

**BECOMING SUBJECTS OF CHILD WELFARE:
PARENTS, WORKERS, AND INSTITUTIONS OF FAMILY GOVERNANCE IN NEW
YORK CITY.**

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ABSTRACT

**Benjamin Rubin: Becoming Subjects of the Child Welfare System: Parents, Workers, and Institutions of Family Governance in New York City
(Under the Direction of Elizabeth Ann Olson)**

Child welfare in the U.S. is frequently characterized by internal contradictions; caught between a narrow definition of welfare as protection from immediate threat of serious physical harm, and a more expansive consideration of wellbeing more generally. This project examines the functioning of New York City's child welfare system through the professionals within it. It emphasizes the spatialized nature of the divisions that exist along lines of race and poverty, as families reliant on public infrastructure in public spaces are more far more vulnerable to surveillance and reporting. The study attempts to use ethnographic interviews to connect a parents' typical experience of the system as unpredictable and precarious, with the structure of the jobs of those working within ACS, and the variable and unregulated nature of their processes of professionalization. Lastly, field observations are used to analyze the courtroom as a space through which governance of families is produced.

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LIST OF ABBREVIATIONS

ACS	Administration for Children's Services
ASFA	Adoption and Safe Families Act
CAPTA	Child Abuse Prevention and Treatment Act
CPM	Child Protective Manager
CPS	Child Protective Specialist
CSC	Child Safety Conference
CWOP	Child Welfare Organizing Project
DCP	Division of Child Protection
DHS	Department of Housing Services
FCLS	Family Court Legal Services
HRA	Human Resources Agency
NYCHA	New York City Housing Authority
OCFS	Office of Children and Family Services
PATH	Prevention Assistance and Temporary Housing
PRA	Personal Responsibility and Work Opportunity Reconciliation Act
SCR	State Central Registry
TPR	Termination of Parental Rights

Anything Else Doesn't Matter: An Introduction to the System

So what's hard about this job for me is dealing with the bureaucracy that is ACS. And dealing with how incredibly inefficient and incompetent the government is. And how little any of this seems to be about what's *actually* good for kids, and it's really just about escaping liability in case something bad happens. There's very little attention paid to the trauma that children experience from being moved around a lot, and taken away from their families, and it's almost like the only thing that matter is, like, if their parents don't kill them or hurt them, then it doesn't matter, anything else doesn't matter.

(Joanna^{*}, Attorney for the Child, Family Court)

They just think you're some type of monster. When you are in the child welfare system, you're guilty until proven innocent. And you're never really proven innocent. You're just branded for the rest of your life as a bad parent.

(Anonymous Mother, from film *A Life Changing Visitor: When Children's Services Knocks*, Greer 2014)

I was attending a meeting of parents who were involved in ongoing cases in New York City's family court; all of them either struggling to keep or to regain custody of their children. One woman had turned to the group for help, describing her dilemmas in trying to follow the directions of her foster care caseworker. Everything has been incredibly inconsistent. She has had a different judge in each of her last three court visits, who have made three slightly different rulings. She has been told earlier today (Wednesday) that she must come to the office to sign documents before a court appearance on Friday, but has not been told what they are or what they

^{*} Unless noted by the inclusion of a last name, all names have been changed to protect the privacy of individuals. Italics indicate verbal emphasis in original interviews.

concern; she has asked to bring someone to help her understand the documents, and has been told that this is forbidden. As far as I understand it, this last action is against official policy, something several other parents also point out. One suggests that perhaps she can take the document with her to consult with someone. She is afraid to try this, saying that, “anytime I refuse to sign something they use it against me. They say I’m incompliant.”

As I began to research the child welfare system, experiences with such inflexible demands and erratically enforced rules were described to me again and again as commonplace; part of the ordinary routine of suspicious treatment of poor parents. But beneath all of the complaints of an unfeeling government bureaucracy, child welfare is propelled by a visceral fear of the very real possibility of harm coming to children, and collective impulses to protect them. Child protection workers, court officials, and parent’s advocates are all tasked to minimize risks to children while upholding the rights of the children and their parents.

Mainstream and academic discussions of the state of child welfare depict a system typified by internal contradictions and conflicting definitions of harm and risk. The vague definition of the very term “risk” reveals a more profound ambiguity, between child welfare as concern for the overall wellbeing of the child, and as protection from immediate risk of serious physical harm. At times these different conceptions may be aligned to satisfy the multiple parties in child welfare cases; more often they stand in tension with each other. The system is responsive to issues caused by poverty and material need, but can only respond by bringing families into the authority of its legal mechanisms. Its primary tools—of services, surveillance, and removal—cannot address these root causes for large numbers of cases of neglect, and yet they are repeatedly deployed, as the only tools that child welfare is designed to use. One lawyer describes this contradiction at length:

So if we're doing what the system *says* it's trying to do, which is to protect the children who are at *serious* risk of *serious* harm, then you actually don't *need* that many resources. There's a real, but not huge, number of kids who are at serious risk of serious harm. ... If we really want to raise the wellbeing of children in New York City, ACS [Administration for Children's Services] is just not the way to do that. It's the wrong system. And putting more money into ACS isn't going to do that. You would need to put money into access to health care, and access to child care, and housing, and education, and those would be the things to raise the wellbeing.

(Christine Gottlieb, Co-Director, NYU Family Defense Clinic at NYU School of Law)

This analysis was demonstrated consistently by interview participants across the spectrum of professional roles, and is also repeatedly echoed in many documents of policy analysis. The starting point for this thesis, then, is to investigate the consequences of this contradiction. Without accepting it as fact, I do take seriously the assertion that “the system” is not doing “what [it] says it’s trying to do” - whether or not child welfare is effective in preventing child abuse, it also claims to have other goals, and has many other impacts on lives, that are the basis of this study.

Another of the system’s most salient features is the overwhelming unpredictability and uncertainty that a parent will face once she enters it. She will often be given unclear or conflicting directives from different people who are in positions of authority over her and her child, often without a clear guide as to what nominally should be happening, or any way to ensure that the system will work as it claims to. Some of these inconsistencies and contradictions can be blamed on individual workers, but many are internal to the system. They must be faced again and again in new forms and through new situations; by families and the frontline workers who are faced with daily ethical decisions.

Objectives of Research and of the Thesis

This thesis begins with the aim to describe the system of child protection / child welfare in New York City – what it actually does, how it is perceived by those subject to it in various

ways, and to describe it as the outcome of interactions between “top down” policies which structure and direct, and “bottom up” individual actions, decisions, interpretations, prejudices, and insights of the professionals who work within it (both working for the system, and representing parents in opposition to it). Second, I aim to demonstrate that child welfare is shaped by structural forces, particularly of poverty and race, but it is not determined by them. Lastly, I will aim to go beyond showing that the nature of child welfare is often contradictory and inconsistent, and attempt to build an understanding of why it functions as it does.

The child welfare system in New York City is complex and fragmented, comprised of its child protective agency, named the Administration for Children’s Services (ACS), a family court system with one court in each of the five boroughs, and over thirty voluntary agencies which provide services for adoption, foster care, and preventive treatment. It is a system that is by many accounts dysfunctional, and which has continually been an object of reform throughout its history (Children’s Rights 2007; Tobis 2013; Wexler 2010). It is a system that is often hidden from most of the middle and upper class of the city; or ignored until a crisis erupts. My goal in doing my fieldwork during the summer of 2014 was first to understand this complicated and confusing system. How did different actors understand and view the system, where did they agree, and disagree? How did workers understand and evaluate risk; and balance the emotional harm done to children by removals with the potential danger of inaction? How are the conflicts and ambiguities of child welfare understood and resolved by the professionals who work in the child welfare system, and those parents subject to it?

Research Questions

1. **Research Question 1:** *Who are the subjects of the child welfare system? How are families, and parents in particular, made into subjects?*

This question asks what the inconsistencies are productive of: it must be answered by examining what child welfare is designed to do, how those in power evaluate whether it has been successful or not in achieving those goals, and the response from policymakers and administrators when it is seen to fail at its goals.

1. **Research Question 2:** *How do workers in child welfare make the practice of child welfare? How do these practices align with, or contradict, formal institutional goals?*

This question asks how inconsistency and unpredictability are produced: it must be answered by examining how workers are trained formally, but also by comparing their evaluations of child welfare with its official representations, with its depiction by parents and their advocates, and with each other.

Structure of the Thesis

I begin in Chapter One with a review of literature relevant to this study, primarily focusing on theorizations of the family and institutions of family governance, an overview of literature on the topic of expertise, and a brief summary of the discussions of child welfare within legal theory. Chapter Two is divided into two parts; the first looking at broad trends in the history of child welfare in the US, and the second picking several key conjectural moments to tell the story of ACS and child welfare in New York City. Chapter Three tells the story of the day to day experiences of parents who become the subject of an ACS investigation, primarily using interviews with professionals who represent them to describe the different stages of an

investigation and the subsequent hearings in family court. This chapter demonstrates, among other things, that parents are extremely dependent on the individual workers within ACS, and so in Chapter Four I turn to the job of an ACS caseworker, using interviews with former ACS employees to examine the structure of the job, and the process of professionalization of its workers. Chapter Five uses field observations from my visits to family court to describe its role; I examine the power relations embedded in the space of the court, and the ways that court makes parents as subjects.

Who Decides What is in a Child's 'Best Interests?' Context for Research

The state of contemporary child welfare in the U.S. has been consistently criticized from opposing viewpoints: that it dangerously abandons children to potential harm (Bartholet 2000), and that frequent unnecessary removals harm children and abrogate the rights of parents (Wexler 1995), in many cities acting to target African American communities in particular (Roberts 2002). It is difficult to draw definite conclusions by looking at the national level, as each of the different branches – child protective investigations, foster care systems, and family courts – are governed by a mix of federal, state, and municipal laws and policies. However, some things are consistent across the country.

There are too many children in foster care. This has been agreed on by a wide array of interests, and has been formulated as a national problem to be solved multiple times. This was the 'crisis' which motivated the law which currently governs foster care and adoption, the 1997 Adoption and Safe Families Act (ASFA), which promotes adoption as the ideal solution to the crisis (see Fig 1 below for the national trends in the foster care population during the 90's). Despite the fact that in repeated studies family reunification is demonstrated to lead to better

outcomes than adoptions (Doyle Jr. 2012; Williamson and Greenberg 2014), and despite the fact that what are considered ‘broken adoptions’ continue to be commonplace (Arsham 2013; Post and Zimmerman 2012), the national landscape of child protection and foster care, structured by ASFA, is tilted toward adoption and away from family reunification. In addition, both nationally and in New York City, the majority of child welfare allegations are for neglect rather than abuse (NYC-ACS 2015; Children’s Rights 2007): even in the eyes of the state institutions, many removals stand on tenuous grounds. This thesis does not argue against the fact that child abuse exists; there is wide consensus that many cases do warrant removal of children. Instead, I focus on the murkier and more difficult cases at the margins, and explore the consequences of treating a wide range of cases of abuse and neglect with the same set of tools.

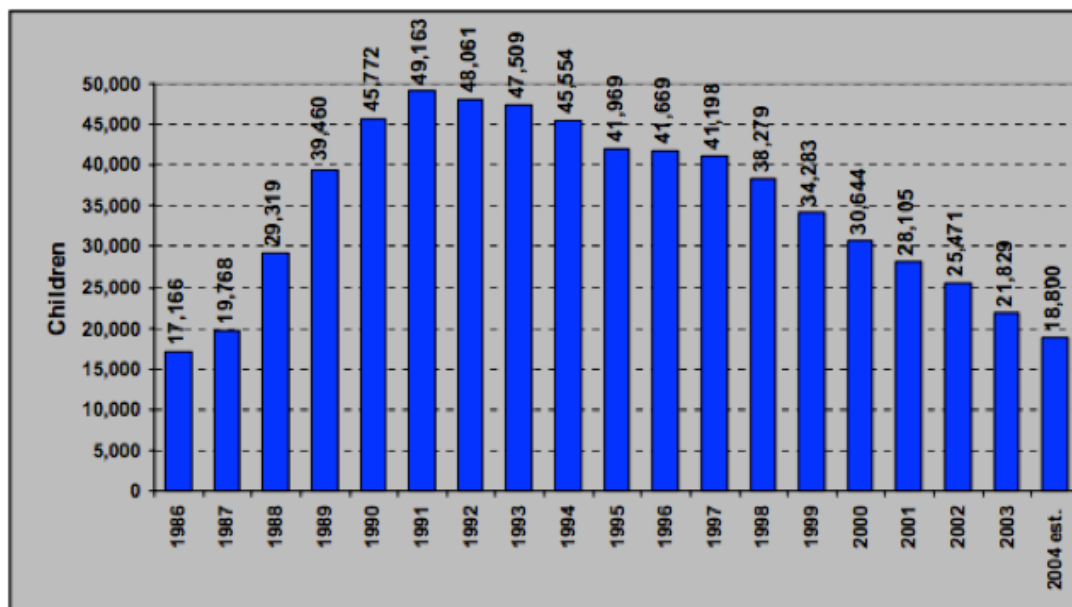


Figure 1: New York City Foster Care Census 1986 - 2004. Source: NYC-ACS. *Protecting Children and Strengthening Families: A Plan to Realign New York City’s Child Welfare System*, February 2005 (14).

Methodology

The data collection for this thesis took place primarily during a single period of fieldwork in New York City, between late May and early August in 2014. I also made follow up visits for

research during October and December. My research is comprised primarily of individual interviews¹: 46 interviews in total, 31 of which were recorded, yielding a total of 360 pages of transcripts. I also observed family court, primarily in Brooklyn, and in the Bronx and Manhattan as well. Lastly, I examined many documents, some produced by ACS, some by city agencies, and many by third party organizations dedicated to child welfare, such as *The Child Welfare Fund* and *Rise Magazine*.

Not all interviews were examined in the same way². On the one hand, my interviews with lawyers, administrators, and caseworkers for ACS and other city agencies tended to fit more with a tradition of studying how experts come to be recognized as such, how they produce accepted knowledge, and how they work to manage populations (Carr 2010). Emphasizing research with current and former ACS employees further focuses my study on the culture and effects of institutions. Within this group, I interviewed six former caseworkers, four current or former administrators, four voluntary agency (foster care and preventive services) caseworkers, senior administrators of two of the foster care agencies in the city, one former ACS attorney, and one judge. Note that changes have been made within ACS continuously since it was created in 1996; and that the job requirements of the caseworker in particular have not remained constant. I was only able to interview former workers, all of whom worked during slightly different time periods, which limits the conclusions that can be drawn from the interviews. For this reason, I have noted the years that each worker was employed by ACS, and have worked to emphasize

¹ All interviews were conducted and handled according to guidelines of UNC's Institutional Review Board, and were approved before fieldwork was carried out. See UNC Non-Medical IRB Approval for Study #14-0974.

² These differences were not assumed *a priori*, but emerged during analysis.

which are consistent across the interviews, and are less dependent on the specific times during which they worked.

On the other hand, my work with organizations who represent or are comprised of parents impacted by ACS fit somewhat more into the mold of critical ethnography, which is predicated upon recognition of my own positionality as researcher, in order to reject traditional divisions between researcher and subject which construct the subject as a knowable object (Madison 2012). I also use this work to explore the possibilities of participatory research for this project as it continues past the thesis, and to search for opportunities for alignment and collaboration (Benson and Nagar 2006). Within this group, I interviewed four parent advocates, seven defense attorneys who represent parents, one attorney for the child, two 18b attorneys³, six social workers, three program directors, two parents in training to become parent advocates, and had many informal conversation with parents who were involved in the child welfare system in some way.

Social Conditions: Poverty and Space, Race and Gender

In certain communities, it's a near certainty. If you live in public housing, if your children go to public schools, if you use publicly subsidized day care... it's not even a matter of if you are going to come to the attention of ACS, it's more a matter of when you are going to come to the attention ACS.

(Mike Arsham, Executive Director of Advocacy, ACS Division of Family Services, quoted from *A Life Changing Visitor: When Children's Services Knocks*, Greer 2014)

The social structures that are most visible in this thesis are the socioeconomic status of the parents—many of whom are poor, often dependent on some form of welfare—and the spaces

³ Article 18b of New York State general municipal law stipulates that the court system provide compensation to private attorneys to represent indigent clients. Such “18b attorneys” must become members of what is termed an 18b panel, which assigns them to clients – children who are not represented by Legal Aid, and parents not represented by public law firms. Until 2007, parents in Article 10 cases had no representation, except for those represented by 18b attorneys.

in which they live. These are inextricably intertwined in New York City, as neighborhoods spatially define boundaries which run along lines of class and poverty, but also as certain spaces and places exist for the express purpose of being used by different classes. This study reveals that the differentiations between wealth and poverty that take place in spaces of public institutions, as well as housing, are not passive backgrounds in child protection, but are active environments, serving as prior conditions which impede or facilitate removal.

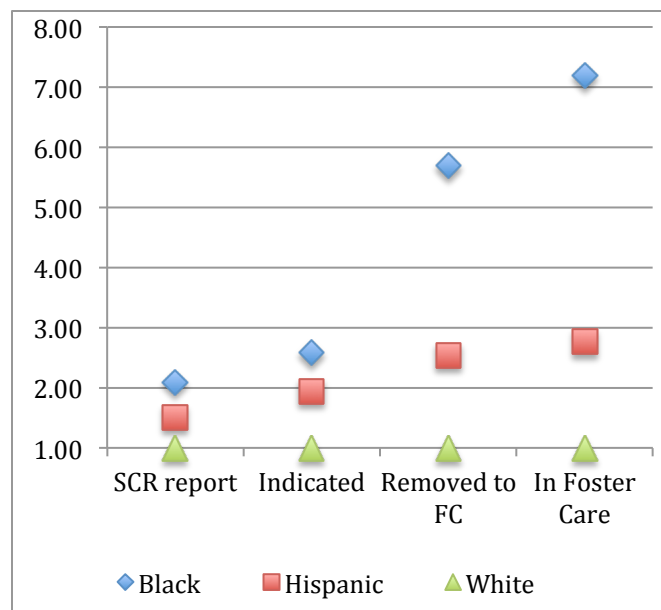


Figure 2: Racial Disproportionality at Progressive Levels of the Child Welfare System (2007) for New York State. The Y-axis shows likelihood of experiencing each stage as a ratio to the likelihood for white children. For example, black children in New York State are 2.1 times as likely to be the subject of an SCR report as white children. Of those reported, cases with black children are 2.6 times as likely to be indicated of those reported. Of indicated cases, black children are 5.7 times as likely to be removed into foster care as white children, and 7.2 times as likely to be found in foster care (i.e. reunifications and adoptions are slower to happen). Graph by Author. Adapted from “Race and Ethnicity: Path Through the Child Welfare System” (Carrion 2007).

The sense of (spatially created) inevitability evidenced in the quote from an ACS administrator above was very commonly expressed among interview participants: an almost unavoidable collision with ACS is set in motion simply by living in certain places marked by poverty. These spatial divisions are also barriers to visibility: many of the basic facts about ACS,

while widely known and understood in those communities affected, are often not common knowledge outside of those neighborhoods.

Neither race nor gender form the primary theoretical focus of this study, but they are inescapable; perpetually breaking through to display their power and un-ignorable importance in determining outcomes. Race, in particular, acts as a structuring principle for the entire system of child welfare. It acts, both seen and unseen, to give shape to interactions and to create prior assumptions that social reality is formed from. On a concrete level, poverty in New York City is incredibly racialized (Sharkey 2013), and so discussions of poverty and material need necessarily become about racialized groups, specifically Latino and African American. But race does far more: it is interwoven in cultural norms of family and child-raising and of proper interactions with apparatus of government; permeating and organizing even the most basic everyday interactions. Extreme racial disparities are apparent at every scale – national, state, and city – and at every level; from reporting to intake, from removal into foster care to adoption out of it. Figure 2 above shows this increasing disproportionality in New York State; similar analyses exist in the US, and are even more stark for New York City.

It is also brought up by interview participants, repeatedly, as one of the most important determinants in the system. One social worker describes racism and racial divisions,

It comes up *constantly*. ... It's almost *inevitable*, if you're living in the Bronx and you're low-income and Black or Latino, you're going to be pulled into this system in one way or another. ... Because there's so much intense scrutiny on this community that's *not happening* in the white middle class community I grew up in. It's just not going to happen. And it's *entirely* about race.
(Lauren, Social Worker, New York City Family Court)

Another participant, a lawyer with over four decades of experience with New York child welfare, also sees race as the key explanatory factor:

What I saw in 1971 when I was in court is what I see today. That 97% of the children who come into the system are black. The *only* white children who come into the system have the craziest motherfuckers for parents you'd every want to know. ... Because there are so many ways to get that case *out* of the system kindly, nicely. When they come to court this is because they're butting heads in a way that the agency is *absolutely* certain the child is in danger staying with this parent. Whereas in the black and brown cases, there's *no* presumption, in my experience, that there's anything seriously wrong. There often is, and there often isn't. [But] I've never seen a white case in which there wasn't something seriously wrong. Because it would be diverted.

(Martin Guggenheim, Co-Director, NYU Family Law Clinic at NYU School of Law)

These quotes are representative of very commonly expressed views within this study. In the eyes of participants, then, the racial divides cannot be understood as secondary effects of some other cause (i.e. of the already existing racial divides in poverty and racialized spaces). Rather, they understand the extremely racialized effects of the system as effects of more explicit racial bias, evidence of structural racism within the child welfare system.

Gender is far more complicated in this study. Some people refer to “parents,” others “clients;” many slip back and forth between these gender neutral terms and the more specific “mothers.” In the quotes that follow throughout this thesis, this slippage will regularly occur, without any further discussion of the differences between the terms. Some workers explicitly refer to the rarity of men:

[In] one case, I mean the *whole* office, *everybody* was trying to help this man get something. Cause it [a male client] was so rare! It was like we had a piece of *gold* in the building! Cause you hardly ever *see* that. Yo, we tried to get him in a hotel overnight, and just all kinds of stuff.

(Joyce, ACS Child Protective Specialist, 2008–2012)

This is a complicated dynamic which is underexamined in this thesis; any further study must consider it carefully, given the implications of making default assumptions about who is able to be a good caregiver (and who is not), and what a good parent looks like.

There are also race and gender patterns of note in the population of child welfare workers. Interview participants consistently stated that the majority of caseworkers are women,

and non-white; especially African American, and Caribbean immigrants. All former ACS workers, and many of those who interact with them, discussed the issue of workers' positionality; especially the uncomfortable territory of a child welfare system which often employs poorly paid black workers to remove the children of ever lower income black parents:

My opinion of how they [other caseworkers] see it is, when you're poor and you're on public rolls, you need to just shut the hell up and take your medicine. Because big brother's watching you. You do something wrong, we're going to let you feel it, and you're going to have to sit here and suck it up. And that's kind of how I look at it. And it's even worse a lot of times because the people giving them their medicine look just like them.

(Darius, ACS Child Protective Specialist, 2005–2009)

Of the six caseworkers interviewed in this study, two were men, one of whom was white. I was not able to obtain any demographic information on caseworkers from ACS. It is interesting to look in a series of recent ACS recruitment ads: of the seven posters, only two portray workers as men, and all seven appear to be workers of color (see Fig 3 below).



Figure 3: ACS Recruitment Posters.

Accessed at: http://www.nyc.gov/html/acs/html/career/work_cps_ads.shtml

In Closing

What you're also dealing with is people living in the cycle of poverty. ... And some of these people, they have a rough time doing what seems to the rest of us to be an easy thing. Some of my clients are very difficult to work with, they need a lot of support. And there's almost no ability on the part of ACS or the agencies to deal with difficult people. Difficult people are at a disadvantage. The person who navigates the child welfare system well, is somebody who can do what they're told. "Go to these classes. If you're angry, keep it to yourself. If you're not happy with the visitation order, just be patient, because in six months we'll get a better visitation order for you." But people who can't get out of bed in the morning... It surprises me just how much, how *inept* the agency is in working with difficult people. And isn't that their job? Isn't that the whole point of the system? If you're gonna take it on face value, you're interfering in the lives of the family because there are problems in that family. And if the more difficult the family is, the less able you are to work with them... it's just a *completely* broken system if you look at it from that perspective.

(Daniel, 18b Attorney, Former Attorney for ACS, Family Court Legal Services)

To what extent is child welfare "a completely broken system," as this lawyer suggests? His depiction of a system which seems to work least effectively for exactly those people who need the most help is a common view held by those interviewed in this study. This again reminds us of the question of what the goals of a child welfare system are, and should be. Daniel points out that child welfare seems to be dysfunctional, a broken system, if we try to understand it "at face value." In this thesis I have tried to hold together for analysis the official goals of the various agencies involved, the motivations and interpretations of the workers within those systems, and the impacts—both intended and not—on the families whose lives it governs. Child welfare may be able to effectively prevent some degree of abuse and harm, but, within this study, it is not seen as an effective means of achieving its own stated objectives, of supporting and helping families.

Daniel's description of parents who have difficulty complying with orders is descriptive of the workers in the system as well. This study reveals a consistent theme of people straining at the limits and margins of functionality: many people end up before family court precisely

because they have already been judged to be “difficult people to work with.” The system makes parents into subjects through disciplinary rules and action; but so too do workers become subject to its logics and demands. Caseworkers, administrators, parents, supervisors: all are more successful when “doing what they’re told,” yet constantly chafe at the requirements. If the child welfare is a broken system—as many other interview participants described it—perhaps it is broken not because the “difficult people” do poorly, but because the people who do what they’re told do so well. That is, perhaps it is a system which only appears to work because its subjects must prioritize following the rules of the system over their own needs and interests.

But if the system is *not* broken, this is only the case because of those who *are* able to resist these pressures, to work with these “difficult families.” In this thesis, I will examine how different workers evaluate, interpret, and enforce the rules of child welfare, how they decide who is difficult, and how to work with them.

Chapter One

Governing through Best Interests: Literature Review

The theoretical lens of this thesis is built around a larger question: How does ‘the state’ govern ‘the family?’ How do both of these objects (state and family) get constructed? My research is directed at one side of this question- how does the state construct the family? By asking how the family is ‘constructed’, I mean to ask how certain ideas of what a ‘normal’ family looks like become produced and circulated, how these norms are enforced, how the state gains knowledge of individual families, and how expertise on family is developed through means of assessment and categorization. The state, as well, is not a single monolithic unit: there is no one “New York City” which acts coherently and consistently. Indeed, I hope that the chapters which follow will show that it is not always meaningful to speak even of a single “ACS” as an institution with clear goals and predictable actions. By ‘the state,’ then, I am discussing a variety of state institutions, rules which govern their actions, and the individual people who act on behalf of those state institutions.

There are three broad means by which the state comes to govern a particular segment of the population that I am interested in: first, through the creation of institutions dedicated to their governance, second, through the development of expert knowledge concerning the governed populations, and third, through the individual professionals who act to manage them. These are all interrelated: the professionals are trained and recognized as experts through the institutions which produce them, expert knowledges rely on data gathered, often through some form of monitoring, by the workers for institutional use; this expertise may then work to justify the

institutionalization of further interventions. I examine in particular how state institutions for governing the social body have linked the governance of family with social welfare.

Part 1: The State and Family

How does the state construct and govern family?

A broad literature theorizes the institution of the family as constructed in its current form as a key part of processes of creating workers for waged labor through dispossession of the peasantry (Federici 2004), institutionalizing private property and inheritance (Engels and Morgan 1972), conscripting women into naturalized roles of social reproduction in the domestic sphere (Federici 2004; McDowell and Sharp 1997; Domosh and Seager 2001), undergirding and buttressing colonial / imperial rule (Stoler 1995), and preparing colonial spaces for integration into a capitalist world-system (McClintock 1993). In short, the family is widely seen as a key unit of social governance, and a fruitful unit of analysis.

1. The Family and Institutions of Governance

a. Institutions and New Forms of Power

Michel Foucault analyzes the emergence of contemporary European state institutions in the mid 18th century as concurrent with new forms of power; which he describes as *disciplinary power* and *biopower*. His goal is to understand shifts in the way individuals are governed as part of the creation of “the population” as a new object of government. Madness, criminality, and sexuality became enfolded into institutions designed to achieve a new goal: to manage “the social body” at large by policing deviance from established social norms. Foucault presents the prison as an exemplar of disciplinary power; power which acts on the individual body, but is only able to do so via the construction of normative definitions of the larger social body

(Foucault 1995). Punishment became oriented toward reforming and reshaping the prisoner, rather than inflicting bodily harm as reparation for a crime (the latter privileged under *sovereign* power). This is accomplished only by first producing a detailed knowledge of the individual, both individualizing them in their specificity, but also by ranking and comparing to standards.

Foucault further discusses the shift from disciplinary power to the combined action of disciplinary and biopower (Foucault 1990). In the mode of biopower, the individual body is abstracted to become representative of, and represented by, the larger object of the population. If disciplinary power requires the gathering of information on the individual in order to exercise its power over him, biopower relies on, and helps create, statistical measures aimed at producing knowledge of this new object, “the population.” The actual practice of intervention, even if legitimated by concerns over the population in the abstract, will take place through institutions created to police individual bodies.

b. Governing Through Family

In his formative work *The Policing of Families*, French philosopher Jacques Donzelot identifies new constructions of the family as the key object of intervention and expertise in the rise of “the social” (Donzelot 1979). The social becomes a new field, not completely public, but neither wholly private: a set of concerns about the implications that problems of individual deviance would have for the larger national / social body as a whole. These individual problems were understood to be the result of failures of family in appropriately conditioning and training members for public life; thus, as Gilles Deleuze writes in his forward to the book, “the rise of the social and the crisis of the family are the twofold political effects of these same elementary causes [the limitations of existing modes of social governance]” (Deleuze 1979 xi).

Donzelot describes the family as a site of productive discourses: debates over when and how to manage families were ‘productive’ in that determinations of what social norms of family life were to be enforced and how to enforce them produced specific institutions, roles for new kinds of experts, and new standards for what aspects of private life was appropriate for public examination (Donzelot 1979). The professionalization of social workers, philanthropic missions, and juvenile courts was a necessary step to enable the state to reach into private family life⁴.

Thus, the formation of the family as a new object of intervention resulted in the production of corresponding new modes of governance. These began with normalization and moralization, disciplining families to police their own members against signs of deviance from the norms of an ideal population. However, when internal (private) family problems became public, then the “tutelary complex” of social welfare—juvenile court, social workers, school teachers, health and hygiene officials, and charity workers—were empowered to enter homes, acting as another layer of disciplinary power.

Therefore, (1) the family and its governance is intimately tied to governing “the social body”, so that concerns about society become a concern about family, and vica versa, and (2) specific mechanisms are created which work on families, but also work to separate them; so that people are governable as part of a family unit, but also as separable from it. I also point to a question on the family which is left under-theorized in Donzelot; namely the naturalization of family as parents and their children. Below I discuss how these conceptions of family become refracted through a racial lens; but I also stress the fundamental importance of the question for what follows in this study: throughout the findings chapters, both the interview quotes and my

⁴ These techniques were seemingly aimed only at the working class family; however, Donzelot argues that the underlying threats of criminality and indolence also motivated new forms of self-policing among bourgeois families as well (Donzelot 1979).

analysis of them will make the default assumption that the “family” of a child, in the case of family court and child welfare, means the child’s parents. As we will see in the history chapter, the degree to which this is accepted or challenged has serious consequences for how the rights of “families” are protected.

2. The Family and Race

Donzelot’s analysis, based in France, focuses on the differentiated interventions between the poles of working class and bourgeois family life. In the U.S., accepted normative forms of family have not only been divided along similar lines, but have been strongly determined by race as well; especially divided between white and black family imaginaries. This originates in the condition of slavery, as enslaved peoples were denied the ability to form family by being denied the right to parent their children (A. Davis 1971; Spillers 1987).

Hortense Spillers describes how slaves responded by forming alternate kinship relations in response. These kinship networks proved a resilient form, and proved to be crucial to the resilience of families in the face of material hardships. Their continued presence is a powerful “strategy of survival,” as anthropologist Carol Stack terms them (Stack 1975). These differing conceptions and instantiations of family are based on concrete and often external causes. The Victorian model of family, e.g., is predicated on a certain level of wage, certain kinds of control of domestic life, stability of living arrangements (again based on stability of work), and so on. Thus images of normative families were not only produced, but produced and entrenched within racial difference.

This is recognized, and pathologized, in contemporary U.S. poverty discourse. The Moynihan Report (Moynihan 1968) famously re-interpreted older images of blackness as hyper-

fertile and lazy, a resilient trope which developed in the 1970's and 80's into the figure of the "welfare queen." The welfare queen becomes what Ange-Marie Hancock describes as a "public identity;" i.e., despite evidence to the contrary, the welfare queen came to represent all welfare recipients as single, black, unwilling to work (Hancock 2004); and later conflated with the figure of the teen mother. The welfare queen had become a "cover story:" a term Wahneema Lubiano uses to describe the utility of the welfare queen as villain, and in facilitating a larger attack on the welfare state. This image was central to the passage of welfare reform in 1996, explicitly aimed at fixing family, and especially the black family, by managing the sexuality, pregnancies, and child-raising practices of women in need of public assistance.

3. Case Study: Family Interventions & Juvenile Court

Racialized assumptions and images dominate contemporary discourse around many of the social problems and their corresponding governmental solutions outlined by Donzelot. For example, crises in public education and public health impact different groups of people in a variety of ways. However, the reactions to these crises are racialized, as blame is focused upon particular racial groups, especially African Americans, as a signifier of crisis. In other words, as social crises legitimize and normalize state intervention, the racialization of social crises does so even more strongly.

Two cases are of particular relevance to this study, and to Donzelot's theorization as well: welfare (public assistance), and juvenile court. Both the juvenile courts and governmental welfare agencies worked to expand and institutionalize the state's ability to monitor, and (regulate/govern/administer) domestic life; both were justified as solutions to wider social crises. The welfare system in the U.S. has acted as a prior substrate for child protection, in that child protection has mobilized and adapted forms of expertise on welfare recipients in order to monitor

and regulate parenting (Bach 2013). Further, the welfare system, which supposedly is about addressing structural conditions, ends up producing and reinforcing "individual responsibility" for social crises, albeit always in relation to the collective responsibilities of racialized populations. However, as welfare assistance is directly addressed in much of the empirical findings, I focus here on the juvenile court.

Juvenile court was one of *the* key mechanisms to open up the inner life of families to state intervention (in the late nineteenth century US), drawing its legitimation from new approaches for adjudicating the “best interests” of children. The best interests doctrine signaled a sharp shift away from criminal court, and the creation of a new project: reforming youth and reshaping them into productive citizens; acting not on their misdeeds, but on their future selves⁵. Even though the claimed object of juvenile court was the delinquent youth, the family was also brought into its realm of judgment. Discourses of individual parental responsibility blamed juvenile delinquency on failures of parenting: thus the social problem of delinquent youth was seen as a result of deeper problems within families, particularly families which failed to properly exert their patriarchal authority to inculcate correct moral values. As Donzelot writes about the juvenile court system in France, “in principle, the family is there to explain or defend the behavior of its progeny, but it is thwarted in this role by the implicit or explicit accusation that is brought against it: it is at least partly to blame for the child’s being there” (108). The solution to this problem was clear: increased governance of the parenting of families judged as risky or deviant. New interventions took the form of mechanisms for managing parenting practices:

⁵ As Foucault notes, this describes a shift in the logic of punishment itself, and the prison, that had begun earlier in both the US and Europe. However, while this process was incomplete in both the criminal court – prison, and in the juvenile court, it was far less controversial, and a widely agreed upon explicit goal of juvenile justice.

Juvenile court solutions pivoted on encouraging middle-class, heterosexual norms of behavior. By way of example, many courts grew in conjunction with family welfare departments. Mothers were provided domestic education to teach them how to clean their houses and watch their children. Parents were scolded for allowing children to work, and fathers were held financially responsible for their wives and children. Juvenile courts often enforced prohibitions on divorce and held divorce, desertion, and lack of a two-parent household as a key parental cause of delinquency. In all, Progressive activists emphasized that mothers should watch their children, children should attend school and participate in adult-organized recreation, and fathers should provide strong moral authority. (Brown 2007:225)

Therefore, the power of the new court drew upon familial authority. It reinforced that authority by enlisting policing into the daily practice of the family's members (to prevent their reappearance in the court); it also decentered and replaced that familial authority when social workers from welfare offices entered into the home, or, at its most extreme, when children were removed from their families.

Part 2: Creating Family Experts

1. Studying Experts

This study follows calls for more examinations of the roles played by experts in contemporary life, considering them as human subjects themselves, rather than as proxies for analysis of the institutions they are part of (Boyer 2008). The anthropology of experts represents an emerging area of study, with many common points of emphasis on the nature of expertise. Within this framing, expertise is not viewed as a property one possesses, but rather something which must be acted out: an expert must be recognized as such by others.

In a review of current expertise literature, Anthropologist Summerson Carr points out that the common framings of expertise studies “consistently assert that expertise manifests in power relations that are both repressive and productive, and it reproduces these relations when

expressed by disciplined social actors (i.e., experts and laypeople)” (Carr 2010:18). Thus, expert opinion relies on official forms of knowledge and continues to create and add to those bodies of (official) knowledge; knowledge which has the power to make possible certain social interventions while foreclosing others. These knowledges also “formulate” (19) individuals by creating ways of describing, categorizing, and making decisions about them. These formulations of individuals exist in reference to a larger population, which serves as an object of study and theorization. The processes by which experts are ‘made’ and made valid through institutions – as they are trained, certified, and employed – is therefore interwoven with the knowledges that these institutions create.

This (Foucaultian) analysis that emphasizes the *effects* of expertise risks overlooking the messy and day-to-day ways that expertise can be constructed and practiced. Contemporary scholars emphasize ways that expertise is learned, via training processes, and in socialization with other experts. Expertise is also tenuous- experts must continually re-assert their expertise to maintain their status. They do this by performing their expertise both to other experts, to the institutions that give them legitimacy, and to the non-experts who must exist as an audience for expertise.

2. Expertise makes legible (and apolitical)

Development scholar James C. Scott, in studying processes of state formation and state rule, suggests that the *legibility* of a society is “a central problem in statecraft” (10). This drive for increased legibility begins with simple yet powerful state tools (tax records, cadastral property maps, e.g.) but becomes expansive, encompassing more details and data as time passes. The state requires making subjects legible to be able to know them and act upon them: the

position of state knowledge is a privileged and (semi)-sovereign position, even as these state actions fall short of complete sovereign control⁶. Scott writes that,

State simplifications ... are designed to provide authorities with a schematic view of their society, a view not afforded to those without authority. Rather like U.S. highway patrolmen wearing mirrored sunglasses, the authorities enjoy a quasi-monopolistic picture of selected aspects of the whole society (Scott 1998:79).

Crucially, this view of society is not complete, as the schematic view simplifies and reduces.

Individuals are not visible in their entirety: legibility works by measuring and recording information, but also by ignoring or discarding other information as irrelevant.

Expertise in solving problems is also intrinsically linked to the expert's view of what constitutes a problem in the first place. The "intelligible field" (J. Ferguson 1990) of expertise – the bounded set of accepted knowledges of how problems may be defined, and what forms of intervention are possible – operates by reformulating political questions as technical issues, reserved for the domain of experts, a process that James Ferguson refers to as "anti-politics." This de-politicizing is also described as the "rendering technical" of a problem: "Experts are trained to frame problems in technical terms. This is their job. Their claim to expertise depends on their capacity to diagnose problems in ways that match the kinds of solutions that fall within their repertoire" (Li 2007:10).

For this study, it is important to stress that expertise need not be "technical" in a quantifiable sense. Nikolas Rose discusses the creation of multiple domains of expertise through the concurrent creating of specific communities, defined as objects of expertise by the "problems" they face and which necessitate expert management (Rose 1993; Rose 1996). The ability to assert that there are a group of people "at-risk" is to make a technical proclamation.

⁶ Cadastral mapping, for example, does not necessarily lead to the levying of property taxes; but it creates property owners as a visible and intelligible group to be governed (including, potentially, through property taxes).

While the category of “at-risk youth”, for example, is often defined via individual behavior (defiance, e.g.), its creation as a category is still an act of rendering a problem “anti-political,” and cloisters it for the intervention of experts (Mitchell 2010).

3. Case Study: Community Psychiatry

In his ethnography of frontline community psychiatry, Paul Brodwin uses the term “everyday ethics” to describe “the fissures and contradictions which are not articulated in a consistent system” (Brodwin 2013:4). These everyday ethics surfaced through moments of doubt and internal conflict. When a client’s wishes (to have greater control over their finances, or to discontinue a medication) are in conflict with the requirements of the job, each caseworker must confront the ethics and basic assumptions underpinning their professional role. But often these moments of conflict are quickly removed from the domain of ethics, and re-framed in technical terms by their supervisors.

Conflicts between caseworkers and supervisors, therefore, become a central focus of his analysis; as these are seen as conflicts between different kinds of claim to expertise. Caseworkers are low-level experts, meant to function as merely an extension of their supervisors- the eyes and ears reporting back to him⁷, receiving his orders, and acting as his hands to carry them out. In contrast, supervisors are psychiatrists, and are granted an authority through their status as experts in the neuro-chemical model of mental illness underlying all practices at the clinic; the supervisors’ expertise also produces a certain (chemical) way of reading mental illness. This power of interpretation is expansive: Brodwin documents supervisors who render technical not

⁷ As is common in many social services settings, most caseworkers – the lowest status job – are women, while the proportion of men seems to increase higher up in the hierarchy of workers.

only the clients' mental illnesses, but their entire range of behaviors. Caseworkers on the other hand develop an expertise based on personal familiar knowledge of clients, and experience that they alone can draw on, as the only workers making visits to clients' homes. This is an uneasy sort of expertise, not easily generalizable.

Part 3: Review of Literature on Child Welfare

1. Social Theory Literature

The most relevant academic work to this study is Sociologist Jennifer Reich's *Fixing Families: Parents, Power, and the Child Welfare System* (2005). Her detailed ethnography is the result of years of research on the functioning of the child protective system in an unnamed county in California⁸. She finds a complicated system with no clear heroes or villains. There are many parents in her study who are quite dangerous to their own children. But she also portrays a system in which over-removing is the norm, as a system she describes as permeated by an "anti-parent culture." We see a system that seems to prioritize judgment and adherence to often punitive or arduous service plans over all else, sometimes achieving the safety of children, and sometimes not, but in which safety is always ancillary to other functions. Her study is interested in parents' experiences, and perceptions of those experiences; and is especially focused on the power dynamics in the initial encounter between social worker and parent. I summarize her conclusions relevant for this study in two main threads.

First, she observes a consistent disconnect between the goals for improvement of the parents, and those of the child protective agency. Even when parents believe that a problem

⁸ Note that in California, all child protective caseworkers are licensed social workers, which requires both an MSW degree, and the completion of supervised clinical hours. There is no such requirement for caseworkers in this study, which becomes an important difference.

exists, and that they are in need of some form of help, they do not necessarily see the offered state services as helpful. She also supports numerous more quantitative studies showing that, for the most part, services offered to parents are indeed frequently inadequate to address whatever needs brought them into the system. She writes,

The failures of reunification services to help parents regain and maintain custody of their children ... show that the manner in which services are provided is flawed. Currently parents are offered little or no opportunity to participate in the development of their own case plans. Parents often do not identify the same goals for their own recovery as the state identifies for them and do not always understand that fulfilling the state's requirements—as it demonstrates deference to state values—is what matters most. Indeed, parents find not only that their own definitions are irrelevant, but that *they are in fact devalued and defined as pathological*. ... From this vantage point, *parents must perform acceptance of the goals of state intervention*, even as these goals remain foreign in parents' own experiential context (Reich 2005:263-4, emphasis added).

Second, and of crucial importance to this study, Reich argues once parents are brought within the child welfare system, the most important element in determining their fate is their ability to “perform deference,” writing that “[t]he expectation that parents demonstrate their willingness to subordinate themselves through a demonstration of deference saturates each stage of the system” (110-111). That is, from the first contact with the state social worker during the initial investigation, through the creation of the mandated service plan, to the regular court appearances to verify parental compliance with the plan, parents are not judged by their deference to each demand, and each representative, of the system.

[S]ocial workers ... adopt a strategy of requiring deference from parents. In the resource-limited and structurally constrained work they perform, *deference acts as a shorthand*. ... Deference communicates that the parent respects the worker's expertise and authority and would like help.
(109, emphasis added)

Sociologist David Tobis has written another academic account of child welfare, focusing on the same site and institutions as this study, ACS in New York City. As the founder of a prominent watchdog organization, Child Welfare Watch, he has been a figure in New York City

welfare for over 20 years. His book is an insider's historical account of change in the system. His overall argument is that parent advocacy and organizing represents a "strong countervailing force" which is "beginning to make unprecedented change" (Tobis 2013:xxvii). The narrative of his book portrays certain events of the last decade – the creation of a parent advisory board, and increasing numbers of parent advocates – as manifestations of the power of "parents," taken as a broad group.

While Tobis and my study both analyze the workings of power in child welfare, his interpretation of power differs noticeably from the one I have taken. Tobis' work does not substantially question the premise of the system of child welfare itself, choosing not to focus on its underlying ideology, or its interrelation with state governance (and its modes of disciplinary power and biopower). His argument (greatly simplified) may be characterized as, "If we give parents a voice, then child welfare can become what it should/intends to be," a position consistent with the logic of liberalism: through debate and inclusion everything will work itself out. This is not to argue that he is incorrect in his analysis. Rather, I wish to point to clear differences between our approaches. In focusing on the problem of a lack of power that parents have in child welfare system, he highlights increases to parental power as positive developments. Without disputing this—groups such as the Bridge Builders and CWOP have made incredible and important progress, and many other groups are finding success in many different venues through which they struggle to assert their rights—I instead focus more on ways that many parents are not included in these more empowered categories.

2. Legal Debate

Child welfare is also discussed in several technical / professional discourses; particularly social work. However, because this study examines the functioning of the family court, and gains much of its information through the figures of lawyers, I will focus on briefly outlining some of the key positions on the state of child welfare within the legal literature.

Blood Bias

Elizabeth Bartholet espouses the viewpoint that is least attached to the importance of preservation or reunification of families. She has for (for decades) consistently described the problem with child welfare as a “blood bias:” a fetishization and over-emphasis on the importance of keeping children with their biological families, despite clear imperatives for removal. Working from assumption that family preservation is a futile effort the majority of the time, she argues that adoption provides the logical solution. The fact remains that adoptions are not common enough to take in all of the children removed; in 2013, there were over 400,000 children in foster care, over 100,000 of which were waiting for adoption, almost half of whom were adopted (AFCARS 2014). However, she argues that this “is because we have a system that holds children too long in their homes of origin and in out-of-home care until they have suffered the kind of damage that makes it hard for them to adjust and to bond in a new family.” (Bartholet 1999:241). This is by far a minority position in the legal literature I have been able to examine.

Somebody’s Children

Martin Guggenheim, at the NYU School of Law, has become identified as one of the most prominent advocates of “parent’s rights.” This position argues that a large majority of removals should not happen on *ethical* grounds, but also that many removals should not happen

on *legal* grounds. He critiques the concept of “children’s rights” over-emphasizes fear and risk, leading to removals ‘just to be safe.’ In his argument, the framework of children’s rights only applies to certain rights— specifically the right to be protected from neglectful parents, but not the right to be protected from state intrusion (foster care). Children have no rights to be part of their family. For Guggenheim, while this is true in the cases of extreme abuse, it has the effect of destroying any middle ground: the creation of rights for the children as separate from their parents facilitates removals, and little to no other rights (Guggenheim 2005).

Destruction of the Black Family

Along with Guggenheim, Dorothy Roberts is recognized as one of the leading scholars in the field. Both are among the most highly cited lawyers writing on the topic. Both examine the empirical data to demonstrate that preservation efforts are lacking, both argue that removals are damaging and happen far too often, but the two diverge in their historical and theoretical analysis. Guggenheim sees it as first a problem of poverty, and devaluation of the poor- drawing on history of orphan trains and Brace (see Chapter Two), while Roberts is drawing on history of control of black bodies, and black women’s bodies (Roberts 2002; Roberts 1999). Roberts’ argument that child welfare is a fundamentally anti-black institution effecting the destruction of the black family sees child welfare as a part of a much larger tapestry of laws and practices which have the result of giving poor black women less ability to control their family lives. Another leading scholar in the field, Laura Briggs, also writes about this contradiction; i.e. that discourses of abandonment of children in foster care erases their often violent and traumatic removal from existing family (Briggs 1994). She diverges from both Guggenheim’s and Roberts’ analysis in directing her critique at the rhetorical function of race, as barriers to adoption have

crumbled in part due to arguments that any measures to address race are counter-productive. Briggs highlights the already existing resistances to racist removal practices, showing that these critiques have not only been domesticated, but have been incorporated into the racial function of child protection as well.

3. Reaction to Exceptional Event, and Abuse as Narrowly Defined

Analyses of child welfare policy throughout the U.S. are in consistent agreement that child welfare policy changes reactively, and most normally as a reaction to extreme and exceptional events of harm to children (Arthur 2012; Fraidin 2012; Gainsborough 2010; B. Nelson 1984). This works within a dominant (liberal?) logic: that abuses are outliers to be eliminated, and the system must be built to seek out and respond to the problem of bad individuals, rather than interrogate the social structure as a whole. This works in parallel with mainstream framings that emphasize abuse far more than neglect, despite the fact that between 60 and 75% of allegations on a national level are of neglect, and not abuse.

Multiple studies on the topic reveal several relevant patterns. First, the media overwhelmingly only discusses child welfare in terms of emergencies and horrific cases (Arthur 2012), reinforcing what Matthew Fraidin terms “the grand narrative of child welfare:” a narrative which “is one of brutal, deviant, monstrous parents” (Fraidin 2012:98-9). Second, policy and practice of child protection are strongly responsive to tragedy and death. This can be seen in the heavy reliance on anecdotal evidence of terrible events in the congressional floor debates over ASFA, the current law governing foster care (see Chapter Two), in spikes in spending after news of child tragedies, and in the shifts in day to day pressures. The making of policy in particular is

shown to be reactive to what Julie Gainsborough terms the “scandalous politics” of child abuse (Gainsborough 2010).

Barbara Nelson argues that “the history of child abuse policy making is also a vehicle for the discussion of political agenda setting more generally” (3, emphasis omitted). She uses child welfare as a lens to examine the process by which issues become framed as political or technical; calling attention to the politics that lie behind the step in defining certain problems as problems that should be given public attention and be amenable to solutions by governmental involvement. The problem of child abuse becomes an example of what she terms “the public use of private deviance” (ibid); as an issue becomes narrowly defined as one of individual or family (private) deviance, enabling it to become a part of government regulation / policing (sexual abuse, domestic violence, e.g.). In the case of child welfare—already defined as solely the protection of the physical safety of the child—differences between abuse and neglect, or between systemic problems and individual ones, became blurred. This blurring between poverty and its effects, between abuse and neglect, has far-reaching consequences, as this study attempts to demonstrate: the horrors of child abuse justify the creation of the child protective apparatus, but the murkier issues of neglect and poverty become the purview of the same system.

Chapter Two

The Price-Tag for Safety: A History of Child Protection

We're going to terminate parental rights [that] in the past we wouldn't have terminated. We're going to remove children from a home that in the past we wouldn't have. And that is the price-tag for child safety.

(David Gelles, Interview with PBS's *Frontline*)

“Child welfare,” as a term in the U.S., has historically referred to a much broader set of issues pertaining to the well-being of children—their bodily health, their development into proper moral citizens, and their future as (economically and otherwise) productive members of society. It has only recently come to specifically signify ensuring safety from the immediate threat of physical harm, as “the very idea of child abuse has been in constant flux for the past thirty years [now fifty-five]. Previously our present conception of abusing a child did not even exist” (Hacking 1991).

I will illustrate that, broadly speaking, the history of government intervention into child-raising moves between a general paradigm of family preservation, and one of child removal; however I also attempt to complicate this standard narrative. Almost all books which discuss the history of child welfare in the US describe this movement as a “swinging pendulum,” alternating between those two opposing poles. I hope that this chapter will demonstrate the limits, and the problematic implications, of this analogy. For one, pendulums are incredibly consistent, quite literally clocklike in their repetition. Child welfare’s shifts, by contrast, are extremely unpredictable—one cannot forecast when they may occur, or how the shifts take place. Unlike

the pendulum's fixed and calculable period as it moves between extremes, child welfare paradigms do not change gradually, but remain unaltered for long stretches, punctuated by turbulent moments of crisis and reform. Also unlike the prescribed and fixed endpoints of the pendulum, each change also results in a previously unseen configuration; each period described as emphasizing child removal does so differently, and draws on its own unique underlying philosophies.

Reforms in child welfare are consistently framed as specific solutions to specific and narrowly defined problems; the framings of these problems prescribe certain possible solutions, while foreclosing others. This is reflected in the organizing theme of this chapter, which is to examine different reforms in child welfare by emphasizing the social problems they were meant to solve, and how those problems came to be defined. Part 1 will give a broad account of the changing paradigms of child welfare in the USA from the 19th century until the present, with particular focus in the final section on the key legislative frameworks from the 1970s onwards still relevant to the current context. Part 2 will give an in-depth account of child protection in the NYC from the 1980s onwards.

Part 1: A Chaotic Pendulum (An American Story)

The right to raise one's children has long been enshrined in U.S. jurisprudence. As the Supreme Court recently observed, "it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right[s] of parents to make decisions concerning the care, custody, and control of their children." (*Troxel v. Granville* 2000, quoted in Guggenheim 2005). These rights are assumed even when they are limited or regulated. The Supreme Court overturned precedents of non-interference for the first time in 1944; but the court was clear to limit the scope of the decision, prefacing it with the statement,

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. . . . It is in recognition of this that *these decisions have respected the private realm of family life which the state cannot enter.*" (*Prince v. Massachusetts* 1944, emphasis added)

This is to show a consistent legal position: that parents have a right to raise their children without state interference, even as some limits to that right have been established. But while this has been articulated within case law, the actual legal rights of child-raising have not been guaranteed in practice for all parents. Parents in marginalized social positions, especially along racially defined lines, have historically been subject to a different set of standards in which their rights to parent have not been enforced or respected.

From Orphan Trains to Child Saving

The Children's Aid Society, founded in 1853 by Charles Loring Brace, exemplifies the 19th century philosophy that the state's duty to protect children can override the rights of their parents. The ascendant ideology of the time blamed the prevalence of poverty on the deficient parenting of children born into dependency (Fraser and Gordon 1994); referred to as "hereditary

pauperism” (M. Katz 1996; O’Connor 2001). Reform efforts brought multitudes of children into orphanages and reform schools, and even moved them across the country in so-called “orphan trains,” although the name misleads, as many of the children were not orphans. However, this was integral to the reform efforts: the logic of breaking the bonds between parent and children to “prevent the transmission of dependence” (M Katz 1996:112) had become accepted wisdom among reformers of the time. Michael Katz writes that

[n]o longer did parents need to commit a crime, act immorally, or abuse their offspring before reformers urged authorities to step in and remove their children. *Extreme poverty itself had become evidence of their incompetence and adequate grounds on which to break up their families* (*ibid*, emphasis added).

The removals which took place via such groups as Children’s Aid Society were targeted primarily at recent Irish and Eastern European immigrants, becoming a fundamental tool of assimilation⁹. This was continuous with a trend of separate treatment of children in otherized populations; such as apprenticeship laws which gave judges in the Reconstruction South the power to remove black children from their parents into white homes (P. C. Davis 1996), or the century long “civilizing” project of removing American Indian children from their parents into boarding schools to “kill the Indian and save the man” (Adams 1995). These examples serve to underscore the long history in which control over the raising of children has continually been employed as an essential component for shaping the identity and future of the nation.

Like Brace and others who advocated removal into orphanages, the Progressive Era reformers of the late 19th and early 20th century shared the belief that the raising of children must be addressed as a vital element of social reform. However, the “Child Savers,” a group of

⁹ These immigrants were viewed in racial terms at the time as inferior to Anglo-Saxons, according to a complex and geographically defined racial hierarchy of Europe (Ignatiev 2009; Crampton 2007).

reformers named for their concern for the well-being of children, advocated increased preservation and management of families in opposition to the earlier ideology of removal.

Perhaps the signature achievement¹⁰ of the Child Saver movement was the creation of the juvenile court system, which also played a pivotal role in dramatically expanding the state's ability to intervene in family life. From the very first juvenile court, began in 1899 in Chicago, the separate system of juvenile justice was designed to provide an alternative to criminal treatment for "delinquent" youth. It drew on a new legal doctrine of "best interests" in its aim at reforming wayward youth, reshaping them through reform school, or conscripting their parents into enforcing stricter discipline. According to the reasoning of the time, due process protection for juveniles was not necessary, because the aim of the court was to rehabilitate, not to punish. And yet sentencing juveniles to reform schools, which barely differed from adult prisons, was extremely punitive in its effect, if not in its intention (Platt 2009; Feld 1993). As geographer Elizabeth Brown describes,

Under the traditional juvenile court, state authorities could use coercion to remove a child from the home and community and place them within an institution. This system based itself on indeterminate punishment, often appropriate for the individual case. ... As the law defined the juvenile court as a welfare, family, and civil court, youth lacked the rights typically associated with the criminal court, including the right to representation, notification of charges, evidentiary requirements, and many others. (Brown 2007:227)

The judge representing the state had unchecked authority in deciding what constituted the best interests of the juveniles, and setting the court's orders for them and their families. This unrestrained power over the court gave rise to what historian Barry Feld has termed "capricious

¹⁰ Another crucial platform of the Child Savers—advocacy for child labor laws—is also instructive in that the 'best interests' of children were used flexibly in directly conflicting ways. The debates over child labor were framed around the opposing views of best interests of saving children from deplorable labor conditions, vs. inculcating moral values of work and productivity. The issue was also highly stratified, as it impacted mostly working class families; thus also producing a debate about interfering in the domestic sphere only for certain categories of the population. See e.g. (Zelizer 1994).

punishment,” as the absolute discretion of the judge—which now encompassed social welfare interventions, child removal, and punishment for the youth—resulted in the regular and unchecked exercise of power in increasingly penal measures (Feld 1993; Platt 2009).

Juvenile courts also routinely ordered interventions for the parents as well; educating them on ways to better monitor and control their offspring. This was part and parcel with the overall ideology of the Child Saver and Progressive movements: the combination of new state agents and parents (especially mothers) was expected to provide new levels of oversight of children.

The Family as a Political Figure

The state of child welfare remained substantially unchanged until the 1960s. Two key developments serve as context for these next shifts, both part of the growing linkages in public understandings of race, poverty, and family. First, the 1968 Moynihan Report¹¹ argued that poverty in African American households was the fault of deviant black families; reproaching absent and unworking fathers, and hyper-reproductive or domineering mothers (Moynihan 1968). These direct claims that “the Negro family” was in crisis, and that fixing these families would be necessary to address urban poverty, made official already nascent cultural assumptions, and soon became widely accepted conventional wisdom (Hancock 2004; Spillers 1987; Lubiano 1992).

¹¹ The Moynihan Report was not the origin of this conjuncture of ideas; rather it served to make explicit many already latent cultural assumptions. However, its direct influence in policy was enormous, beginning with its ideas serving as the framework for Lyndon Johnson’s “To Fulfill These Rights” speech at Howard University two months after the report’s publication, and Moynihan’s role in crafting the “Great Society” program (Katznelson 2005).

Second were the political lessons from the twin legislative failures of the Nixon administration's attempt at welfare reform, the Family Assistance Plan (FAP), and the proposal to create the nation's first system of universal child-care, the Comprehensive Child Development Act (CCDA). The FAP was seen as unable to successfully push single mothers into the workforce, as it did not simultaneously create a mechanism to provide care for their children; thus the CCDA was proposed. However, there was immediately a national outcry over universal child care, seen as an attack on "traditional family values," soon reaching levels of an extreme panic. One congressman's reaction (emblematic of a broad response) misrepresented the act as a proposal that would "tak[e] the children away from families and train them as wards of the state," calling it "a step toward the socialization of our nation" (Congressman Durward Hall, quoted in Quadagno 1994:152).

This was the context of the 1960's: a publicly asserted narrative that social ills in general, particularly poverty, were directly linked to problems with individual families, and to racialized differences in family. This was counterbalanced by the strong public protest against anything that resembled state interference in child-rearing; encouraging any future legislation to limit its scope.

Legislating the Protection of Children

The status of child welfare was rapidly transformed in the 1960s and 70s, pushed by three interrelated factors. First was a new concern for physical abuse in the figure of the battered child. On the one hand, national media began to describe harm to children by the parents as a widespread pattern, rather than as isolated incidents (Arthur 2012; B. Nelson 1984). On the other, x-ray examinations began to reveal that many "minor" injuries were correlated with hairline fractures in children's bones, which became construed as evidence that many more

children were regularly experiencing serious bodily harm than previously thought. This culminated in the influential 1962 article, “The Battered-Child Syndrome” (Kempe 1962), which not only increased the prominence of the issue but also medicalized it, helping to portray it as a disease, independent of social context (Hacking 1991). By the 1970’s, child abuse had become a new social crisis that demanded a national response.

Second, the nascent discipline of cognitive development began to transform common understanding of childhood. Psychologists argued for the developmental model of “attachment,” which described children forming bonds after birth with their caregivers, who became termed their “psychological parent” (Goldstein, Freud, and Solnit 1979). This paved the way for de-emphasizing the importance of a biological parent’s claim to uniquely be able to care for their child.

Third, the children’s rights movement¹² in the U.S., influenced by the “due process revolution,” became aimed at reforming the highly punitive juvenile justice system. Its watershed moment arrived in the Supreme Court case of *In re Gault*, which determined that juveniles accused of a crime were to be afforded the same due process rights as adults, including the rights against self-incrimination and the right to counsel (Guggenheim 2005; *In Re Gault* 1967). The movement thus shifted the terms of debate of children’s welfare away from broader social concerns, and toward a framework of individual rights applied to children, including the creation of attorneys for children who were to consider their interests apart from their parents.

¹² The children’s rights movement was a global phenomenon, creating international action such as the U.N. Declaration on the Rights of the Child (see Aitken 2001, e.g.). The discussion in this chapter is only applicable to its history in the US.

1974: The Child Abuse Prevention Treatment Act (CAPTA)

Anxiety over the newly defined social problem of child abuse intersected with the legislative drive to separate child welfare from issues of poverty. Senator Walter Mondale (who had been directly involved in the failed efforts to pass the FAP and the CCDA) became the main architect of the new bill to address the problem, the 1974 Child Abuse Prevention and Treatment Act (CAPTA). In promoting the bill he was part of a concerted effort to convince the public that the issue must be dissociated from poverty, declaring in hearings for the bill that child abuse “is not a poverty problem, it is a national problem” (quoted in Nelson 1984:107). Political scientist Barbara Nelson argues that

[f]avoring the narrow definition [of child abuse] during agenda setting had important, long-lasting effects on the shape of child abuse policy. *By ignoring neglect, the connection between poverty and maltreatment was purposefully blurred.* In fact, strenuous efforts were made to popularize abuse as a problem knowing no barriers of class, race, or culture.
(Nelson 1984:16-17, emphasis added)

This narrow definition was in keeping with the medicalized definition of child abuse: however, as child abuse was still being defined, the standards for what precisely justified government intervention were in flux, and instances of neglect which stemmed directly from conditions of poverty became included in the same category as abuse.

The provisions of CAPTA provided funding to state governments for “child protection activities” (which included the setting up of child protection agencies to investigate allegations of abuse), and created a federal oversight body, the Office of Child Abuse and Neglect. (Myers 2010). CAPTA was designed to solve a particular social problem; the problem of child abuse. This was reflected in CAPTA’s allocation of resources: it authorized large funds for child protection investigations and out of home care payments (i.e. foster care), but no funding for services to ameliorate the reasons for removal, or services dedicated toward reunification.

1980: The Adoption Assistance and Child Welfare Act (AACWA)

Soon after CAPTA's passage, congress held hearings to determine the status of child welfare in the country. Legal scholar Martin Guggenheim writes "the hearings Congress conducted made clear that far too many children who could have stayed safely at home ended up in foster care. In addition, congress found that in too many instances children remained in foster care for a much longer time than necessary" (Guggenheim 2000:187). These problems were the impetus for the 1980 Adoption Assistance and Child Welfare Act (AACWA).

AACWA's primary intervention was to require that states make "reasonable efforts" to support families and reunify children with their parents after a removal; entailing the creation of new categories of social services: preventive services, and reunification services. But the act was doomed almost from the beginning; as its provisions to provide money for preventive services and reunification services were never been adequately funded (Lindsey 2004; Guggenheim 2000). The requirements that states make "reasonable efforts" to prevent removals, or to reunify parents, were almost impossible to enforce without the ability to provide sufficient services to support those efforts.

The 1980s was also a period of austerity measures more broadly. Cuts in funding for housing and welfare support, rising unemployment, and mass closing of facilities for the mentally ill all impacted poor parents' ability to care for their children. As the reporting standards from CAPTA were left unchanged, greater numbers of families were being reported (Wexler 2002; White 2003). Increased removals created a national foster care crisis: deplorable conditions in many foster homes, overcrowding of children in group residential homes, and unstable foster placements resulting in children moving from home to home. This is pointed to as the only contemporary 'swing of the pendulum' away from removal and toward family

preservation, however, the inadequate and halfhearted enforcement of AACWA meant that this swing was in name only.

AACWA became the scapegoat for the problems of foster care: those near-impossible “reasonable efforts” to reunify parents and children were blamed as dragging out an inevitable termination of rights, preventing healthy adoptions, and prolonging children’s time in foster care. Senator Mike Dewine’s testimony before the House on the status of AACWA reflects the commonplace nature of such views: “There is strong evidence to suggest that, in practice, reasonable efforts have become, many times, extraordinary efforts...efforts to keep families together at all costs” (DeWine 1996, quoted in Stein 2003:672).

This narrative rested on the assumption that “fixing” many of these parents was a lost cause; i.e. that the vast majority of parents to children in foster care would never be able to parent their children properly. This assumption was based on dominant ideas and images of the deviant, and highly racialized, figures of the teen mother and the welfare queen; figures who became the target of social legislation in the 1990’s.

1996-7: The Personal Responsibility Act (PRA), & Adoption and Safe Families Act (ASFA)

In the wake of the perceived failures of AACWA, the “problem” of child welfare and the overcrowded foster care system became framed as a problem of too many impediments to adoption; ending family preservation efforts was seen as the solution¹³. The next legislation to

¹³ This was a highly racialized discussion as well. The 1994 Multi-Ethnic Placement Act (MEPA) required agencies to make efforts to recruit foster parents who reflect the racial makeup of the population of children to be placed in homes; MEPA was heavily blamed as a significant cause for adoption delays and overcrowded foster care systems. A prominent argument leading up to ASFA claimed that there were thousands of white families attempting to adopt, and African American children who were unable to be adopted into these loving homes due to MEPA. See (Briggs 1994) for a more thorough discussion of MEPA and its role in the writing of ASFA.

change child welfare—the 1997 Adoption and Safe Families Act (ASFA)—must be discussed in the context of its more infamous predecessor, 1996’s Personal Responsibility and Work Opportunity Reconciliation Act (PRA), colloquially known as welfare reform.

The two acts are connected on several levels. First, PRA set the stage for devaluing parents in child welfare by attacking teen pregnancy and declining marriage rates as primary causes of poverty. That is, an assumption of a breakdown in family structure, and an assumption of poor parenting, were both prior conditions for the PRA as it was formulated. This was clearly articulated in the influential conservative thinker Charles Murray’s highly cited Wall Street Journal article, “The Coming White Underclass.” In it he asserted that “[b]ringing a child into the world when one is not emotionally or financially prepared to be a parent is wrong. *The child deserves society’s help. The parent does not*” (Murray 1993, emphasis added). This same ideology was omnipresent in the bill’s creation; many instances of congressional floor debate explicitly wrestle with the problem of how to create punitive incentives for mothers without punishing their children. In most instances the more punitive option was chosen (Hancock 2004; Mink 1999; Chappell 2010). In doing so, the PRA furthered the separation of parents and children as subjects of state intervention, laying the groundwork for ASFA.

Driven by the same concerns about proper family that were at the core of the PRA, ASFA presented adoption into ‘good’ families as the solution to America’s purportedly broken foster care system. Like PRA, the public vilification of unwed mothers receiving welfare was instrumental in public discussion leading to ASFA’s passage. In promoting ASFA, Senator DeWine declared, “there are too many children in this country today being returned to the care of people who have already abused and battered them, people who should not be allowed to take care of these children. Children are being returned to homes that are homes in name only and to

parents who are parents in name only” (DeWine 1997, quoted in Beem 2007:22). This hyperbolic devaluation of all parents who have had children removed exemplifies the logic of ASFA, that parents in child welfare are incapable of improvement, and undeserving of preservation efforts.

ASFA’s provisions include strong financial incentives to states for successfully promoting and executing adoptions (including increased funding earmarked for adoption services, combined with cuts to preventive services), and a weakening of the “reasonable efforts” standards which required states to make efforts to preserve families. Perhaps the most significant shift in ASFA is the mandate that state agencies *must* begin proceedings for a Termination of Parental Rights when a child has been in foster care for 15 of the past 22 months¹⁴.

A cursory search for analyses of ASFA returns articles with such lurid titles as “Federally Mandated Destruction of the Black Family” (White 2003), “An Assault on Family Preservation” (Roberts 2002), or include such phrases as “Take the Child and Run” (Wexler 2002), and “How Congress Overlooks Available Data and Ignores Systematic Obstacles in Pursuit of Political Goals” (Stein 2003). It is of course not condemned universally; Elizabeth Bartholet, one of its most prominent supporters, alleges that it does not go far enough to sufficiently ensure children’s safety, and that social services are still too reluctant to remove children from their homes (Bartholet 1999).

The Act is described by many critics as a mechanism which fundamentally sets families up for failure through strict requirements that must be enforced whether or not effective services for support were made available to the family in the first place. A lack of funding, and a lack of

¹⁴ Exceptions to this are allowed if a convincing case can be made that remaining in care is in a child’s best interests (an extremely subjective measure, giving a great deal of discretion to the individual judge). An exception is also made if the child is in kinship care (see Part 2 of this chapter).

consequences for failing to provide services, result in a system where “the only ‘service’ offered to families is foster care” (Guggenheim 2000); and “[i]nstead of fifteen months of reasonable efforts, there are often many months of no efforts to help a family” (H Baldwin 2002:260). One legal scholar describes ASFA as having been “designed to force states to quickly seek a hearing on termination, to facilitate permanent adoptions, rather than waste time and money on temporary solutions” (*ibid*). Controversial at best, ASFA is still the law of the land governing foster care and adoption; and it therefore underlies all of the struggles over removal and reunification discussed in this study; as this attorney makes clear: “the whole ASFA *framework* doesn't really make sense for families where you're struggling with lifetime issues. Substance abuse, poverty, housing, those are not things that anyone could reasonably *expect* would be addressed in 15 months” (Christine Gottlieb, personal interview).

Part 2: Removing Any Ambiguity (A New York Story)

Child welfare in New York City also changed dramatically in the 1990's. In 1996 the city's child protection agency was disbanded in the wake of scandal; and the Administration for Children's Services (ACS) was created in its place. The creation of ACS was a response to the intersection of a foster care system straining at the limits of functionality, a tragic death transformed into a national scandal, and court action against the Giuliani administration. I will trace these as a way of discussing material conditions, response to public outrage, and struggles through the legal system, as the main forces shaping child welfare.

In interviews, professionals who have been involved in child welfare for decades—as organizers and activists, as social workers, as lawyers, as administrators—all pointed to the “crack epidemic” of the 1980's and 90's and its outsized impact on child protection and foster care in New York. The 80's were already time of strain and dysfunction for the child welfare system in New York. The city's finances were still reeling from its near-bankruptcy in 1975, and social services were being slashed citywide; simultaneous with similar cuts at the federal level (Brash 2011; Tobis 2013). The crack epidemic,¹⁵ which took place in (and was targeted at) poor and black neighborhoods, had a devastating impact on community life. The number of children entering foster care escalated, as large numbers of mothers struggling with cocaine¹⁶ addiction

¹⁵ See (Webb 1998) for a history of the CIA program to distribute crack cocaine in black urban areas in the US.

¹⁶ Crack is a particular form in which cocaine is sold, as opposed to powder cocaine; the two are chemically identical drugs. The two are treated as dramatically differing drugs in popular media: “crack,” as a drug associated with blackness, is positioned as vastly more dangerous than cocaine, framed as a “white” drug. This is echoed in legal treatments, as one must have up to 100 times more powder cocaine than crack cocaine to receive the same prison sentence (Kurtzleben 2010). In addition, the figure of the “crack mother” continues to exert a powerful symbolic influence. I refer to the drug as cocaine to avoid rhetorically reinforcing the demonization of its users.

were unwilling or unable to care for their infants. The foster care population doubled between 1987 and 1989, peaking in 1991 at over 49,000 children (Tobis 2013).

Tragedy and Reactive Changes

1996: Elisa Izquierdo

In 1995 New York City's child protection agency, the Child Welfare Administration (CWA), came under intense criticism after Children's Rights, a national child advocacy law organization, filed a class action lawsuit on behalf of 11 children who had suffered severe levels of neglect and abuse at the hands of foster parents. The suit, *Marisol v. Giuliani*, would lead to court-ordered transformations. But before the litigation was completed, CWA became the center of a national story of scandal after failing to prevent the murder of 6-year old Elisa Izquierdo by her mother.

An investigation revealed that CWA "had been notified multiple times by social workers, school officials, relatives, and neighbors that Elisa was being mistreated, then brutalized, and then tortured," but had repeatedly ignored the warnings (Tobis 2013:17), in what was later described as "the worst case of child abuse the authorities said they had ever seen" (Purnick 1996). A memo was discovered, filed one month before Elisa's death, complaining that the agency was severely constrained by cuts which had reduced its budget by a sixth over the past year. The story quickly turned into a national scandal – a *Time Magazine* cover featured a full page image of Elisa, covered by the words, "A Shameful Death," declaring that she "symbolizes America's failure to protect its children" (*Time Magazine* 1995).

The entire child welfare apparatus was disbanded and re-formed as a result. The function of child protection was removed from the offices of the Human Resource Agency (HRA), the behemoth agency administering welfare assistance, and ACS was formed as a separate agency, with its own commissioner reporting directly to the mayor. Child Welfare was also given a new mandate to aggressively protect children from the possibility of abuse. The reform plan of ACS's first commissioner, Nicholas Scoppetta, boldly stated, "Any ambiguity regarding the safety of the child will be resolved in favor of removing the child from harm's way" (Scoppetta 1996).

This unequivocal directive empowered caseworkers to supersede any other considerations, and created official policies that reflected the motto many new workers learned at the time, of "when in doubt, take them out" (personal interview, ACS administrator and former caseworker). Caseworkers learned to see danger suffused throughout the homes of parents being investigated. Removals spiked, increasing the strain on an already over-crowded foster care system. This was child protection in the age of ASFA; in which the default assumption was that children were in danger from their parents.

2006: Nixzmary Brown

Like Elisa Izquierda, Nixzmary Brown died a horrific death at the hands of her mother. And like Elisa, it became understood that she died because the city failed to save her; that her death could have been prevented, and the system was to blame for not doing so. *The New York Daily News*, for example, illustrated this stance when declaring in a cover story that "Everyone—school, family, child workers—failed her. Her story shames all who could have saved her" (*New York Daily News* 2006). One account shows that "[r]ecords later revealed Nixzmary came to the attention of New York City's child welfare agency several times, but the supervisor and

caseworker assigned to those reports missed the signs of the parents' abusive and neglectful behaviors” (Arthur 2012).

After her death, a 2007 panel led an investigation into 11 deaths, generating a series of recommendations (NYC - ACS 2010). These are, distressingly, not the end to the story. A 2010 grand jury investigation, prompted by the death of 10 year old Marcella Pierce found that at least 19 child deaths after the 2007 panel were a result of ACS’s failures to implement the recommendations (Supreme Court of the State of New York Kings County 2010). These were also considered to be preventable deaths. Some become especially formative in shaping new directions in child protection; these come to be referred to by only by the name of the children involved, their names marking new policies and new commissioners.

Elisa was the formative event of ACS: changing culture, policy, and even the institution. But even though the name wasn’t changed after Nixzmary Brown, her high profile death created changes in the day to day functioning of child welfare: the public responded by becoming more conservative in their willingness to report, caseworkers and managers increased removals and petitions for TPR’s¹⁷. This fits within a larger trend; a study examining “the relationship between welfare reform and child welfare services, caseworkers, the street-level bureaucrats of the child welfare system, reported that ‘highly publicized child death cases’ affected their day-to-day decision making” (Gainsborough 2010). It was also felt by the workers themselves, as demonstrated through interviews in this study:

I remember after Nixzmary, they had us working a lot of hours. At the same time, the public was calling in a lot more cases, the calls to the SCR¹⁸ spiked, so we're responding to so many cases. We were working a *lot*. I mean I was working 12 hour days, five sometimes six days a week. ... Whenever something like that would happen, when we would have a *media* death, that would kind of be the response.

¹⁷ A Termination of Parental Rights

¹⁸ State Central Registry. See Chapter Three for a discussion of reporting.

(Darius, ACS Child Protective Specialist, 2005–2009)

The shifts in response to her death also included higher levels of scrutiny, campaigns to hire more workers, and shortened training periods to get workers through the academy and onto the street faster.

I started working in 2006, and that was a really chaotic time, because it was when Nixzmary died. So after that, they did pretty much a mass hiring. I had sent in my resume maybe the end of March of that year, got a response in April to come down to interview and it must have been initially about 300 people in the area. ... The formal job offer came at the beginning of May, and I wasn't able to give my job two weeks notice, because everything was just [snaps fingers several times] super quick.
(Tasha, ACS Child Protective Specialist, *years*)

In general, child welfare is responsive to death; and especially responsive to especially horrible deaths. The deaths which become front-page news are rare; and often they are notable precisely because they *were* avoidable, and demonstrably so. Changes in the system are often a response to these very specific and rare events (Fraidin 2012; Arthur 2012; Gainsborough 2010). At every level – of policy, of staff, and of individual performance of the job – these events demand attention and response.

Conversations in the Court

Kinship Care: What Counts as Family?

The story of how the crack epidemic impacted children and parents in New York City has been told elsewhere in more detail (McCarthy 2004, e.g.). I am using one specific court case to trace how kinship care—a response to material need due to the crisis—was institutionalized and made legible through the courts. This story also illuminates how questions of what comprises a

family, and who constitutes the subject of child protection, are always imminent, always beneath the surface, poised to become a battleground of policy.

During the 1980's, an increasing number of mothers were abandoning infants in hospitals, creating a highly visible social crisis. However, many more children were being taken in by other relatives, primarily their grandparents¹⁹ (Zwas 1992). This was an unstable and unsatisfactory arrangement for all concerned. The grandparents, many of whom were already financially struggling, saw that they were not being compensated as foster parents; whereas a stranger would have been given a stipend from the city for caring for the same child. It was also not a desirable solution for ACS's predecessor, the Children's Welfare Authority (CWA): placing children in foster care did not qualify as achieving "permanency," the national and local measurement of agency success (and which federal funding depended upon). As long as children were cared for by their grandparents, they were not being adopted or reunified with their parents, the only official means of permanency.

It became common for agencies to pressure grandparents to adopt, something most resisted, for good reason. Adoption would ignore the fact that the grandparents already had a familial relationship to their grandchildren, one that was recognized to legally entail custody rights in other situations. Even more consequential, adoption would require that the parent's custody rights be formally terminated; grandparents who choose to adopt their grandchildren must reject the possibility of their own children eventually returning to their parental roles. An ACS administrator remembers that, "sometimes, the grandparents were put under tremendous pressure to the effect of, 'Well if you *don't* [adopt], we will find another permanent solution'" (personal interview).

¹⁹ For the most part this happened *after* an infant was officially placed in foster care; and was therefore already within the authority of the child welfare system.

Large numbers of grandparents in the city organized, and through the national organization The Child Welfare League, filed the lawsuit of *Eugene F. v. Gross* in 1986. Decided by the New York State Supreme Court in 1990, the court ruled that (1) relatives acting as foster parents had a right to foster parent funds, and that (2) children in the kinship care would be exempted from the ASFA requirement to seek a TPR: i.e., children could remain in the care of their relatives without being permanently severed from their parents (Green 2011; Zwas 1992).

While the *Eugene* decision was an unambiguous victory, kinship care is also criticized by many parents and organizers: the creation of kinship care as an official category has led to additional complicating issues, changing the relationship between caregiving relatives and the state. The legal view of who may be considered a valid candidate for kinship care is restrictive. Splitting sanctioned relatives (such as grandparents) into a separate category from relatives who are not privileges legal definitions of family over lived relationships, ignoring the often flexible kinship networks that can be common in those communities impacted by child welfare. In addition, incorporating relatives into the foster care infrastructure requires them to go through the same background checks as any other potential foster parent. This has the effect of increasing scrutiny on family members, and increasing their visibility to other systems, notably the criminal justice system. It also has the effect of subjecting kin to the numerous rules that govern foster parenting, rules which do not apply to parents and guardians of other children²⁰. Sandra Killelt, a long-time organizer in New York City child welfare, articulates these tensions:

They didn't term it kinship care back then [in the 1970's and 80's]. There *was* no kinship care. We know *informally*, for *us*, whether it was child swapping, whatever you want to call it, we know that that was the protective factor that we created, cause I grew up in it, right. We know that *that* kept kids safe, kept communities united. The child welfare

²⁰ For example, corporal punishment is allowed in New York City (within limits), but not by foster parents. If a foster parent strikes a foster child, the child will be removed, and the adult will no longer be legally allowed to qualify as a foster parent.

system kind of *broke* that. Because now they're saying it needs to be *formalized*. And we're going to make it formalized, which means that everybody's under a microscope. And once you do that, it's easy for people to drop off. "I'm not getting involved, I'm not doing this." Because who lives in a perfect house? So it's no longer the safety net that *we* created in our communities that we've been living with all the time. ... And *then*, once we formalize the system, then we get a little more stringent on what the qualifications are. ... So kinship is good, yes, but then you have kinship and you have *restraints* on kinship. (Sandra Killett, Executive Director, Child Welfare Organizing Project)

This is not an argument that a foster care system should be prevented from regulating who is allowed to become a foster parent, or from monitoring children once they are in foster homes. The numerous and frequent horror stories of poor care and abuse in foster homes belies that idea; including the children who formed the subject of *Marisol v. Giuliani*. However, kinship care—both in its struggle for recognition, and today—represents yet another process by which certain parents are made subject to additional requirements and made legible by a system that does not apply to parents with the means to avoid it. While change in child welfare is far too chaotic to be predictable, this case illustrates a consistent direction; change tends to happen toward institutionalization and formalization, and toward more detailed knowledge of subjects by the system.

Nicholson v. Scopetta: What Constitutes Risk?

One case is central to discussions of risk and removal in New York today: the 2006 decision *Nicholson v. Scopetta*, often referred to simply as *Nicholson*, is the most important reference for discussing risk for child protection. *Nicholson* was one of the many struggles that could conceivably have been resolved in a number of alternate ways, but became a matter for the court.

The 1994 passage of the Violence Against Women Act (VAWA) elevated the attention paid to domestic violence, imposing laws for more punitive police responses to it. This

intersected with the Scopetta-era ACS's doctrine of removal and its consequent aggressive handling of cases. As a result, a common response to a domestic violence report in the mid 90's included a report to ACS and the removal of any children in the household. Not only were children removed immediately, but frequently charges of neglect brought against the *victim* of the violence (for allowing her children to be exposed to domestic violence). Evan Stark, a longtime advocate for women's rights involved in the original domestic violence trainings for ACS workers, interprets this as an almost inevitable consequence of arguments for more attention to be paid to domestic violence which framed women as "helpless victims," logically implying that they were also powerless to protect children against abusive men. (Stark 2005).

This happened to Sharwline Nicholson in 1999. While she was in a hospital receiving care after an attack by a former partner, after arranging for her children to be in the care of neighbors and relatives, she was informed that her children had been removed from her custody and that she faced charges of neglect for "engaging in acts domestic violence." She became the face of class action lawsuit. Her case, *Nicholson v. Scopetta*, was decided in the New York Court of Appeals in 2004. It was a broad decision: in dealing with the immediate facts of the case, the court ruled that an inability to protect a child from witnessing abuse or violence does not constitute neglect, and therefore is not, by itself, grounds for removal. The decision went further, holding that in any decision to remove, the grounds for removal must be weighed against psychological damage of removal to the child, and establishing that there were clear limits to a worker's ability to ignore those worries by invoking danger. This gave the decision far broader importance than only cases pertaining to domestic violence removals: after Nicholson, there was a legal precedent for halting the agency's ability to interpreting "imminent risk of serious harm" as conservatively as possible. Nicholson has become the standard for evaluating the risk of

removal against the risks of non-interference. It surfaces almost parenthetically in this interview excerpt, which both illustrates how it is to be applied, and shows its wide applicability:

Something that I've learned in this job is that I think kids really generally know when they're safe and when they're not. ... So there's this case, Nicholson. Have you heard of it already? I think kids *do* the Nicholson analysis in their head without even knowing it. They *weigh* the danger of staying home against the trauma they're going to experience from being removed, children do that [analysis] in their head, and I think they're ... better at it than anybody else can be, because it's their lives.
(Joanna, Attorney for the Child, New York City Family Court)

After much discussion of the case, I was surprised to hear lawyers and caseworkers, describe similar removals—i.e. children removed from their mothers after the mother was a victim of domestic violence—as something that still regularly occurs. Nicholson, then, shows both the power and the limitations of court litigation: it can be used to enforce existent rights, or to institute new ones, but rights that are never assured, and must always be re-asserted, again and again. It also provides an example of how cases can be parsed. A former family court judge explains:

I think [Nicholson] is a brilliant decision. And it really, some of the brilliance of it, is it really gives a *lot* of discretion to family court judges. I mean, you can read that decision and still do what you want to do. I think it's a great decision. ... Nicholson doesn't say you *can't* charge a mother with failing to protect because of DV, you just have to be able to show that the mother didn't follow through with a safety plan. And you as ACS had to have tried to assist her in doing so. I mean, children can't just be subjected to their mother's *failings*, and get beaten up by their *father* while their mother's standing by, and watch their mother get beaten up, and it's ok. That is not what Nicholson holds.
(David, Former ACS Administrator, Former Family Court Judge)

Nicholson v Scoppetta and *Eugene F. v Gross*, the two cases examined in this chapter, mine substantially different territory: one revolves around the question of who counts as family, and how a foster family differs from other familial forms; the other is a decision increasing the legal specificity of what counts as imminent risk. They are also only two of a much larger array of cases which shape the practice of New York child welfare. I have chosen these two because,

taken together, they illustrate the wide range of issues that come before the courts, as well as their contingency: neither of these issues needed to be resolved through the court system, and once there, either could have been decided in other ways. They also demonstrate an additional trend of particular interest to this study; that when questions are contested, resolving them often happens by creating or increasing the regulation of official categories—that is, the actual implementation of these decisions happens through the expert judgment of professionals.

Chapter Conclusion

The theme of this chapter has been the chaotic nature of changes in the child welfare system: the complications in its seeming oscillations between preservation and removal, the role of fears and the impulse to save which must be responded to, and the contested nature of its movements. Neither the national nor the local history of child welfare have a knowable regularity, but both are shaped by a common tendencies.

The changes discussed in this chapter exhibit a consistency in maintaining the state's ability to separate children from their families. During the Progressive Movement, poverty was no longer an acceptable justification for removal, but the right and duty of the state to intervene in families it deemed as social problems was in fact strengthened, as it was formalized through juvenile court. This is coupled with a reinforcement of the divisions in the governance of families via the categorization of deviance—even as some children became protected through social movements, others, especially those already marginalized by race, were made less visible, as their portrayal as children dependent on families was displaced by labels of criminality and delinquency. These reforms—both historically and today —continue to reinforce a drastic shift in the ideology of family; from 'family' as a unit understood to be inviolable by government to an understanding of children and parents as already separate actors, with separable interests. In order to help protect families, organizers and advocates often must first accept the framework that parents and children are to be treated individually. This can be seen at the national level in ASFA and its assumptions of the futility of fixing bad parents; at the state and city level in the management of relatives; in the discursive reduction of mothers to nothing more able or unable protectors; and even in the mundane daily practice in which an Attorney for the Child is tasked with determining a child's best interests independently of their parents.

Chapter Three

A Very Broken system: The Everyday Life of Child Welfare

If they didn't file so many stupid cases, and they didn't spend so many resources on things that weren't necessary, they would have more resources and time to focus on the serious cases. So it's a very broken system. A very broken system.
(Joanna, Family Court Attorney for the Child)

During my fieldwork, while I was interviewing a defense attorney who also teaches at the NYU Family Defense Law Clinic,²¹ we began discussing the problems of communication within and between city agencies. These problems seemed to be within the normal range of what might happen in a large institution: a parent with two children in foster care would have two different workers who wouldn't agree on visitation schedules, children placed in different boroughs from their homes were required to change schools several times, and so on. One story in particular stood out to me in its Kafkaesque logic:

I was representing a client who had a child in foster care, and she was pregnant. And we're at this case-planning meeting. And I say, "My client would like to talk about setting up a plan to try to ensure that the *coming* baby doesn't have to go into foster care." And the people at the table, the caseworkers from the agency and ACS said, "Sorry, we can't talk about that, that's not our responsibility." ... Basically what they said was, "We have to *wait* until the baby is born, and the hospital calls the hotline to say there's a baby at risk of abuse, then a worker will be assigned to that baby, and then we can see what we can do."
(Christine Gottlieb, Co-Director, NYU Family Defense Clinic at NYU School of Law)

Parents constantly feel that they are at the mercy of a system they do not understand, and

²¹ One of only three law school clinics in the country dedicated to representing parents in abuse and neglect cases.

even advocates who are there to help them are still not always able to successfully intervene on their behalf.

This chapter attempts to understand what ACS looks like to parents who are affected by it, and those who work on their behalf. I use data from ACS and other child welfare reports, discussions with parents, and multiple interviews with their representatives: lawyers, social workers, and parent advocates²².

In section one I describe the process of mandated reporting, the starting point of a case with ACS. Child protection can enter into anyone's life at any moment, but as I explain here, the mechanisms by which it enters are far more present in spaces associated with poverty. Systems of surveillance that already exist in more marginalized lives create increased vulnerability to child protective services. Advocates and representatives working with parents caught up in the system frequently identify a gap between these parents' rights on paper and what rights are actually upheld in practice. This gap varies depending on individual parents, the individual workers, and the situational context. Thus, while well-designed and intentioned policies are a necessity, they are not sufficient to ensure uniformly fair treatment.

The inconsistency parents experience in their treatment results, in part, from differences between individual workers who make up the face of child welfare. To a parent, there is no single entity of "ACS," or "Family Court;" they are instead experienced through interactions with many individual workers. Thus in section two, I focus on ways that parents and their advocates experience the many different workers in the system, including common themes in the (negative and positive) portrayals of these workers.

²² "Parent advocates" are an officially recognized category describing nonlawyer representatives for parents. Some organizations only allow parents who have themselves been affected by the child welfare system – typically a parent who has lost and then regained custody of a child – and has undergone some sort of training: this will apply to all parent advocates interviewed in this study.

Stopping and Frisking Families: Mandated Reporters

Social workers, *we* are the ones who are stopping and frisking families in the South Bronx. We are. That's what we're doing. We are the social workers who are directors of the shelters, and we are doing random home visits, and we're finding weed, and we're calling in cases, and we're social workers at the schools, and we're seeing bruises, and you know, we are the ones who are bringing this system to bear on families in the Bronx. And it *frustrates* me to no end that *nobody* sees it. And nobody talks about it.²³

(Lauren, Family Court Social Worker)

The Report

ACS receives approximately 60,000 reports of child abuse and neglect each year. Each report begins as a phone call to the State Central Registry (SCR) in Albany. Many of these SCR reports are made by neighbors, relatives, or other family members; but the largest proportion come from mandated reporters: professionals identified by Article 10 of the Family Court Act in New York State²⁴ as having an ethical and professional obligation to report any suspected neglect or abuse. The catalog of specific mandated reporters lists almost 50 professions (see Fig 4). Most are in social service professions: social workers, therapists, teachers, day care workers, doctors, and other hospital workers are all included. These are professionals that most parents will encounter regularly, but parents of more privileged backgrounds or living in more affluent spaces have very different encounters than others.

²³ “We” in this context refers to social workers in general, and not to the social workers at Lauren’s organization: this quote occurred in a conversation about a national social work conference she had attended.

²⁴ The Family Court Act covers a wider range than cases than discussed in this study. My focus, allegations of neglect and abuse, are all governed under Article 10; professionals frequently describe these as “Article 10 cases.”

The advocates who help parents negotiate ACS discussed two distinct ways that these class differences emerge in mandated reporting. First, many services only exist for those in poverty; and second, there are substantial differences in how people obtaining services are seen by

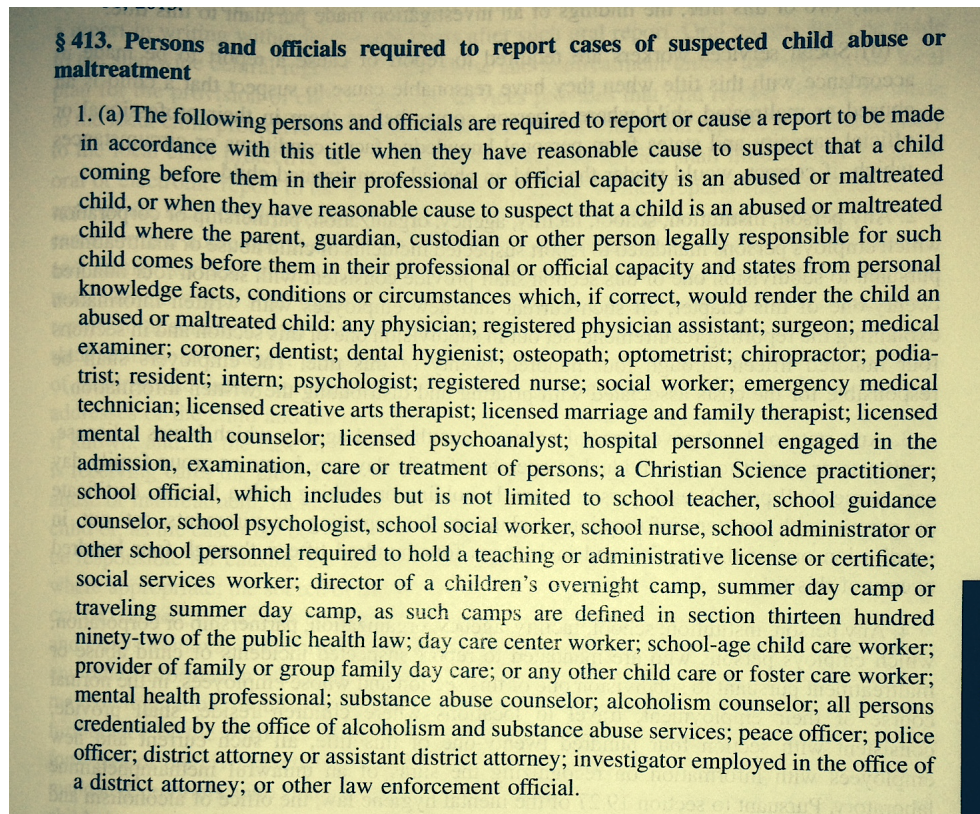


Figure 4: New York State law designating mandated reporters.
Source: New York Family Law Yellowbook, Social Services Law (S-721).

professionals in (relatively) privileged spaces compared to impoverished ones. These testimonies indicate that the law, while race- and class-blind in its written form, is applied far more often to poor parents, and to black and Latino parents, amplifying the frequency and intensity with which they are observed.

More eyes on the family

Professionals designated as mandated reporters are not equally distributed throughout society. The quote that opens this section reveals one social worker's frustration that social

workers in general are implicated in a system of monitoring that increases the exposure of their clients to ACS. When Lauren observes that social workers “are the ones stopping and frisking families,” she is pointing out the many ways that social workers are a regular presence in the lives of those in poverty or dependent on the state: social workers “are directors of the shelters,” are “doing home visits,” calling in reports from schools, and so on. She is also referencing the fact that social workers have historically acted to monitor and report on their clients; something that has become formalized in contemporary institutions, as social support and strict management have become intertwined (Margolin 1997).

The very condition of needing material support can increase one’s risk of being reported to law enforcement in what Loïc Wacquant refers to as “the carceral-assistential complex” (Wacquant 2001:97), a term meant to highlight the increasing intersections and overlaps between systems of welfare and criminal justice. Forms of public assistance have become inextricably linked to ideologies of distrust and surveillance, while also directly connected to systems of law enforcement through information sharing and the use of police to enforce welfare regulations. Wendy Bach terms the heightened surveillance characterizing both of these systems, “the hyperregulatory state” (2013). She argues “that in institutions like public hospitals and welfare offices, poor people, and disproportionately poor people of color, face a hyperregulatory state” (6), indicating that simply to seek support from the state carries elevated risk of punitive responses. This feeds directly into the institutions of child welfare through the mechanism of reporting (Bach 2013): many of the professionals who are mandated reporters only interact with clients precisely because they are recipients of some form of public welfare in the first place.

As U.S. citizens, many of us have a “reasonable expectation of privacy” enshrined as a constitutional right in the Fourth Amendment, protecting us from unlawful search and seizure.

But this right is contingent for some, and almost non-existent for welfare beneficiaries. In the 1971 decision *Wyman v. James*, the Supreme Court ruled that Fourth Amendment rights to privacy did not apply to laws that required welfare beneficiaries to submit to random home visits.

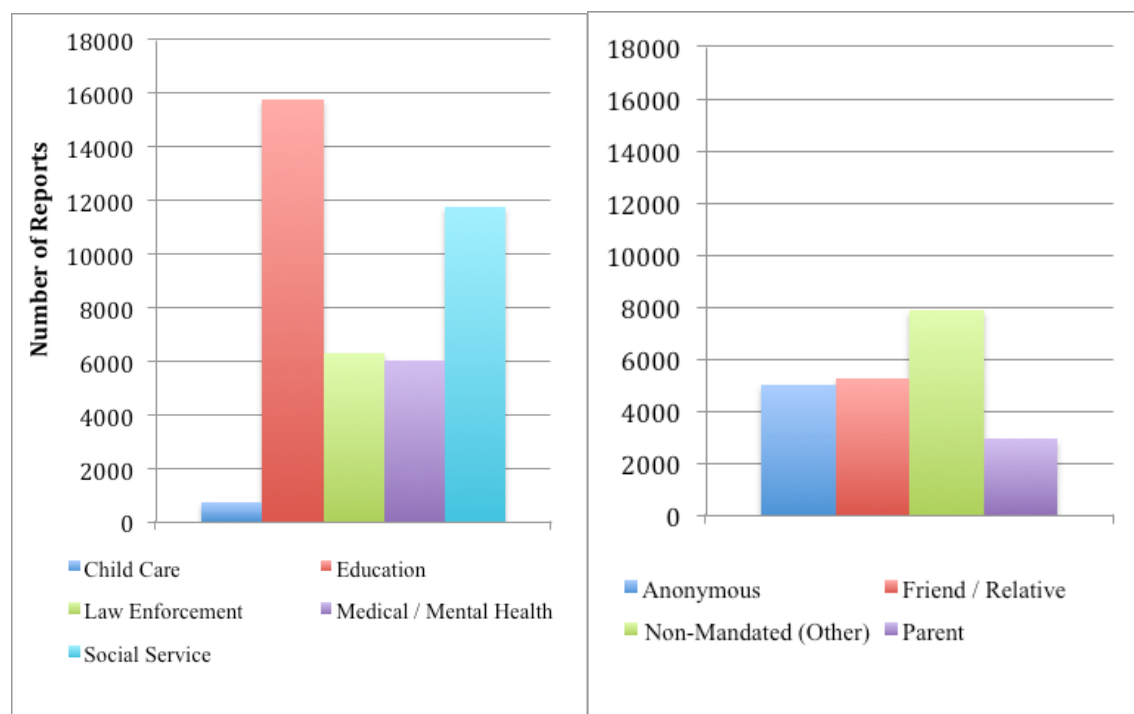


Figure 5 and Figure 6: Citywide SCR Intakes by Reporter Group for 2014 for Mandated reporter groups (Left) and Non-Mandated (Right). Graph by Author. Adapted from ACS *Flash Reports* (NYC-ACS 2014a; NYC-ACS 2014b; NYC-ACS 2014c; NYC-ACS 2015).

This has an enormous consequence; as welfare recipients are formally recognized to have lesser rights to privacy than ordinary citizens. Beyond the *Wyman* decision, “scholars have carefully detailed the way that ... poor people hold no genuine right to privacy once they seek support and that, more and more frequently, poverty focused social welfare programs employ the methods and modalities of the criminal justice system” (Bach 2013:18). Below, I detail several examples of these restrictions on privacy (see Fig 5 and Fig 6 above for a breakdown of SCR reporting by specific category).

In exchange for some forms of public benefits such as Temporary Assistance to Needy Families (TANF), the remaining vestige of welfare assistance program Aid to Families with

Dependent Children, “poor single mothers forfeit rights the rest of us enjoy as a fundamental to our citizenship” (Mink 1999:174). Applications for benefits regularly include highly detailed questions into one’s personal life which many groups protest as overly intrusive. The ability to escape certain forms of scrutiny, and to raise children in privacy, is taken away as a condition of certain forms of material support.

Those in need of housing support have highly curtailed privacy rights. Families in public housing move more frequently than average, each move necessitating an application process that can involve home inspections and the disclosure of personal information. Scrutiny in homeless shelters is especially exhaustive: not only are the many workers able to observe intimate family moments, they are given an explicit directive to constantly monitor social interactions to prevent potentially disruptive or harmful behavior. Even the process of entering a homeless shelter brings one into contact with multiple city officials, as explained here by Lauren:

A family will meet a number of people in the course of their trip through PATH [Prevention Assistance and Temporary Housing]. Different *supervisors*, and *intake* workers, and if a parent is experiencing domestic violence they'll have to meet with a *separate* caseworker that's through the domestic violence screening program at PATH. So they sort of tell their story to a number of different people in PATH. And then they have to return, multiple times, in a ten day period to prove their homelessness. ... And so, just the number of people that our client meets throughout the PATH shelter system in the course of a week is astounding, as they're trying to stabilize their families. (Lauren, Social Worker, New York City Family Court)

Lawyers in this study described large numbers of clients who were, or had been, living in the shelter system. One estimated that “almost half” were either homeless or in danger of becoming so. One lawyer describes her first job in family defense, in which she worked almost exclusively in cases in which the allegations are due to homelessness or housing problems.

I would focus on our clients that were in housing crisis, or who were already homeless, and represent them in family court, inasmuch as their homelessness was affecting their case. Which of course, it always does. Sometimes the allegations against them actually had to do with homelessness, like they were being accused of having inadequate shelter,

or they were being accused of having a really dirty home, or they were accused of *not* going to shelter when they should have, or all kinds of things can stem directly from the homelessness in really *clear* ways, where the homelessness is referenced.
(Sophie, Family Court Public Defense Attorney)

Unequal standards of reporting

The second means by which poverty and privilege shape one's experience was brought up even more frequently in my interviews. When poor parents meet the same types of social service providers that other parents do—such as doctors, therapists, or teachers—they meet them in spaces that are commonly segregated by income. Article 10 applies equally everywhere, but it is not equally enforced or enacted. Informants in this case study—organizers, parent's supporters, and former ACS workers—all observe that poor parents are subject to a different set of standards for reporting. One former ACS caseworker describes this openly:

I worked on the Upper East side. Fairly affluent neighborhood. If a parent beat their child into a *coma*.. *maybe* the child would be removed. But basically, almost everything else, not really. It's arbitrary. ... It's social economic background. These are the people who are financially connected and *politically* connected. ... And that's why I say, unless a child is like *beaten* into a coma, or it's obvious sexual abuse, usually the child's not removed.

(Robert, former ACS caseworker, former Agency caseworker)

This is also described by many observers writing about the system in New York City both from within (Tobis 2013), and as outside journalists (Beam 2013). It is clear that in the eyes of those impacted by the child welfare system, the rules of reporting operate differently between public hospitals and clinics versus private hospitals, public versus private schools, and so on.

The disparities in treatment by mental health and medical professionals became a common theme in my interviews. Rachel, another social worker, talked at length about this issue, emphasizing the persistent fear of being reported that clients discussed with her:

Clients are so fearful, parents are so fearful. The services that are supposed to be *helping* them, I have several clients that tell me, “I’m *afraid* of my therapist. How do I trust them when my therapist is the one who called in the report against me? Or my *doctor*.” I just had a case where a pre-natal doctor, the baby wasn’t even *born* yet, and the doctor thought that he was required to call in a report. Because the client tested positive for marijuana. For *marijuana*!
(Rachel, Social Worker, New York City Family Court)

Here Rachel does not distinguish between the treatment that her clients experience from therapists or from doctors. While the two may have very different training concerning mandated reporting, as she narrates, the parents she works with are aware that both have the potential to make reports based on what might otherwise be considered confidential information: the space of the doctor’s office and the therapist’s office are equally risky for the mother. Thus we see the two faces of assistance – the helpful and the watchful – yoked together. Rachel goes on to describe the lack of concern that parent’s fears are given:

I have a case right now where the client *specifically* talked to her therapist, and psychiatrist, about these issues, and said, “I’m talking to you about things that are showing up in case notes, and then you’re giving evaluations to ACS that have all this detailed information. I don’t want it to go to ACS.” And I went and I sat down and I talked to them. And the next psychiatric eval from the psychiatrist has in it, “Social worker came with her to the meeting to talk about the confidentiality issue, to talk about how she felt unsafe.” And it’s all in this report, that everyone can get access to again!

Parents thus have a strong incentive to avoid services when they fear the consequences of reporting, whether this fear is justified or not for the specific circumstances. This has harmful ramifications: for example, laws which mandate criminal charges against pregnant women who test positive for drug use have been shown to drive women away from much needed prenatal care (Levy 2015; Roberts 1999).

Hospitals and other medical spaces are highly divergent between public and private. Historically they were one of the first sites of reporting, given the medicalization of child abuse as it became a national issue. As far back as the 1980’s, a study found that

[A]mong a group of children referred for suspected abuse in the emergency and surgical units of a hospital, the best predictor of removal of the child from the family was not the severity of abuse, but Medicaid eligibility, which we might interpret as a proxy variable for the income status of the family.

(Katz et al. 1986; cited in Guggenheim 2014:1724)

The study offers no causal explanations for the differences (which continue today); however interviews in this study suggest several possibilities. For one, hospital workers – like many mandated reporters – have a particular expertise. They are trained to respond to dangers to health, and often emergencies which require immediate action; but they are not trained extensively on nuances of reporting. Thus, reporting becomes a default option. Illustrating this, a lawyer describes in detail a chain of events that turned a normal trip to a hospital for treatment into a child’s removal:

She [the mother] grew up in foster care, she was switched around, she was abused in foster care, she developed PTSD. When she was discharged from foster care she was 21 years old with a 2 year old, and the one thing that was *not* in place was mental health treatment. And she asked for it and she asked for it and she asked for it. I mean I've read all the case notes, you see her asking for it and she was never given it. She was discharged *without* it. Within a month she ends up in Jacobi [a public hospital in the Bronx] having a panic attack, and scared to leave in the middle of the night. [She didn't want to go home alone in the middle of the night, to her public housing where she'd been discharged from foster care]. You read the notes and it's clear that the health professionals didn't really know what to *do*, ended up calling ACS, and a case was filed against her.

(Michelle, Family Court Defense Attorney)

This story is about the reporting that occurred at a public hospital; in which the report seems to be made almost as a reflexive response to a parent who is difficult to handle, rather than any specific concern for the child’s well-being (“the health professionals didn’t really know what to *do*”). Michelle, an attorney with over a decade of experience representing clients in Family Court, describes this incident as very typical of the disconnects between attempts to help which may motivate a report, and the results which follow once a parent is investigated.

Schools are similarly bifurcated. In addition to differences in willingness to report, there are differences in the degree to which a school will cooperate with an ACS investigation into an SCR report. Not only do reporters within the schools and ACS workers treat the two differently; the school administrations have different responses to child welfare allegations as well. One former ACS caseworker was telling me about an allegation of very minor seriousness that he struggled to get un-indicated in a process that drug out for months. He now works as a school social worker, and I asked him what would have happened if a similar incident were to happen at the upper middle class school he now teaches at:

I would call the family, set up a meeting, and talk about it before deciding that there is reasonable cause to suspect. And we were told [at ACS] that we have to make these calls if we have reasonable cause to suspect. Well what is reasonable cause? I maintain to this day that the fact that family was from the Dominican Republic is what made the white school staff think that they had reasonable cause, that this child was at risk. *Everything* is more risky when you're a person of color. Not inherently, but because of this increased level of bias and institutional surveillance. Why is smoking marijuana more of a risk to a black child than a white child? Nobody's mom smokes pot? I work at this progressive, middle class elementary school, I'm sure that many of the parents smoke pot. (Anthony, LMSW, former ACS Child Protective Specialist, 2009–2010)

Another former worker describes the difference between investigations in public and private schools, explaining that “[in] private schools, everybody is like *covering*. You would call them on the phone, primarily. They don't *want* you there. [Whereas in a public school] you visit the school. You're actually, physically there” (Robert, former ACS caseworker).

Interview participants made several consistent claims to explain the differences in reporting between wealthier spaces and less privileged ones. The spaces that parents and children move within are often more public for poorer parents; both in that they are visible to more eyes, as well as being public rather than private institutions. The cultures of reporting – how decisions are made as to what constitutes a sign of danger, making a reportable incident – are seen to be more conservative in public spaces. Professionals are potentially operating with conscious or

unconscious biases that cause them to associate danger with poorer parents (for example, in concluding that a bruise on a child's arm signals potential abuse, rather than deciding that it is within the normal range of childhood injuries). Catharine, formerly a social worker in the child welfare system, is now an attorney who works in custody cases from divorce in private, and also represents clients in need of a public defender as an 18b attorney. Here she reflects on the economic and racial differences she sees daily:

In actuality, my parents who are in this practice, wealthier parents, probably are more passive in parenting than some of my other clients that I've had as a social worker. So it's very interesting to see what their reaction to ACS is across the board. "How dare they, How dare you ask me these personal questions." [In a] case that I had where the mother brought the child down to be interviewed, the mother got down there and ... they wanted her to sign a HIPAA for her kids, so they could conduct a further forensic, which in ACS's language is a comprehensive interview... [And] the mother said, "No, I'm not doing it." Another mother in another case in a lower socio-economic status, an African American or Latino mother, would have been *bullied* ... She was not willing to cause her child what she felt was this massive disruption and intrusion. Another parent would have been totally bullied²⁵.

(Catharine, Private Family Attorney, and 18b Attorney)

She attributes some of the differences in treatment to a difference in power, as some parents have more agency to assert their rights. Moreover, as she points out, this also stems from the agency's *perception* of parental power, and its differing standards in responding to parents' requests and demands ("another parent would have been totally bullied").

Mandated reporters may also not understand the consequences of making the report. Social workers and teachers in particular are described as reporting parents to ACS out of a desire to help the family. If a family is struggling with raising a child and needs support, ACS *is* the social service agency one should call, if one is to accept its official description as "the City's

²⁵ Catharine went on to explain her use of the word: "Bullying is a term of art, right, but I can't tell you how much power exists in this agency, and what they can do. ... So when I say bullying, I mean threats, I mean, 'We will take your child away now' even though that's not legally possible. I have seen ACS workers employ whatever tactic necessary to get what they want out of a situation. I've been bullied as a lawyer, [and] as a social worker, by ACS."

agency responsible for child welfare, juvenile justice, and early care and education services dedicated to protecting, supporting and promoting the well-being of our City's children, youth and families each and every day". Whereas in private institutions there is often a stigma associated with child services, in other places it is seen as the appropriate—and perhaps the only—way to intervene to help a family²⁶ (Beam 2013; Reich 2005).

Groups such as the Radical Social Work Group in New York hold information sessions on reporting aimed primarily at the social workers and teachers who make a large portion of the SCR Reports, and who are not always aware of the limitations of helping families through ACS. One social worker describes what she has discovered about the awareness that various reporters have about the system:

[I've been] talking to social workers in schools, and social workers in hospitals, and what I'm finding in my conversations with them, and we've done some trainings in hospitals and schools, is that social workers and teachers just *don't* often know what *happens* as a result of a call. And they believe that they have to make the call. And sometimes the *way* that they make the call, and the information that they provide could be a lot more, and could really round out the story of what they're trying to do for this *family*, which is oftentimes just get them some help.
(Rachel, Social Workers, New York City Family Court)

Reporters, then, are faced with a difficult conundrum- there are few (if any) alternatives to reporting that are seen as acceptable in situations when the professional feels obligated – both legally and ethically – to intervene.

²⁶ ACS does provide funding for cribs, day-care vouchers, and other forms of help – but only after a lengthy process, often only after an attorney for the parent demands them, and far less often than they effect a removal and / or mandate services. Statistics also show racialization of these services: African-American families in similar circumstances are less likely to receive the material or financial support to which they are entitled from ACS than Latino families, who in turn are less likely to receive this support than white families; this is true nationally, and is even more pronounced in New York (Tobis 2013).

They Need to Act Better Than a Regular Person: Encountering ACS

A good caseworker ... is almost similar to a good police officer. Like, for example, when a police officer goes up to someone on the street, and the police are saying stuff to him, and he's maybe ... cursing at the police or whatever. Police are not supposed to be like regular people. They're supposed to be able to endure that, and act professionally. I think the same is true for caseworkers. A lot of parents and families have big attitudes when the *government* comes into their home. Some people are scared. Or sometimes people are just assholes, you know what I mean? Caseworkers need to act better than a regular person.
(Joanna, Attorney for the Child)

The knock on the door

The encounter with ACS begins with the knock on the door by a Child Protective Specialist (CPS). Parents in communities with high rates of child welfare involvement already know this knock, and know that it represent the intrusion of the state's authority into one's home, even before it happens. As Dorothy Roberts describes in her study of child protection in Chicago, "residents were all aware of intense child welfare agency involvement in their neighborhood and identified profound effects on family and community social relationships" (Roberts 2008). This image of ACS as "baby-snatchers"²⁷ targeting and bullying poor black neighborhoods starts with invasive questions and unexplained demands. This does not describe all CPS investigations; however, it is a common enough experience to shape community-wide perceptions.

The investigation happens under strained circumstances: not only is the presence of a government official in one's private home distressing, but the presence of a CPS means that one's child may be taken away at any moment. The title of a short documentary about

²⁷ This term was used to me in person by parents; it is also regularly used by commentators on child welfare, typically those that write from the perspective of the parents (Tobis 2013, Wexler 2010; Roberts 1999), it is also referred to by internal ACS studies (Epstein, Adamy, and Lalayants 2007).

ACS, *A Life Changing Visitor: When Children's Services Knocks*, calls attention to both the heightened significance of the metonymic knock, and its potential for the radical disruption of a family's life. As one caseworker put it, "When ACS comes to your door, they're not coming to say 'You're the best parent!' ... [I]t's more about what ACS represents to this parent. They all automatically think they're inadequate, they think, 'I can't care for my child, someone is saying I'm a bad person'" (Trina, Preventive services caseworker).

Typically less than 10% of investigations lead to a removal, and they are also more likely to happen after a court appearance than during the initial investigation;²⁸ but every investigation carries the potential to turn into a removal at any moment. Investigations can happen late at night, and require waking children. Parents are often angry, and uncooperative. Workers describe removing children "with just the clothes on their back," and nothing else- no knowledge of any of a child's needs, such as medication or health conditions. Even in cases in which there is agreement that a removal is necessary, it is a traumatic experience for the parent, and even more so for children removed. When in the home, caseworkers are directed to interview each member of the household, inspect the home for dangerous conditions, check that there is adequate food, and examine children present for any marks or bruises: all of this takes time, time during which a parent is aware that she is being continually judged.

²⁸ Given the high volume of investigations, above 55,000 for the past five years, and as high as 58,666 (NYC-ACS *Flash Report* January 2015), this translates into several thousand emergency removals of children in New York City each year—2,693 in 2013.

ACS's policies recognize the need for caution and restraint in removing children, although parents and advocates question whether such caution is sufficiently exercised, describing unnecessary removals as a significant problem:

One of the reasons why I say that I think children could avoid foster care more often than is happening, is because we often ... appear in court after the removal has occurred and provide the information and phone numbers for relatives that no one seems to have asked for before. [And] it's difficult to understand why they weren't called prior to the removal [making it unnecessary to take the children from the home]. Or we'll say, "Well this is the *dad*, he's *here*. Why are the children at the children's center and not with their father?"
(Michelle, Family Court Defense Attorney)

Anyone has the legal right to refuse to admit a caseworker into their home; however a refusal carries a risk that this it be cited later as evidence of in compliant behavior. It is also a tenuous right; ACS can request police – who *can* enter without permission – if they believe the situation to be an emergency. Even parent advocacy groups are cautious when discussing this right, advising that opening the door is often “the right choice” (“The Survival Guide to the NYC Child Welfare System : A Workbook for Parents,” n.d.). That is, the predominantly low-income parents who are subject to ACS investigation, despite their legal rights to not allow the CPS into their home, often do not realistically have the option to exercise that right in practice, and are typically aware of the limitations of that right.

It is important to note that, as at every stage, divides of poverty and privilege shape how the investigation unfolds. Caseworkers who describe routinely requesting a police backup to enter apartments in low-income housing make clear that this is not considered acceptable in wealthy neighborhoods. Tasha below describes how Riverdale, an affluent neighborhood in the Bronx, became a symbol of this division for her and her colleagues:

It was kind of like a running joke in the office, like, “Cases in Riverdale!” Cause you really have to put on your, you know, “I am educated, I’m going to use my words to explain to you the severity of this case.” As opposed to going into section 8 housing, or NYCHA housing. “C’mon, open up the door, don’t make this more difficult, you know, I don’t want to have to come back with the police,” and speak in terms that people can understand. ... [Whereas in Riverdale], they have no qualms about just pushing you aside, looking through the peephole, not saying anything. Just saying, “No, I’m not letting you in, come back with a warrant.”
(Tasha, former ACS Child Protective Specialist, 2006–2009)

Going through the system

After the initial visit, the next stage is the Child Safety Conference (CSC), usually held the next day in an ACS field office. ACS purportedly uses the conference to decide what course of action the agency will seek, which then becomes the agency’s petition before the family court. Opinions vary widely on whether or not ACS is open to allowing input from parents in the CSC to affect this decision – the ultimate authority for the petition rests with the CPS’s manager, a Child Protective Manager (CPM). CSC’s were begun on a trial basis in the mid-2000s, and widely instituted by 2009, as a way to respond to a demand for more parental input:²⁹ they are intended to allow ACS to act in its more supportive and less punitive role in working with parents.

However, as lawyers are not permitted to attend these conferences, parents often have no one to represent them or guide them through the interaction with multiple ACS workers, all of whom have an expertise in the details of the system’s rules and employ a specialized vocabulary which parents are not always able to follow. One worker discusses his perception that the conferences are not sufficient to shift the institutional culture and practices:

²⁹ Several other conferences were created as well: the Family Team Conference, which occurs after a family is already in the system, an Elevated Risk Conference, held by ACS when they are considering removing a child from the parent after the case has been filed, among others.

Honestly, you walk into those child safety conferences knowing what you're going to do. The *parent* really has no real input. ... The CSC's came about as I was getting ready to leave, in late 2009 - and I remember at *that* stage, we walked in there going, "We know what we're going to do here. We're going to do the work how we normally do it, but this is just another process to sort of cover ourselves. To say that we talked to the family, and the parents really have no input." They can come with a ton of support, but if that decision's made - and depending on the temperament of the people making the decisions - those decisions aren't going to be influenced by the parents, the caretakers.
(Darius, LMSW, ACS Child Protective Specialist 2005 – 2009)

The outcome for a parent is highly variable, conditional on the individual workers ("depending on the temperament of the people making those decisions"), although the individual "temperament" of workers is itself constrained by cultural and institutional possibilities: there is only a limited range of what can happen in a CSC.

Have the CSC's changed in the past six years since the description above? After the organizing efforts of groups such as the Bridge Builders, and the Children's Welfare Organizing Project (CWOP), parent advocates are now regularly present in the conferences. However, the conference is still a meeting between a parent at her most vulnerable, and an agency with the power to take or return her child. Advocates in this study described that conversations in the conference can be "impersonal" and "dehumanizing." One social worker reflects on her difficulties with the CSC model; describing her interpretation that the decisions take place based on individual judgments, rather than a technical or objective appraisal of the situation:

I've been in conferences with up to 19 people in a room – It's not *typically* 19 people, but it can be that many – who are making judgments and decisions about my client, and their parenting, and their family, and talking about their *children* as if they *know* them, and have a greater claim to them than my client. And this is in front of and *to* my client. ... It's a really hard thing to be in a room advocating for our clients, when often, we feel a lot of judgment, and a lot of negative energy coming from the other people in the room. And those are the people with a lot of power.
(Lauren, Social Worker, New York City Family Court)

However, the decision coming out of the CSC does not yet take effect. ACS may decide that a removal of a child is necessary, but making a decision in the conference does not give them the ability to enforce it. Even if the initial investigation revealed an emergency and a child was immediately removed, this is a temporary condition; not (yet) a neglect or abuse adjudication, or the termination of the parent's custody. ACS may decide that a parent 'needs' counseling, drug treatment, or any number of other interventions, but the decision to require them must be rendered by a judge in family court.

The CSC is followed by a series of separate stages, often stretching out for months at a time, during which a child may be with their parents, or waiting in foster care. At the intake hearing³⁰, the beginning of the process, ACS presents the court with a petition: a document including the allegations and the case report and the action that ACS is seeking, usually to remand children from their parents, and / or to mandate services for the parents. At this stage the parent or guardian comes to be referred to as the respondent (legally signifying that they are charged, and must respond to the charges) in what is termed an Article 10 filing, after the section of New York State family law covering child abuse and neglect (see Fig 7 for number of Article 10 filings in 2014). As respondents, parents are given the choice of admitting to the alleged charges, disputing charges but submitting to court judgment, or going to trial.

There are fact-finding hearings to substantiate or dismiss the allegations, dispositional hearings to decide the long-term "permanency plan" for the child, and permanency hearings to judge if that plan is appropriate. Following your case from stage to stage is a confusing process; one which moves in erratic fits and starts, but never very fast. This limbo is made worse when

³⁰ This description applies only to some of the cases before the court. Also common are cases in which ACS is seeking an immediate removal, or has already made a removal and is seeking permission after the fact (both termed a 1027 hearing), or cases in which a parent is petitioning for the return of their child after a removal (a 1028 hearing).

parents do not have caseworkers working effectively to help them make sense of the unfolding chain of events.

It can take a while for a parent to see their kid again. ...So I've had cases where I've dropped off kids in Brooklyn, and the parent was in the Bronx, and they never heard from the agency until we go back to court the next time, which is three weeks later. A parent would show up to court, and I'd be there for the first time since I did the removal, and they're like, "I haven't seen my kids in three weeks. I don't even know who my worker is." I've actually been outside the courtroom, gone up to the worker assigned to the case. And I say, "Oh are you on this case? Meet the *mother*. Meet the parents."

(Darius, LMSW, ACS Child Protective Specialist 2005 – 2009)

Here we see a distressingly normal bureaucratic problem: parents are highly dependent on their individual caseworkers, but without the accountability that would ensure a consistent level of support from each worker.

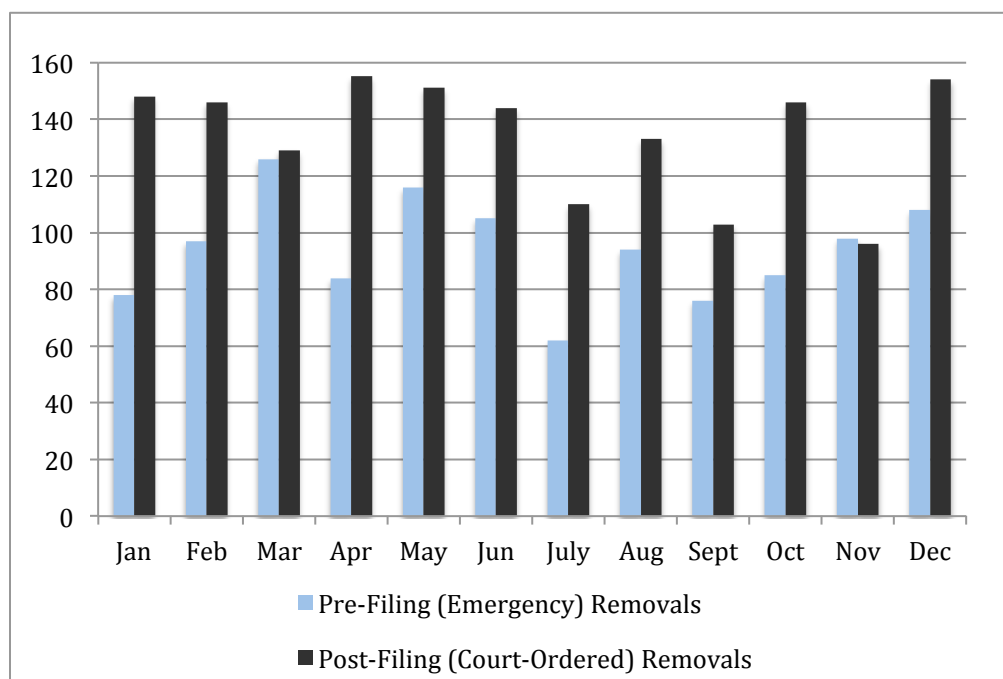


Figure 7: Monthly Article 10 Filings, filed after a removal, or resulting in a court ordered removal, 2014. Graph by Author. Adapted from ACS *Flash Report Jan 2015* (NYC-ACS 2015:9)

It is possible for an abuse or neglect case to leave the system quickly in a dismissal, but this is not likely, even in cases where the agency eventually decides that there was no

cause for removal. More commonly, the case moves from ACS to either foster care or to preventive services, both within the same voluntary agency³¹. In the past decade, family court has followed a trend of increasing orders of preventive services rather than removal to foster care. Currently, the court consistently orders families to be placed in preventive services slightly more often than removing to foster care³² (see Fig 8).

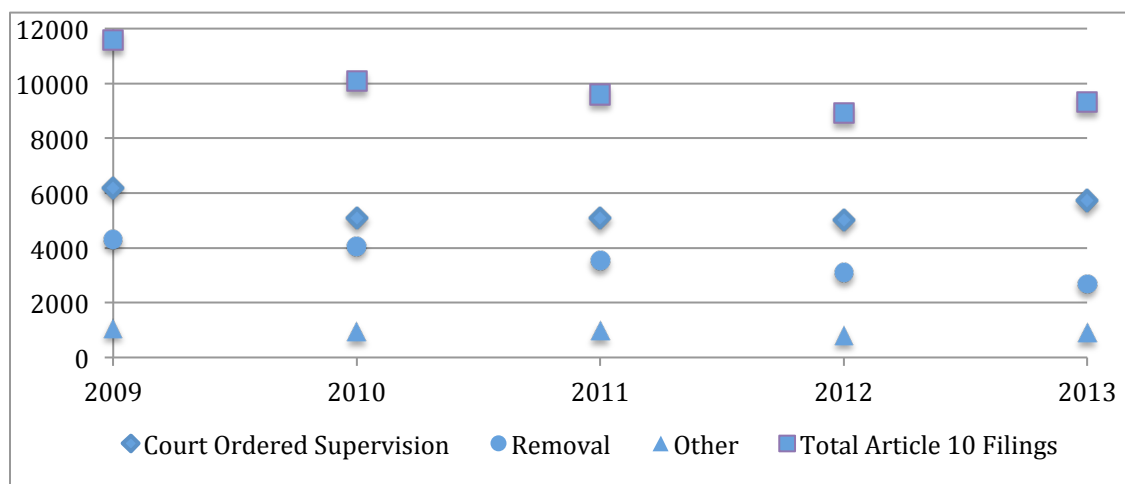


Figure 8: Outcomes of Article 10 Filings (after being processed through intake hearings). The category “Other” includes released with no supervision, no order issued and no outcome specified. Graph by Author. Adapted from ACS *Flash Reports* (NYC-ACS 2014a; NYC-ACS 2014b; NYC-ACS 2014c; NYC-ACS 2015).

The service plans are often criticized as being rote and automatic, unable to respond to the roots of structural poverty that most frequently led the family into child welfare, and, at its worst, more of a tool of commanding compliance than improving parenting abilities. One lawyer lists below close to the full range of services.

³¹ All voluntary agencies in New York City are privately run. Foster care has always been privately administered in New York, dating back to Charles Loring Brace’s founding of the (still extant) Children’s Aid Society. Voluntary agencies are licensed and monitored by ACS, and receive a large portion of their funding from ACS.

³² Families in Preventive Services or in Foster Care will both have a Service Plan, which mandates certain services; the only difference is whether the child has been removed into foster care. Many lawyers for parents compare preventive services to a system of probation.

Service plans are pretty much always the same, though. ... You could show me a petition and I could tell you what the service plan's going to be. ... It's going to be parenting, 99% of the time they're going to recommend a parenting class. 98% of the time they're going to recommend counseling, individual counseling, and maybe family counseling when it's appropriate. And then you know, if it's a drug case they're going to recommend drug treatment program and follow after care recommendations. If there's *any* type of violence at all, they're going to say anger management. If there's any kind of *domestic* violence, they're going to say domestic violence counseling for the victim, and batterer's accountability for the perpetrator. And they're going to ask for a psych eval if there's any reason at all for them to ask for it. (Joanna, Attorney for the Child)

The service plan is one of the few predictable parts of a highly unpredictable system. To be clear, the service plan *can*, and sometimes does, help the parent. This can be especially complicated in cases of drug addiction, as parents and their advocates will frequently recognize a need for, and seek out, detox or other drug programs. However, the parent's input is not sought out, and is usually ignored, as to what services might meet their needs. These services vary widely in quality and efficacy, and there is little attention paid to those services that a parent seeks out on their own³³. The service plan cannot address the majority of the issues that many families face because they are technical solutions, and as such can only address problems after they have been rendered technical- a service plan cannot address structural poverty. Lastly, the service plan is not only a tool for the parent which can be helpful, even though it more often is not; it has also become a tool of child welfare to monitor parents' behavior.

³³ The differing requirements to qualify for various services also creates perverse incentives: many lawyers describe frequently being forced to counsel clients who have stopped smoking marijuana that they must test positive in order to continue in programs that provide shelter, but only for those who have problems of drug addiction.

It's Risky to Assert Your Rights: Uncertain and Unreliable

From a parent's perspective, this system is confusing, difficult to understand, and creates a loss of control. Even knowledge of the law is not sufficient; the law is not always followed. At what points are parents' legal rights reinforced, and at what points are they ignored? Like other parts of the system, this is dependent on the many individual workers who are responsible for enforcing the rules of the agency and state law. One of the most prominent advocates for parents in the field of child welfare, New York University Law Professor Martin Guggenheim, has often famously stated that the challenge in child welfare is not in changing laws and policies, but in demanding that they be enforced as written:

The majority of children removed from their parents' homes coercively are not in the kind of danger that justifies their removal under a proper application of law. What most of us working in this field are trying to do is simply enforce the law. We're not looking for any change; we're looking for people to become faithful to it.
(Martin Guggenheim, Co-Director, NYU Family Law Clinic at NYU School of Law)

Guggenheim is articulating a perspective widely held by those who represent parents: leaving aside the ethical question of whether or not a removal *should* happen, many removals do not follow the legal standards for removal as stated in ACS policy; violating a range of laws that are set up—sometimes by ACS itself—to protect against unnecessary removals. The most vexing problem for Martin and other lawyers is not a set of punitive ACS policies: it is that ACS cannot be relied on to follow ACS policy, nor do the courts hold ACS accountable to following the requirements under the law.

Whenever I asked for examples of this problem, every attorney I spoke with brought up the same example—the visitation policy—as one of their most regular frustrations. The current policy states that unsupervised visitation is the default: visitation to be supervised only if there is reason to believe the child is in immediate danger otherwise. It also lays out the role of the

supervising agency worker to monitor for improvement, with the ability to increase visitations at any time – visitation should be an evolving process, ideally evolving toward a family reunifying (NYC-ACS 2012). This policy, crafted with input from parent’s lawyers, parent advocates, and the Parental Advisory Committee, reflects the view that visitation is the “road to reunification” as one attorney described it. Yet, for these same attorneys and advocates, the reality of visitation falls short:

Everyone knows the benefits of visitation. It can reassure a child separated from their parent. And it can allow a parent to continue to parent their child. But I have yet to have one case where ACS has stood up and requested unsupervised visitation, even though it is the default according to their own policy. ... There is an incredible disconnect between those positive pro-family policies - policies that *we* would say are good as the advocates for parents - and what happens in the actual courtroom. (Michelle, Defense Attorney, New York City Family Court)

Nor is this a recent concern. In 2004, a subcommittee from The ASFA Ad Hoc Coalition³⁴ issued a report on the problems of implementing visitation policy, stating:

The most disturbing finding is that supervised visits at agencies continue to be the norm, without case-by-case assessments as to whether there is a continuing need to protect children and whether close supervision is warranted. ... There is substantial confusion regarding who has the authority to change visiting plans, *with caseworkers often thinking they cannot increase frequency or duration or diminish the level of supervision without a court order yet failing to seek court approval to suspend visits.* (The Visiting Subcommittee of the ASFA Ad Hoc Coalition 2004, emphasis added)

The report reveals an inequality in the worker’s willingness to use their own authority: when the decision involves reducing visitations (a safe decision- there is no risk that a tragic incident can be blamed on less visits), workers are shown to be willing to make the decision on their own. They are more reticent to decide to increase visitation, deferring to (and therefore waiting for) a judge’s order. This is despite the fact that, as outlined in the

³⁴ An interagency group drawing members from over twenty organizations working with child welfare in New York City to monitor changes caused by the 1997 ASFA.

visitation policy, it is clearly part of their job to monitor visits in order to both decrease and increase their frequency as needed.

Perhaps even more concerning, not only can parents not count on the law being followed, they must be cautious in asking for ACS to act within its own policies. As a defense attorney comments,

It can be risky to assert one's rights, or to argue that the agency failed to follow the law. Judges often are not interested in whether the law has been followed by ACS when they conducted the removal or gave the parent notice. Asserting one's right to resist entry into your home or to have a lawyer present when questioned by a caseworker can be *interpreted* by a judge as that you're hiding something, or you don't care enough about your children's welfare to cooperate. There's really no room to talk about what it's like to have your home *inspected*, or to speak to several caseworkers at once without support by your side. It's almost as if an expectation of privacy or representation just shouldn't *exist* in this community.
(Michelle, Family Court Defense Attorney)

Why is there any risk? Simply being in family court means that one's behavior is now an object for inspection and judgment. One's actions open to interpretation, and those interpretations can carry immense consequences: the possibility of being seen as not "car[ing] enough about your children's welfare to cooperate" gives parents a strong incentive to obey directives, even when they may technically have the right not to.

Dependence on the Individual Worker

Tracey Carter, who began working as a parent advocate at the Children's Welfare Organizing Project (CWOP) in 2004 after a long struggle to regain children from foster care, provides an example of how violations of law can occur without repercussion, and serve to make the rights of parents even more precarious. Here she is narrating her journey in family court after the removal of four of her children. The older two were adopted by their foster parents after the foster care agency successfully filed for a TPR; however

Tracey was not made aware that she was legally allowed to appeal the decision. Her right to do so was contingent on the decision of a judge, who chose not enforce that requirement:

If I had known that I could have appealed and stopped [the adoption of my older two children] them, I would have, but they told me it was too late, so I kind of like just focused on getting my younger two children back. That's what they told me. But they wasn't adopted yet. So [even though] I had a chance to get them back, they told me it was too late, that they was already adopted. They said I had to go downstairs to the adoption unit and talk to the workers down there because they've been adopted. ... When I went back there, the security guard knew me from the past and he was like, "Oh, you're gonna get your other children back," and I was like, "They told me that the other ones were adopted." He was like, "Hold on." He said they wasn't adopted yet. ... But you know what, it was too late. They was living in a foster home with a family. When I went to court for my youngest two, the judge was the judge for my other children. She could have gave me a chance, but she didn't. ... Judge Adams from Brooklyn Family Court. She just kind of like brushed it off, like "The children were adopted, focus on those two, court adjourned."

(Tracey Carter, Parent Advocate, CWOP)³⁵

It was not the case that Tracey simply didn't know a technical loophole that would have allowed an appeal, or that an unlikely long shot was overlooked. She was directly lied to, or was given information by a worker who completely wrong about the most important thing in Tracey's life, her children. This does not represent the norm; this story was chosen because it is egregious. However, it is also common enough that Tracey still sees similar incidents in her role as a parent advocate.

Other advocates describe the persistent low-level symbolic violence of judgment and disrespect from workers:

But it happens every day though, every single day. "Oh, *they* [parents] don't want to do services. You think they want to do services? *They* don't want a job, they want to sit there and collect a check." It's *so normal*, that conversation. There's *nothing wrong* with it for them [ACS workers]. It's *normal* for them to talk like that. ... I see it every single day. *Every* day. You know, "Oh, this person will be back in the system again. We'll offer them an ACD [Adjournment in Contemplation of Dismissal], but they'll be back." "Oh she'll take him back," if there's domestic violence.

³⁵ See (Tobis 2013) for a lengthy section detailing the stories of several parent advocates and their journeys from parents in the system to organizers, including Tracey's.

(Veronica, Parent Advocate)

Veronica is visibly angry as she describes how unremarkable and routine it is to hear such judgment from workers. Many former caseworkers agreed with this general assessment: even as they were careful to point out that such attitudes varied greatly from worker to worker; they were clear in expressing that they did not find such sentiments appropriate:

There are workers that will speak *very* ill [of clients]. ... [Other workers will say things] like, "As soon as I close this case they're gonna be back, they don't know how to behave." "They have drama. Three kids, three different baby daddies. "You don't work but you're complaining, you're getting 400 dollars a month in food stamps and I work and I can't even get that and yet I have the same amount of kids you do."

(Tasha, Social Worker, ACS Child Protective Specialist, 2006–2009)

That is, workers are not immune from wider social devaluation of the parents who appear in family court. This is not an argument that the problems parents face are due to uncaring workers, but is meant to draw on the historical context discussed in Chapter Two, showing a continuous process of questioning the fitness and "fixability" for certain parents, pre-categorized as unfixable.

Making a good worker

In principle, it is the job of the caseworker to uphold her client's rights. While this chapter has demonstrated that caseworkers cannot always be relied on to breathe life into the law, many do exactly that, applying the agency's policies to their best ability.

Interviewees repeatedly made an effort to convey, first their empathy with a very difficult job, and second, that many workers *did* advocate for their clients, work with attorneys and social workers, and do everything in their power to reunify families.

What makes a good caseworker? A good worker is one who is helpful, and not judgmental or dismissive of a client. Joanna, an attorney for the child, describes certain minimal standards; but also the wide variability of her experience with workers:

So many caseworkers are so terrible at their jobs. And some are so *amazing*. I mean, you have a really good caseworker on a case, it begins to be so clear how bad the other ones are. ... It's not like we're so great all the time, but they're the real front line of the child welfare system, and when you have a really good caseworker, it makes all the difference in a case. It makes *so* much of a big difference. Now caseworkers have I think some of the *hardest* jobs in the world. ... But when you have a really great caseworker, they're very patient, they're supportive of the family, you know they fight hard for the kids. ... They don't try to be punitive.
(Joanna, Attorney for the Child)

Sophie, an attorney representing parents, illustrates a specific experience of the good caseworker. Here she is describing the court report: a report that caseworkers are required to bring to each court date to document both the work they have done, and the progress of the client³⁶. She refers to these as “an often hastily written summary,” and goes on to differentiate between court reports which make an effort to present the client in their full complexity, and those that reductively present them in narrow and negative terms.

Or they'll list all the missed visits but barely comment on the quality of visits that *did* take place, unless it's to criticize a parent's behavior. A caseworker who's in a bigger rush, or is maybe not as nuanced in the way they approach the job, will not include, or will maybe even take the credit for things. Like, “I signed them up for this program.” And not mention that it was not part of the [original] service plan, but the parent requested it specially. And little details like that make a huge difference in how a judge is going to be seeing a client when they keep reading these things over and over again over the course of the case. You know, it's such a crazy difference. Like, “Oh right, all you did was humanize the client.” But it's so crucial.
(Sophie, Family Court Defense Attorney)

³⁶ It is relevant, giving the previous discussion of ACS failing to follow its own policies, to mention that multiple lawyers complained that workers frequently do not fill out these required reports, or fail to bring them to court.

At the end, she tellingly implies that all one need do to become a good worker is to “humanize the client.” This is seemingly a very low and achievable bar, and so all the more distressing that, for Sophie, it happens so rarely that she is surprised by it.

Others pointed to a caseworkers’ ability to empathize with parents. A good caseworker not only tries to understand a client, but has the ability to do so across personal or cultural differences. Lauren demonstrates the difference that a change in caseworkers can mean for a case:

We had a caseworker on the case who was *so difficult*. And just didn't understand our client's, sort of, *affect*, or way of talking and relating to people. And the way that the court reports were *written*, really were focused on my client's difficulties in terms of interpersonal reactions that didn't really bear much at all on her relating to her child. ... But it's this kind of interpersonal relationship with the caseworker, and *that* became the subject of the reports to the court. And so the court became very *fixated* on our client's symptoms and mental health. But then a new caseworker took the case. And just really got to know our client. ... That caseworker *recognized* it, she *got* it. She understood her, she really recognized the strength of the bond between my client and her son. So you know, in that case, it's a game-changer.
(Lauren, Social Worker, New York City Family Court)

Unlike the difficult caseworker who uses her personal interactions with the mother as part of her judgment of parenting ability, the good caseworker prioritizes the parent-child interaction as more pertinent information. That is, a good caseworker must be able to apply a professional sense of what is relevant to the case, and to actively decide what is most important to present to the court.

These good caseworkers are seen as exceptional in both senses of the word. They are exemplary in their performance of the job, but they are also exceptions: one cannot count on such a caseworker. And the exceptional caseworker is even more incredible when one considers that workers have incentives *not* to be excellent- being a good caseworker, as it has been defined above by parents and their advocates, means taking risks on behalf of the

parent. These excerpts also show the necessarily individual and personal aspects of becoming a good caseworker, as whether or not one “gets it” about a parents needs, whether or not one is able to resist the time pressures to list extra details, to humanize clients, are seen to be of incredible significance in the outcome of cases.

Chapter Conclusion

Publicly Legible Lives

In this chapter, I have drawn from interviews with current and former experts in order to reveal the uneven routes by which families become the subjects of the child welfare system. The discussion of mandated reporting demonstrates the concrete ways that this increased vulnerability occurs. Some of these instances may be understood as the outcome of structural poverty – allegations of housing neglect as the result of living in substandard housing when it is the only option a parent can afford, or a mother forced to leave her children alone because she cannot afford child care, for example. Some may be understood as a result of the loss of private space: the homeless, for example, by virtue of living lives that are more publicly visible, are more easily targeted by systems of law enforcement and child welfare as well. In general, forms of state dependence expose families to increased monitoring, and increased likelihood of one's behavior being reported.

The uneven experiences of different parents are also contingent on general use of public space, whether associated with poverty or not. Denser urban neighborhoods provide more opportunities for neighbors to see watch and judge family life. As the urban modes of childhood, and urban parenting become more securitized (with private playgrounds, e.g.), those who do use these increasingly privatized methods of raising children become even more visible relative to those who are absent; and so the division increases between those who have access to such services, and those who do not.

I describe this vulnerability by saying that certain parents are more 'publicly legible' than others. People become visible to institutions of the state through such official records as their Social Security and tax records, criminal history, or previous cases in children's services. These

forms of visibility overlap as data systems are shared, such as when the IRS, AFDC, Social Security, and Department of Labor databases were linked to each other in the early 1990s in an attempt to address welfare fraud.

Parents who make use of public institutions – hospitals, housing, and schools – are more visible than those who frequent private ones. The inner homes of welfare recipients become visible to caseworkers. However, at each stage, only the information which the institutions choose to examine and record becomes part of the official knowledge of the family. As one lawyer lamented, a parent's love for her child, or a child's emotional connection to her mother, is not part of this set of measurable variables. Thus, this legibility signals not only a kind of surveillance, but a filtering as well; as certain kinds of information are considered meaningful and others are not. This is produced by technical decisions of what information to record and transmit; and thus the process by which parents are made legible is built in combination by the structures of the institutions and physical spaces they move in with the evaluations and expert knowledge of the professionals who observe them.

The Precarity of Uncertainty and Dependence on the Worker

Parents who enter the child welfare the system often feel as if their legal rights don't matter. They experience repeated moments of uncertainty: the system produces a sort of compounded precarity, as cases progress from one stage to another, the potential for derailment and the risk of punitive measures grows at every additional step. Their rights are enforced and dismissed at various key points, but always by the individual workers who are in control of managing their case. Even though lawyers and parent advocates provide a way to maintain a

parents' rights, achieving those rights in practice may be a given, may require a struggle, or may be impossible, depending on which workers have authority over the case.

There is a tangible link between those who are at greater risk of being reported, and those who are unable to navigate the system, as the divergent experiences of parents continues after they enter the system. Katharyn Mitchell uses the term “pre-black” to describe those racially defined subjects who are “individuals and populations who are defined—in advance—as risk failures” (Mitchell 2010:239); suggesting that these disparities are not only caused by the concrete factors discussed (additional eyes on the family e.g.), but that categories of social value (signified by most often via race and signs of poverty) also contribute these disparities in treatment.

However, while these signifiers of social value structure and constrain the outcome, they do not determine it. This is part of the unpredictability of the system: one cannot be ensured of good or fair treatment, but neither can one uniformly count on a punitive experience. All that can be relied on is doubt, uncertainty, and above all, dependence. The system of child welfare works by moving through disjoint and discrete stages, and the outcome of each one depends heavily on the representative of the system who is given authority over it. In the next chapter, I take this up by examining a parent's first point of contact: the often vilified figure of the ACS caseworker.

Chapter Four

The Hardest Job in New York City: Doing Child Protection

When we get to the discussion of ACS child protective specialists, I'll tell you it is *the* hardest job in New York City. And they can do nothing right, and everything wrong, and people will forever complain about the quality of their work. It's like police, 30-30-30. 33% of them *suck*. 33% of them really do their job. And 33% of them are the *most* extraordinary people you will ever meet in your life. And that's like *anything*, but their job is so extraordinarily *important*, that the 33% who suck are the 33% that everyone talks about. But the 33% who are extraordinary, nobody talks about them.

(David, Former ACS Administrator, Former Family Court Judge)

I now pivot from writing about how ACS looks from the outside to the point of view of those working within the system. This chapter examines the workings of child welfare by looking at the job of the caseworker. Chapter Three revealed that the outcomes of cases become highly dependent on individual caseworkers, who vary widely in competence, empathy, and willingness to put effort into helping families. If we can agree that the job of the caseworker is so extraordinarily difficult, then it is extraordinarily important, not to castigate the agency for accepting that “33% of them suck,” but to understand the role that the organizations themselves play in the professionalism and effectiveness of their workers.

My study suggests that this is not a problem only of attracting better workers. I draw from interviews with former workers to suggest that the conditions and the structure of the job makes it difficult for workers to not act in these ways, while minimal methods of standardization and professionalization contribute to variances in individual approaches to the job.

Impossible Demands: The Job of the Caseworker

When I initially started, I actually *loved* the job. I went there with the purpose of making a difference. When I got there, my ideas changed. ... As an ACS worker, if you have a good supervisor, a supportive supervisor, that understands the demands of this job and has some compassion, some humility; you know, you can work with that person, because you're working as a team. But, I found, if you get the *wrong* supervisor, it can make the job a living hell. ... That can turn a good worker into a bad worker, cause you're trying to meet these demands, but they're impossible demands to meet.
(Joyce, ACS Child Protective Specialist, 2008–2012)

An extremely difficult job

The policies and directives of ACS are carried out by the frontline workers, the Child Protective Specialists (CPS)³⁷. The job is stressful, demanding, requires making incredibly high-stakes decisions, and means entering peoples' homes unannounced to make judgments on their lives. If you are a caseworker, you carry the stigma that your presence alone signifies a threat that a child's life—and thereby their mother or father's—may be violently disrupted. The caseworker sees parents at their most vulnerable, in their most frightened, angry, and volatile states. As the frontline workers, CPS's carry with them the extraordinary power to remove a child, but almost no authority to make their own decisions. Their recommendations and ethical concerns are easily ignored and overridden by management. While the retention rate has improved significantly, very recently almost half of Child Protective Service workers had been on the job for a year or less (NYC-ACS *Child Welfare Indicators Annual Report* 2007–2014). It is, by all accounts, an extremely difficult and nearly thankless job.

ACS employs over 1,100 Child Protective Specialist (CPS) workers, and several hundred supervisors and managers to oversee them, divided among several field offices in each borough;

³⁷ All interviews were conducted with former caseworkers, who worked for ACS during different periods. For this reason I have attached the years of employment to each interview participant's name.

all of whom are within the Division of Child Protection (DCP) of ACS. Despite the intense demands of this work, there are few prerequisites. In some states child protective workers must be social workers, but in New York neither an MSW or social services experience is a requirement for the job. Each of these workers must have a bachelor's degree and pass a city test to qualify for the job, and receives six weeks of training at Satterwhite Academy, followed by three months in a training unit. Workers found the academy training to be helpful, but only to a limited extent relative to the amount of skills required for the job.

This opinion was also in line with the results of a large study examining the experiences of CPS workers: *The First Year's Experiences of CPS Caseworkers: Qualitative Findings & Worker Recommendations* (Epstein, Adamy, and Lalayants 2007); which I will rely on throughout this chapter to supplement my interviews, as the most thorough qualitative document I was able to access in my research. According to the report, caseworkers frequently "said that the Academy provided them with an excellent knowledge of social work related aspects of the job," but felt it to be rushed. One commented, "I completely appreciate everything the Academy taught us, but it didn't teach me to do this job" (Epstein, Adamy, and Lalayants 2007:34).

Six weeks of training cannot fully complete a worker's professional training for such a multifaceted job. Workers describe learning documentation skills, court procedures, some basic social work ideas, but attribute their abilities to make difficult decisions to experience, rather than academy instruction. Dealing with confrontational or resistant clients, the emotional impact of performing removals, how to deal with other professionals and their requirements (particularly police officers, lawyers, and judges) all require an expertise which must be developed on the job. As a consequence, the making of caseworkers does not happen in the Academy, but in the months and years of work that are far less controllable by the agency, and experiences that

diverge widely from worker to worker. Just as the individual caseworker has the potential to make a large impact on the outcome for a parent, workers experienced what they described as wonderful supervisors, and those who made the job “a living hell.”

Following their initial investigation, caseworkers stay with each case—through the court process and as-needed follow-up visits—until it can be closed. Caseloads have been significantly reduced in the past decade, from an average of over 15 cases per worker to an average of around 10 cases per worker. Each case, however, involves multiple simultaneous deadlines and requirements. A caseworker must evaluate safety and risk, conduct interviews, investigate apartments for evidence of neglect, properly document findings, and testify in court. These responsibilities are difficult to balance, and opens caseworkers up to criticism on multiple fronts. A former high level ACS Administrator points to the contradictory imperatives that a worker must attempt to follow, with seemingly no way to satisfy every job requirement:

Their skill at doing competent investigations is the source is a lot of criticisms. They're not police officers, they don't receive police officer training. They don't *know* how to do a forensic interview. You know, there's a judge I know, who I like a lot, who couldn't believe that a CPS instructed a parent to discard marijuana. Flush it down the toilet. You know, “You can't have this in the house.” “It's *evidence*. How could you possibly tell her to throw it down the toilet, are you crazy?” *No!* For the CPS, she was like, “You shouldn't have it in the house!” But the judge is ready to *indict* the woman. “How could this ever happen.” She's calling ACS, she's ordering, “I want every policy, on marijuana, that you have at ACS.” Really? Is that what you're spending your time doing? Really?

(David, Former ACS Administrator, Former Family Court Judge)

The riskiest and most stressful element of the job is undoubtedly the initial investigation, which is followed by a series of other requirements. First, the worker must file a case report within 48 hours (24 in the case of a death, or other extreme allegation). She³⁸ then has sixty days to close the case: this means that a judge finds for or against ACS's petition, and the case is

³⁸ See Introduction for a discussion on gender and caseworkers.

either dismissed, or moved to a voluntary agency. Before the case is closed, the worker must make bi-weekly visits – unannounced – to continue to inspect the family’s home. These visits must be extensively documented, and written up in reports submitted to the court. The report entails thoroughly interviewing many of the people in a child and parent’s life who may have information relevant to the case. One former worker narrates the steps involved in an investigation:

So you go on one case with that person [as a partner] who might be competent or might be awful. You do a million things. You're in the house for hours cause you're new and you're slow and you don't really know what you're doing and of course the report says there's four people in the home, [but] there's really seven. Someone shows up while you're interviewing, everything changes. You leave, you call your supervisor to debrief, it's now 9pm, and she says, "What about this?" "They didn't provide that." "You have to go back right now." So you go back and bother the shit out of these people some more. You wake up the babies, now everyone's crying. You call your supervisor back, she doesn't pick up the phone and eventually goes to sleep or stops answering the phone. You go home, you eat, you collapse, you get up, you go first thing in the morning. "But what about this? What about that? You have to go back." Or some awful demoralizing thing like "What's wrong with you people? You're the type of workers where the children on your caseload are gonna die³⁹." (Anthony, LMSW, former ACS Child Protective Specialist, 2009–2010)

Becoming a professional

In Chapter Three, those who work with parents discussed their conceptions of ‘good’ and ‘bad’ CPS workers. How do workers themselves view this question? First, workers emphasize having experience, and the ability to draw lessons from it. Caseworkers must read different situations fluently- to have a sense of what to expect in a home, when there might be danger, and so on. Second, workers must balance their ability to judge risk (a “sixth sense”, as one described it), with the imperative to not *pre-judge*. Anthony, a former worker, criticized those colleagues

³⁹ Later Anthony clarified this statement: “The comment about children dying on my caseload was actually said by someone, however that is not the norm, by any means. Most supervisors would never say such a thing.”

he found to be unprofessional, saying that “[often] people are either out to indicate or they're out to unfound. ‘I'm not a mean case worker.’ Those are the people who are allowing oversights to happen. Versus the ‘I'm indicating’ [caseworker].”

These fit together as traits of a professional; a term used in descriptions of good workers in the previous chapter. In interviews, workers also used the framework of “professional” and “unprofessional” behavior to describe themselves, or contrast themselves with workers they were critical of. A professional worker will interview all of a child’s teachers and not only the one who filed the SCR report. They will fill out reports thoroughly, both taking the time to make clear any important details that are not evident, and producing work they can stand behind in court. A professional worker might have a thorough knowledge of the visitation policies, even if she will not get in trouble for failing to follow it.

Here, one worker discussed other worker’s ability to maintain a calm emotional state in the face of provocation several times, saying, “I've *seen* people, colleagues, get in clients faces, where they're screaming and hollering at each other. And I'm like, ‘*Who's* the client, and *who's* the professional here?’” Just as in the previous chapter a lawyer told us that a worker “needs to better than a regular person,” he emphasizes that workers must expect and be able to deal with clients’ emotions:

If you've got a low salary you're not going to be able to attract people who have a certain level of professionalism, and you're dealing with parents, caretakers, whose kids have been removed, and are in a heightened state. Even though they've had their issues of neglect or abuse, they've experienced a traumatic situation- they lost their child. Their child is no longer with them. And of course they're going to show up to your office screaming and hollering at you. Of *course* they're going to do that. But you know what, if you don't have a certain level of professionalism and decorum, you're going to respond the same way.

(Darius, LMSW, ACS Child Protective Specialist 2005–2009)

This is also supported by the 2007 report, which found that many caseworkers enjoyed most the aspect of their jobs which allowed them to advocate for families, and to provide social and emotional support; “Going out there and helping a kid, a mother, a family, and maybe the mother doesn’t have anyone to talk to and maybe you’re the only one. It’s a joy to me” (Epstein, Adamy, and Lalayants 2007:15). Workers also tended to express frustrations, as these goals would inevitably come into conflict with other job requirements, and the reality of the caseloads:

I don’t have enough time to basically conduct my job correctly. It’s a lot of pressure. The quality of the work is really bad, and it’s rush, rush, rush. *I feel like I’m being rushed and not assessing the safety of the households in a way I would love to do it because there’s not enough time.* (Epstein, Adamy, and Lalayants 2007:18 emphasis added).

That is, both the report and my interviews suggest that the structure and requirements of the job make it more difficult for workers to perform “professionally”, as they understand it.

A Cookie Cutter Mentality: Conflicts with Management

The CPM's really seemed, it's almost as if they had a *template*. "What's a family that gets court-ordered supervision. What's a family that gets a removal. What set of facts here is that, what set of facts here is worse than that." It's like there's this cookie cutter mentality, and they really are looking to protect themselves.
(Daniel, 18b Attorney, Former ACS Attorney, FCLS)

Each of the former CPS workers I interviewed described conflicts with their supervisors or managers as a regular feature of the job. Most of these were explained as the result of difficult managers. However, it is important to stress that I did not interview any managers: I am only telling the stories of and from the frontline workers, who were often describing their most extreme experiences. While this chapter will show that many workers considered individual managers to be incompetent, uncaring, or vindictive, this chapter is less concerned with actual managers than the *figure* of the manager, and how that figure is understood by workers: the character of the perfect bureaucrat, well-versed in how to pay attention to numbers and forms, how to avoid blame, how to present oneself to administration.

A Hostile Environment

A large portion of the 2007 focuses on the workers' complaints about managers, emphasizing that

the feeling expressed by the majority of workers was that they were in a consistently ***hostile work environment*** with their managers. ... The ***disrespectful managerial attitudes*** towards the caseworkers have been seen in the ways managers and supervisors communicate with the workers.
(Epstein, Adamy, and Lalayants 2007:23, emphasis in original)

One worker in the report is quoted as saying, "CPM managers [sic] are so mean. I had a horrible manager. You couldn't speak directly to her. Okay, I'm a couple of levels beneath you, but I'm human" (Epstein, Adamy, and Lalayants 2007:18). Several workers I interviewed also

expressed feeling de-humanized by supervisors or managers; recall Anthony ended his narration of a typical exhausting day by describing the feedback he would receive from an awful supervisor, “some awful demoralizing thing like ‘What's wrong with you people? You're the type of workers where the children under your caseload are gonna die.’”

Many conflicts described in interviews would have been completely avoidable by the CPS's, had they accepted the decision of their supervisor⁴⁰ or CPM. Workers consistently talked about disagreeing with management as a way of underscoring their professionalism. It is not disagreements with management *per se* that are seen as professional behavior, but the judgment to disagree when necessary, and the willingness to argue against what a caseworker sees as an incorrect decision.

One issue in particular came up again and again as one of the most volatile and personally felt disagreement; conflicts over a decision to remove a child. Each worker I interviewed described at length times when they were in conflict with their supervisor or manager over whether or not to do a removal. Notably, none of these fractious disagreements were arguments over the merits of the case, such as an argument over whether required classes had been effective for a particular parent. The arguments were almost uniformly over whether or not the judgment of the CPS should be trusted when that judgment was in conflict with what was suggested by the more official discourse of case reports and court petitions.

Joyce, a former caseworker, frames this as a conflict between a ‘cookie-cutter process’, and understanding the individuality of families:

⁴⁰ There are multiple levels of supervisors. The Sup 1 is the first level above the CPS, and below the Sup 2. Both levels of supervisors are below the CPM.

I had a couple of problems with the non-supportive supervisors in the sense of, they follow protocol to the T. And I'm all about protocol, but when dealing with families, this is not a cookie cutter process. Everybody's not the same. Everybody's dynamics is *different*. So *they'll* say, "If *that* person has seven priors, and *this* person has sever priors, they're *both* ultimately probably doin what you say they doin." But that's not so, people change! If you go to the home, and you see it with your own eyes that something's changed, one of those factors, matter of fact *five* of those factors that used to exist no longer exist. Mother's no longer gettin high, the kid is goin to school, there's a dad in the home that's supportin her, and different things change. And you have to literally *argue*. Argue with you supervisor to even get a case *unfounded*. Because they goin by what they see on a piece of paper. I'm telling you what I see with my own two *eyes*, when I go to every bi-weekly and *see* these people.
(Joyce, ACS Child Protective Specialist, 2008–2012)

Joyce worked in human services before for job at ACS as a supervisor for clinic services for HIV patients, and as a supervisor in a penitentiary mental health program. She is proud of her ability to help families, but as she describes here, she is also proud of her judgment, her ability to assess risk and safety, to understand the complex changing dynamics of individual families. She was frustrated and almost indignant about having to argue with her supervisor for her interpretation of a situation. She also describes her own expertise in terms of understanding nuanced differences between situations that may appear to be identical – “they goin by what they see on a piece of paper. I’m telling you what I see with my own two *eyes*.” She is not disputing the CPM’s ability to make good decisions, but is pointing out that the CPM’s knowledge is inherently limited and abstracted, compared to her experiential knowledge of the case. The rules that the CPS must follow cannot capture the nuances of how she makes decisions; and so rules come into conflict with personal judgments.

Joyce, like all the workers I interviewed, was open about not always advocating for parents to keep their children if she judged that the child was at risk: she also told me that, “I didn't have a problem with removing a child. If I actually *felt* there was some danger, they comin up out of there!” Whether workers were describing an argument *for* or *against* a removal with their

supervisor, they expressed frustration with exactly the same issues: the degree to which their opinion and expertise were devalued and ignored. Tasha, another worker, talks about her efforts to carry out a removal:

I'm *saying* [to my supervisors], "This situation is not working out. She doesn't give him the medicine." She's *responsible* for *caring* for this child. ... It was the understanding of the agency, and all parties involved, that the mother was to provide a certain level of care for the child for a specified time frame, that she wasn't doing. Why are they still together? And I had addressed this with management. I ended up writing an email that looked like a *book*, and they *finally* let me take it back to court. So it was just, it was like, "I'm *speaking* about this, what do you want me to do? Because I can't make a judgment call by myself and have it stick." (Tasha, Social Worker, ACS Child Protective Specialist, 2006–2009)

Tasha is not making a very complicated or technical argument. There were certain conditions legally required for the mother to retain custody, and Tasha, as the worker responsible for monitoring the situation, was consistently documenting and reporting that the conditions were not being met. She emphasizes that she felt as if she had no voice in the process ("I'm *speaking* on this"), despite her position as the ACS worker who had the most experience and direct knowledge of the case, and a job which requires her to seek a removal in such a situation.

The Root of the Conflict

Why are such conflicts so common? In essence, these are conflicts over fundamentally different ways of looking at a case, as CPS workers and their managers possess distinctly different kinds of expert knowledge. While their opinions are constantly disputed and overruled by other workers in the system, the CPS is the only worker who has actually visited the home, seen the conditions of life there, and spoken with the parents and children. When their judgments are rejected or ignored, it is a challenge to their status as professionals. The manager has knowledge of court petitions and case files, while the worker sees him or herself as an expert

through their experience of the clients' lives. They are both experts, but experts in contrasting approaches. The CPM's expertise is based on an *abstracted* view of the parent through the case notes and progress reports. Adam, another former worker, explicitly articulates this critique:

There was conflict. You know, whenever there's a difference of opinion you're always going to have some sort of conflict. Especially when you're the front line worker, and then the supervisors and the CPM's, although they may also have been frontline workers at one point, there's a little bit of a clash. I think one of the issues ... was, that the higher ups were more focused on numbers. You know, they were more number driven, they were more about getting things done at a certain time, deadlines. *Policies* and *procedures*. It was more *bureaucratic* than anything. That kind of upset the workers, cause the workers felt like *their* work could have been compromised. You know, "I'm going into a home, I'm trying to *help* a family, you're talking to me about *numbers*. What if this family needs more help than you're allowing me to offer?"

(Adam, foster care caseworker, former ACS Child Protective Specialist, 2006–2008)

Adam points to a number of defining features of bureaucracy – policies and procedures, numbers, deadlines – in his complaint that the agency itself, by pursuing its internal bureaucratic goals, can be an impediment to helping families, rather than a way of providing that help.

The worker's view of each parent is based on a more complicated narrative that no one else sees. Consequently, they have a strong incentive to suppress opinions which may contradict management's decisions. But the workers interviewed saw their professionalism as, in part, an obligation to push for the narrative that they see as accurate. Darius, a former caseworker, sees his role as going beyond the minimum of reporting case details to the agency and enforcing their directives; but also to evaluate the ethics of his—and by extension the agency's—actions. He outlines a clear ethical conflict between his evaluation of the situation and his professional duties, saying, "I've had times when I was completely *against* a removal, and had to do it anyway." Here he describes a conflict over the question of removal in a domestic violence case:

[My supervisor] doesn't want to make a decision, so she goes to my manager ... who is a manager who never knocked on a door before. And immediately he says, "We need to remove these kids, because she's exposing them to an abusive relationship, and putting the kids at risk." ... I'm like, "I'm not *doing* that." We get into it. Me and

him. Like, we're just really, really, into it. Just back and forth. And then at the end of the day, what does he do? Doesn't make a decision. He gets up and leaves. ... He leaves at five, doesn't say anything to me. What he does is he goes to another manager, and tells her, "Can you deal with this situation over here."
(Darius, LMSW, ACS Child Protective Specialist 2005–2009)

He looks back on the incident by saying, "So yeah, that was one of those stories where I butt heads with ACS. But *any* social worker is going to butt heads with their agency. It's what you're supposed to *do*, you're supposed to fight what's wrong." This highlights several themes of these conflicts. First, that workers see their job in ethical terms; and in fact are perpetually confronted with ethical expectations. Second, that the worker can be more invested in decisions than their managers, even as they have less power to make those decisions, and third, that workers do not (necessarily) recognize managers as having any additional authority to make these decisions, beyond their institutional position. If decisions to remove are understood technical decisions, which must be carried out according to pre-determined criteria, the manager has greater experience and sufficient knowledge to enact them. But when the same decisions are recast as ethical judgments, the manager has no knowledge or training to draw on which could convince the worker that he is correct: workers see themselves as just as capable of making ethical determinations on their own.

Another worker, a former attorney for ACS, illustrates that this is not unique to the caseworker / manager relationship.

Look, as a lawyer, what we're trained to do is analyze our cases under the law. To decide whether we *have* a case. And so a caseworker would come in on intake. And I would say, "There's really not a case here," or, 'There's really not a good reason to remove.' And then they would say, "But that's not what my manager told me to do." So I'd get on the phone with the CPM... And it would just be a *fight*: "This is really not imminent risk." It would go back and forth, and they would insist, and we *have* to go in and ask for a removal if they insisted on it. At one point ... this one CPM actually said to me, [arguing over whether there was imminent risk], "Let the judge

decide.” And that pissed me off so much. Because that's what they do. They're not supposed to say, “Let the judge decide,” because it's not their *job*. [They're] supposed to make [their] own judgments.

(Daniel, 18b Attorney, Former ACS Attorney, FCLS)

It is important to understand this quote in terms of the CPM's role as a professional. A CPM is only legally authorized to request a removal if he or she believes there is imminent risk. In this case, the CPM openly admitted that he was not sure—i.e. he was acting in violation of this directive—and instead took the position that there may or may not be imminent risk, but that the judge would determine it, not ACS. When Daniel criticizes the manager for “let[ing] the judge decide,” he is pointing out that the CPM is avoiding his own legal and ethical obligations, and ordering a removal without meeting the legal standard required. Later, Daniel explained that this story was even more complicated:

The CPM did not tell me, “Let the judge decide.” The CPM told it to the caseworker, and she reported it to me. I was in court with the caseworker, and the caseworker was on the cell phone with the CPM. She was standing next to me. I was speaking to her, and telling her what to say to the CPM, trying to get the CPM to withdraw the removal request. We could not get the CPM to budge, and when she got off the phone, she told me that the CPM had said to her, “Let the judge decide.”

This drawn-out process is the norm as CPM's very rarely appear in court, or even in the FCLS offices. One defense attorney pointed out that when trying to compromise with ACS, she and the judge are in effect negotiating with the manager and not the CPS; but that she never interacts directly with the CPM's themselves, who become a disembodied and abstracted figure of power. “As far as I know, they're just voices at the end of telephones that I never even hear. It's just like I see an ACS attorney over by the windows where they get service in the courthouse, hurriedly talking into a phone, and then they come back and they say ‘Ok, we can do it if they agree to x,y,z’” (Sophie, Family Court Defense Attorney).

The manager's absence from court contributes substantially to the dynamics between the CPM and the CPS. Even though the caseworker rarely makes independent decisions, their testimony is required in court hearings; and so internal conflicts between a CPS and supervision or management can become public in court. This is seen as a breach of office culture; it audibly signals to the court a division within the field office, which makes the testimony suspect. It also creates further tension between a worker and management:

You can write it [your recommendation], but even after you write it, you can't *submit* it. ... You tell the supervisor what you wanted to do, you told her *verbally* what you wanted to do, she goes and *reads* what you wanted to do, then she'll turn around and say, "No. You don't get the final say on the closure." You can say, "As per CPM, as per Sup, I'm indicating this case, but I'm not of the opinion..." But see now, if you *do* that, you might get an enemy. And that supervisor that you used to like might become your worst enemy. They do stuff like that. [If you write that, you're] making *them* look like they don't know what *they* doing.
(Joyce, ACS Child Protective Specialist, 2008–2012)

The professional caseworker is put in an uncomfortable position. While those I interviewed often saw conflict with management as an inevitable result of performing their job in a principled manner, disagreeing with one's Sup or CPM is not a way to succeed professionally. The ethical demands of professionalism and the career demands can be directly opposed to each other.

Once They Burnt Out: Emotional Wear

The worker's attitudes about parents are relatively good, unless they burnt out. When they burnt out they don't care. They just don't care. Once they become burnt out, *everybody* that has a prior history is guilty, *everybody* that had a prior drug addiction is currently addicted, *everybody*. So when they burnt out you get anything. Once they get burnt out, everybody the same.

(Joyce, ACS Child Protective Specialist, 2008–2012)

All of the workers in ACS's Division of Child Protection – the CPS's, Sups, and CPM's – work within a structure that rewards responsiveness to certain concerns and not others. Each worker will be judged by quantifiable measures, and so there exists an imperative to be attuned to the more statistical results of their job. This concern grows greater, and focuses on more and more abstract knowledge, as one travels higher up the organizational ladder.

Getting a Fatality

One of the most powerful forces acting on workers, at all levels, is the potential for the exceptional case: the rare case in which there is serious physical harm to a child, or even a death. The more exceptional the case, the greater the tension it creates in and between workers. Studies of child welfare in the media have consistently found that media representations overwhelmingly portray the most extreme and abusive cases, even though they are far from representative (Fraidin 2012). Juliet Gainsborough further argues that high-profile incidents of extreme neglect and abuse shape how child welfare is practiced in a process that she terms “scandalous politics,” as new legislation and policies are hurriedly crafted in reaction to public “scandals” of child abuse (Gainsborough 2010).

The omnipresent fear of the extreme event exerts a constant power over workers both because of the tragedy of the event, but also because of potential professional consequences.

Here Tasha discusses the impact that death can have on a worker:

And I tell people this, this is how you know that this job literally *changes* you. If you're watching the news. And you see that, you know, unfortunately a child passed away. Your first thought isn't thinking, "How sad it is that we've had this loss of life, and what the family must be going through." You're thinking, "What *borough* is it in. Who's *office* is it coming to." I felt horrible for *months* over that, and I would talk to other workers about it. And they're like, 'It's not just you, like we know it's wrong,' but it's just so hard-wired into you to *fear* getting a fatality.
(Tasha, Social Worker, ACS Child Protective Specialist, 2006–2009)

Later in the interview, Tasha described a case assigned to her that came in to the office as a child fatality; as the family had not been previously reported to ACS, she was in little danger of being blamed and sanctioned. But even when the worker will not be blamed for the death, it is much higher profile, and higher stress, case. This was seen in both my interviews, and the 2007 study, which found that "[i]n response to questions about recent fatalities, these unseasoned workers described an unsettling and defensively reactive work environment" (Epstein, Adamy, and Lalayants 2007:50). In a fatality case, the documentation requirements grow, while the time allotted for each stage of investigation is shortened. As Tasha describes, both the logistical requirements and the emotional labor demanded from a fatality case takes over your life.

If other workers hear you have a fatality it's like [sharp inhale], "Do you want me to follow up on your other cases?" Because it literally takes everything you have. And everything else you have gets pushed to the side, but you *still* have to address it. I'm feeling exhausted again just talking about it!

The consequences for a case of serious harm or death are compounded when the harm is considered to have been preventable: it is precisely its potentially avoidable nature which invites second-guessing, blame, and professional ramifications. The deaths that become front-page news

become the markers of time in child welfare world; they punctuate changes in agency policy, and firings and hirings. The existence of ACS originates in the city's response to the scandal surrounding the tragic, and preventable, death of Elisa Izquierda. Many workers and lawyers in my interviews divided time into before and after Nixzmary (Brown, murdered in 2006), referring to the incident only by her first name. One administrator described the general history of New York child welfare as "when a child dies, change the name, and fire the commissioner." This always-present fear of the always-latent crisis pervades the work environment; stretching from the workers, through the managers, all the way to the highest level of administrators. A former ACS attorney points to this as a significant force in decision making:

An amazing thing that happens at ACS. I never got very high up there. But the longer I was there the more I got involved in cases that were more, bigger deals, so they got more attention from the higher ups. What I noticed is that if something goes wrong at that place, somebody gets blamed. Even when nobody's to blame. I've never worked in an environment like that. Normal people, shit happens, right? I mean things happen. ACS, *somebody* has to get blamed. And they can be *so* cutthroat with each other. And they can be *so obsessively* focused on protecting themselves to make sure that *they're* not the one that's blamed. Because everybody who's been around the block there knows that someone's going to take the fall for something. ... And I found that that seemed to be what animated the CPM's as much as anything else. Now, not everybody, and not all the time. But that was the culture there. And it's not a particularly positive way to do child protection.
(Daniel, 18b Attorney, former ACS Attorney, FCLS)

It follows from the logic of child welfare, built on protecting children from extreme physical harm, that workers and managers must become experts in preventing that harm. This does not equate to saying that the system *must* become dominated by conservative fears; but there is every reason as a professional to over-respond to any potential threat. Journalist Richard Wexler, who has devoted a career to covering child welfare in the U.S., suggests that people are responding to a very simple incentive: as a worker, one will never get in trouble for over-removing or over-protecting, one will only get in trouble for *not* removing (Wexler 1995). This suggests that fear of death is an integral part of the process

of evaluation of risk in decision-making. The informal training for workers, the experiences on the job seeing which job requirements are strictly enforced and which are not, very clearly demonstrates to workers that this caution is integral to the job. Other problems simply do not exist at the same level of importance.

Not Even Hearin Them

When you burnt out, and you talking to somebody, it's like they saying “Wah wah wah wah wah.” You not even *hearin* them! You catchin pieces of it, but the meat of it, you done missed it. You got enough to do your progress note. All that extra stuff you used to try to get when you first got up here, you like, “Man, I ain't doin all that.” And you know, when I found myself getting like that, I was like, “Yeah it's time to go.”
(Joyce, ACS Child Protective Specialist, 2008–2012)

As shown, child fatalities take an extremely emotional and wearing toll on individual workers; but so do smaller everyday events. As Joyce points out above, the stakes for emotional wear are quite high. This erosion results from the daily frustrations, conflicts with management, and ethical struggles already discussed in this chapter. In the 2007 report, the authors took note of the extremely fast rate at which workers were worn down:

What was remarkable to us was how quickly and deeply disappointed many workers seemed to be in the job. And while several used the familiar term “burn out” to characterize their experience, technically and theoretically that term refers to a dysfunctional response to *years* in an unrewarding bureaucratic position. In this context, “flame out” might be more appropriate.

(Epstein, Adamy, and Lalayants 2007:16)

Below, as Tasha discusses a fatality case, she also makes clear that the problem she had with the culture of ACS went beyond responses to death. It is the pressure to work faster, to close cases, that creates incentives for workers to de-humanize clients:

...after that [child fatality case] it was hard. I had trouble *sleeping*, I was stressed out all the time, I was getting sick, and it was just, it was just the *max* of being overwhelmed because... [parents with ACS cases] they're *people*! We still need to

treat them like people. And it's like sometimes I felt like that was *forgotten*, and you would just kind of get fed up and frustrated.
(Tasha. Social Worker, ACS Child Protective Specialist, 2006–2009)

Interviews with workers in this case study suggest that it can be forgotten that workers “need to treat [clients] like people” precisely because treating them like people is not necessary for the minimum demands of the job. Commissioners have stressed the importance of a more caring approach to families, and this motivates many of the workers who enter ACS, but as a CPS, one does not need to take that approach. Just as the worker is the only one to see the details of family life which might differ from the way a case looks on paper, they are also the only one within the agency to see their successes: there is no metric within ACS for measuring and rewarding good casework, other than individual ‘good’ supervisors or managers. One can do a perfunctory job of supporting families, avoiding arguments with supervisors, and be seen as doing an acceptable job. That this is not always the case is perhaps due to the fact that at its extreme, it is simply an awful way to treat other human beings.

In the opening quote to this section Joyce recognizes her own status as burnt out, describing it in extremely stark terms: the burnt out worker has no energy, or desire, to do her job beyond a perfunctory surface level. She has also connected this condition to unfair and unhelpful treatment of parents (“when they [workers] burnt out you get anything”). It is striking that as she articulates that she doesn’t want to become the inadequate or awful “burnt out” worker, she shows that it is easier to leave the job than to stay and find a way to continue her professional and ethical behavior.

Chapter Conclusion

An Emotional Labor versus a Bureaucratic Function

This chapter has suggested that the contours of the caseworker's job are formed through interpersonal interactions. This is not just a technical job, or even primarily a technical job; it is (very often) an emotional one, which workers end up investing in personally. The highs – adhering to self-imposed codes of professionalism, going beyond institutional requirements, standing up to management – and the lows – fear of reprisal, scrambling to avoid blame, balancing ethical duty with professional politics – depend on, and either nurture or hurt, personal relationships. However, these aspects of the job, and the ways that workers come to understand and define professionalism, are disconnected from the bare necessities for surviving the job: mastering bureaucracy, accepting discipline of one's bosses, ignoring ethical concerns.

This chapter has also demonstrated that there is very little standardized system of professionalization of Child Protective Specialist workers by ACS; they therefore become professionals predominantly through more individualized, and deeply personal, experiences. That is, to a substantial degree, workers must professionalize themselves. This context has two corollaries: on the one hand this 'haphazard professionalization' contributes to the perceptible differences between workers and their approach to their jobs (although it does not determine it), while on the other, it also contributes to the struggles of caseworkers to be seen and heard as experts, which becomes a struggle over whether or not their judgment is to be trusted.

Both caseworkers and their superiors work within a structure in which they are driven and motivated by a different set of concerns than are parents and those working for parents. CPM's must consistently demonstrate the ability to mitigate risk—to children, but also to ACS and

themselves—while CPS’s struggle to turn their expert knowledge of the messy details of family life into a form recognized by management and the court system.

Clashes of Expertise

Theoretically, the caseworker presents a puzzle for existing theories of expertise. The CPS functions as an expert by relying on and creating official forms of knowledge as a means of “formulating” individuals (i.e. enforcing ways of categorizing and making decisions about them) (Carr 2010). However, their claims to expertise are quite tenuous: they have little training, little educational requirements, little technical vocabulary to master and use to perform their expertise. They are especially ill-equipped to argue with their managers; the same institution which gives them power as workers also gives greater power to their managers. But they regularly *do* struggle to claim expertise, resisting the decisions of management when they judge them to be incorrect. Thus, the struggles within ACS described in this chapter can be seen as struggles of legitimacy, as different workers fight to assert their particular ‘expert’ opinion, and struggles of ethics, as workers must regularly confront situations in which their interpretation of the rules comes into conflict with the ethical system they have developed as a professional.

In his ethnography of frontline community psychiatry caseworkers, Paul Brodwin (2013) shows how the moments of doubt and ethical conflict for caseworkers occurred over decisions about how to enforce requirements of the job. CPS workers had a different central conflict: not only whether to remove, but whether to fight what they saw as bad decisions by their superiors. Like the workers in Brodwin’s study, ACS caseworkers develop an expertise based on personal familiar knowledge of clients, and experience that they alone can draw on as the only workers making visits to clients’ homes.

There are two key differences between Brodwin's caseworkers and CPS's which are illuminating for this study. First, the caseworker must regularly appear in court. This gives an additional moral weight to question of whether or not to accept a manager's decision. Second, community psychiatry is legitimated through the scientific discourse of neuropsychiatry. When a worker in Brodwin's study disagrees with her supervisor, the supervisor – who is a psychiatrist – asserts the medicalized authority of psychiatry as a superior form of expertise in knowing the client, winning the argument. In ACS, though, the manager has no technical language that the worker does not have access to⁴¹. She does not have access to knowledge outside of what is presented by the caseworker. The manager has no technical or moral claims to authority. Her only form of authority is the hierarchy of the job invested in her by the institution of ACS.

⁴¹ While case managers are required to have a social work degree, none of the caseworkers recalled a CPM justifying a decision by invoking good social work practice- in fact, many of the workers who either had or were working toward their MSW's referred to social work principles to explain why they disagreed with their manager in the first place.

Chapter Five

Compliance is King: Making Parents Legible to the Court

In many cases, [parents] deny doing what's in the allegation, but they may opt to go to the service because they want their case to move forward, and compliance is king. If you comply, [it is much more likely that] good things will happen in your case. Children will come home. Visits will happen. ... Every step of the ladder [towards a favorable resolution of the case] will be that much easier to climb if you have a record of good compliance.
(Sophie, Family Court Defense Attorney)

The previous chapter looked at how the power of the caseworker is made, constrained, and compelled by the institution of ACS. This power that is so volatile in the homes and agencies becomes contained and channeled as it moves into and through the court. The court does not operate with clockwork reliability: outcomes for parents remain unpredictable and dependent on the individuals who arbitrate their case. But while in the investigation or the child safety conference, conflicts between workers and management can lead to seemingly arbitrary changes in agency demands and actions, the power in the courtroom is centralized in the judge. It is in the court that the parent, their lawyers and advocates, and the agency workers struggle over the fate of each case. This chapter is about how those unpredictable and explosive encounters with power become institutionalized and standardized through the mechanism of the court, and the limitations as that standardization happens unevenly and incompletely.

The Inhumanity of the Place: The Space of Family Court

There's an ethical constraint that lawyers are not supposed to speak to unrepresented parties. So if there's someone else in the case that has a lawyer, *you* are not allowed to talk to that person without talking to their lawyer. ... I know lawyers in family court, where somebody in the court house will come up to them in the court house and ask them for directions for something in the court house. They won't know that person, they've never seen them before, and their answer is, "I can't talk to you." ... And it really adds to the inhumanity of the place. The place is full of people who are in states of crisis, all they're doing is asking for directions, and you're being *rude* to them. You're literally being rude, they can't *possibly* understand this *rule* you're talking about. The lawyers for ACS usually refer to our clients as "*the mother*." I mean you can't even use somebody's name? Or *mom*, even worse. "She's here, well *mom* did this, *mom* did that." ... But there's a lot of that, just not treating people as individuals. Harshness of tone.

(Christine Gottlieb, Co-Director, Family Defense Clinic at NYU School of Law)

Walking in

James Baldwin once wrote that "whoever wishes to know who is in prison in this country has only to go to prisons and watch who comes to visit" (J Baldwin 1972:147). Anyone who is curious about the state of child protection in New York only needs to observe the lines which lead to the entrance to family court⁴² to see who is caught in this system, and who is not. Very few ever do this. Court may be open to the public, but the public rarely comes in⁴³.

In Manhattan, the court lies within a cluster of buildings at the foot of the Brooklyn Bridge, all projecting the power of the city: New York Supreme Court, City Hall, the NYPD headquarters at One Police Plaza. In Brooklyn, family court is a block away from the Fulton

⁴² "Family Court" technically includes other proceedings not researched in this study, notably juvenile court. All of the court proceedings I witnessed were Article 10 proceedings; I am using the term "family court" rather than Article 10 for clarity, and because that is how interview participants most often referred to it.

⁴³ There are of course no statistics to verify or dispute this. Lawyers I talked to expressed variants of this statement when encouraging me to attend, and reassuring me that I could, despite the fact that many judges might ask me to leave. I was also invariably challenged by a security guard each time I attended court alone.

Mall. Formerly one of the most diverse commercial area for black and Caribbean businesses, it has been transformed by massive evictions and city land giveaways, which have been touted as a redevelopment success story *par excellence*. The Bronx Family Court is perhaps a ten-minute walk from Yankee Stadium. If you go there from the 161st street subway stop, you will have several blocks of walking by almost exclusively black and brown faces. By the time you enter the lobby to see the lines of people, you might be forgiven if you do not notice the absence of whiteness, for thinking of this space as one more piece of a low income neighborhood of color in New York. The first time I arrived at family court during my summer fieldwork, in Brooklyn, I approached a security guard to ask if I was in the right place. He pointed toward the long, motionless line behind him, but then suggested that I could also go next door, through the empty supreme court entrance- “they both lead to the same place.” I had biked in an athletic undershirt, planning to change into the less conspicuous dress shirt and tie once inside. As far as I could see, I had nothing besides my whiteness to mark me as someone who ought to be passing through quickly, like all the lawyers and clerks waving their passes at security. These racial divides are normal, even if some people do not normalize them:

There's *no* way not to notice. When you walk into the courthouse, and everyone in line is a person of color, almost exclusively, and everyone who's walking in quickly [isn't]. It almost feels like the *olden* days, when there's separate *entrances*. Cause there *are* separate entrances, right? And it's all the employees, and then all the people we need to go in front of a judge.

(Rachel, Social Worker, New York City Family Court)

Navigating this space is overwhelming and confusing the first several times I visit. The only publicly visible rooms are large waiting halls. The courtrooms, called ‘parts,’ are scattered around, hidden by a double set of doors. There are no signs to make clear who or what is inside any of them; I have to rely on the lawyers to guide me from one to another. They don’t always know, and often have to stop colleagues to ask which part intake is in, or where a certain judge is

holding dispositional hearings. I watch lawyers almost running with case files, although none of them look frantic; they are apparently accustomed to this pace. Sometimes hearings don't happen because they have been moved to another time or another part, a frustrating delay for the lawyer who deals with it every week, but even more confusing and maddening to the family waiting outside. Each time I visit parents and children are interspersed in the waiting room. Court is an unpredictable experience, described as, "a lot of hurry up and wait." A 10:00 appointment means arrive by 9:30 just in case, but don't plan on leaving for a few hours.

The partitioning of space acts to arrange the bodies within it, even beyond the noticeable racialized separations at the entrance and in the waiting rooms. The judge presides over the courtroom, with everyone else in their assigned place. The double sets of doors to each part, identical from the outside, hide the proceedings from view. After leaving a hearing, ACS employees follow hallways into their offices in the court building, but away from the public. One lawyer commented,

It's really hard to see the impact when you're working there because you don't deal directly with people. When they're in the hallway crying, the ACS attorneys *never* even see it. When they're in the hallways they just give up. ... But dealing with all of that, the ACS attorney's are very shielded from that. ... *Caseworkers* know all *about* this stuff. [But] attorneys don't.
(Daniel, 18b Attorney, Former ACs Attorney, FCLS)

Each time I observed family court, I found the experience emotionally difficult. Sometimes it was shocking, sometimes I wasn't able to follow the details of what I was witnessing, only understanding an emotional outburst at the end of a hearing, as a parent lost or re-gained her child. My time there was made much easier, though, by my lack of responsibility to any of the people whose lives were being adjudicated. Unlike the workers I interviewed, I didn't know anything about the parents who were having the details of their struggles unfolded in front of me. As many workers pointed out to me, this is shocking even for those who have

already worked in criminal court, for those who have experience working with dispossessed and marginalized populations. It is hard to accept that this is how we govern the lives of some families; it is easy to see how one lawyer could describe it as “the wild, wild, west” of court, a place where anything still goes.

[I was] absolutely *shocked*. I mean I was absolutely floored when I went to family court. ... I had certainly seen the criminal justice system, I had worked with homeless kids, I mean I had seen a lot of really devastating things, and I have seen a lot of devastating things in my career so far, but I think seeing what family court does to a family has been just incredibly devastating. ... I think that those early days of seeing kids removed from their parents, in court were *incredibly* devastating things to see.
(Lauren, Social Worker, New York City Family Court)

Emotionally Charged

Like all proceedings in family court, Article 10 child neglect and abuse proceedings are categorized as “civil,” formally distinct from criminal proceedings: their official aim is to decide and enforce what is in the best interests of the child, and not to punish the parents. However, it does this from within the framework of a judicial system designed to determine guilt, and discipline wrongdoers. This rests as a tension in family court, particularly in the discourse of blame and judgment aimed at parents. It also mean that judges trained in the law are responsible for decisions about what is in the interests of a child, which according to one prominent critic, “are often social work decisions, not legal decisions” (Tobis 2013:20). One lawyer referred to FCLS lawyers as prosecutors—technically an incorrect designation—and then commented that, “attorneys for ACS prefer not to be called prosecutors, but I use it because they are prosecuting our clients.”

This brings up many comparisons to the history of juvenile court; as each encapsulate a friction between determining the best interests of children, and the confrontational mode of criminal court. Family court was created along with Juvenile Court in the Family in the New

York Family Court Act of 1962, and in many ways the conflicting aims are even more pronounced here than in juvenile court. After the children's rights movement, all children in New York Family Court are represented by an Attorney for the Child⁴⁴. This has resulted in a juvenile court system that functions more like criminal court than in its original conception, but also in ensuring the rights of minors in juvenile proceedings. In Article 10 hearings, by contrast, while both children and ACS must be represented for a hearing to proceed, organizations watching the court have pointed to a serious problem of lack of representation for parents. Until recently⁴⁵, parents did not have access to an attorney until after appearing in court, and were not guaranteed an attorney even then (D. W. Nelson et al. 2000). The delays in fact-finding hearings have been so bad that they have "sometimes result[ed] in permanency hearings being held prior to the court even having made the finding that abuse and neglect had occurred" (Children's Rights 2007:9).

Family court is not seen as a fair and neutral place by the majority of parents and their attorneys. Like other moments in child welfare, the rights of those parents who rely on public defenders or 18b attorneys are limited in practice. Many parents' lawyers see the purported function of family court of determining the best interests of each child as one that proceeds only by first judging their clients, a judgment which can seem to take precedence over the good of their children. It is a court that is not seen to function properly as a court:

Usually I believe, in the majority of our cases I believe, that legally, the children should go home, today. That's usually what I believe. I usually don't argue that in court, because I know that I'll lose. ... I think there's no legal basis for them being in, but [accepting conditions before children can return] is often better than litigating ferociously, where a

⁴⁴ All children are represented by a single agency, Legal Aid, throughout the city. There are occasional exceptions in the case of a conflict of interest (Legal Aid also represents adults in criminal and other civil proceedings).

⁴⁵ Beginning in 2007, approximately half of parents in the Bronx, Brooklyn, and Queens have been represented by the holistic defense practices of The Bronx Defenders, The Brooklyn Family Defense Project, and the Center for Family Representation, respectively.

lot of times you litigate, it takes a year to litigate, and then you lose. So you're better off just working with them.

(Christine Gottlieb, Co-Director, Family Defense Clinic at NYU School of Law)

Gottlieb is not identifying a conflict between her ethical interpretation of a case and the legal limits of what she can do within her role as a lawyer; she is explicitly outlining a conflict between what she believes to be the correct application of the law, and what can happen within a courtroom. Court has long been a place where defense lawyers fight for their clients' rights which have been ignored, but in New York City, family court becomes still yet another point in the system where a parents' rights are insecure.

Spaces in which official state power operates often reproduce power relations of the society in which it is inscribed. Court is the space which makes immaterial fears into real and inescapable outcomes through the power of the judge. Allegations become findings. Requests become orders. ACS can petition for a removal, a parents' attorney can petition for a return, but it is a judge who mandates it to be done. The physical space of the court works together with its rules of operation to reflect certain unwritten rules, allowing power to be exercised through the figure of the judge. For example, I was repeatedly struck by the judges' ability to control who was speaking; it was especially striking to watch judges routinely silence parents for speaking out of turn. But the judge does not receive power because of this rule; these moments stand out, symbolizing the futility that parents can feel about their efforts in court, precisely because the judge already embodies a relation of power between the state and its subjects.

Much of what happens in court is repetitive, and can be hard to follow. At many moments court—through the judges and attorneys before them—operates in a highly technical language that works to exclude outsiders who are not versed in it, making manifest how little power parents have in the proceedings.

The field notes below describe the quotidian nature of the experience in the courtroom:

I walk into the part in the middle of a case. A CPS is testifying, describing an incident in which police were called to a homeless shelter due to the violation of a protection order: a father was seen by a shelter worker violating an order to stay away from the mother and children. The officers arrested the mother, the father escaped, and the police directed an ACS caseworker to remove the children. The questioning which reveals this story takes place over an extended period of several minutes; after every exchange people stop to write. The defense attorney is writing, the attorney for the child, even the judge is writing. Throughout these cases, in fact, the judge spends more time writing than anyone else, notes to herself for the next time the case appears. I am most surprised by the amount of silence in the courtroom.

Field Notes, Bronx Family Court, October 2014

For all their power, the actions of a judge are often rather mundane. Like the caseworkers, they must record everything. A great deal of their time is spent reading over case notes from workers, their own previous notes, making more notes for the next court date, and scheduling follow up appearances. Judges are trapped in the same imperative of documentation as everyone else. At the end of every hearing I observe – which generally take place within a half hour time limit – the judge, the FCLS, the Attorney for the Child, and the parent’s attorney pull out their calendars and begin looking at dates months into the future. It is common to hear, in July, questions like, “What about November 12th in the morning?” be answered by, “I have a trial until 11, your honor.”

What the Law Allows: The Embodied Power of Judges

The Power of Decision Making

The judge in a hearing has the final say as the sovereign figure of the courtroom. As in any courtroom, the judge in family court decides which objections are valid, what evidence is admissible: a judge decides what matters and what does not. Further, while ACS requests a service plan, it is actually set by the judge, who can modify it as they see fit. Because of this, a judge's individual beliefs about parenting become part of an official decision about those before them. There is no official state position specifically on marijuana use by parents, for example: if it is part of a petition in an Article 10 filing, it is justified because it is within the ambiguous category of risk. Large discrepancies between different judges' opinions about the dangers of smoking marijuana lead to wildly divergent consequences for parents; sometimes it is virtually ignored, but at other times it is seen as such a threat to child-rearing that ACS frequently removes children as a response when a parent is found with so little weed that it is not permissible for the NYPD to arrest them (Secret 2015). Interview participants discussed some of the most common and consequential divergences: opinions on the level of danger of alcohol, illegal drugs such as cocaine or heroin, and differences on approaches to corporal punishment. This may operate in subtle ways, such as when a judge decides to allow evidence of a parent's unemployment to be admitted even though it is not relevant to the original petition: this is a substantial issue, as everything admitted can open up new lines of questioning, and new reasons (potentially) to distrust the parent. Below, in my court observations, I watch as the entirety of the discussion about a mother's petition centered on her behavior, and what the judge allowed as evidence:

This case involves a mom petitioning for the return of her daughter from foster care; the discussion focuses on her behavior for the past few months. She refused to take part in a parent-parent meeting with the foster mom. She once cursed out the foster care agency caseworker outside of court. The worker expresses her judgment of the mom's actions as a pregnant mother: "I asked her to take a random drug test, and she admitted she drank moscato two weeks prior. I reminded her that she can't drink." The mother's attorney objects, "There is nothing in the petition about alcohol, this isn't relevant." The judge replies that her fitness for the return of the child is before the court, so this detail is open. There is a long discussion about her drinking. Was moscato always her drink of choice? Were there beer bottles visible when the caseworker visited? Were there liquor bottles?
Field Notes: Brooklyn Family Court, August 2014

Tensions can also rise when the judge's opinion, given the force of facts, runs into walls of scientific proof. For example, consistent studies suggesting that pre-natal cocaine has very little impact on long-term physical health – and certainly no impacts which ever approach those assumed in the public hysteria over "crack babies" in the 1980's and 90's – have been in the medical literature for over a decade (Zuckerman and Frank 1992; Zuckerman, Frank, and Mayes 2002), but this does not matter in a courtroom if the judge does not believe them.

Rachel, another social worker for parents in the system, often struggles with judicial understanding of mental health issues, and their fluidity:

Judges don't recognize [the inherent uncertainty and fluidity of mental health diagnoses] a lot of the time, judges think it's a very exact science. I had a case of a woman once with very bad PTSD. ... There were two different psychiatrists, and she had gotten two different diagnoses, and both psychiatrists had to testify. ... But she had an old schizophrenia diagnosis, and her current treating psychiatrist had given her a diagnosis of PTSD. [And the judge was skeptical of the new diagnosis.] Because there was an *old* diagnosis. And how could a diagnosis *change*?
(Rachel, Social Worker, New York City Family Court)

Like the ACS workers and managers, both the judges and the FCLS lawyers vary in their treatment of parents; a fact that several attorneys attested to. Sophie explains it plainly: "When you find out, who's the kid's attorney, who's the judge, who's the prosecutor, that tells you a lot about what is going to happen for your client. Which is sometimes very sad, and sometimes very lucky." This was a constant thread running throughout conversations about court. Attorneys

described the reputations of various judges to me: this one is tired of burnt out ACS workers.

This one is especially harsh about any kind of drug use. This one always believes the CPS. This one is pretty fair. Many are described as disrespectful to parents:

Sometimes the way judges speak to or about our clients makes it clear how little regard they have for them. A judge the other day said to one of our clients, well *about* one of our clients... We made the argument that removing the newborn was going to interrupt nursing and could we have daily visits, and [the judge] said, “Someone better teach her how to use a bottle.” It was incredibly dismissive.
(Michelle, Family Court Defense Attorney)

The lack of respect from the judge toward the mother’s needs evidenced in this story was not unique. Just as some judges are seen as competent and fair, some are also described as continually making disparaging and belittling comments and assumptions about their clients.

This comes up in conversation with Joanna, an Attorney for the Child. I had asked her about examples of reasonable or unreasonable stances from ACS petitions. She related a case in which ACS had petitioned to remove children from the care of their grandmother “because the house was too cluttered.” The judge seemed to be a voice of reason in this story: “They [ACS] were just saying it was too cluttered. And the judge was like, ‘How is that? You want four kids to go into foster care instead?’ And they didn’t have a great answer. ... And the judge was like, ‘This is ludicrous, you know.’” When I asked if she considered this to be one of the ‘good’ judges, she had a more nuanced comment which revealed very real limits on a judge’s ability to be attuned to every possible issue before her:

I think that, had the children had no attorney, the only attorney there would have been the ACS lawyer. This particular judge, she’s good at pushing back. Though I think that on a given day, if there’s a bazillion cases on the calendar and there’s a lot of things left to do, *no* judge is going to give any case the amount of thought that it requires. And this is one of the more conservative judges, actually. But she’s also a no bullshit sort of judge. So I don’t I know. There are definitely judges where that wouldn’t have happened. Or even *her* on a different day I suppose.
(Joanna, Family Court Attorney for the Child)

It seems that even a ‘good’ judge cannot be *relied* on by attorneys or parents. Again, like the caseworkers, judge’s actions are understood to be structured by an almost broken system which loads each with a staggering number of cases. As of this writing, the city’s 47 family court judges must oversee an astronomical 250,000 cases per year, or over 5,000 cases for each judge. (New York State Coalition for More Family Judges 2014, Mueller 2014). Ignoring any days off, this would be 20 cases a day, *if* each case only came to court once, rather than multiple times.

Enforcing Professionalism

In the messy everyday reality of the court, the judge must also monitor the competence and reliability of the workers as well; something which also depends on the individual beliefs of the judge. Recall David’s incredulity at a judge who was focused on policing a worker’s response to finding pot (“She’s calling ACS, she’s ordering, “I want every policy, on marijuana, that you have at ACS.” Really? Is that what you’re spending your time doing?”). The judge in the story is upset at the incompetence of a worker in not preserving evidence, while for David this is not a serious issue. In the field notes below, I observe

The hearing is moving at a snail’s pace; this time it’s because the agency caseworker doesn’t remember sufficient details about the case. A cycle repeats itself. The corporation counsel⁴⁶ asks a question, and the caseworker can’t recall the answer. Each time, the counsel asks, “Would anything refresh your memory?” Each time, the caseworker replies, “If I could look at my notes.” This is only allowed after the counsel asks the judge, “Your honor, permission for the witness to examine her notes.” The judge is openly frustrated each time. For most of the questions the caseworker spends several long minutes reviewing the notes, but still can’t answer satisfactorily. Sometimes the answers aren’t in the progress notes. Other times, her note-taking skills are not sufficient for court testimony. When asked what the client said to her on a certain occasion, she replied, “We talked about her drinking.” “Please be specific, the question was what the mom said to you. Did you tell her to stop drinking, or did she tell you that she had been drinking?” “I

⁴⁶ The child was in foster care; thus the foster care agency, and not ACS, was the agency represented in court. Voluntary agencies are represented by corporation counsel (who also prosecute cases in juvenile court).

don't know. I wrote down, 'talked with client about drinking alcohol.'" Towards the end, the caseworker seems to feel that she is not seen as a reliable source, and needs to assert her trustworthiness compared to the mother. "I don't know what she said, but it was a lie. She said a lie."

Field Notes: Brooklyn Family Court, August 2014

I was able to observe one judge who was generally liked by defense attorneys. The first time I sat in her part I was reminded of the consistent complaint made by lawyers and advocates that clients were habitually de-individualized by the loss of their name in the courtroom. When a worker who referred to the respondent as "mom," the judge interrupted, reminding the worker "she has a name, please call her Ms. ____." Over the course of the afternoon's hearings, I witnessed several moments in which she directed her most fierce judgments for the ACS lawyers and caseworkers.

This judge has a reputation for being impatient with mistakes, and it's certainly deserved. She is incredibly critical of the FCLS's and attorneys for the foster care agencies (from the Corporation Counsel). They seem incredibly incompetent in the face of her scorn. "Why aren't you ready with the witness, council? This trial date was set in May!" The ACS attorney is scolded after she finishes examining her witness. "Is there any other evidence?" "No your honor." "There are no medical records?" "Yes, there are, I apologize your honor." The FCLS looks for a several long moments, only to realize that she has in fact forgotten the records. The judge is clearly irritated, "Come on council, get it together!"

Field Notes: Brooklyn Family Court, December 2014.

All of these issues—the harms of illegal drugs or spanking, the monitoring of proper behavior, and so on—are ultimately monitored by judge's broad discretionary power. Another fundamental function judges perform is to ensure that the actions of child welfare proceed within the framework of the law. This is of crucial importance as a check on the power of ACS workers:

Sometimes child protective managers, who are social workers, are asking for something that the law, in the case, does not *allow*, and the lawyers for ACS have to figure out how to negotiate that. Which is *very* hard. Like, 'We don't have enough to get a removal. You're not getting a removal.' 'But I *want* a removal.' 'You're not getting a removal.' And as a child protective judge, they would sometimes seek removals from me. Or they *wouldn't* seek removals from me, and I was *shocked*. And I was like, "How could you *not* be asking for a removal?" And the lawyer would say, "The child protective manager's *not*

seeking removal.” And I’d say, “Really? The case is on tomorrow. Get the CPM here, she’s *ordered* to be here.” And then she would come in and I would rip her to shreds. Because I was so shocked that this person does not understand safety and risk. (David, Former ACS Administrator, Former Family Court Judge)

David points to the potential conflicts in different ways of understanding a situation, and is clear that, in a courtroom, the legal framework takes priority. Even concerns of child safety must comport with the statutes of New York family law (“sometimes child protective managers are asking for something that the law does not *allow*”). He makes very clear the power of the judge: the judge is the arbiter of the expertise of everyone else in the courtroom. She decides when other professionals appearing before them have made poor professional judgments, when their professional role includes making *legal* judgments; the judge imposes legal logic onto everything before the court.

This underscores the criticisms that defense attorneys have made of the family court system, both within this study, and by other observers (Ketteringham and Shapiro 2014; Children’s Rights 2007); that lawyers and families in family court cannot rely on the law being properly applied. How can the broad discretion and authority of the judge be reconciled with this complaint that they fail to properly and reliably enforce the law?

Decisions that are correct or incorrect strictly on legal merits are not always so cleanly divisible from decisions influenced by personal prejudices as judges are obligated to make personal judgments as a way of understanding legal arguments, something that can be subjective and invite dissent. This becomes woven into different opinions on what the professional standards are, and should be, for others in the system.

Those working inside the agency, for example, view the problems of knowing the policies differently, seeing it as an impossible ideal to attain. One administrator and former caseworker laughed at the notion of knowing the policies by heart, pointing to an immense

binder which was not even half of the policies for just his division. He explained, “You don’t learn policy [in the job], you learn the culture.”

This provides an additional perspective on the problem of the often un-enforced visitation policy, discussed in chapter three. Two professionals who have both worked in the world of child welfare for decades provide two very opposing ways of evaluating this problem. Christine Gottlieb is speaking as an attorney with a wealth of experience, and also as a regular part of public and private discussions with city officials on policy reform. This dual perspective, of both policy and practice, informs her frustration:

So as often is the case in New York, advocates from all different positions work together, understood it wasn't happening the way it *should*, we come up with an even better policy that's supposed to help caseworkers do it, and that's all *great*. Except that the next time you go to court and ask the caseworker, they're like, “What policy are you talking about?” ... We will often ask the ACS lawyers, or even the caseworkers if we get them on the witness stand, you know, “Does this comport with ACS policy,” and the workers will inevitably say, “Well, I haven't *seen* the policy.”
(Christine Gottlieb, Co-Director, NYU Family Defense Clinic, NYU School of Law)

David, however, is speaking as a judge, and as someone who has worked within ACS. For him, the need to evaluate each case individually according to criteria of safety and risk takes precedence over the policies. This illustrates the precarity of depending on a framework of rights, and improving policies, when the threat of danger can always act to displace any other priority.

You asked about, “Why don't the CPS’s know the policies.” That agency has *volumes* of policies. No one knows all the policies. Yes, the lawyers who represent the parents and the children have all their paralegals look up every single policy before they go into court. Well, you know, congratulations. As a *judge*, sometimes they talk about the policies, and there is a practical, you know, imperative council. The caseworker in the first instance was not worried about whether the child got to their violin lesson. The caseworker was worried about whether the child was safe.
(David, Former ACS Administrator, Former Family Court Judge)

Not only is the expectation that workers would know all of the rules unrealistic, the ambiguity is also productive of the power of the agency and judges, as they may be selectively enforced. This is not to claim that ACS intentionally makes rules confusing in order to increase its power or dilute the rights of parents; it is an observation that confusion and indeterminacy produces a situation in which they have power to be selective by virtue of the need to interpret those rules, and in which parents are uncertain about how to act within the system.

A Parental Competency Test: Making Evidence, Making Judgments

What Counts as Evidence

There is a complexity inherent in the truth-finding function of the court: the court is intended to consider the good of the child, however, this is impossible to measure by unambiguous and objective means. Thus, the question of what constitutes evidence in family court is particularly consequential⁴⁷. Above we saw that the judge exercises significant power when examining questions of what should be considered admissible. It is equally illuminating to examine what is *not* questioned- i.e. what is uncontroversial as evidence. In my time in family courts I noted a consistent emphasis on observable evidence. I (crudely) consider these as three different kinds of evidence. First is the physical or quantifiable evidence:

In a 1028 proceeding, a mother is petitioning for the return of her son after his recent removal. The CPS who did the investigation is being questioned when I walk in. Her original assessment was that there was some risk to the child, but not enough to warrant an immediate removal. She then returned a day later to remove the child, following the directive of her CPM. The contested points are for the most part not about rightness or wrongness of actions. The courtroom arguments focus on specific details. What was the size of the bruise? How many days did it remain visible? Did the mother use an open palm to discipline her son, or the back of her hand? What is her level of medical knowledge? She did not bring her son to the hospital to treat his bruises. They were later judged to not have necessitated hospital treatment, but did she know that?

Field Notes, July, Brooklyn Family Court

These are concrete and empirical facts, but I am struck by just how much of the discussion is *only* on these details, presented with little context. The physical evidence of the bruise is, literally, evident—it is visible to the senses, documented through testimony, reports, and

⁴⁷ Family Court is a Civil Court, and so findings in Article 10 cases must meet the standard of “preponderance of evidence” (i.e. that a claim is more likely true than not), rather than the stricter “beyond a reasonable doubt” standard of criminal court.

photographs. One cannot argue with the fact that a bruise existed; but increasing levels of detail emerge in questioning, shifting the context of these material facts.

Second is the behavioral or moral judgments of parents. These judgments blur the line between judgment as official and precise legal opinion, and judgment as personal conviction; transmuting moral judgments of individual character into evidence before the court. I regularly observed testimony and arguments in court that centered almost completely on a parent's behavior toward caseworkers, or their behavior in agency offices. These arguments were used to determine the court's decision, and were treated as valid evidence in that sense. The actions of a parent in these situations, often when not with their children, certainly can be relevant; what was striking was how frequently this discourse was the primary focus of ACS's arguments, foregoing arguments based on more direct actions when parenting. This is also consistent with the perspective held by those representing parents:

Family court feels like a parental *competency* test. Rather than really thoughtfully trying to figure out what children are at risk, it seems much more like, "Here you are, so how do I know you're not going to hurt your kid? How do I know you're not doing drugs? How do I know you're not in a gang? How do I know you're not this?" That's the inquiry. No one would *ask* that question if I were the respondent.
(Michelle, Family Court Defense Attorney)

Third is the evidence of compliance or noncompliance. This last category incorporates the previous: compliance has the flexibility of being both a technical measure (a parent has either attended mandated parenting classes or they have not), and an interpretation of behavior as well. For the times that I observed the court, the discussion of compliance was often a parsing over just how compliant or non-compliant a parent has been—how many anger management classes they have attended, how long it took for them to follow an order, how long it has been since they violated one, and so on. The field notes below exemplify the slippery boundary between compliance as measurable fact, and compliance as interpretive judgment:

This case is about the mother's custody rights, but she is not here in the courtroom. I am sitting in a room full of people arguing over the moral judgment of someone who is absent; this is an unpleasant feeling. A dispute erupts. The ACS attorney alleges that "she has stopped going to therapy." Her attorney disagrees, and explains that "she was discharged from therapy, because the therapist said it was unnecessary." "No, she missed too many appointments." It is clear that whether this mother "needs" therapy or not, whether she's complying with an order for therapy, is considered significant as evidence required to judge her fitness as a parent. The judge lets it go back and forth for a few minutes – longer than it seems to take to realize that it is not going to be resolved – before ordering the attorneys to request the therapist's records before the next hearing date⁴⁸.

Field Notes, Bronx Family Court, October 2014

This use of 'compliance' and 'noncompliance' as a way of rendering parents intelligible to the court is central to my understanding and analysis of family court. Describing a parent as compliant implies their acceptance of any charges against them. Compliance as criterion also erases any discussion of whether the service plan is appropriate. In this formulation, there is little room to suggest that the service plan is itself failing to perform its function of improvement, as any complaint or resistance to the plan immediately becomes evidence of noncompliance. Below, a parent advocate illustrates tensions that can arise when a parent (and advocate) have interests that are not aligned with the service plan.

I have a client I just picked up about a month ago. [I] picked up the dad, and [an] 18b picked up the mother. And there's an order of protection against our client from ACS; so the court ordered the mother to keep the baby away from the father. And the mother *told* the caseworker that she was not going to stay away from him. And the caseworker looked at her, and she was like, "Expect to be here again. Cause she's just not going to stay away from him, and so we're going to end up remanding." She just put it out there. ... They're a young couple, they have a baby. Who would want to be separated from their spouse, you know. And domestic violence in most cases is the couple arguing in front of the child, so it's DV. And so they make it seem like it's this *huge* thing, you know. And sure enough she ended up violating the order, and they remanded the baby just the other day. And the caseworker, I ran into her in court, and she was like, "Didn't I call it? Didn't I call it?" Almost like *taunting*.
(Veronica, Parent Advocate)

⁴⁸ The ACS attorney had already requested them, but was unable to get access because they were protected. A judge's order, however, can open that access.

In this example, the appropriateness for the label of “domestic violence” is contested by both the advocate and the mother. The imperative to comply has turned an opinion on what is best for the mother—an opinion which may or may not have been ‘correct,’ but was not open to debate—into a necessary and foreseeable removal.

Performing Deference

The function of the court is to render judgment on people; to decide what will happen people’s lives. Stories are heard and dismissed as unreliable, or validated and turned into truth. People enter court in a state of uncertainty, knowing that their futures are to be decided. There one will find parents who are anxious, scared, confused, and waiting interminably. One can watch performances of docility, and displays of authority. Family court is different from criminal court in that its official goal is to determine the best interests of children, not to adjudicate guilt and punishment. However, it still operates within the framework and logic of a courtroom, assignations of guilt and blame still play a significant role. And its effects are still felt to be punitive when children are removed, even though that is not the presumed purpose of the removal. Family court is designed to facilitate judgments of parents according to very specific criteria. The evidence in this case study suggests that the most important and most contested of these is the parents’ compliance.

ACS comes to court with a report. Or they're supposed to, they don't always do it. And some things that they *love* to say in these reports are, you know, “The parent refused to attend therapy.” *Refused* is such an overused word in these reports. And uncooperative. “Parent's uncooperative.” ... If people don't *go* to therapy, don't *go* to parenting skills, they don't, whatever it is they're supposed to do, then they get *crushed* by the system. Somebody like that father [who had been refusing services], they've never heard of therapy from where they come from. “Why do I have to do this, it's not helping me.” And then that's it. That's the *worst* thing they can report to the court, “He's *uncooperative* with services.” That's *it*, that's the *end* of you in family court.

(Daniel, Former Attorney for ACS, Family Court Legal Services)

The opinion Daniel formed as an ACS attorney is almost identical to descriptions by parents' advocates and lawyers: that complying with the court can seem more important than anything else, even if the removal took place for material issues (such as housing), or that complying can feel "almost like a way of proving you love your kids" to the court (Attorney, anonymous). Darius, a former caseworker, points what he sees as an important distinction between the concept of compliance as a measurement of dedication to a service plan (and actions required to regain custody), and compliance as submission to authority:

I mean, just cause a parent is screaming and hollering at you, doesn't mean they're a bad parent. You know, "They're non-compliant." No! They're non-complaint because they told you to kiss their ass? But they're still going to the parenting program, they're still seeing the kids regularly, they're still doing this, they're still on time, they're still going to court. They're not *docile*.
(Darius, ACS Child Protective Specialist, 2005–2009)

While following a service plan can be a result of a parent's desire for custody of their children, these analyses by former workers suggest that even the possibility for interpreting a lack of obedience as evidence lends itself to a focus on that element, of compliance or noncompliance, at the expense of other kinds of evidence.

Chapter Conclusion

On an official level, family court translates cases to fit within legal codes, but it does additional work beyond its formal role. It employs the power of the state to impose a system of judgment (“a parental competency test”) onto parents, and it does so in a way which hides its own political nature. This is not portray judges as the villains of the story: they are given the task of deciding which of the messy details of a petition are relevant, and of limiting the discussion to forms of evidence which fit within an ordered technical schema. When a judge functions as the expert on child welfare law, as well as its enforcer, she interprets complex family issues rooted in social relations, rendering them individual problems. This separation of parents from social context, and particularly of already existing issues of race and poverty, acts to depoliticize what are potentially very politically charged issues. But in order to perform their job, judges *must* act to separate the details of individual cases from the larger economic and social structures which produce the conditions for parent’s actions which are reported.

What are the consequences of a system in which “compliance is king?” This metric has such prominence partly because it *is* a metric, that is, it is easily measurable, and makes different parents comparable to each other, allowing judges and agencies to classify parents according to trajectories of improvement or stagnation. The case of a noncompliant parent does fit into the “cookie cutter” mold that multiple former workers described as part of the ACS approach to decision making. There are concrete limitations on the reliance of these narratives of compliance, limitations in particular on their ability to address what many advocates, and workers within the system, see as underlying causes of a parents’ appearance in family court.

The classification according to levels of compliance has powerful effects. As it ranks parents according to a linear scale of progress, it not only makes parents comparable, it also acts

to discipline them. Jennifer Reich concludes in her study of child protection in California that “[b]y looking at different critical moments of interaction—investigation, reunification, and case determination—we see that parents’ ability to retain or regain custody of their children depends on their capacity and willingness to perform deference and to subordinate to the expectations of the state” (Reich 2005:255)

In this chapter I have argued that the most powerful tool of measurement used by the court is the compliance to court mandates by parents. This is not an argument that compliance with service plans cannot actually help parents to improve their parenting, or that it is not at times beneficial to children. However, the observations throughout the chapter suggest that the best interests of the child are rarely discussed directly, and instead are replaced by the only ‘measure’ of effort to be a good parent—compliance with the rules that have been established to retain parental rights. The assumption that complying with a service plan corresponds to the best interests of the child, and the fact that compliance is legible in ways that ‘being a good parent’ is not, work together to displace other factors in a case, turning compliance into the key standard by which parents are assessed.

Every Opportunity? *Concluding Thoughts*

And you know what I find? That we in child welfare have every opportunity to make a different decision, but we don't take it. ... At every opportunity, there's somewhere that someone could say, "You know what, we shouldn't be moving this family further into this system," but no one takes it. Even after the family gets into the system, even after they're there, no one will say, "You know what, we made a bad decision on this. We need to fix this up." They are willing to let it ride to the end. And the end result is a failed family and child relationship dynamic. Because there is the inability for someone to say, "I'm not doing this. Stop. We're gonna stop right here. We're not doing this." (Sandra Killett, Executive Director, Children's Welfare Organizing Project)

At the beginning of this thesis, I posed two research questions. First, who are the subjects of the child welfare system? How are families, and parents in particular, made into subjects? And second, how do individual workers make the practice of child welfare? How do these practices align with, or contradict, formal institutional goals? The conclusions of my three findings chapters come together within the two main categories created by these questions. I want to review them here, while also holding them against my main theoretical question; how does the state govern family?

Becoming Subjects: Parents According to ACS

Parents find themselves made into subjects of child welfare against their will through an SCR report. However I argue that they are made subject in other ways as well: first, many have already been made into subjects of its legibility through the heightened legibility of their lives to institutions of governance, and that second, once brought into the system of ACS and family

court, parents are further disciplined by the need to voluntarily present themselves as compliant subjects (further extended by their lack of control once in the system).

Space

Space plays a critical role in the establishment and enforcement of the state's control over families. This ranges from rules in institutional spaces (hospitals, schools, etc.) to the informal making public of private spaces discussed above. This thesis has particularly examined the space of the court, where rules and routines shape what constitutes acceptable debate; restricting discussions that might otherwise consider more expansive ways of determining the best interests of the child.

I have shown that the process of becoming what I have termed “publicly legible” is facilitated by dependence on the public institutions of the state. It is also embedded in the space of the city itself and its divisions between private and public space. As more and more parenting happens via private spaces – playgrounds, after school programs, and so on (C. Katz 2008) – parents who are unable to access these new securitized means of child-raising end up carrying out a larger proportion of the day to day activities of parenting in the public eye than most. This sociospatial segregation also stems from divisions within the categories of public and private spaces themselves. Not all public spaces, or private ones, are subject to the same rules, or the same levels of scrutiny: this study has pointed to deconstructing the idea of the private space of the home in particular, as many (private) homes are highly exposed to scrutiny and surveillance.

From a historical viewpoint, child protection has produced a range of dedicated spaces, from orphan trains to juvenile courts to the current family courts. These spaces must be understood as products of these explicit exercises of power in relationships between families and

the state – they are not naturally occurring, but instead have been created and recreated to serve the stated purpose of protecting children, even when evidence suggests that they often circumvent that goal.

Compliance

Parental compliance is demanded at every stage as a condition for continued access to their children, and the legal means to regain their rights as parents; indeed their very rights to *be* a parent: demanding compliance is thoroughly an act of disciplining, governing not only behavior but one's identity.

This act of discipline individualizes parents through the normalizing judgments of whether or not they accept and complete their supposedly individual service plan. It also provides an ongoing means of assessment, as parents are measured against their progress toward service plan completion in each court visit. As parents are normally required to find the mandated services themselves, they become part of the process of creating the service plan. Following Foucault's description, this disciplinary power acts in both voluntary and coercive ways: rather than forcibly controlling parents' actions, it requires them to actively participate in its effects (Foucault 1995). Compare this to Barbara Cruikshanks' analysis of the power exerted on welfare recipients: "It is significant that welfare and most social programs are voluntary. Even when they are overtly coercive, they work by getting the recipient to see her own interests in those control strategies" (Cruikshank 1999:23).

Child welfare is not a voluntary system- one is not given the option of whether they would prefer if their child is to be removed or not. However, the service plan and the measure of compliance act to re-position the respondent as a voluntary participant of the court. She is now

framed as responsible for choosing her own success or failure, and judged accordingly.

Questions of the feasibility of the service plan, its usefulness, or the many issues that it cannot address, are not asked. The legitimacy of the service plan as *the* way to help a parent regain custody is the prior condition of participation in the system.

The state is always actively working to make subjects more visible, more specified though detailed knowledge, though not necessarily by intention. The condition of being publicly legible for welfare subjects, and being rendering compliant or non-compliant in the family court, both work via almost identical logics; the biopolitical impulse to manage population via standards of normalcy and deviance.

Making Daily Practice: Power and Limitations of Workers

The expertise developed by individual workers is largely acquired and shaped by personal experiences through the actual work of child protection, and thus is highly variable from worker to worker. This unofficial expertise is composed of a mixture of different kinds of knowledge: some are determined by the job objectives, such as assessing risk to children; others are targeted at success in the particular professional environment in which workers find themselves. This expertise is developed by the worker on the job, contributing to a lack of uniformity in approach, and the overall sense of unpredictability from the standpoint of parents. The different ways of knowing and interpreting families between caseworkers and their managers also leads to a dilemma for workers. Expressing their professional opinions of appropriate actions to take in a particular case, based on their unique personal experience of the family involved, is seen as proper professional and ethical behavior. But it is also understood that

expressing such opinions often leads to conflicts with management, which is detrimental to one's career as a professional.

The problem of variability between workers is not a problem of the state's inability to control its own institutions, it is instead foundational to the functioning of the system. In effect, one way that the state governs families is by *not* fully regulating the many workers doing the governing, allowing their individual actions to come together into a loose and unpredictable means of governance. Despite its attempts to control and regularize, the state governs families chaotically, and contingently. Conflicting ideologies are sedimented over one another, creating unintended contours: eroding in some places, accreting in others, a fluid and unplanned morphology of management. One can dredge the bottom of a river, but the daily motion of the waters will continue to deposit layer after layer. So, too, does the daily functioning of the individuals within systems of governance continue to push back and alter the structures which constrain them.

Limitations

Like all such research studies, the conclusions of this thesis are imperfect and incomplete, only valid within the limitations of the research data. The empirical evidence discussed here is drawn from one particular system and place, and from interviews done in a small window of time. This research was begun in the summer of 2014, less than a year after the election of Bill DeBlasio as mayor of New York City and the replacement of Ronald Richter with Gladys Carrion as ACS Commissioner. It also took place as the city was recovering from a massive

financial crisis, and as gentrification and displacement radically transform neighborhoods throughout the city. This is to point out that the institutional, economic, and social contexts, all of which surround child welfare in the city, are constantly in flux. None of these are directly addressed in this study, and therefore neither does this study sufficiently account for how what has been observed and analyzed is specific to this moment.

As one example, I was unable to interview any caseworkers currently working at ACS; and so the interview excerpts reflect workers' experiences at different times, under different Commissioners (not to mention working in different offices under different managers). Therefore, these interviews miss any system-wide institutional changes over the past decades in the structure of the job of the caseworker, or their experiences. I note that CPS retention rates improved substantially after 2007- this is similar to patterns in other city jobs of increased retention after the financial crisis of 2008, but has also been attributed by some ACS officials to changes in the requirements of the CPS's job at the same time (anonymous, personal interview).

Many other limitations should be readily apparent. For one, much of the data on child welfare is highly protected, and difficult to access as an outside researcher. I am unable to quantify, for example, how many SCR reports occur from public hospitals versus from private ones, and so many of the arguments made in this study piece together anecdotal evidence with other reports on similar issues. However, as further study of these issues moves forward, a more detailed quantitative analysis of ACS data is needed, to support, refine, refute, or alter my current conclusions.

Further Work

Race and Surplus Population

Throughout my research, I repeatedly encountered evidence that child welfare functions as a deeply anti-Black institution. The current moment (in 2015), the moment of #blacklivesmatter, a moment in which the policing of black bodies is being publicly questioned, demands that we think about the stark racial differences in childhood outcomes in the city through this lens, and that we apply this analysis to all systems governing the life of children, not just child removal and foster care.

One opportunity for moving this research more in the direction outlined above is to think about the literature on biopolitics (and necropolitics) as it pertains to what many theorists describe as “surplus life.” Paraphrasing from Mitchell, McIntyre and Nast, and Nikolas Rose, I am considering surplus lives as those that are to be devalued, abandoned, or actively harmed as a condition for the protection and care for other lives (Rose 2007). As McIntyre and Nast describe in their work on surplus life in global cities, the bodies of socially valued populations, and populations made surplus, must co-exist in the same city; and so the emergence of (often informal) effectively separate systems of governance is not an aberration, but a result of biopolitical judgments of social value (McIntyre and Nast 2011). I return to Mitchell’s use of “preblack” and “prerisk” here. One may find a perfect exemplification of the racialization of pre-risk – those pre-judged as risk failures, “beyond risk” – in the rationalities of ASFA, seeking to solve the problem of foster care by abandoning parents not able to be fixed.

Securitization of Childhood

This links to another important direction, building on Cindi Katz's work in which she analyzes the securitization of childhood and its linkage to what she terms "terror talk" (C Katz 2008; Katz 2006; Katz 2014). She shows how this terror talk – discourses of fear for the safety of children – "has been neatly tied to a set of operations concerning urban public space" (2006:110). While her analysis focuses on increasingly privatized aspects of childhood, I suggest that this increased concern and attention to potential dangers to children is intimately tied to an increased ability to view other parents as deficient. Christine Gottlieb argues that analysis of child welfare cannot ignore this relationship of between standards of parenting publicly discussed in the context of upper and middle class mothers, and the treatment of poor mothers through family court. She argues that, "our culture of judging parenting by impossible standards hits some much harder. For it is a culture of judgment that we have developed and it is pervasive, extending to the offices of government bureaucrats and courtrooms where poor parents are scrutinized" (Gottlieb 2010:373).

Without empirical evidence, I suggest that research may open up these connections more broadly. Are newly arisen anxieties about the dangers of seafood in the pregnant body part of the same broader cultural concerns and awareness of perinatal chemical exposure that makes it reasonable, even inevitable, to assume that a 'crack mom' has already committed child abuse by 'poisoning' her baby, and thus deserves to be seen as a criminal?

Looking Ahead

The most recent exceptional event may suggest a system that is becoming less reactive to exceptional events. In response to the death of 4 year old Myles Dobson in January of 2014, who was killed by his caretaker, Mayor Bill de Blasio was supportive of Commissioner Gladys Carrion and ACS workers. To my knowledge, no caseworkers were fired. He also responded by changing policy to include increased court appearances for parents when leaving agency supervision, and expanded ACS access to criminal court databases: it seems there must always be *some* response.

Almost everyone interviewed in this study agreed on the need for some system of child protection; i.e. that an agency which takes on many of the functions of ACS *should* exist. But as I asked many participants if they believed that the system of child welfare as it currently stood could be fixed, I received many answers like this one:

No. I don't [think ACS can be changed]. I think it's just like the infrastructure of the police department. I think they need to dismantle the entire police department, the entire ACS, and start from scratch. There's no way. ... You can't just take the bad apples out of it, the bad seeds. You have to start from scratch. ... It's baked in. So deep. So deep and so far, that you wouldn't even know where to start.
(Veronica, Parent Advocate)

We are left with a conundrum. On the one hand, a system built out of reactive reforms, responding to emergencies; made of contrasting ideologies accumulated on top of each other over time, creating a constellation of multiple bureaucracies: in short, a system unlikely to ever change in a directed way, except when forced to by extreme events. But if it is a system which cannot be fixed by reforms, a system that only reacts to uncommon and dramatic events, where are we left? Or, is the system truly broken?

Here I return to the comment which closed the introduction; that the people who do well in the child welfare system are those who “do what they’re told.” This thesis may offer the hope that, if there is to be change, it will because of those people who do *not* do as they are told- the CPS who argues against a removal, the judge who pushes back against an ACS order, the parent who, despite the need to act out her acquiescence, finds ways to seek other forms of help, and to organize for change. The politics of changing child welfare, then, cannot only be a politics of policy reform, or a politics of legal struggles. The politics of child welfare is born from the mundane and everyday interactions between workers and parents; in which the directions people are told to follow are in conflict with their own needs, or their own ethical and professional evaluations. Child welfare begins with intimate moment within daily lives, and the politics of its change are rooted in recognizing the importance of those moments, and the voices of those who resist them.

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