients and have been with the practice for just over one year.

The last group consists of attorneys who have been with the Juvenile Rights practice over five years. In this group, 80% of the attorneys carry more than 150 clients with almost 50% carrying over 200 clients. Of the 50%, almost 30% of the staff carries over 250 clients with several carrying between 300 and 400 clients apiece.

These numbers are significant as they relate to an attorney's ability to complete the tasks required for the representation of these young clients. The higher the client base, the fewer hours available in the course of a work day to address individual client needs. With the increase in new filings and the difficulties that have arisen from the new permanency law, court time has increased considerably with the average attorney appearing in court between 22-25 times per week exclusive of their assigned intake day in which they appear in court continuously throughout the day. Again, this type of in court time leaves dangerously few hours for essential out of court tasks.

Of the 17 staff attorneys dedicated to delinquency work, less than half have a client count between 50 and 60. The remaining number has over 60 clients apiece with over 35% having well over 75 clients. These complex and trial intensive cases require a great deal of out of court preparation to ensure quality representation. With the grave consequence of possible loss of liberty, these clients require an attorney with sufficient time to devote to the comprehensive investigations that are necessary. In fact, success in a delinquency matter often hinges on time for work outside the courtroom, a rare commodity for an attorney with 60 plus clients.

With such high client numbers, attorney staff must delegate many of the non-court activities to social work and paralegal staff, placing a significant burden on these overwhelmed disciplines. The new permanency law has created an influx of new work for paralegals related to the scheduling of client interviews and the ancillary work related to the insufficiency of the permanency reports submitted by the presentment agency,

ACS. Additionally, social work staff has been flooded with assigned tasks of every type due to the attorneys' lack of available office time to complete even the most rudimentary work such as interviewing, ensuring client services and making home or facility visits. As each discipline becomes inundated with the implications of the new filings and permanency law, the ability for the overall Juvenile Rights practice to address each client's specific and critical needs becomes severely limited.

With child protective filings skyrocketing even the most ordinary tasks have become difficult. Juvenile Rights staff members in all disciplines have been scrambling to find the time to complete everything from case preparation to the most basic follow up in service referrals for clients. Even managing the logistics of meeting with clients as quickly as possible once a case has been assigned, which has always been a priority, has become a significant issue. With the increase in court appearances and the constant adjournments, finding time to complete these interviews has been a difficult task. Time constraints, the limited office hours for those offices housed in the courthouses and travel issues for children and their families have taken a toll on client contact.

For each task that is reassigned during such a crisis, it becomes clear that other, equally essential tasks are falling to the wayside. Moreover, the increase in clients means an increase in the time spent in court and the follow up required to serve each and every client. Once again, without adequate resources, Juvenile Rights staff has been attempting to maintain the practice's traditional level of representation.

The new permanency law also brought an array of difficulties to the practice in all boroughs. The increased frequency of court appearances simply to comply with the requirements of the statute created problems for staff, both in scheduling and in preparation as permanency hearings were added to calendars already swelling with increased filings. Due to the chaos surrounding the filing of the permanency report and the scheduling of permanency hearings, properly capturing the number of permanency hearings and the workload related to the new legislation has been difficult for both the court and the Juvenile Rights practice. While the effort to comply with the new law is laudable, more often than not the agencies do not prepare the statutory reports in a timely manner (very few were actually completed and served 14 days in advance as required) so neither the court nor counsel are ready to proceed, adding yet another appearance date to the calendars.

In response to this crisis, the Administration for Children's Services and Corporation Counsel, the Juvenile Rights practice's counterparts in Family Court, have increased their staff in record numbers. The Juvenile Rights staff continues to lag behind. To address this crisis and to ensure that children and families are truly served by family court, the Legal Aid Society asks the City Council to consider the following recommendations:

1. The National Association of Counsel for Children, along with the ABA and NYSBA all recommend caseload standards in child protective cases. These three agree on a standard of 100 clients per attorney. Currently JRD attorneys represent between 200 and 300 clients at any given time. We need to start complying with

practice standards and ask that the City Council support case cap legislation and urge the State Legislature to do the same.

2. The new Permanency Legislation significantly increased workload pressure in Family Court and all practitioners; permanency hearings every six months doubled attorney and Judge as well as necessitate increased case preparation and motion practice for attorneys. We ask the City Council to urge the State Legislature to provide additional funding to fully implement the Permanency Law so it will function as originally intended and truly serve families.
3. Although ACS has begun to increase its community-based preventive services to families, the City needs to commit more resources and to focus ever more on how to support children and families so that they do not end up in crisis. That focus, and funding, must be in schools, outpatient mental health services, housing, and other supports in the communities where families live. Early identification of problems, and the availability of resources to address them, could prevent some of the neglect cases that flood our Family Court system from ever escalating to that point.
4. The City Council must urge the State Legislature to increase the number of Family Court Judges so that families seen in Family Court are given the time and attention they so desperately need. Temporary judicial assignments only serve to add to the confusion of the courthouse, increase attorney court time and result in the bifurcation of matters, ignoring the one judge, one family model.

The introduction to the Child Welfare Watch's report on Family Court states: "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." We ask the members of the City Council to join all of us in fighting to ensure that New York City's Family Courts have the necessary resources to do justice and do it in a timely manner. Then, our children and families will truly be served.