STRATIFIED REPRODUCTION AND DEFINITIONS OF CHILD NEGLECT: STATE PRACTICES AND PARENTS' RESPONSES

by

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Abstract

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This dissertation focuses on the day-to-day decision-making practices and definitions of child neglect used in the child welfare system and on parents' experiences with child welfare cases and their attempts to regain custody of children placed in foster care. It is guided by an overarching concern with how and to what extent state practices build on and recreate inequalities of race, class, and gender. It also seeks to add to our understanding of state efforts to shape the lives and behaviors of poor women of color in the contemporary United States and of state change under neoliberalism. My purpose is to examine how child welfare decisions are made, to understand on what basis they are made, and to see how these decisions are related to and reproduce larger inequalities.

I understand reproduction as "political" (in the sense of being inextricably bound up with power and inequalities of power; see Ginsburg & Rapp 1991) and employ the term "stratified reproduction" to discuss the conditions under which some categories of women are valued and supported in bearing and raising children while others are not (Ginsburg & Rapp 1995).

Everyday practices in child welfare empower or disempower women (and men) to carry out their caretaking work through the legal processes that grant custody of children to some and not to others based on notions of what the proper care of children entails and what kinds of individuals proper parents should be. Child welfare is thus a key arena for drawing lines between "fit" and "unfit" parenting and these often fall along lines of race, class, and gender. Consequently, I see the child welfare system as integral to the production and reproduction of stratified reproduction. Drawing on observations in family court and at support groups for parents, interviews with child welfare decision-makers, and interviews with and a survey of parents with children in foster care, I argue that the child welfare system both builds on and directly reproduces relations of stratified reproduction as well as race, class, and gender inequality.

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Chapter 1: Introduction

While conducting fieldwork for this dissertation, I met many parents, mainly poor women of color, who have dealt with the child welfare system. I heard the stories of how they became involved with child welfare, how their cases were handled, and their struggles to regain custody of their children. Some, like Joan, an African-American mother in her 40s, were investigated after testing positive for drugs and lost custody of their children when they were not able to access drug treatment quickly enough. Others, like Olivia, also an African-American in her 40s, lost custody due to their inability to provide adequate housing for their children. Elizabeth, an African-American mother in her 20s, was arrested for a crime not related to the care of her child but was then unable to regain custody after her release due to her admission that she had used marijuana. As I will discuss throughout this dissertation, the problems these mothers faced and the resources they were or were not able to marshal to deal with them were profoundly shaped by their race, class, and gender; however, this larger context was ignored by the child welfare system. Instead, they were labeled neglectful parents and were subjected to state supervision of their families and/or to the placement of their children in foster care. Their attempts to prove their worth as parents in order to end this supervision and/or regain custody were also constrained by these larger social inequalities.

The child welfare system investigates reports of child abuse and neglect and aims to protect children from maltreatment by providing foster care and foster care prevention services to those children found to be abused or neglected. It also provides reunification services to parents whose children have been placed in foster care (see Chapter 4 for a description of this system and its procedures). This dissertation focuses on the day-to-day decision-making practices and definitions of child neglect used in the child welfare system and on parents'

experiences with child welfare cases, and their attempts to regain custody of children placed in foster care. It is guided by an overarching concern with how and to what extent state practices build on and recreate inequalities of race, class, and gender. It also seeks to add to our understanding of state efforts to shape the lives and behaviors of poor women of color in the contemporary United States and of state change under neoliberalism (see Chapter 2). My purpose is to examine how child welfare decisions are made, to understand on what basis they are made, and to see how these decisions are related to and reproduce larger inequalities.

Following Ginsburg and Rapp (1991), I understand reproduction as "political" (in the sense of being inextricably bound up with power and inequalities of power) and employ the term "stratified reproduction" to discuss the conditions under which some categories of women are valued and supported in bearing and raising children while others are not (Ginsburg & Rapp 1995a). Everyday practices in child welfare empower or disempower women (and men) to carry out their caretaking work through the legal processes that grant custody of children to some and not to others based on notions of what the proper care of children entails and what kinds of individuals proper parents should be. Child welfare is thus a key arena for drawing lines between "fit" and "unfit" parenting and these often fall along lines of race, class, and gender. Consequently, I see the child welfare system, which is fundamentally about judging the behavior of individual mothers (and, to a lesser extent, fathers) and making decisions about child custody, as integral to the production and reproduction of stratified reproduction.

This dissertation argues that the child welfare system both builds on and directly reproduces relations of stratified reproduction as well as race, class, and gender inequality. Child welfare disproportionately impacts poor families of color (see below), and women are more likely to be seen as neglectful (see Chapters 2 and 8). Although rates of maltreatment do not

seem to vary by race (Sedlack & Broadhurst 1996; Hill 2004; 2006; Roberts 2002) children of color are more likely to be labeled as maltreated and to be placed in foster care. The women who are thus the most likely to be investigated by child welfare and who are the most vulnerable to the loss of the their children already face numerous constraints in raising children and supporting their families (see Chapter 2) and are often perceived as irresponsible and unfit mothers whose reproductive labor is of little value (Collins 1990; Mullings 1995; Gilens 2000; Williams 1995; Quadagno 1996; Roberts 1997; 2002; see Chapters 6 and 7).

The decisions made in the child welfare system often both build on and reproduce dominant ideas about unfit parents. My research found that decision-makers in child welfare draw on various overtly color-blind, but nonetheless racialized, discourses in making decisions about neglect and child placement. These discourses paint mothers of color as irresponsible and unable to adequately care for children and fathers of color as either "deadbeat dads" who will not care for their children or as criminal and violent and therefore unsuitable caretakers. When caseworkers use these discourses as a filter through which to understand the parents they investigate it can become easier to define them as neglectful and to make the decision to place their children in foster care. This causes profound family disruption and perpetuates the idea that they are unfit and do not deserve custody of children.

I also became aware that parents are held to standards of proper childcare that are strongly influenced by middle-class expectations that are extremely difficult, if not impossible, for working-class and poor parents to meet. Decision-makers expected certain standards of care for children and an ability to handle personal problems that are achievable for middle-class parents but difficult for poor parents. Meeting these standards requires access to resources such as money, time, flexible work schedules, health insurance, mental health and substance abuse

treatment, and quality childcare, but these resources are often unavailable to poor parents of color. When parents cannot meet these standards and are not offered assistance to meet them, they are, again, labeled neglectful and risk losing or being unable to regain custody of their children.

In general, the definitions of neglect in the child welfare system take parental problems and risks to children out of their social context, ignoring their roots in structural inequalities. Instead individual parents are blamed, making the decision to supervise families and/or place children in foster care seem the most appropriate. The overall care parents provide for children is often ignored and parents are judged instead on the basis of particular problems, such as illegal drug use, or particular actions, such as the use of corporal punishment. Rather than being seen as parents who need help or support, they are perceived as neglectful and "risks" that children need to be protected from. By continuing to define poor parents of color by what they lack, and by not providing the services that might enable them to better care for their children, the idea that they are unfit is then reinforced and reproduced.

The child welfare system also plays a role in recreating and exacerbating the pervasive social inequalities of race, class, and gender that make it difficult for parents to provide for and care for their children. As I will demonstrate, the child welfare system often played a role in deepening the poverty some parents experienced or in making a more stable economic situation worse. An inability to support their children was then blamed on parents and used to define them as neglectful and undeserving of custody. Since parents of color are disproportionately involved with child welfare, this particular form of increasing economic instability impacts racial inequality as well. In addition, daily practices in child welfare hold women accountable for the safety and well-being of their children while men are either expected to be uninvolved in their

children's lives or are not given the help they need in order to gain custody. These practices perpetuate gendered and racialized assumptions that child rearing is women's responsibility and that assume men of color are "deadbeat dads" who cannot be expected to care for their children and therefore need not be helped in gaining custody.

Finally, the child welfare system helps to reproduce racial inequalities and stereotypes. In New York City and other large cities, the child welfare system deals almost exclusively with the problems of minority families and, as I will discuss throughout this dissertation, it deals with them in a particularly punitive way, often through child removal. In contrast, white families are more likely to be able to deal with family problems by turning to "separate and less disruptive mechanisms" (Roberts 2002:10). This raises the question of whether child welfare would be as punitive if it dealt primarily with white families. Families of color are subjected, through the child welfare system, to profound disruption of family life that increases insecurity for children (Roberts 2002; 2008). The likelihood of being reported to child welfare authorities and losing custody of children also disrupts communities of color as a whole. It creates distrust of neighbors and service providers, which, in turn, often causes parents to be reluctant to seek help for problems such as drug use or domestic violence (see Chapter 6). High rates of child involvement can also exacerbate the poverty already concentrated in these communities (see Chapter 9).

In addition, by disproportionately placing families of color under state supervision of their parenting, "stereotypes about Black people's incapacity to govern themselves and need for state supervision" are perpetuated (Roberts 2002: 237). The high rates of child welfare investigation and family disruption among poor people of color as compared to whites sends a message "that Black parents are unfit to raise their children and that Black children are better off

in the state's custody. It reinforces long-held stereotypes about Black mothers' and fathers' irresponsibility and corrupting influence on their children" (Roberts 2002: 244).

My argument that child welfare helps to reproduce stratified reproduction and larger social inequalities is a structural one. In other words, the system's racialized, gendered, and classed effects cannot be blamed solely on individual biases in decision-making but stem from the aims and underlying assumptions at work in child welfare. These goals and assumptions condition day-to-day practice and policy including what caseworkers and other decision-makers take into account, what they are able to see as relevant and irrelevant in making decisions, and the solutions they have at their disposal for dealing with complex family problems. In other words, there are institutional reasons as to why child welfare works as it does and these are closely related to larger societal beliefs and policies about race, class, gender, family, poverty, and the care of children.

Project Description and Background

This dissertation is based on 14 months of fieldwork in family courts, support groups, and parenting classes, as well as on interviews with parents impacted by child welfare, and attorneys, judges, and caseworkers who work in the system. The research conducted for this dissertation had several objectives. First, I was interested in day-to-day decision-making practices in child welfare and in how the vague legal category of "neglect" was made concrete and applied to particular cases. I interviewed caseworkers, attorneys, and judges about their decision-making and examined specific cases to see what constituted neglect and when it was deemed severe enough to require state intervention in family life. I then analyzed these practices to see to what extent decision-making was related to 1) standards of child care that were race-, class, and gender-specific or to 2) larger discourses about poor families and parents of color. I also

investigated the extent to which limited resources constrained the ability of poor women and women of color to meet standards of adequate parenting or if the operational definitions of neglect used by caseworkers and the family court tended to automatically place them in the category of unfit parent.

My second research objective was to understand the daily lives of parents involved in child welfare in order to see the mechanisms that led to child welfare reports and state scrutiny of their parenting practices and personal lives. I was also interested in parents' experiences of raising children and dealing with personal problems such as drug use, domestic violence, and mental health issues while living in conditions of poverty. Finally, I examined the process of reunification in child welfare. Here I followed parents as they attempted to prove they were adequate caretakers and investigated the constraints that made this difficult.

The child welfare system, as is well known, disproportionately impacts poor families of color (see Chapter 2), and the literature on race and poverty in child welfare demonstrates clearly that poverty is related to neglect in several complicated ways. First, poverty itself, by creating an extremely stressful situation for parents, might contribute to maltreatment of children. Second, poor families are more subject to reports because they are more likely to be under the surveillance of public services. Finally, conditions that are a result of poverty such as inadequate housing, lack of childcare, or an inability to get drug treatment are often labeled neglect (Lindsey 1994; Pelton 1989; Roberts 2002). In addition, African-American children, partly because they are more likely to be living in poverty, are more likely to be reported to child welfare authorities, to be found neglected, and to be placed in foster care despite the fact that rates of maltreatment do not seem to vary by race (Sedlack & Broadhurst 1996; Hill 2004; 2006; Roberts 2002).

Statistics from New York City highlight the extent to which child welfare cases and foster care placements are concentrated in poor communities of color. In New York City, as in the country as a whole, Black children are grossly overrepresented in the foster care population. In 2008, African-American children accounted for 27% of the children under the age of 18 in the city but a staggering 57.1% of the foster care population. In contrast, 24% of the children under age 18 in New York City were white, but white children comprised only 4% of the foster care population. Asian and Latino children were also underrepresented relative to their percentages in the under-18 population (see Table 1).

Table 1: New York City Overall
Data from ACS: http://www.nyc.gov/html/acs/html/statistics/statistics_cd_snapshot.shtml.

	% of Population of Children 17 and under	# in Foster Care Population	% of Foster Care Population
Asian	10%	674	4.0%
Black	27%	9,664	57.1%
Latino	35%	4,836	28.6%
White	24%	669	4.0%
Other/Unknown	4%	1,068	6.3%

Child welfare cases and foster care placements are also highly concentrated in a few neighborhoods in New York City. The numbers of children placed from each Community District (these are meant to roughly correspond to neighborhoods),[1] shows that many of the children placed in foster care came from a few Community Districts. 42.2% of all children placed came from the ten Community Districts with the most placements, while only 1.9% came from the ten Community Districts with the fewest placements.[2] The Community Districts with

[1] New York City is divided into Community Districts (CDs) which each have a board nominated by city council members and citizens and appointed by the Borough President. The boundaries of each CD are drawn by the department of city planning and are meant to fall along neighborhood lines (although there is only a rough correlation in some cases). The boards are responsible for making recommendations to the city about services and development and for reviewing land use applications. Each CD has an office which can take residents' complaints and provide help accessing city services.
[2] Data from ACS: http://www.nyc.gov/html/acs/html/statistics/statistics_cd_snapshot.shtml.

the most placements are also those with large numbers of families of color and large percentages of children and families living in poverty. Again, this shows that child welfare reports and foster care placements are disproportionately concentrated in poor communities of color. These communities are also plagued by other social problems: large percentages of unemployed adults, high infant mortality rates, low percentages of adults with more than a high school diploma, and high rates of incarceration as compared to the rest of the city. To illustrate this, I will compare the Community District with the most foster care placements, Highbridge/Concourse (in the South Bronx), with the city as a whole and with the Community District with the fewest placements, Greenwich Village/SoHo (in lower Manhattan). Table 2 shows that, in terms of race, 97% of the Children under age 18 in Highbridge are African-American and Latino. In contrast, in Greenwich Village/SoHo 64% of the children under age 18 are white.

Table 2: Comparison between CDs with most and fewest placements and New York City overall; Race of Children under 18
Data from ACS: http://www.nyc.gov/html/acs/html/statistics/statistics_cd_snapshot.shtml and http://www.spatialinformationdesignlab.org/publications.php?id=84.

Percentage of Children under 18	In NYC	In Highbridge/ Concourse	In Greenwich Village/ Soho
Asian	10%	1%	21%
Black	27%	30%	2%
Latino	35%	67%	7%
White	24%	1%	64%
Other	4%	2%	7%

Table 3 compares these two Community Districts and the city as a whole in terms of poverty rates, average household incomes, the unemployment rate, infant mortality rates, educational attainment, and rates of child abuse and neglect (which are based on substantiated reports). To take some examples of the disparities, in Highbridge almost half of all children live below the poverty line, and the average household income is only slightly above $33,000 per year. In 2007, 7.2% of the children in this Community District were the subject of child welfare reports, but this

statistic does not capture the large numbers of children who have been the subject of reports at some time during their lives. This is in direct contrast Greenwich Village/SoHo, a wealthy and overwhelmingly white neighborhood where it is rare for families to be involved with child welfare. In this Community District, the median income is over $178,000 per year and only 15% of children lived below the poverty line. Only 1.2% of the children in this neighborhood were the subject of reports in 2007. Highbridge/Concourse had almost twice the unemployment rate of the city as a whole and more than three times the rate of Greenwich Village/SoHo. The number of children living under the poverty line was about one and a half times greater in Highbridge than in the city as a whole and more than 3 times greater than in Greenwich Village.

Table 3: Comparison between CDs with most and fewest placements and New York City overall, Economic and Social Indicators

Data from ACS: http://www.nyc.gov/html/acs/html/statistics/statistics_cd_snapshot.shtml and http://www.spatialinformationdesignlab.org/publications.php?id=84.

	NYC	Highbridge/ Concourse	Greenwich Village/ Soho
% of Married couples w/children below poverty line	14%	23%	10%
% of Single-parent families below poverty line	41%	86%	22%
% of Children below poverty line	28%	49%	15%
Average household income	$75,861	$37,383	$178,464 (median)
% of households earning less than $15,000/yr	16%	33%	6%
Unemployment Rate[3]	9.7%	18.1%	5.1%
Infant mortality per 1,000 live births	5.9	4.8	1.1
% of population with a high school diploma or more	71%	53.2%	91%
Child victimization rate per 1,000	16.7	25.8	3.6

[3] This number comes from a Nielson survey that attempts to capture not only those actively looking for work but also those who are "discouraged" and not looking actively and those who are underemployed.

In 2007, the percentage of investigations in which at least one child was found to be maltreated was higher in Highbridge/Concourse and lower in Greenwich Village/Soho as well (see Table 4). In other words, investigations in Highbridge are more likely to find that children are maltreated. This suggests that family problems are more likely to be labeled neglect in poor communities of color than they are in wealthier, white communities.

Table 4: Comparison between CDs with most and fewest placements and New York City overall; Substantiation Rates
Data from ACS: http://www.nyc.gov/html/acs/html/statistics/statistics_cd_snapshot.shtml.

	NYC	Highbridge/ Concourse	Greenwich Village/ Soho
# of Reports	58,500	2,047	76
% Substantiated	39.8%	40.7%	35.5%

The numbers of African American children placed in foster care in both of these Community Districts was disproportionate compared to their percentage of the population (see Tables 5 and 6). In Highbridge, 58% of the children placed in foster care are Black although Black children made up only 30% of the population of children under age 18. Latino children are underrepresented in the foster care population in this neighborhood.

Table 5: Racial Disproportionality in Foster Care Population (Highbridge/Concourse)
Data from ACS: http://www.nyc.gov/html/acs/html/statistics/statistics_cd_snapshot.shtml and http://www.spatialinformationdesignlab.org/publications.php?id=84

	% of Population of Children 17 and under	# in Foster Care Population	% of Foster Care Population
Asian	1%	13	1.8%
Black	30%	423	58.0%
Latino	67%	276	37.9%
White	1%	3	0.4%
Other/Unknown	2%	14	1.9%

In Greenwich Village, 50% of the children placed (nine) were Black although Black children made up only 2% of the population under the age of 18. In these neighborhoods, then, as in the U.S. as a whole, ACS disproportionately impacts the lives of families of color.[4]

Table 6: Racial Disproportionality in Foster Care Population (Greenwich Village/SoHo)
Data from ACS: http://www.nyc.gov/html/acs/html/statistics/statistics_cd_snapshot.shtml and http://www.spatialinformationdesignlab.org/publications.php?id=84.

	% of Population of Children 17 and under	# in Foster Care Population	% of Foster Care Population
Asian	21%	0	0.0%
Black	2%	9	50.0%
Latino	7%	5	27.8%
White	64%	4	22.2%
Other/Unknown	7%	0	0.0%

In talking with parents involved with child welfare who live in neighborhoods like Highbridge/Concourse, it became clear that they were struggling to raise children despite poverty, crime, violence, housing problems, lack of childcare, and failing schools (see Chapter 2 for a review of literature that further documents these issues). Most of the parents I interviewed received government benefits or worked at low-wage, part-time service jobs (see below), without benefits and with inflexible schedules and stressful working conditions. Their efforts to provide for their children adequately were constrained by inadequate incomes and government benefits that were subject to being cut off. Parents also dealt with crowded or dilapidated housing and some were vulnerable to eviction and homelessness. Their neighborhoods are generally unsafe and they were constantly worried about the safety and futures of their children. Drug treatment and other social services were scarce (see also Mullings & Wali 2001).

[4] A 2007 report found that African-American children were overrepresented in the child welfare system, being reported more often, placed in foster care more often, and staying in foster care longer. This report calculated the "disproportionality index" (a number under 1 is under-representation and a number over 1 is overrepresentation) and found it was 2.26 nationwide for African-American children and .68 for white children in 2004 (i.e. Black children were represented in foster care at over twice their proportion of the child population). In New York State, the index was 2.63 for Black children and .37 for white children. The race of children in the foster care population in New York State was more skewed than it is nationwide (United States Government Accountability Office 2007).

Methodology and Data

My research (carried out between October 2006 and November 2007) included observations at various sites, a survey of parents, in-depth interviews and informal conversations with people involved in the child welfare system. I observed Family Court proceedings in all five boroughs of New York City, and attended support groups, parenting classes, and case conferences. I was also able to interview some parents in their homes to get a sense of their neighborhoods and housing situations. I interviewed caseworkers, attorneys for parents, law guardians (attorneys for children), lawyers for ACS, parents, and parent advocates. I also conducted a survey of parents from two parenting classes about their experiences with the child welfare system. I chose sites for observation that would enable me to see the broad range of cases that child welfare deals with, information about cases and how decisions are made, and an overview of the common problems faced by parents in their daily lives while navigating the child welfare system. After spending time at these various sites, I began to meet officials in child welfare (caseworkers, lawyers and judges) and parents. From there, I conducted open-ended interviews with officials and conducted a survey of parents in order to learn more systematically about their cases and the common road-blocks they faced. Over a period of time I found parents willing to allow me to follow-up with them and their cases.

I began with over two months of observations in New York City Family Courts in Brooklyn, Queens, and Manhattan. Later in the project I was also able to observe cases in the Bronx and Staten Island when I attended hearings with parents who had cases there. I began with family court because it is open to the public and so observing was not difficult. I contacted the administrative judge for the family courts in the city to let him know what I was doing, and he contacted the administrative judge in each borough to tell them that I would be coming. In

Brooklyn, specific child protective judges were asked if I could observe their courtrooms. One declined (although I observed his courtroom later while observing intake and shadowing attorneys), but another welcomed me and allowed me to actually sit next to her on the bench for two weeks. This was the first courtroom I observed, and this experience was invaluable in terms of learning about the legal process. Family court proceedings are conducted quickly and in specialized legal terminology, so they can be hard to follow. The judge also allowed me to look at court files, so I was able to gather details about cases that are sometimes difficult to obtain without this access.

While observing family court, I took extensive notes about the proceedings, paying particular attention to the allegations in the case, the services offered, how parents were treated, and information about how decisions in the case were made. In Brooklyn I sat with the same judge, while in the other boroughs I chose a different courtroom each day and watched all the cases heard there. I also asked the supervising attorneys in two boroughs if I could observe the intake process in which the lawyers for the child welfare agency speak with caseworkers and then draft the petitions to file in court. They allowed me to, and this was invaluable in terms of learning more detail about the investigation process and how decisions are made. Finally, I followed two lawyers as they did their jobs to observe their practices first hand.

During my observations at court I met attorneys and caseworkers and was able to talk to them informally and ask for interviews. A neighbor of mine is a parents' attorney, and he introduced me to attorneys and asked caseworkers if they would talk to me. Through the friend of a graduate school colleague, I was also able to meet a law guardian who had also been a caseworker. She allowed me to shadow her as she did her job and gave me a long list of attorneys and caseworkers to contact. Finally, I met ACS caseworkers while waiting at court, at

various public forums held by ACS, and even, once, at a restaurant near Queens' family court.[5] I generally was able to talk to legal professionals easily and was able to build a sample of caseworkers through various contacts. All caseworkers, attorneys, and judges were briefed about my research and signed consent forms agreeing to participate. I conducted 42 interviews with lawyers, judges, and caseworkers (I use pseudonyms to refer to all participants in this research). The caseworkers I spoke with are responsible for conducting investigations of reports of child abuse and neglect. In my interviews with them I asked them to describe the cases they see, the process of conducting an investigation, and how decisions are made about whether neglect is occurring and what interventions will be made in the family. Lawyers on all sides of the family court process discussed their cases with me and how the legal side of child welfare works. Judges discussed their decision-making and how they apply the broad legal concepts with which they must contend.

The next phase of my project began with observations at two support groups for parents who have open child welfare cases and at two parenting skills classes conducted at foster care agencies. The support groups yielded additional information about the allegations in these cases as well as about the common roadblocks parents face in navigating the child welfare system. In parenting classes, I observed the model of good parenting used by the child welfare system and gained insight into how services for parents are handled and the process they must go through to reunite with their children. I conducted a brief survey of 42 parents in these classes which asked them for basic information about themselves and their families, why their children were in foster care, how satisfied they were with their caseworkers and lawyers, and about any problems they had in getting needed services.

[5] A woman carrying an ACS tote bag asked to share my table, and I struck up a conversation with her.

Finally, I conducted 24 in-depth interviews with parents who were briefed about my research (both orally and through a written letter) and gave oral consent to participate. In these interviews I asked them to describe their interactions with caseworkers, the allegations in their case, and their experiences with the child welfare system. I also asked them to describe their daily lives including how they support themselves and their children; what their neighborhoods and their children's schools are like; any problems they have had meeting basic needs such as for income, medical care, and housing; and issues such as drug abuse and domestic violence. I followed the cases and lives of approximately half of these parents throughout the remainder of my project. I received updates from them periodically and attended case conferences, court appearances, and other meetings with them in order to see how their cases progressed and the issues they faced in navigating "the system" (as they generally refer to child welfare).

I had two main avenues for meeting parents: activist organizations that run parenting classes and support groups, and parenting classes at two foster care agencies. The Child Welfare Organizing Project was by far the most helpful. They allowed me to sit in their support groups, and I met many parents and heard their stories that way. In the analysis that follows, I do not talk about specific cases I heard about in these groups, unless the parent explicitly gave me permission. However, my understanding of the system is informed by the general themes that arose in their conversations and the view I got of the range of cases and barriers parents must deal with. As time went on, I was able to talk with parents about their cases and share with them what I had observed and learned through my research. In an effort to repay their kindness and hospitality, I volunteered to accompany parents to court. It was common for parents attending groups to ask if someone could come to court with them, not to advocate on their behalf (although a few wanted this), but to have moral support and company. The parent organizers

often were unable to do so and so I volunteered. I made it clear to parents that I was not able to advocate for them, but I was happy to attend to give them someone to talk to or to take notes for them about the hearing. I also explained to them that I was doing research and asked if I could discuss their case and follow-up with them. A few did not want to be included, and they are not. I also attended case conferences with three parents whom I got to know especially well.

My contacts with activists, and parent advocates at one foster care agency (they ran a parenting class I attended), were especially valuable in my research. They gave me their insights into "the system," which is how they refer to child welfare, and taught me what they knew (and they know a lot). I am extremely grateful to them. In addition, I think that their acceptance of me made it easier to develop some rapport with parents. Only after attending many groups or attending several sessions of a class did parents begin to talk to me informally. One mother, who eventually told me, openly, that she has become suspicious of many people since her experiences with child welfare, refused to speak to me initially. I did not ask her again, but several months later, she asked if I still wanted to talk to her. Many parents were initially suspicious of me, and I think the time I spent listening in support groups and sharing what information I had helped parents to feel more comfortable around me.

In addition to these activities, I attended public forums, hearings, rallies, and meetings about the child welfare system in New York City; and attended conferences for lawyers and other professionals about issues in child welfare. I kept up with news about child welfare and family court in newspapers and other smaller and grassroots periodicals that cater to workers in the non-profit sector and/or feature stories about child welfare.

Research Participants

Caseworkers: I interviewed 13 child protective staff members, including ten caseworkers (two of them had left this job in the recent past but were still working in the child welfare system), two Supervisors ("Sup II's"), and one Child Protective Manager (CPM). Descriptions of all of the caseworkers I interviewed can be found in Appendix 1. One of the supervisors, Ella, has never worked as a caseworker, but she has been a Sup II for 13 years (she was hired from another city agency specifically to be a supervisor) and is thus very knowledgeable. The other Sup II, Dan, who has been at ACS for over six years, and the CPM, Pamela, who has been at ACS for 11 years, both worked their way up from being a caseworker to management positions. Among the caseworkers, the length of time they have been in this position ranged from a year and a half to ten years. Most of them (seven out of ten) have worked as a caseworker for five to seven years. Thus, most of my sample was more experienced than the average caseworker currently at the agency, which has been plagued by high turnover.[6]

Most of the caseworkers/managers I spoke with are African-American women (seven: five caseworkers, one Sup II, and the CPM). Two other caseworkers were minority women, one was an African-American man, one a white woman, and one a white man; the other Sup II was also a white male. Most of the caseworkers are young (in their mid 20s to mid 30s), with the exception of the supervisors and two of the caseworkers who are in their 40s and 50s. This fits fairly closely with the overall demographics of caseworkers who are overwhelmingly young women of color with supervisors being more generally older and/or white.

[6] I received several estimates of turnover. One CPM told me that caseworkers stay an average of 18 months and that in her part of Manhattan they lost 20 caseworkers in one month. One of the Sup IIs told me he heard the average time people are staying is a year and a month. He also said he went through training with a group of 27 people 6 ½ years ago and only 5 are still at the agency. Carl, who is also a union representative, told me that the agency grossly underestimates turnover. He said that the agency only retains about 20% of the people they hire.

I do not have specific income information from the caseworkers, but current salaries at ACS (according to a job posting on their website retrieved in April of 2008) range from $39,568 to $45,822 (after 18 months). Following Wright's (1997) discussion of the complexities of mapping current class structures, it is important to think of classes as having both similar material interests, and similar lived experiences. By these criteria I consider caseworkers middle-class due to their income and benefits, education, and lifestyle. Although they do not have much autonomy in their jobs and are not considered professionals who "own" skills that they can take from job to job, they do have stable jobs, moderate incomes, and, as they told me, excellent benefits (except for childcare).[7] This contrasts sharply with the parents involved in child welfare who are likely to be unemployed or working in precarious service sector jobs and to be living at or below the poverty line. In terms of "lived experiences" and social capital caseworkers also differ from parents in that they have more education and can live in more affluent and safer neighborhoods. It is also likely that they come from families who are at least working class with stable jobs since they were able to go to college. A few caseworkers described themselves as coming from middle-class backgrounds.

I did not specifically ask these workers about their educational backgrounds, but many volunteered this information when I asked how they came to work at the agency. Currently, to be hired at ACS you must have a bachelor's degree, so I assume all of the workers I spoke with have a degree (Ella, the Sup II who transferred from another city department 13 years ago is a possible exception). Of the ten caseworkers, seven mentioned what their degrees are in: three have degrees in Forensic Psychology, one in Psychology, one in Sociology, and two earned

[7] Working for a government social service agency, they are vulnerable to budget cuts and efforts to increase "productivity." However, their particular jobs are unlikely to be cut given the constant turnover and high priority placed on child welfare investigations. Caseworkers also face long hours and inflexible work schedules.

Masters of Social Work (MSW) degrees while on the job (these are the two caseworkers who recently left those jobs). Of the three managers/supervisors, one did not mention her degree (she came to ACS from another city agency), one has a Masters of Social Work, and one has a BA in Psychology and an MA in Criminal Justice. Most of these child protective staff members attended City University of New York schools, many while also working.

Attorneys and Judges: I formally interviewed 13 lawyers (six parents' attorneys, four ACS attorneys, and three law guardians) and two judges. They were overwhelmingly white (11 out of the 13 attorneys and both judges) but included a parents' attorney who identified as Puerto Rican, an ACS attorney of Middle-Eastern descent, and a law guardian of Indian descent. Both of the judges and seven out of the 13 attorneys are women.[8] In terms of class, all of the legal officials I spoke with are professionals (they have legal skills that could be taken to other jobs, see Wright 1997) and are thus in a different class position than caseworkers and most of the parents who came before them. Judges make about $136,000 annually.[9] ACS attorneys make around $60,000 per year (or more if they become supervising attorneys), and the starting salary for Legal Aid attorneys is about $50,000 (but their contract guarantees yearly raises). The hourly rate for court-appointed parents' attorneys is now $75; this translates to a salary way below what could be made at many law firms, but it is still quite a bit above a caseworker's salary and vastly different from a minimum wage job. Attorneys also have fairly flexible work schedules (especially the court-appointed parents' attorneys), a fair amount of control over their work, and very secure jobs.

[8] This seems to fit fairly closely with the demographics of family court attorneys, judging by whom I saw around family court—most are white, with parents' attorneys more likely to be men and law guardians to be women. Most family court judges at the time of my research were also white women (15 out of 25), although there were also 5 white men, 3 men of color and 2 women of color.

[9] A lawsuit in 2008 was working to get the salary increased as it has not been changed in over 10 years.

Parents: Finally, I interviewed or got to know well 29 parents (see Appendix 2 for a complete list and summaries of their cases). The vast majority of these parents were either black (14) or Latino (12; either Puerto Rican or Dominican) and all were American-born. Only three parents (all mothers) were white. 22 parents are mothers while seven are fathers, and 14 of the 22 mothers I interviewed were single mothers raising their children alone. This includes one mother who was going through a divorce precipitated by the family's involvement with child welfare. She is white and middle-class and the only parent I met who had ever been legally married. The other eight mothers were currently with a partner who was the father of at least one of their children. Among the fathers I interviewed, two, both African-American and working-class, are raising children alone (in both cases the mothers had been using illegal drugs and lost custody through a child welfare case). Two other fathers, one African-American who was unemployed and relied on disability payments (he was homeless when we met), and another who identifies as both "African" and Puerto Rican and also relies on government assistance, were no longer with the mother of their children and did not have custody of their children.[10] I also spoke with three fathers who were partnered with the mother of (at least some of) their children.

In terms of class, and following Wright (1997), I classified 6 parents as "middle-class" in that they have college degrees and have worked in professional or social service jobs. Significantly, all three of the white women I interviewed are middle-class. These parents are similar to caseworkers in that they have relatively stable jobs, moderate incomes, and benefits. Some of these mothers have had jobs that provide autonomy and flexible schedules. However, the African-American mothers in this category, as is common among the African-American

[10] One of these men, Eric, was working to gain custody of his children after they were removed from his ex-partner and her new boyfriend and placed in foster care. In Edward's case his son was taken away from him and his former partner and placed with Edward's mother. He was not actively seeking custody when I spoke to him.

middle-class more generally in New York City, work or have worked in government or non-profit jobs which are vulnerable to budget cuts and so are not as stable as other middle class professions (Mullings & Wali 2001; Gregory 1998; Waldinger 1996; see also Pattillo-McCoy 1999). As women of color, they were thus in some of the least stable middle-class occupations in New York City's race- and gender-segmented labor market. For all of these middle-class women, their middle-class status, in terms of material resources, was precarious because they are single mothers and did not have the advantages of accumulated wealth or homeownership. Two of the women in this category, one is white and one is African-American, lost their foothold in the middle-class and were living at or near the poverty line when I met them, and their stories show the precariousness of middle-class status for single mothers and especially for black women. The mothers in this category became involved in child welfare due to a period of living near the poverty line when they lost jobs or housing or became involved in drugs, or because they relied on public social services (most prominently public hospitals) that reported them to ACS.

I consider five parents to be working-class and this category includes two African-American fathers and three mothers. Two of the mothers are Latina and one is African American. I consider them working class because they work in stable non-managerial jobs, either "blue collar" or "white collar," and generally are able to make ends meet. However, one mother, Irene, told me she sometimes went to food pantries to save money so that she could pay for her son's tuition to Catholic school and her college tuition. Their jobs are inflexible and have little autonomy, but most have benefits such as health insurance and many are in unionized occupations. Four of these parents, both of the fathers and two mothers, became involved in child welfare due to drug abuse (this includes Robert whose wife had an addiction) and were subject to

surveillance by the public services (especially hospitals) that they relied on. The other mother was reported to ACS by a public hospital when her daughter was observed by a pediatrician with bruises on her knee. The working-class status of some of these parents was precarious and achieved by combining various jobs. Two of the mothers were supported by family/partners.

The rest of the parents I interviewed (18) live at or near the poverty line. Eight of these parents are African-American, nine are Latino/a, and one identifies as both Black and Puerto Rican. This category includes 13 mothers and five fathers. Three of these parents work at low-wage service-sector jobs; ten rely on welfare, social security disability payments, and/or housing vouchers (most of these parents have worked in the past but were unable to due to their child welfare cases); two are supported by family members; and three combine government help with off-the-books or informal work. Some of these parents, like Joan and Eric, have worked at relatively stable, yet low-wage jobs at some point in their lives but have had periods of being out of work due to drug use, injuries, and/or child welfare cases. Others, such as Ramel and Elizabeth, have worked at low-wage service jobs on and off in their lives. A few, such as Amanda and Rose, survive almost exclusively on government help although some reported work in the informal sector such as working off-the-books at local stores or hairdressing. At most, these parents have a high school education, and some, like Salina, dropped out of school as a teen. In terms of income alone about 71% of my total sample was living in poverty. These parents were all vulnerable to child welfare involvement due to conditions that stemmed directly or indirectly from their poverty: housing problems, homelessness, reliance on public hospitals and Medicaid, or lack of resources to deal with drug use or mental health issues.

The parents living in poverty have dealt with personal problems and barriers to caring for their children. Many have used illegal drugs and, since they were vulnerable to testing and

surveillance, became involved in child welfare for this reason. Three mothers, Nicole, Rose, and Olivia, have mental disabilities or illnesses that have kept them from working. All three of these mothers get disability payments. Two mothers, Salina and Jasmine (both are Latina), were foster children themselves and have been involved with child welfare as adults. Jasmine has done better economically than Salina as she finished high school and consented to remain in foster care so that she could receive subsidized housing; she now goes to college part time. However, her decision to remain in foster care as a young mother left her vulnerable to child welfare reports. While living in a group home for teens she was reported to ACS by a social worker after getting into a verbal altercation with another resident. Some of these parents have experienced homelessness and have lived in shelters. Many of them currently live either with relatives or in dilapidated housing. Olivia, for example, was evicted from a Section 8 apartment after a live-in boyfriend's arrest and moved to a single room in a run-down building. When she refused to go into the homeless shelter system, her children were placed in foster care. Three of the four men in this category have a criminal history that has hindered their ability to work and to gain custody of their children.[11] The combined effects of poverty and race created situations in which these parents faced barriers to caring for their children and they were vulnerable to child welfare reports.

For all the parents in my study, even for those whom I consider middle- and working-class, these parents' efforts to provide for their children adequately were constrained in various ways. For those living in poverty, the government benefits they relied on were subject to being cut off for various reasons or they were required to participate in work requirements without adequate provision for childcare. Many relied on Medicaid and food stamps in order to make

[11] Two of their criminal histories were related to drugs and selling drugs and one had a history related to gang activity as a teen.

ends meet. Due to New York City's racially segregated labor market in which Latinos/as and African-Americans are concentrated in the lowest-paying and least stable jobs (Mullings & Wali 2001; Waldinger 1996; Mollenkopf & Castells 1991), the positions in which most parents had worked or were qualified for did not always provide enough income to make ends meet. Arranging childcare with changing or inflexible schedules was difficult. Due to the combined effect of class inequality and racially segregated housing, many parents dealt with crowded or dilapidated housing and some were vulnerable to eviction and homelessness due to income loss or, in some cases, gentrification and increased rents. They generally lived in unsafe neighborhoods where drugs and violence were common and where they were constantly worried about the safety and futures of their children. Drug treatment and other services were scarce and many raised children with little financial support from fathers and other family members (Mullings & Wali 2001). All of these factors must be understood as part of the larger context of how they became involved with child welfare and why they were considered neglectful.

Dissertation Outline

The following chapter reviews the literature that forms the theoretical and conceptual background for my project as well as previous studies of the child welfare system. Chapter 3 will trace the history of the child welfare system and highlights the ways in which efforts to help children have always been part of larger state projects to govern poor families and populations. The discussion will include developments in both charitable and state efforts to help children and in efforts to deal with poverty. Chapter 4, based on my fieldwork as a whole, will turn to the current child welfare system in New York City and will describe the process a case goes through in order to examine the underlying assumptions behind child welfare and its practices. This

chapter aims to provide the reader with an orientation to the process, the child welfare system, and the individuals who play a role in it.

Chapter 5, which draws on my interviews with child welfare officials and parents, will explore the sense of crisis that seems to be endemic in recent child welfare practice and that was especially heightened during my fieldwork. It will discuss how child welfare is overburdened with high caseloads and will explore some of the effects this has on the families who come are caught up in it. It will also examine the difficult mandate that caseworkers and family court officials must carry out, namely to protect all children, and how the fear of making a bad decision plays an important role in their jobs and decision-making. Chapter 6 will focus on why certain families are more likely to be investigated by child welfare and why they are more vulnerable to child removal. It will also address the question of to what extent child welfare is in line with dominant trends under neoliberalism (see Chapter 2 for a review of the literature on neoliberalism and what these trends are). I will outline the forms of surveillance to which poor families of color are subject and will address the question of whether the helping role of child welfare caseworkers is subordinated to their law enforcement and child protection role—a larger trend under neoliberalism. Finally, I will consider to what extent race, class, compliance, and the differential power held by caseworkers and parents play a role in caseworker's decision-making.

Chapters 7 and 8 focus on the family court and how the legal construction of unfit parents unfolds. Chapter 7 will take up the question of to what extent the family court provides judicial oversight of ACS decisions and a balance between child safety and parents' rights. I will explore day-to-day practices in court and the views of parents held by attorneys and judges. An important theme will be the place of larger societal ideologies of race, class, and neoliberalism in family court and how they affect practices there. Chapter 8 looks more closely at the decisions made in

family court and will explore what fits within a legal definition of neglect, when it is viewed as serious enough to warrant state intervention, and when the level of risk to a child is deemed high enough to justify placement in foster care. I will address the question of what standards of adequate childrearing parents are held to and whether or not the barriers they face in parenting are acknowledged. Chapter 9 will investigate the process that parents must navigate in order to regain custody of their children after they have been placed in foster care. Drawing on Polsky's idea of the "therapeutic state" I will discuss what changes parents are expected to make in their lives and the services through which it is thought these changes will occur. I will also discuss the role of power in this process by examining the central role of compliance in judgments about when parents are ready to regain custody. Finally, I will demonstrate how poverty is both recreated through child welfare and is a barrier to reunification.

Chapter 2: Literature Review

My focus, in this dissertation, on definitions of child neglect and the day-to-day practices of the child welfare system is guided by an overarching concern with understanding how state practices build on and recreate inequalities and with adding to our understanding of state efforts to shape the lives and behaviors of poor women of color in the contemporary United States. I see the child welfare system, which is fundamentally about judging individual mothers (and, to a lesser extent, fathers) and making decisions about child custody, as integral to the production and reproduction of stratified reproduction and inequalities of race, class, and gender. This dissertation argues, in part, that the child welfare system is one of the most direct ways that the state is involved in stratifying reproduction and is an important component in understanding the experience of poverty in the United States. Thus I start from the insights generated by critical anthropological work on reproduction, poverty, and state practices and seek to expand these literatures by attending to the child welfare system, an arena which has not received sustained attention. This literature review will outline the starting points of my study—insights from anthropological understandings of reproduction and of poverty—and the theoretical frameworks I will be using to analyze state policies and practices under neoliberalism. It will end with a brief review of other studies of the role of race, class, and gender in child welfare.

Reproduction and "Stratified Reproduction"

This study uses reproduction, as Ginsburg and Rapp propose, as an "entry point to the study of social life" that provides a window into how cultures are "produced (or contested) as people imagine and enable the creation of the next generation" (1995a: 1-2). I begin from the premise that reproduction is not simply a matter belonging to a "private sphere" that is nonpolitical and separate from the "public" world of politics and the economy (Ginsburg & Rapp

1995b). Instead, reproductive practices have political implications and are structured by inequalities surrounding race, class, and gender as well as by state policies and tactics (among other social forces) (Ginsburg & Rapp 1995a). Reproductive practices are often a key arena in which social categories are created and ranked such that racial, ethnic, and class groups are, in part, defined by their reproductive practices and viewed as, for example, more or less "modern" or "responsible" or "worthy" on that basis (see, for example, Kanaaneh 2002; Colen 1995; Mullings 1995; Maternowska 2000). The term "stratified reproduction" is especially helpful because it describes "the power relations by which some categories of people are empowered to nurture and reproduce, while others are disempowered" (Ginsburg & Rapp 1995a: 3). This concept is foundational for this study because it provides a way to talk about how other systems of inequality impact individual's reproductive practices, the choices available to them, and the supports they are able to access in bearing and raising children. My study starts from the reality of stratified reproduction and asks how, precisely, is it produced and reproduced in the day-to-day practices in the child welfare system.

I thus move beyond existing work that has fruitfully used this concept to largely *describe* the dominant patterns in how reproduction is stratified—i.e. by race, class, and sexuality (Appell 1998; Cancian et al 2002; Kanaaneh 2000; Ladd-Taylor & Umansky 1998; Mink 1998; Mullings 1995; Roberts 1997; 2002; Sullivan 1993; Susser 1991; 1996; 1998; McCormack 2005)—or has focused on the creation of stratified reproduction through power relations and discourses of motherhood, family, and childrearing that *create opportunities* and *allocate resources* that allow some women to reproduce and care for children while it is more difficult for others. Previous studies focused on reproduction have examined:

- Reproductive technologies (Ragone & Twine 2000; Pollock 2003; Franklin & Ragone 1998),
- Population policies (Kanaaneh 2000; Petchesky & Judd 1998; Greenhalgh 1994; Kaler 2000; Lopez 1997; Maternowska 2000; McKinley 2003),
- The punishment of women who use drugs while pregnant (Gomez 1997; Roberts 1997; Young 1994; Zerai & Banks 2002; Tsing 1990), and
- Dominant representations of women of color and poor women as mothers (Connolly 2000; Mullings 1997; Ortiz & Briggs 2003; Roberts 2002; Glenn et al 1994; Kingfisher 1999; Williams 1995).

What has been less studied, however, and what this dissertation focuses on, is how everyday state practices empower or disempower women (and men) to carry out their caretaking work through the legal processes that grant custody of children to some and not to others based on notions of what the proper care of children entails and what kinds of individuals proper parents should be. It will also focus on state efforts, through child welfare, to create responsible parents/citizens.

I also draw on studies focused on poverty and reproduction which have described the difficulties that poor, minority, and working-class women face in carrying out their reproductive work and demonstrate that, while women of all classes are primarily held responsible for the care of children, they have access to vastly different opportunities and supports (Mullings & Wali 2001; Susser 1993; Bolles 1983; Scheper-Hughes 1987; 1992; Dill 1988; Hays 2003; Stack 1974). For example, professional women are able to buy the childcare services of immigrant women (Colen 1995; Susser 1991; 1998; Parrenas 2001), but poor and working class women often struggle to find quality childcare and/or must leave children inadequately supervised (Susser 1991; Edin & Lein 1997; Hays 2003). It has also been demonstrated that government institutions and social service agencies shape the experience of poverty and the family structures of poor populations, and that changes in state support for poor families have reduced the safety net upon which women have relied in the past to enable them to raise children (Abramovitz

1996a; Goode & Maskovsky 2001a; Mink 1998; Sidel 1996; Solinger 2001; Kingfisher 1998; Morgen 2001; Morgen & Maskovsky 2003; Sharff 1998; Susser 1993; Susser & Kreniske 1987; Roberts 1999; Kingfisher 1996). This study builds on these insights by examining how and why poor women become involved with the child welfare system and to what extent judgments about their caretaking acknowledge the constraints they face.

While anthropologists and others have cited the reality of child removal in the lives of poor families (see Gailey 1998; Susser 1998; Edin & Lein 1997; Edin & Kefalas 2005; Fine & Weis 1998) and have critiqued the child welfare system for ignoring extended kin networks and breaking up families needlessly (Stack 1983-84), this system has not been the *focus* of anthropological study[12] outside of work about Native American communities' interactions with it (see Barkwell et al 1989; Goldberg-Ambrose 1994; Joans 1997). More importantly, there has been little attention paid to exactly *how* the state judges the care of children and attempts to create responsible mothers. My study will build on existing studies to extend our understanding of state policies that judge and attempts to shape poor mothers' behaviors and caretaking work. It will illuminate how standards of childrearing might be class- and race-specific as well as ethnocentric (Korbin 1977; Korbin 2003).

Finally, anthropologists and other researchers have pointed out that American society more generally has tended to view the care of children as a private matter despite a long history of the regulation of the families and reproductive lives of women of color (see, for example, Mullings 1997; Roberts 1997). Individual families, and mothers in particular, are often held

[12] There is literature about the child welfare system in the U.S. in social work and legal studies that takes a critical approach and provides important insights that I have drawn on (Appell 1998; 1997; Golden 1997; Pelton 1989; Roberts 2002; Reich 2005; Guggenheim 2000; 2005; Lindsey 1994; Wexler 1995; Derezotes et al 2004; Waldfogel 1998). There is also literature about how the system functioned historically (Billingsley & Giovannoni 1972; Gordon 1988; Broder 2002) and about efforts to protection children in other countries (Briggs & Mantini-Briggs 2000; Swift 1995; Elizabeth 2004; Anglin 2002; Gillingham 2006; Parton et al 1997; Kline 1992).

solely responsible for the care and wellbeing of children (Hays 1996; Ivy 1995; Roberts 2002) even though a majority of mothers work outside the home and there are important *social* factors that impact children's wellbeing—poverty, public schools, availability of health insurance and child care, etc… These ideologies continue to be imbedded in contemporary child welfare policy and practice and profoundly influence how individual women and their caretaking are judged.

Poverty and State Policy

This dissertation takes as a second starting point anthropological studies of poverty, how it is experienced, and understandings of it as created and recreated by the workings of capitalism and the "interconnected ideologies of race, class, gender, sexuality, and nationhood" (Goode & Maskovsky 2001a: 16). I see the child welfare system as part of these larger processes—judgments about caretaking in child welfare often reflect ideologies about the "unworthiness" and "irresponsibility" of poor women of color (see, for example, Zucchino 1995; Sidel 2000; Roberts 1999; 2002), and the child welfare system actually plays a role in recreating poverty. Anthropological studies of poverty have a long history of attempting to dispel popular (Katz 1989; Moynihan 1965; Murray 1984) and scholarly (Lewis 1966; Wilson 1987) conceptions that it is the behavior of the poor themselves that is to blame for their poverty (see, for example, Jones 1993a; Leacock 1971; Liebow 1967; Stack 1974; Valentine 1968; Valentine 1978). Furthermore, anthropologists have attempted to counter ideas about the "disorganization" and hopelessness of poor people by keeping their agency firmly in view (see the articles in Goode & Maskovsky 2001b; Susser 1982; and reviews by Susser 1996; Morgen & Maskovsky 2003) an approach I take as well. A recent collection of articles by Goode and Maskovsky (2001b) is especially useful in that it ties the production of new forms of increasing class inequality directly to recent changes in the global economy and to an increasingly "neoliberal" ideological climate.

As I will discuss, neoliberal ideology has affected child welfare policy and practice, and neoliberal notions of what a good citizen looks like influence views of parents who are affected by this system, as well as shape efforts to reform them.

One important body of work within this larger anthropological tradition illuminates how government institutions and social service agencies (among other public institutions) shape the experience of poverty and even the family structures of poor populations (Abramovitz 1996a; Kingfisher & Goldsmith 2001; Kingfisher 1996; 1998; Morgen 2001; Mullings 1995; Piven & Cloward 1993; Sharff 1998; Stack 1974; Susser 1993; Susser & Kreniske 1987; Susser 1991).[13] Given this focus on the role of the state, much recent work on poverty has been focused on recent welfare restructuring through the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA or "welfare reform"). This law imposed a more restrictive set of guidelines and time-limits that aimed to end the supposedly pathological "dependency" of welfare recipients who were imagined as single, black mothers. Since this time, anthropologists and other social scientists have contributed much to our understanding of this law and how it affects the daily lives of people living in poverty (see a review by Morgen & Maskovsky 2003; Edin & Kefalas 2005; Hays 2003), while Kingfisher's (1998; 1996) and Morgen's (2001) recent ethnographies of welfare offices are an important contribution to our understanding of the workings (and indeed production) of policy at the local level. In contrast to this focus, recent policy changes in and the workings of child welfare have been little studied (outside of social work and legal studies) although this is another domain of state policy and practice which almost exclusively impacts poor and working-class families and one that was

[13] For example, Susser (1991) found that, in the 1980s, welfare agencies and homeless shelters contributed to the break-up of poor families when men and even older male children were not placed on women's welfare "budgets." If families became homeless, men were not accepted into shelters and caseworkers frequently encouraged women to place their children in foster care.

similarly "reformed" along neoliberal lines in 1997 (in fact, these child welfare changes were originally part of PRWORA).

In addition to studies of welfare and welfare reform, there has also been important research conducted on the criminal justice system and the dramatic increase in incarceration, another realm of state practice which disproportionately impacts poor families and communities of color (Campbell 2006; Gilliom 2001; Mullings 2003; Sullivan 1990; Jordan-Zachery 2003; Wacquant 2008; 2001). One important insight from this literature is that, in recent decades, there has been a shift "from the social to the penal treatment of poverty" as incarceration, along with "workfare," is used to reinforce class/race inequalities. A "carceral-assistential complex" has been created with the mission

> to surveil, train and neutralize the populations recalcitrant or superfluous to the new economic and racial regime according to a gendered division of labor, the men being handled by its penal wing while (their) women and children are managed by a revamped welfare-workfare system designed to buttress casual employment" (Wacquant 2001: 97).

I see the child welfare system as another area of state practice that "manages" poor women and children and one that has been reformed along similarly punitive and neoliberal lines. However, it is important to note that child welfare today shows important continuities with the past. It has a long history of being part of state efforts to regulate poor populations and attempts to mold them into proper citizens. Many practices and underlying assumptions in child welfare show similarities with older forms (see below and Chapter 3).

Neoliberalism, The State, and Governance

I do not only want to show that child welfare is another way to shape and regulate the lives of poor parents, however. I am interested in the concrete processes by which the state judges childrearing, shapes the lives of poor families, and seeks to create particular kinds of

parents. To get at these issues, I draw on anthropological understandings of neoliberal ideology and theories of governmentality and the forms it has taken in recent decades. I see recent changes in child welfare policy and practice as partially shaped by neoliberalism (although it also has underlying assumptions that are much older), and this dissertation traces some of the ways in which neoliberal ideas about individual responsibility shape child welfare decision-making, policy, and practice. Anthropologists have argued that neoliberalism must be understood as a "cultural system" (Kingfisher 2002) that uses an ideology of individual responsibility for social problems and a belief in the superiority of unregulated markets and competition to roll back state support for various social services at the same time as policing and social control functions are expanded. It has also defined the family and caretaking work as private and outside of the state's purview (Goode 2002; Goode & Maskovsky 2001b; Kingfisher 2002; Morgen & Maskovsky 2003; Scheper-Hughes & Sargent 1998; Stephens 1995a). As a result, it is argued, state support for caretaking work has been withdrawn and poor women have been defined as "degendered workers" rather than mothers (Kingfisher 2002).

It is clear that state support for poor families has dramatically decreased and been defined as no longer an entitlement but rather a short-term benefit that is contingent on recipients' behavior—especially upon their participation in the paid labor force (Jimenez 1999; Roberts 1999; Mink 1998). Child welfare practices do draw on ideologies of individual responsibility in judging parents and attempt to alter parental behavior in ways consistent with beliefs about how good citizens ought to act. It also seems clear that child welfare has become more punitive and increasingly tied to formal policing. Along with welfare and incarceration, child welfare is part of state efforts to extend social control over poor people of color.

At the same time, however, many accounts of state change under neoliberalism oversimplify recent changes in social welfare policy and practice (see Clarke 2004 who argues this is a common problem in studies of neoliberalism). Cultural ideas about family, caretaking, and motherhood continue to be central to state practices in the realm of child welfare. Women are still judged as *mothers* while their status as workers is often secondary. In addition, responsibility for the proper upbringing and support of children has, at most times in U.S. history, been defined as a private matter, and individual poor parents have long been blamed for poverty and been subject to judgments about their parenting that tend to conflate poverty with neglect, immorality, and criminality (see Chapter 3). Thus, there is a continuum between child welfare practices today and past attempts to regulate and shape poor family life. This dissertation will, by examining this area of state policy and practice, clarify the nature and direction of state change by expanding our knowledge beyond policy that overtly deals with poverty.

In trying to understand the complexity of recent state change, I draw on the governmentality literature which views "the state" not as an entity that acts in particular ways, but rather as a set of practices and tactics, which are not necessarily internally coherent, that aim to govern and shape populations. This allows, I think, for a more nuanced understanding of state change. This view of the state is also important in understanding a system like child welfare which tends to straddle what might more traditionally be thought of as "public/state/government" and "private/philanthropic/non-government" lines. Rather than focus solely on formal state institutions such as family courts and child protective agencies, this project is concerned with the various sites in which practices and tactics that aim to protect children are carried out—from government-run child protective agencies, to privately-run foster care agencies operating under government contracts, to mandated reporters, to social service agencies and drug treatment

centers.

In some of his later works, Foucault outlines the emergence of modern ideas about "government," which focused on rule at various levels (state, family, self) (Foucault 1978: 91-92), had a "plurality of specific aims," and used tactics (policing, administrative apparatuses, public health, statistics) to arrange things so that ends could be achieved (Foucault 1978: 95). Government, in this sense, "draws our attention to the variety of ways of reflecting and acting which aimed to *shape, guide, manage or regulate the conduct of persons*—not only other persons but also oneself—in the light of certain principles and goals" (Rose 1993: 287, emphasis added). In addition, Foucault uses the term "governmentality" to draw attention away from an analysis of "The State" (i.e. formal set of institutions and actors) to a larger attention to the political and to "'a certain mentality of rule': a way of problematizing life and seeking to act upon it" (Rose 1993: 288). It is thus the *tactics* and *practices* used that define the state, its power, its domains, and its limits, and these can change over time.

Scholars have used these ideas in their treatment of various methods by which states have regulated populations through regulating families and childrearing. These discussions also draw on Foucault's conceptions of power in that they see power as not simply "top down" and repressive (although it can be repressive). Rather, power is evident in the ways that individuals are engaged in monitoring and controlling themselves through various "technologies of the self" and the ways that these techniques create certain ways of being and thinking (Foucault 1988).The key contribution of these studies, for this dissertation, is the focus on how individuals of different races, genders, and classes will be subject to different tactics based on evaluations of how well they are able to govern themselves and comply with societal norms.

For example, in *The Policing of Families*, Jacques Donzelot traces the history of the government of families since the 18th century when there began to be a concern with the health, education, and upbringing of children. At this time, there was a criticism of both upper-class ways of raising children, which were thought to produce children with weak bodies "trained…exclusively in pleasure and in dress" (Donzelot 1997 (1977): 12), and the methods used to care for "foundlings" and other poor children in institutions which were plagued by an appalling mortality rate whereby children died, cared for at public expense, before they could become of use to the state as soldiers, settlers in the colonies, etc… (Donzelot 1997 (1977): 10; see also Davin 1978; Comacchio 1992). Medical advice about proper childrearing was given to bourgeois women through advice books, while poor families were subject to interventions aimed at controlling their children, stopping parents from abandoning children to be cared for at public expense, promoting marriage, and encouraging them to settle in one place (rather than roam around as vagabonds).

Families thus became an important site for controlling populations and inculcating values, and it was thought that proper families would be able to accomplish various social ends: "eliminating illegality, curbing inebriety, and restricting promiscuity, imposing restrictions on the unbridled sensualities of adults and inculcating morality into children" (Rose 1999: 3) The institution of legal marriage was thought to "promote emotional and economic investment by both men and women into the home, cathecting domesticity at the expense of street life, public bawdiness, and vice" (Rose 1999: 3-4). Women were especially targeted by philanthropy, in part because of new medical and psychological thinking that held that the extremely close attention of mothers was needed to ensure children would develop properly (Rose 1999; Donzelot 1997 (1977)). These aims, with the exception of marriage promotion, are still pursued through

governing parenting and family in child welfare.

Families who failed in these duties had to be dealt with, however. To this end, philanthropy was the preferred solution in newly liberal states in which it was not desirable to support everyone as this would be costly, erode power at the top of the social hierarchy, and was not in keeping with a liberal economy. Nor was it possible to leave poor families without help as this would continue the problem of improperly cared-for and socialized children and give rise to class conflict. Philanthropy sought "to promote certain kinds of moral conduct by coupling the provision of financial aid with conditions as to the future conduct of recipients" (Rose 1999: 129). By the end of the 19th century, however, more of the work of governing through families was carried out by political authorities and "a web of legal powers, social agencies, and practices of judgment and normalization began to spread around troubled and troublesome children" in the form of public health projects, juvenile courts, and child guidance clinics (Rose 1999: 131; see also Donzelot 1997 (1977); Polsky 1991).[14] At the same time that political authorities were becoming more directly involved in governing through families, various experts (psychologists, psychiatrists, doctors, social workers) disseminated representations of "normal" family life, motherhood, and fatherhood. This "regulation of images" as Donzelot puts it, played a role in creating an investment in carrying out their familial duties (Donzelot 1997 (1977); Rose 1999). The child welfare system in the U.S. was an integral part of this history (see Chapter 3).

Once government institutions took on the task of governing individuals and families, it was those who were thought to be failing in their duties and in need of being taught "mainstream values" that were subject to state interventions. "Therapeutic states," as Polsky calls them, assume that not everyone is able to adjust to everyday life and "function according to the rules

[14] Donzelot (1997 (1977)) refers to these as the "tutelary complex" and Polsky (1991) terms them the "therapeutic state."

by which most of us operate" (Polsky 1991: 3). For those seen as able to adjust, therapeutic involvement is voluntary and seen as helping with concrete problems, since it is assumed it is unnecessary to "instill in them mainstream values to which they already subscribe." On the other hand,

> public therapeutic intervention aimed at marginal citizens proceeds from the assumption that they cannot govern their own lives. The state therefore seeks to "normalize" them… Lower-class clients do not seem to require merely a bit of support, like their middle-class counterparts, but instead wholesale personal and family reconstructions… Further, resistance on their part will not be tolerated. The state has the legal tools to impose client status upon marginal citizens and the coercive instruments to compel them to remain in that exposed position (Polsky 1991: 4)

To this day, child welfare is one realm in which parents who seem unable to cope and conform are expected to engage in various kinds of education and therapy in order to turn them into responsible parents while family courts are used to force compliance (see Chapter 9).

Apart from insights into the history of governing populations in these ways, these theorists have also provided important insights into recent forms of governmentality. For Rose, recent decades have been marked not only by neoliberalism, i.e. a reassertion of liberal ideas about the role of government and the market, but also include governing in new "advanced liberal" ways. First, "the calculative regimes of positive knowledges of human conduct are to be replaced by the calculative regimes of accounting and financial management" as the "new techniques for exercising critical scrutiny over authority" (Rose 1993: 295). Reliance on the audit of various institutions and experts (for example schools and social welfare agencies), in particular, is both an outcome of the loss of trust in experts and contributes to further loss of trust (Rose 1993: 295). Second, the subject of government has increasingly become the *individual* who is required to manage his/her own risks (as opposed to relying on social welfare or social insurance) (Rose 1993: 298).

These changes have important implications for child welfare. Agencies are subjected to increasing scrutiny, and their decisions are called into question and subject to audit by managers and the courts. Risk assessment has arisen as a way to target interventions given scarce resources and to create an auditable record of decision-making (Parton 1996). Responsibility for children and for behaviors thought to place children at risk is placed on individual parents at the same time that they must deal with shrinking social services and declining state responsibility for enabling social reproduction (see, for example, Katz 2006). Decisions in child welfare often hinge on parents' willingness to "take responsibility," stop risky behaviors, and comply with caseworkers' demands.

Perspectives on Risk

As hinted at above, "risk" is a key concept in current child welfare practice and policy. Theorists from a range of perspectives have argued that risk has become a pervasive concept in recent decades and one "by which individuals, social groups, and institutions are organized, monitored, and regulated" (Lupton 1999a: 25). Although varying in to what degree they see risks as socially constructed, these theorists all identify a discourse of risk that holds it is amenable to management and is strongly associated with "notions of choice, responsibility, and blame" (Lupton 1999a: 25). Lupton (1999a) has divided this literature in terms of three main perspectives: risk and culture (Douglas 1992), risk and reflexive modernization (Beck 1992), and risk and governmentality (see, for example, Dean 1995; Fisher & Poland 1998; Lupton 1999b; O'Malley 1996; 1992). All three agree that risk acts as a way to assign blame to individuals and point out that perceptions of risk can be used to differentiate between social groups and exacerbate power differentials. Beck, in his discussion of "individualization," for example, argues that, as individuals are expected to shape their own lives and be in control, as it were, of

their own destinies,

> inequalities by no means disappear. They merely become redefined in terms of an individualization of social risks. The result is that social problems are increasingly perceived in terms of psychological dispositions…Social crises appear as individual crises, which are no longer (or are very indirectly) perceived in terms of their rootedness in the social realm (Beck 1992: 100).

Theoretical approaches to risk that draw on Foucault's concept of governmentality have the most relevance for this study because they focus most closely on how ideas of risk serve to draw lines between groups and to create responsible citizens (in this case parents). These theorists examine risk as a technique of government that is an important part of "advanced liberal" or "neoliberal" governmental rationality that depends on "autonomous, self-regulated citizens" who seek "to maximize their life opportunities and minimize the risks to which they are exposed" (Lupton 1999b: 61). Risk is individualized in neoliberal societies. Individuals should seek to be independent rather than a burden on others and become responsible for monitoring and limiting their exposure to risk. They are held accountable for either failing or being unable to cope with the risks they face (Dean 1999; O'Malley 1996). In the case of parents (especially mothers) they are held responsible for the risk to their children (Jackson & Scott 1999; Katz 2006; Lupton 1999b). Those who are not in control of their lives and are not able to deal with risks individually are labeled "irresponsible" and blamed for the problems they face.

For these scholars, perceptions about risk and individuals' ability or inability to deal with it are a key way to draw a line between what Dean calls "active citizens"—i.e. those who are capable of managing their own risk—and "targeted populations"—i.e. the "at risk" or "high risk"—who require intervention and regulation in an effort to transform them into active citizens (Dean 1999), or, alternatively, punishment and exclusion if they refuse to become active citizens (Fisher & Poland 1998; O'Malley 1992). Child welfare is a key arena in which these lines are

drawn (Parton 1996). Certain children are viewed as "at risk" and certain parents as presenting risks to their children, and it is these families who are subject to child removals and other interventions and services. It is often assumed that coercive intervention is necessary as parents will not minimize their risky behavior on their own (see Chapter 4).

Not only do ideas of risk serve to drawn lines between populations subject to intervention and those who are not, they also serve as an important resource to meet child welfare agency goals under neoliberalism. Scholars in Britain, Canada, and Australia have written persuasively about how contemporary concern with risk has come to dominate child welfare practice and have outlined some of the consequences of this.[15] They argue that risk assessment has become a central concern as state projects that attempted to increase the health and wellbeing of children overall have narrowed significantly to a focus on "child protection," i.e. protecting children from the worst abuse and neglect suffered at the hands of individual parents and caretakers. This narrowing in focus has occurred as agencies have faced a dramatic increase in reports since the 1970's, and as child welfare budgets have shrunk, along with other social services, under neoliberalism. In this context, agencies have turned to risk assessment in an effort to target their interventions to the worst cases (Ferguson 1997; Anglin 2002; Parton et al 1997; Parton 1999; 1996; Houston & Griffiths 2000; Gillingham 2006; Lindsey 1994; Waldfogel 1998).[16]

Media attention to tragedies and public inquiries publicizing child welfare agency failures to remove children have also fueled a focus on risk:

[15] The U.S. literature does not deal with the concern with risk in this critical way, but has mainly continued in a "technico-scientific" approach (Lupton 1999a) in which the focus is on whether risks have been more or less accurately measured and how accurate various risk assessment instruments are (see, for example, Baird et al 1999; D'Andrade et al 2008; Gambrill & Shlonsky 2000; Hughes & Rycus 2007; Leschied et al 2003).

[16] In the UK there has been much criticism that child protective agencies have intervened in families unnecessarily and so there is perhaps more pressure that in the other countries to ensure they do not intervene when allegations of harm are questionable (Parton et al 1997; Parton 1999; 1996). In contrast, there seems to be little widespread concern about "over intervention" in the U.S.

> In both the USA and the UK, the public and media have played a large part in shaping child protection priorities. Outrage at children's deaths at the hands of their carers has been directed at the professionals…who have the duty of protecting children (Parton et al 1997; Waldfogel 1998). This pressure has led agencies to increase the level of investigations to minimize the chances that a child will mistakenly be left in danger…Agencies, realizing that the risk of child deaths cannot be wholly removed, may take steps to protect themselves (Munro 2004: 880).

Risk assessment has become a main way agencies have sought to protect themselves in a "scapegoat society" (Beck 1992) in which all tragedies must be blamed on someone (Douglas 1992; Parton 1996; Ferguson 1997) and in a climate of increasing distrust in government efforts to deal with social problems. Risk assessment also becomes a record of decision-making that can be audited by agencies and the courts (Rzepnicki & Johnson 2005; Goddard et al 1999; Parton 1999; 1996; Parton et al 1997; Houston & Griffiths 2000; Gillingham 2006; Anglin 2002), and caseworkers can use these instruments as a way of protecting themselves (Ferguson 1997). In short, risk assessment can become a tool in making "defensible" decisions (Parton 1999: 124).

Power, Race, Class, Gender in Child Welfare

A final important concern of this dissertation is the role of power, race, class, and gender in child welfare. The social work literature about the role of class, race, and gender in child welfare decision-making tends to deal with these axes separately and is quantitatively oriented, approaching this question by examining, statistically, how the race or class (gender is far less examined in this way) of decision-makers or families are related to the decisions made. My study builds on these insights and attempts to understand the processes behind these findings.

First, parents who are accused of abusing and neglecting their children tend to find few advocates and have decidedly less power in their interactions with child welfare agencies. As Pelton puts it:

> The parent-agency interaction represents a particular type of conflict one in which—far

> from the two parties having more or less equal power—one party is vastly more powerful than the other. The agency has on its side the police, the law, and public opinion. The caseworker has emergency legal power to remove a child from his home on the spot…No one is advocate for the allegedly abusive or neglectful parent. No one investigates and collects evidence on her behalf, presents her side of the story…nor bears witness on her behalf (Pelton 1989: 123).

As an example of this overall power differential, it has been found that parents who were compliant with and deferent to caseworkers were less likely to have their children removed and more likely to regain custody as compared to parents facing similar allegations but who were defiant and hostile (Reich 2005).

The question of the role of poverty in child maltreatment and the child welfare system has been subject to debate in the literature: Does poverty itself have a role in the etiology of maltreatment? Do the conditions of poverty account for greater numbers of reports because it opens families to surveillance? Or do caseworkers and other officials conflate poverty and maltreatment? In her review of the literature, Dorothy Roberts makes a case that all of these are at work (Roberts 2002).[17] First, there is evidence of a strong correlation between poverty and maltreatment (Lindsey 1994; Roberts 2002; Pelton 1989; Golden 1997; Waldfogel 2004; Berrick et al 2006) and researchers posit stress as the link. The argument is that parents under extreme stress have fewer resources to deal it and might be less able to focus on children's needs and more likely to lash out at them (Roberts 2002: 31). However, it is also the case that living in poverty means that family problems are more likely to be brought to the attention of authorities: "Poor families are more susceptible to state intervention because they lack power and resources and because they are more directly involved with governmental agencies…[P]oor families lead more public lives than their middle-class counterparts…" (Appell 1997: 584; but see Pelton 1989

[17] There is also evidence that conditions arising from poverty (such as a lack of income or not having a separate bed for each child) are used as reasons not to delay reunification (Reich 2005; Roberts 2002).

who disagrees that higher rates of detection account for higher numbers of poor children involved in child welfare). There is also evidence that poverty itself is conflated with neglect. For example, in New Jersey in 1980's homelessness and inadequate housing was the most prevalent reason for placement in foster care (Pelton 1989: 52; see also Roberts 2002: 35). Many items found on risk assessment instruments are often impossible to separate from poverty[18] (Roberts 2002: 38; Krane & Davies 2000: 37; Swift 1995) or measure deviation from middle-class family norms (Krane & Davies 2000).[19]

The fact that race and class intertwine to create a situation in which black children are more likely to live in poor families than white children accounts for some of the reason black children are disproportionately involved with the child welfare system. However, there is also evidence that race and racism plays a role as well. Although some studies have not found differences in how cases involving black and white families are handled (Levine et al 1996; Zuravin & DePanfilis 1999; Wolock et al 2001), other evidence points to the role of racial biases in decision-making. For example, Latino children, who are also more likely to be poor than white children, are not overrepresented in the child welfare system, and studies have not found differences in the rates of maltreatment between ethnic and racial groups (Roberts 2002: 48-49). A host of other studies have found that black children are more likely to be reported, have their cases substantiated, and be removed from their families (see reviews by Derezotes et al 2004; Hill 2004; 2006; Roberts 2002: 49-52; Rivaux et al 2008). Although Hill's review (2006) finds no definitive proof of racially biased decision-making, Roberts (2002) argues that views about

[18] These include the presence of food in the home, if the family has moved a lot, if the mother has an "inadequate" education, etc...

[19] These include the presence of multiple children in the home and a single-parent household. By including these "factors" on risk assessment checklists "these conditions are abstracted from the social context and translated into discrete and observable items, given a negative connotation, and subsequently measured as individual weaknesses or deviations from idealized child-rearing norms" (Krane & Davies 2000: 41).

what "proper" families look like and stereotypes of black women probably play some role in decision-making. For example, long-standing cultural stereotypes of black women as careless mothers, and the idea that single-mothers and those who rely on welfare are responsible for poverty, welfare dependency, crime, drug abuse, and other social problems leads to a devaluation of the caregiving of black women.

It is also clear from the literature that women are the main "clients" of the child welfare system and that men are less often involved (Turney 2000; Scourfield 2006; Featherstone 2006; Daniel & Taylor 2006; Brown 2006; Swift 1995; Parton et al 1997; Krane & Davies 2000; Strega et al 2008; Scourfield 2003; Appell 1998; 1997; Reich 2005).[20] In part, this reflects the fact that many of the families who come to the attention of the child welfare system are made up of single mothers and their children (Risley-Curtiss & Heffernan 2003).[21] However, it also the case that women are more likely to be held responsible for child maltreatment. Motherhood tends to be naturalized in mainstream culture and in the "scientific" literature in psychology and child development. The message is often that mothers "naturally" put their children first at all times and that their care and love are necessary for a child's wellbeing and proper development (Turney 2000). This naturalization of motherhood leads to child neglect being "primarily blamed on mothers" (Turney 2000: 52; see also Swift 1995; Daniel & Taylor 2006). In contrast, a father "can leave his children without being seen as abandoning them, and can fail to feed, clothe or otherwise care for them without being seen to be neglectful (Strega et al 2008: 706; see also

[20] Most research that critically examines the role of gender in child welfare practices is from Canada and the U.K. Work by Appell (1997; 1998) and Reich (2005) are important exceptions.

[21] Risley-Curtiss and Heffernan note a gender bias in social work research. For example, many studies purport to study "families" but focus on mothers and their role in child maltreatment. This research bias likely stems from the fact that case files are listed in the mother's name and information about fathers is often lacking (2003).

Scourfield 2003; Swift 1995).[22]

The following chapter turns to the history of the child welfare system in the U.S. Here, I trace the creation of institutions, practices, and policies that aim to deal with child maltreatment and how these are one piece of efforts to govern poor populations.

[22] Swift (1995) and Parton, et al (1997) find that descriptions of mothers and their behavior predominate in case files. Appell (1997; 1998) makes a similar finding with regard to court cases. For example, Swift found that mothers who were seen as "needy" and unable to put their children first (even if this was due to being victims of domestic violence) were judged as inadequate caretakers.

Chapter 3: Historical Development of the Modern Child Welfare System

"Throughout this [20th] century, child removal has survived as a major tactic in regard to child welfare problems despite a long-standing policy of family preservation" (Pelton 1989: ix).

One persistent belief in American history and culture is the idea that families should be private and the care of children the responsibility of individual parents (Pleck 1987). If parents failed in their duties of basic material support, public intervention was warranted, but still suspect (Grossberg 2002). Thus, there have been debates about the role of the state and how it should (or should not) get involved in "private" families. Except for a few key periods in American history, discussion about policy and the role of the state or the larger community have revolved around parental responsibility for children's welfare rather than concern with poverty and other structural issues. At the same time, however, there has been concern with the family lives of those at the bottom of social hierarchies and how they were or were not preparing themselves to be citizens. Liberal governments, beginning in the 19th century, came to depend on individuals to be active in their own government and to control their own behavior. At this time, a division between "civilized members of society and those lacking the capacities to exercise their citizenship" was also created (Rose 1993: 291). Various institutions and programs were set up in order to produce self-governing individuals or to intervene with those who failed. In the United States philanthropic organizations originally were involved in "normalizing" poor families but began to argue, during the Progressive Era, that the state use its power to compel change (Polsky 1991). The child welfare system has been an important part of these efforts.

In the discussion that follows, I trace the development of the modern child welfare system including developments in philanthropy, law, policy, and courts. I will also include developments in the realm of poverty policy, as it has been closely aligned with, or even

intertwined with, child welfare policy in the U.S. Throughout, I will highlight the ways in which child welfare has been used not only to help children but also to regulate them and their families' lives. In other words, I will be discussing the ways in which this system is one part of broader efforts to "regulate the poor" (cf Piven & Cloward 1993). As Grossberg has succinctly put it in discussing the history of child welfare in the U.S.: "Americans have been torn between a *fear for* children and a *fear of* children" (Grossberg 2002). In other words, the safety and future of children has been of public concern since they are seen as a resource and future citizens. However, and at the same time, there has been a fear of poor children and what will happen to them if they are not given a proper upbringing: that they will remain poor and a drain on resources, that they will become criminals, and/or that they will mistreat their own children. These two views of children have led to contradictory policies that aim to help them but also to police and control them. This chapter will outline the development of various efforts to "save" or "protect" children and ensure their proper upbringing as part of a larger project of controlling poor populations and attempting to mold them into proper citizens.

Early 19th Century "Child Savers"

The early 19th Century was a time of increased urbanization, economic instability, and various "uprisings" by the poor due to a lack of jobs, high costs of living, difficult living conditions, and epidemic diseases. These caused worry about the stability of capitalism and society (Zinn 2003: 219-225). In general, among the wealthy and a rising middle-class, who were confronted with urban poverty on an unprecedented scale, there was increased anxiety about the behavior of the urban poor and recent immigrants. These "dangerous classes" were thought to be criminal, vicious, indolent, and intemperate (Stansell 1990 (1982)). A new understanding of poverty as a moral failing (captured in the distinction between the poor and

paupers) arose among reformers which served to justify the "mean-spirited treatment of the poor, which in turn checked expenses for poor relief and provided a powerful incentive to work. In this way the moral definition of poverty helped ensure the supply of cheap labor in a market economy increasingly based on unbound wage labor" (Katz 1989: 14).

In cities like New York, the poor lived in crowded and unsanitary conditions (Zinn ; Stansell 1990 (1982)) and spent much of their time in the streets which were a space for social and economic activities for poor and working-class New Yorkers. These practices contrasted sharply with views about the superiority of life inside the home held by a newly emergent middle-class involved in urban reform (Stansell 1990 (1982)). For them, the home

> preserved those social virtues endangered by the public world of trade, industry, and politics, a public world which they saw as even more corrupting and dangerous in a great city like New York. Enclosed, protected, and privatized, the home and the patterns of family life on which it was based thus represented to middle-class women and men a crucial institution of civilization (Stansell 1990 (1982): 93).

Thus, the presence of women and children on the streets was especially troubling to middle-class reformers. Changing notions of children and childhood, specifically the idea that childhood is a separate and special part of life, also took hold, and children came to be viewed as dependent, innocent, and in need of protection (Stephens 1995b; Aries 1962; Zelizer 1985; Boyden 1997; Cunningham 1992). These new ideas of childhood led to increasing concern about poor children and the long-term effects of an improper upbringing. The first steps towards creating a separate child welfare system—special institutions for dependent children—were undertaken to deal with these issues.

Prior to this time, efforts to deal with poverty did not differentiate children from adults. According to prevailing ideology and practice, the burden of supporting children fell squarely on their parents, and childhood poverty was thought to be a result of parents' moral failings.

Nevertheless, there was some idea that the state had a responsibility to "relieve want and suffering among those in need, including children" under the doctrine of *parens patriae* (Grossberg 2002: 7). Poor children were supported by Poor-law officials through a combination of apprenticeships, indoor relief (placement in institutions), and, rarely, outdoor relief (i.e. direct assistance to families). Children were placed in almshouses with poor adults and could be auctioned off to the lowest bidder as servants in an effort to reduce costs to the public (Grossberg 2002). Thus, children were subject to the same policies as adults—policies that sought to control costs, instill proper work habits in the poor, and maintain an abundant supply of cheap labor (Katz 1996).

The first juvenile asylum to care specifically for impoverished and neglected children was created in 1851 in New York City. It was organized by private philanthropy and received state money towards its operations. Children could be placed there either by their parents or by the courts (Folks 1902: 61-62). Orphan asylums were built in many places around the U.S., and their numbers continued to increase through the 1890s (Katz 1996: 108).[23] In 1875, New York State passed the Children's Act which ordered all children between the ages of two and 16 removed from poorhouses. The law allowed law enforcement officers (in addition to overseers of the poor) to commit children, who were mostly recent Italian, Jewish, and Irish immigrants, to asylums and stipulated that they should be placed in institutions run by "persons of the same religious faith as the parents of the child" when possible (Schneider & Deutsch 1941; Katz 1996). Commitments to asylums were generally permanent and, until 1884, many asylums sent

[23] From 1868 to 1873, the number of children in poorhouses dropped statewide, while the numbers in New York City increased from 1,252 in 1868 to 1,473 in 1874 (Schneider & Deutsch 1941).

children to work as contract laborers in private homes in an effort to contain costs (Sobie 1987: 63-64).[24]

After the passage of the New York State Children's Act, the number of orphan homes and asylums increased (Schneider & Deutsch 1941), as did the cost to New York City. However, the number of children in orphanages increased far beyond the numbers who were leaving poorhouses (Katz 1996: 108).[25] Although other ways of dealing with poor children did exist—"outdoor" relief and building better family quarters in poorhouses—these were not tried, Katz argues, because part of the aim was actually family break-up since this was thought to be a way to interrupt the perpetuation of vice and indolence (Katz 1996: 109). The increased role of orphan asylums was not only determined by their founders and the state, however. Hacsi (1997) has found that many poor parents used them as a "second home," a place where they could, as a last resort, place children in times of extreme poverty, illness, widowhood, or desertion.

Also in 1853, Charles Loring Brace founded the Children's Aid Society (CAS) in New York City. Although his organization built lodging houses and other institutions (including schools), he was the first to suggest an "anti-institutional strategy of child rescue" (Katz 1996) and adopted a policy of "placing out," or placing dependent children with families. The CAS placed children outside the city and organized "Orphan Trains" to send children west (Gordon 1999a). By the mid-1890s, the organization placed at least 90,000 children (Katz 1996); however, Brace's innovation in placing children in individual homes would not be implemented

[24] This was in direct contrast to the demise of the older system of apprenticeship, which fell out of favor amongst all but the very poor (Grossberg 2002).

[25] Within fourteen months the numbers of children in orphanages and asylums nearly doubled. In 1875, there were 9,363 children in 10 private and one public orphan asylum at a cost to the city of $757,858. This number increased to 14,234 children at a cost of $1,505,663 in 29 public and private (mainly Catholic) institutions in 1885 (Lowell 1974 (1886): 166). A great majority of the children in asylums were under the age of 12 and were "half-orphans," which included those whose mother had been abandoned and whose father was still living (Lowell 1974 (1886): 234). Part of the reason for this increase in the numbers of children in orphan asylums was that poor parents were less wary of these institutions than they were of poorhouses (Katz 1996).

on a broad scale for several decades. The CAS was criticized for patrolling slum areas looking for children and for pressuring parents into surrendering them; many poor parents feared that their children would be taken (Gordon 1999a). Although Brace presented his work as saving "orphans" the majority of children placed out had at least one parent and many were simply poor and found on the streets in activities that contributed to their family economy (Gordon 1999a; Ashby 1997; Stansell 1990 (1982)). In reading Brace's writings, many scholars have concluded that he was driven, in part, by the belief that only by taking poor children out of their families and the city would children be taught proper morals and behavior and saved from a life of poverty and crime (Gordon 1999a; Katz 1996; Trattner 1999; Ashby 1997; Stansell 1990 (1982)). In short, he felt he needed to work with children as their parents were beyond redemption (Ashby 1997; Gordon 1988; 1999a; Pleck 1987). Brace's views were common among middle-class reformers and reflected prevailing notions that poverty was caused by moral failing.[26]

Early institutions for poor children and the CAS both grew out of middle-class reformers' concern with urban poverty, crime, and unrest, and a desire to rescue children from a life of poverty and crime like their parents. It was thought that only by separating them from their parents would the perpetuation of these social problems be halted. By the late 19th century, these reformers became concerned with the "cruelty" of lower-class parents and continued attempts to save their children.

[26] Bruce Bellingham (1990) argues that these aims were not reflected in their actual work and that poor families used the society for their own ends. Brace's methods built on poor families' existing fostering practices (in which children would be placed with others due to family hardships or in order to learn a trade) and parental unfitness was alleged in only a few cases. Mason refers to the placements brokered by the CAS as "involuntary apprenticeships" to both recognize the continuity with older practices and to highlight the coercion involved (Mason 1994: 78-80).

Late 19th Century Concern with "Cruelty"

The late 19th Century was a time of continued industrialization and urbanization, as well as massive immigration from Southern and Eastern Europe to cities like New York. There was continued concern among the middle- and upper-classes about the problems of poverty and about rising working-class consciousness, unrest, and increasingly radicalism (Zinn 2003: Chapter 11). When viewed through a middle-class lens, these urban problems arose, in part, from deliberate maltreatment, referred to as "cruelty," towards children. Middle-class philanthropists and reformers saw cruelty as a vice of "inferior classes and cultures which needed correction and 'raising up' to an 'American' standard" (Gordon 1988: 28) and traced it either to drunkenness or to the "depravity" of immigrant groups (Gordon 1988: 47). Thus interventions were targeted to these families. Important child welfare developments also arose from further development of the idea that childhood was a separate part of life and the idea that children were *future* members of society who needed a period of play, enjoyment, and education outside of work. According to Zelizer (1985) children at this time became "economically useless" but "emotionally priceless."

The most important attempt to deal with the problem of cruelty, The New York Society for the Prevention of Cruelty to Children (NYSPCC), was founded in 1874 after the highly publicized case of Mary Ellen, a child who was malnourished, not adequately clothed, and beaten by her step-mother.[27] This was followed by the creation of Societies for the Prevention of Cruelty (SPCCs) and Humane Societies (which handled both animal and child cruelty) in many

[27] Mary Ellen was actually indentured by the city after the woman her parents hired to look after her stopped being paid and took the child to a poor law official. The family she was indentured to was actually her natural father and his wife (the child was illegitimate and the charity did not know this fact). Her father then died and her step-mother remarried. Then the abuse began. A charity worker learned of the abuse and approached the Society for the Prevention of Cruelty to Animals (which had been founded in 1868 and had the power to enforce animal cruelty laws and remove animals from owners) for help. Their lawyer found a legal justification for removing Mary Ellen. Based on the child's testimony in criminal court, a jury found her stepmother guilty of assault, and she was placed in an orphan asylum and later with a farm family outside the city (Pleck 1987).

cities and small towns in the Northeast, Mid-Atlantic, and Midwest (Pleck 1987). By law, the NYSPCC was authorized to investigate cases where parents violated laws that aimed to protect children, and they had the power to get warrants to enter homes, to arrest parents, and to bring children found begging or on the streets into court to ask that they be placed in orphan asylums (Pleck 1987). The founders of the NYSPCC were motivated by a mix of concern for children and a concern with the problems of urban poverty, unrest, crime, and increasing immigration. Concern with cruelty and children on the streets thus reflected a measure of fear *of* these children as much as fear *for* them (Grossberg 2002; Stansell 1990 (1982)).

Most studies of the day-to-day work of SPCCs have been done in cities other than New York, but I will discuss these findings to give some idea of how the NYSPCC most likely carried out their work. The SPCCs had a broad view of "cruelty" that went beyond the kind of abuse suffered by Mary Ellen, and included sending children out during "unreasonable hours" to beg or sell, employment of children in "degrading, unlawful, or immoral callings," and neglect in terms of food, clothing, shelter, and care (Pleck 1987: 83). In other words, cruelty included effects of poverty and behaviors that grew out of poverty and were seen as problematic by the child savers. It was not just about the physical abuse or willful neglect of children. In fact, Pleck, in examining the records of SPCCs in Philadelphia and Chicago, found that most cases involved various forms of neglect[28] and that SPCC officers were generally willing to overlook physical cruelty and not prosecute parents and/or remove their children when parents were "otherwise temperate and industrious." In addition, much of their work focused on counseling families to follow middle-class patterns of a bread-winning father and caretaking mother (1987: 81-84).

[28] Physical cruelty made up only 6% to 13% of cases in Philadelphia between 1878 and 1935 (Pleck 1987).

The SPCCs did have to overcome strong beliefs about the privacy of the family and the right of parents to use physical punishment.[29] The NYSPCC was, indeed, perceived as interfering too much in family life and inspired fear that many children would be taken. However, its leaders "reassured the public about their commitment to traditional values and sincerely believed in the efficacy of corporal punishment." They further couched their work in terms of "rescuing children from a future life of crime" and defined cruelty as "an instance of exploitation and faulty moral character that occurred in *public* as well as in the home" (Pleck 1987: 76, emphasis added). This approach played on fears of immigrants and urban unrest that were common at the time while arguing it was not only about intrusion into private home life.

In addition to the role they played in the control of poor, immigrant populations, the SPCCs were also used by poor families for their own ends. Families brought children to SPCCs to find a place for them in times of economic distress; women sought help from abuse at the hands of husbands; and reports to SPCCs were used as a way to settle disputes or as a weapon against family members and neighbors (Broder 2002). Gordon finds that the SPCCs did actually did help women escape abusive husbands, and, in general, the presence of these agencies lessened, somewhat, patriarchal power (Gordon 1985).[30] However, poor women experienced the SPCCs ambivalently. They were sought out as a source of help but were also commonly referred to as "The Cruelty" (Gordon 1986; 1988), since it was women and children who had the most to lose (despite fathers' frequent outrage at their loss of face) from SPCC intervention. As Gordon notes, the most common outcome of agency action was not prosecution and jail sentences for

[29] Under the doctrine of *parens patriae*, children could be removed from their parents when their welfare was threatened, and this had been extended in the 19th century to allow the removal of children from drunken parents or those who did not house, clothe, feed, or educate their children. Although, in theory, these laws, or laws against assault, could have been used to remove children, they generally were not due the strong belief in the family ideal (Pleck 1987).

[30] Gordon uses patriarchy in the narrow sense of "a family form in which fathers had control over all other family members…that flowed from the fathers' monopolization of economic resources" (Gordon 1985: 214).

men, but the removal of children (Gordon 1985: 219). The SPCCs were the first organization given power by the state to remove children and are, in many ways, the precursors of modern state-run child protective agencies.

As with earlier efforts to protect children, SPCCs were in part driven by concern about the morality, crime, and vice of poor populations. New York State law regarding child "cruelty" at this time reflected, in many ways, the concerns of these child saving organizations. In 1877 an Act "for the protection of children" was passed which included, in this order, the following conditions under which a child (defined as under the age of 14) could be found to be subject to placement in an orphan asylum:

- A child found begging or begging "under the pretext of selling;" a child found in public for the purpose of begging
- A child found wandering, homeless or without "proper guardianship or visible means of subsistence"
- A child destitute, "either being an orphan or having a vicious parent, who is undergoing penal servitude or imprisonment"
- A child who "frequents the company of reputed thieves or prostitutes or houses of assignation or prostitution, or dance-houses, concert saloons, theaters and varieties" (Laws of New York 1877, Chapter 428).

Again the law reflected concern with the behaviors of poor families and children, with a focus on behaviors thought to be immoral but that were likely part of families' economic survival strategies.

The law regarding abuse and neglect in the 1892 penal code included these basic provisions but was expanded in two ways. First, provision for the punishment of parents found to be guilty of child maltreatment was included. Second, maltreatment was expanded to include failure to provide food, shelter, clothing, and medical care; and to willfully causing or permitting "the life or limb of any child" under age sixteen "to be endangered, or its health to be injured, or its morals to become depraved" (Parker 1900). Criminal courts were responsible for adjudicating

this law, and, at this time, the child would usually be the "defendant" (i.e. the person accused of committing the crime) rather than the parent (Sobie 1987). This reflects, I believe, the degree to which the children who were subject to this law (along with their parents) were seen as a menace at the same time that they needed protection. The first laws that dealt with child maltreatment, then, reflected a concern with the morality and behavior of poor populations, criminalized some of these behaviors, and institutionalized the practice of child removal in an attempt to change them. The following decades would bring important shifts in understandings of poverty and child maltreatment and innovations in how these problems were dealt with.

The Progressive Era: 1900-1935

The Progressive Era was a time of continued urbanization, industrialization, immigration, as well as the increased concentration of wealth and the growth of poverty (Ehrenreich 1985). The steady flow of immigration from South and Eastern Europe stoked fears that the country would break "apart into squalid ethnic and linguistic enclaves that bred crime, disease, and pauperism" (Katz 1996: 121). The middle-classes were worried about these changes, especially about a militant response from the working-class and poor towards them which would threaten the overall capitalist system. Their reaction was a mix of desire to curb these vast inequalities with fear of the working-classes and social instability. Proposed remedies thus aimed to reform capitalism in order to ameliorate its worst effects by combating poverty and regulating corporations, and included efforts to shore up the system by controlling the working-classes (Ehrenreich 1985: Chapters 1 and 2; see also Zinn 2003). Reformers at this time were more likely to view poverty as a product of the environment rather than a problem of morality (Ehrenreich 1985; Polsky 1991), and to believe in the value of science. The progressive view was that "only a rationally organized state, managed by nonpartisan experts, had the wherewithal

to address the complex problems of a modern urban-industrial economy and society" (Willrich 2003: xxxviii; see also Ehrenreich 1985; Kunzel 1993; Walkowitz 1999).

Reformers of this period also worried about the breakdown of the family as birth rates fell, divorce rates rose, female participation in the labor force increased, and college educated women married at very low rates (Katz 1996). These concerns led to a more general concern with children and attempts to protect them in private homes which were thought to be the most proper venue for their upbringing. There were increasing attacks on placing children in institutions—both because they were seen as improper places for children to grow up but also due to their expense and to the belief that too many parents used institutions to shirk their duty to raise their own children. This increasingly critical perspective towards institutional responses in the care of indigent and mistreated children led to attempts to find other ways to support them (Katz 1996: Chapter 5).

Women took a much greater role in these reform efforts, as newly college-educated women sought to carve out public roles for themselves, but justified their efforts in terms of "traditional" female roles and supported "maternalist" politics and reforms (Chambers 1986; Dye 1991; Frankel & Dye 1991; Ladd-Taylor 1994; Clapp 1998; Muncy 1991). The roots of maternalism lie in dominant mid-nineteenth century beliefs about gender and proper family life (which reflected middle- and upper-class white views and realities) which held that women were naturally nurturing and suited for the domestic or "private" realm while men were suited to bread winning in the "public" realm. As Welter has famously described it, a "cult of true womanhood" held up the virtues of "piety, purity, submissiveness, and domesticity" for women (Welter 1966). It was these virtues, in slightly altered form, which female reformers used to justify their *public* activities (DuBois 1991: 162).

Much female-led and other Progressive-era reform revolved around children:

> To many living in the United States at the turn of the century, the circumstances of many children—barely subsisting in poverty; laboring in the nation's factories, streets, tenements, mines, and fields; and dying as infants from preventable disease—represented the worst consequences of unregulated modernization (Lindenmeyer 1997: 9).

These concerns were fueled by sentimentalized notions of children as innocent and sacred and of childhood as a separate part of life, making a concern with improving the lives of children politically popular. For women, the plight of children was a supremely acceptable political issue and a realm in which to undertake public reform work. For those worried about the social problems of "'hunger, disease, vice, crime, and despair'" among the working-classes, poor, and recent immigrants, it made sense to focus on children since it was thought that these problems would be "perpetuated if the patterns of poverty were not broken among society's youngest members" (Lindenmeyer 1997: 10-11).

Reflecting these views of poverty as having environmental causes and the increasing role of women in reform efforts, the child welfare field was marked by an explicit attention to the problems of poverty and parental neglect rather than "cruelty" (Pleck 1987). However, efforts continued to focus on the behavior and parenting practices of poor families and attempted to "rehabilitate" or "reform" them so that they could cope with the rigors of modern, industrialized society. As in earlier periods, child removal was often a solution: if parents did not accept help or show evidence of change, this might mean removing the child from her family. State power was enlisted in these efforts because reformers believed it would make their work more legitimate, and thus more accepted by the poor, and because the state had the power to force families to submit to therapeutic interventions and comply in a way that private social workers could not (Polsky 1991). Although child removals continued in this period, there were policy and

institutional changes: efforts to remove children from orphanages and into private foster homes, the creation of Mother's Pensions, emerging definitions of parental neglect, and the creation of separate courts for children.

De-institutionalization of Children

In 1898, in response to a public inquiry that uncovered problems with the "placing out' methods of orphan asylums and overseers of the poor,[31] New York passed legislation that regulated the placing of children in private homes and stipulated that children be placed in homes with families of the same religion whenever possible. The State Board of Charities was given the power to inspect homes and close agencies that did not follow proper procedures. However, the legislature failed to adequately fund the board, so home visits were rare and agencies found to be acting improperly continued to exist (Schneider & Deutsch 1941). A move toward "boarding out" children, i.e. private homes that would care for them in exchange for public money, was also underway on a small scale at this time. By 1916, many asylums were boarding out children and The New York City Department of Public Charities established a Children's Home Bureau to find homes where children would be cared for at city expense. However, statewide, there were still 31,517 children in the care of institutions and only 4,482 boarded out (Schneider & Deutsch 1941: 170).

Mother's Pensions

Policies to allow the support of children in their own homes by providing funds to their mothers were also created during this period. These were largely pushed by female reformers as a way to support "worthy" women without a male breadwinner and to ensure that children could

[31] The 1897 inquiry found that some child-placing agencies were run mainly for profit, made little effort to investigate the homes to which they sent children, and worked to find private homes for children mainly as a way to save on the expense of supporting them (Schneider & Deutsch 1941).

be raised at home (Gordon 1994). However these policies were supported more generally by reformers, in part because they served as one way to lessen competition from women in the labor market (Katz 1996: 129). In 1898, the New York City Department of Charities began referring all applications from parents to commit children they could not afford (i.e. "dependent children") to the SPCC. The SPCC, in turn, would investigate, and if the home was deemed suitable, they would offer a pension to the mother rather than place the child in an institution. However, this did little to change the prevailing practice of removing children. In the first year of the program, 69% of investigations led to the institutionalization of the child (Schneider & Deutsch 1941). Pleck, using NYSPCC data, found an increase in the numbers of abused and neglected children placed in institutions between 1890 and 1923 (Pleck 1987:131-132). Thus, removal as a main solution to dealing with "dependent children" continued despite efforts to support them at home.

By 1909, the belief that children should not be removed from their homes due to their parents' poverty was articulated nationally at a White House Conference on the Care of Dependent Children. This conference brought together prominent people in both public and private child welfare work in order to discuss the needs of children in institutions and of "dependent" children in a growing number of foster homes. It was pushed by prominent reformers as a way to raise awareness and public support for a new federal Children's Bureau that would research and report on all issues relating to the health, welfare, and safety of children.[32] The conference made recommendations that both reflected changing ideas and affected policies around the country:

> [T]he discussions and recommendations of those attending the meeting reveal a continuing shift away from nineteenth-century ideas. Instead, twentieth-century-style

[32] The Bureau was the brainchild of Lillian D. Wald and Florence Kelly. It only investigated and lobbied, except between 1921 and 1929, under the Sheppard-Towner Act, when the Bureau was funding and ran programs to promote infant and maternal health (Muncy 1991; Grossberg 2002; Ladd-Taylor 1994).

> child welfare techniques emphasizing prevention, government regulation, aid to families so that children might stay within their own homes, and foster care as preferable to institutionalization prevail in the conference's official report (Lindenmeyer 1997: 19).

As an organizer and participant in the conference, Hastings Hart wrote, the participants resolved that "under no circumstances should a child be taken away from parents simply from poverty" (quoted in Ashby 1997: 96). This idea led to recommendations that "Mother's Pensions" for "deserving" mothers who were "reasonably efficient" and of "worthy character" be instituted nationwide (Mink 1995: 31-32). As a result several states did create pension programs over the next few years (Mink 1995; Abramovitz 1996a). This proposal reflected a concern with the plight of poor women and children at the same time as it reflected a worry about the rising problem of single-motherhood and family instability. Thus, the proposed policy sought to help some mothers without encouraging further formation of these "broken" families (Gordon 1994). New York State set up pensions in 1915, but because they did not fund the program until 1920, pensions were not available in all areas. In New York City, there were strict residency rules and investigations determined whether the mother was suitable and actually needed the pension before it was granted (Schneider & Deutsch 1941: 190). Mothers were thus subject to scrutiny by social workers or SPCC agents, and children could be removed and cared for in institutions when mothers were found "unsuitable."

As has been well-documented, Mother's Pensions throughout the country required that distinctions be made between worthy and unworthy mothers, and eligibility requirements were used to deny benefits to minority women. Most pensions in Northern cities went to immigrant mothers (Jewish, Italian, and Irish) while mother's education programs connected with pensions aimed to Americanize them (Mink 1995). Despite the idea that pensions would enable women to stay home to care for their children, they were generally meager, so many women had to find

paid employment even after they received financial support (Trattner 1999; Ladd-Taylor 1994; Gordon 1994; Ashby 1997; Abramovitz 1996a; Katz 1996; Mink 1995; Michel 1993; Mason 1994).

I was able to find some annual reports of the New York City Board of Child Welfare which describe how pensions were administered. I found that in the first years of the program, allowances to mothers did keep some children out of institutions. However, and more significantly, approximately half of the applications for pensions were denied.[33] Notably, the allowances given to mothers were about half of the cost of keeping a child in an institution, which suggests that they did not adequately alleviate poverty,[34] and the greater willingness to fund support for children rather than for their mothers. Most of the time, if women were found unsuitable during the course of an investigation, pensions were cut off.[35] However in a few cases the family was further investigated by the NYSPCC due to the mother's "immorality" or "intemperance," or due to the children's crimes or "unruly" behavior. In only one case I found was violence against a child alleged, but since "good home conditions" were found the mother was only warned. In only one case referred to the NYSPCC for investigation was the child removed (Board of Child Welfare 1920). Thus, it seems that the increasing numbers of children being placed away from their families due to neglect (see above) were not placed due to a pension application, at least by 1920, but through reports to the NYSPCC directly and/or being brought to court. Mother's pensions, then, do seem to have allowed some women to support their children at home and to avoid placing them (or having them placed) in institutions. However, not

[33] Pensions were instituted in 1915. In the first two years, 5,433 families received pensions, and 3,000 fewer children were in institutions (Schneider & Deutsch 1941: 191). Between 1915 and 1920 allowances were denied in about half of the cases (Board of Child Welfare 1920).
[34] In 1920, the NYC Board of Child Welfare gave pensions that cared for over 20,000 families at an average cost of $8.96 per month for each child, about half the amount paid to keep a child in an institution.
[35] In 1920, 2,660 new applications were received, with allowances being granted in 2,288. 1,153 allowances from previous years were discontinued, 45 of these for "improper guardianship[35]" (1920).

all women were entitled to pensions and the application process still left the morality and parenting of poor and working-class women open to scrutiny.

Changing Definitions of Neglect

Although mother's pensions attempted to support poor women so that children did not have to be removed, SPCCs continued to judge family life and had the power to remove children. SPCCs in general[36] during this period were focused on the neglect of children by mothers (Gordon 1988), and this was related to a larger societal shift towards valuing a mother's nurturing and seeing it as essential to the proper upbringing of children (Mason 1994). Reflecting a continued concern with the lifestyles of the poor that focused on recent immigrants, the emerging definitions of neglect tended to conflate it with poverty and reflected the class-based expectations of a proper home environment held by middle-class philanthropists. For example, the Massachusetts SPCC list of "elements and factors" in their cases included many elements reflecting moral concerns (drinking, illegitimacy, divorce, women living alone, sexual activity among girls), parental characteristics (insanity or "feeble-mindedness"), as well as physical neglect and delinquency. Many of the definitions of physical neglect "were not only inaccessible to, but unimaginable by, turn-of-the-century agency clients (Gordon 1988: 121).[37] Children playing in the streets, children under twelve minding their siblings, and children contributing to the household through their own work all qualified as physical neglect. Although these were the

[36] Again most of the information I have comes from cities other than New York.

[37] As an example of how the conflation of poverty with neglect worked in practice, Gordon cites the case of a single father during Prohibition who was reported by neighbors because his children were not supervised, were running in the street, and were inadequately clothed and fed. He received money from public welfare, but complained it did not come regularly and that he still did not have enough money for food. The MSPCC pressured him to get rid of his housekeeper (who was supposed to care for the children) because she was said, by neighbors, to be unreliable and to drink. He became angry with caseworkers, but complied. Despite hiring several other women, the children were still not supervised. The neglect allegations made by the MSPCC were "inadequate food, inadequate child care, and a father's hostile response to agency workers" (Gordon 1988: 122). Here it is clear that the father's poverty was the cause of the neglect of his children and his attitude toward caseworkers was faulted as well.

realities of poor family life at the time (Gordon 1988), they were labeled neglect and blamed on individual mothers. In some cases Gordon examined, it seemed that the children were in danger from abuse, but the worker was focused on convincing the parents to marry (Gordon 1988: 134). Thus, as Gordon demonstrates, the regulation of poor life and the upholding of middle-class notions of morality was at least as important as child maltreatment to the organizations that conducted evaluations of family life. Despite the belief that poverty alone should not lead to family break-up, emerging ideas of child neglect allowed for the conflation of neglect with poverty and did not provide guidance for deciding parental culpability (Gordon 1988: Chapter 5).

Juvenile Courts

At the same time that policies shifted away from institutionalization of poor children and towards supporting them either in foster homes of through pensions to their mothers, judicial institutions were created which judged and regulated family life and were inclined to remove children from their parents (Pelton 1989: 14-15).[38] In New York City (and in many cities of the United States), juvenile courts were created which handled cases of both delinquent and "dependent" children. In 1901 the first "children's parts" within criminal courts in New York City were created. By 1922 these courts existed statewide and were run quite differently from criminal courts "including confidentiality, privacy of proceedings, and the disuse, if not abhorrence, of procedural due process standards" (Sobie 2003).[39] The idea behind these courts was that children, because they were different from adults, needed different treatment. Rather than being seen as culpable for their actions, children were to be treated as "wards in need of

[38] Pelton finds that between 1910-1920 (the only years in this period for which he was able to find data) the numbers of children placed away from their parents increased, a trend he links to the growth of juvenile courts and probation departments that were, by and large, inclined to remove children from their homes (Pelton 1989: 14-15).
[39] They also began to use the terminology in use today: "fact-finding" (for trial), "dispositional hearing" (for sentencing hearing), and "respondent" (Sobie 2003).

care" by civil courts "with flexible procedures adapted to diagnosing and preventing as well as to curing delinquency" (Ryerson 1978: 3). Judges were encouraged to counsel them, and formality was to be curtailed. The line between cases involving delinquent and dependent children was intentionally blurred by either treating them very similarly or by arguing that a dependent child was likely a "pre-delinquent" who would become delinquent if not given help and guidance (Platt 1977). Since, it was argued, children were brought before the court to be saved from crime and delinquency, they did not need the same legal protections to which others charged with crime were entitled (Platt 1977).

During this period, private agencies continued to investigate cases of child maltreatment and judge poor and immigrant families based on their own notions of morality and proper family life, while juvenile courts added a layer of state bureaucracy to this regulation. Despite emerging ideas that children should be supported at home and tentative steps that allowed this to occur for some children, juveniles courts were inclined to continue previous practices of removing children from poor families and children continued to be placed in institutions. The collapse of the U.S. economy in the late 1920s, however, led to a sharp decline in societal concern with child maltreatment and a decline in the numbers of children removed from their parents.

The Great Depression to the 1950s

During this era, there was a marked decrease in public concern with the problems of child abuse and neglect as attention was focused on the Depression and a World War. This corresponded, in turn, to a decrease in the numbers of children in foster care. In addition, the creation of Aid to Dependent Children (ADC), which had better (but still inadequate) benefits and covered more families, meant that fewer children were subject to removal due to poverty (Pelton 1989: 17-18). Child saving organizations continued their work, although on a smaller

scale, and there was little change in the government structures for dealing with child abuse and neglect in New York City.[40] Child savers focused on the physical neglect of children (malnutrition, homelessness, lack of medical care) which was linked to widespread unemployment during the Great Depression, or on inadequate guardianship leading to juvenile delinquency, which was attributed to women working during WWII (Gordon 1988: 147-158). Overall, the blame for most family problems was placed squarely on women, and neglect came to be, by definition, an exclusively female form of child maltreatment (Gordon 1988).[41]

One of the most important societal changes in New York City was a profound shift in the demographics of the poor population from being largely European immigrant to African-American and Puerto Rican. African-Americans moved to Northern cities like New York from the rural south in response to discrimination and violence, lack of jobs and education, lack of access to land, and the mechanization of agriculture that left them without farm work.[42] Except for a few years during WWII, when African-Americans arrived in Northern cities they faced a situation of chronic unemployment and/or under employment (Gutman 1976: Afterword; Piven & Cloward 1993) and were confined to the lowest rungs of the occupational ladder in a racially segmented labor market (Piven & Cloward 1993; Tolnay 2003; Freeman 2000: Chapter 11). They were also confined to racially segregated neighborhoods which were in the least desirable areas of the city and contained dilapidated housing (Tolnay 2003; Drake 1945; Freeman 2000:

[40] In other locations government agencies gradually took over the work of enforcing laws relating to child abuse and neglect.
[41] This era also was marked by increasing reliance on psychiatry both to explain family problems and to treat them, which helped to draw some attention to the problem of sexual abuse (Pleck 1987). However, widespread concern and awareness of sex abuse would not come until the rise of Second Wave feminism in the 1960s (Gordon 1988).
[42] The first wave of this migration occurred around the turn of the century through WWI as blacks were drawn to northern cities to work in expanding industries and as the war and changes in immigration law lessened numbers of available European immigrants (Tolnay 2003; Gutman 1976). Migration slowed during the Great Depression as work became scarce (Piven & Cloward 1993) and picked up again with WWII, ending around 1970 (Gutman 1976; Tolnay 2003).

Chapter 11). In response to these stresses, the rate of family break-up among migrants increased (Gutman 1976), but networks of extended kin and friends allowed for the care of children and the pooling of resources (Stack 1974). Although eligibility rules for the newly created ADC program were less restrictive in Northern Cities, it does not seem that all those who needed it were given grants (Piven & Cloward 1993). Thus, poverty led many Black families to become involved with the child welfare system.

A substantial migration of Puerto Ricans to New York City also occurred during this time. Many were displaced farmers and farm laborers while others left conditions of urban poverty and unemployment. In general, U.S. domination of the island after the Spanish-American War (1898) led to worsening economic conditions and poverty, and attempts to deal with the problem and industrialize the island did not create sufficient jobs. The overall result was a "surplus population," many of whom migrated to the United States to work as contract laborers (Rodriguez 1989: 12). Upon arrival in New York City, Puerto Ricans faced a racially segmented labor market, were hired only as non-skilled laborers or in declining industries such as textiles, and were often worse-off economically than many African Americans (Freeman 2000: Chapter 11). Despite this position in the New York labor market, the percentage of Puerto Rican children involved with child welfare was far less than that of African-American children.

In New York City, this era of non-white migration coincided with a powerful working-class which was able to push for, and secure, benefits and government services on a scale not realized in other cities (Freeman 2000). Unions, most of which were segregated by race, led organizing campaigns for rent control, free public higher education, control of consumer prices, low-cost public transportation, public housing, public hospitals and clinics, and health insurance. Although these were not solely employer provided, but were provided through various

public/private schemes and were thus open to people beyond union workers, they were not fully public and universal: "Some New Yorkers—disproportionately those with skills, union cards, and white skin—gained greater advantage" (Freeman 2000: 103). Unskilled workers, unemployed and poor individuals, and non-whites benefited less. In contrast to the creation and expansion of public higher education, housing, transportation, and health care, the child welfare system, which mainly dealt with the poor, and, by this time, increasingly with African-Americans, was not expanded to allow it to serve greater numbers of children adequately.

This period also saw a radical shift towards the idea that the government did have a responsibility to deal with inequality and the problems of poverty. The 1935 Social Security Act created a two-tiered system of government help for those living in poverty. There were social insurance programs (covering unemployment and old age) given to workers which were seen as entitlements, and "means-tested" programs given to those who were not working (as in aid to the blind). Most importantly for my discussion, Aid to families with Dependent Children (ADC) was developed, which provided help to some poor women raising children alone. ADC was modeled after Mother's Pensions but was now required in all states and allowed women who were widowed or living alone due to the physical or mental incapacitation of the father to collect money. Women raising children alone for other reasons were largely excluded. States created their own eligibility policies which determined which homes were "suitable" and thus entitled to aid. In general, as with the earlier Mother's Pensions, these policies excluded women of color and single women (Abramovitz 1996a; Gordon 1994; Mink 1995; Piven & Cloward 1993; Quadagno 1996).[43]

[43] For example, some states created "employable mother" rules that required able-bodied woman with school-age children to work, and these were generally only applied to women of color (Mink 1995: 142-143).

In addition, various regulations continued to place women's behavior and morality under scrutiny:

> Using vaguely defined rules, state welfare departments denied aid to single mothers who took in male boarders, who co-habited with men, who refused to identify the fathers of out-of-wedlock children, or whose homes and behaviors simply didn't not look right to the investigating worker. They also threatened ADC mothers who applied for aid with child removal, informing them that a negative assessment might force the welfare department to press for the placement of their children in institutions or foster homes (Abramovitz 1996a).

In addition to threats, rules in some places directed workers to file neglect charges if benefits were denied and mothers refused to voluntarily place their children. However there are no records which detail the numbers of children removed in cases where homes were deemed unsuitable (Frame 1999). A study of ADC by Bell found that, in the 1940's, according to social workers, removals were rare and the more common consequence was simply refusal of public aid (Frame 1999 citing Bell 1965: 49). In New York City, child neglect cases were still investigated by the SPCC, so it is possible that women who were denied aid were also investigated by that organization, which could have resulted in child removal.[44]

With regards to the child welfare system, the Domestic Relations Court[45] in New York City continued to be responsible for hearing cases of abuse and neglect in which it seemed the child needed to be placed away from her home (Sobie 1987). Most cases of neglect were brought to the court by the NYSPCC, although police, schools, and parents could also bring children who needed placement to court. If the court decided that placement was necessary, the Bureau of

[44] I was unable to find information about how often ADC cases were referred to the SPCC and the removals that might have then occurred.
[45] The former Children's and Domestic Relations Courts were combined in 1933 and called The Domestic Relations Court (Sobie 1987).

Child Welfare was then responsible for finding a placement with a private agency[46] (Polier 1974 (1941)). Justine Wise Polier, a family court judge in New York City, wrote about the cases that came before her in July and August of 1938, and her account gives a more complete picture of the kinds of cases deemed "neglect" and the families involved.[47] Sharing a prevailing feeling held by others involved with juvenile courts, and, again, conflating poverty with neglect and criminality, she felt that a sharp distinction between neglected and delinquent children was unwarranted and that delinquent children were simply neglected children who were not dealt with early enough. Reflecting the fact that the racial composition of families before the court had changed, this was the first report I found which recorded the race/ethnicity of the children in court: 47.2% of the children were white, 43.4% black, and 9.4% Puerto Rican. However, as with children in the past, most of these children were poor: 64% came from families on some kind of public assistance, and 6.5% came from families with no discernable income.

In terms of the kinds of behaviors and problems that were considered to be neglect, there was a range of problems directly or indirectly related to poverty, and the cleanliness and disrepair of homes was frequently noted as one of the problems. For example, in one case, a mother had left her children alone and required the oldest to work. Later the family returned to court and had no income, the girls had skin conditions of some kind, their home was dirty and in disrepair, and the mother owed two month's rent. Other cases involved "immorality," which could include sexual promiscuity, sex abuse of children by fathers, and women living with men out of wedlock. Polier linked immorality cases to poverty as well:

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[46] These agencies were still sectarian, and it was still the law that children were to be placed in an agency of the same religion as their parent.

[47] During this period 343 neglected and 224 delinquent children came before her court. There were several ways that neglected children were brought there: by the SPCC (172), by parents (114), by the bureau of attendance (17), by other relatives (16), by another social agency (8), by police (2), and by citizens (2).

> Immorality in the home is one condition that often leads agencies to intervene on behalf of children through court action. The homes thus exposed are almost invariably poor. This does not mean that immorality is more prevalent among the poor. Families with means are able to secure psychiatric care, closed hearings in other courts, sealed papers for relatives who transgress the laws or moral code…The poor are not only exposed to prying neighbors and investigation by social agencies on whom they are dependent, but are also subject to housing conditions which preclude personal privacy (Polier 1974 (1941)).

Although her views on these cases are not entirely clear, she seems to accept that these problems meant that children were in danger. However, she does hint that these cases might be better dealt with outside of court (Polier 1974 (1941)). Again, concerns with behavior and with the morality of poor women were reflected in the work of child welfare agencies, although many family problems stemmed from poverty.

Polier also discussed, quite forcefully, the problems with the then-current system of child placement (i.e. that children were placed with religious agencies at public expense). She complained that agencies were allowed to make their own eligibility rules and could reject whichever children they choose. At the same time, many children remained in institutions with few efforts to place them in individual homes or to work with the family towards their return. The situation was especially bad for "negro" children: there were few agencies who would accept them, so many judges hesitated to find them neglected and in need of placement. They then remained in "improper home situations until behavior difficulties appear[ed]" and they had to be placed in institutions for delinquent children (these were more often public and accepted all children) (Polier 1974 (1941): 240-241). If these neglected children *were* removed from their homes, they were likely to remain in SPCC-run "temporary shelters" [48] for long periods of time

[48] In 1943, the temporary shelters were investigated by both the mayor's office and the court due to overcrowding and poor conditions. A public scandal broke out when the police were called to a boy's shelter to restore order. The investigation found that children did not have shoes and were punished by being isolated in two basement rooms with no furniture (one also had no windows) (Rosner & Markowitz 1997: 1846).

(Polier 1974 (1941): 245; see also Rosner & Markowitz 1997). Alternatively, they were labeled delinquent in order to allow placement in New York State-run training schools (Rosner & Markowitz 1997: 1846).[49] However, overcrowding at these schools led to a policy under which judges could place children in city jails (Rosner & Markowitz 1997).

By 1945 the city had taken over "temporary" shelters (Polak 1989) and placement in jails was prohibited (Rosner & Markowitz 1997). Despite city control, through the 1950s city shelters remained severely overcrowded (one report stated that 140 children shared 73 beds on Labor Day 1955) and children often stayed there for months and sometimes for years (Rosner & Markowitz 1997). Most of the children subject to these conditions were Black. Puerto Rican children are not mentioned in discussions of these problems, and it is likely they were accepted by Catholic organizations.[50] This situation would not change substantially until the 1980s when black children made up practically the entire child welfare population and a class-action lawsuit against the agencies was finally settled (see below).

Before 1962 the NYSPCC was responsible for investigating allegations of abuse and neglect and filing cases in court. No government agency existed to do this work.[51] The Bureau of Child Welfare determined eligibility for ADC and supervised the payment of private agencies for the care of children placed with them. Rarely did they do child protective work (although they were authorized by state law to do so), but they did sometimes refer families to the SPCC. The

[49] Judges were reluctant to label any white child "delinquent" "because of the long-term consequences for future employment, army service, and self-image" (Rosner & Markowitz 1997: 1846). Either these consequences were not seen as important to avoid for black children or judges acted pragmatically to ensure black children at least could be placed somewhere.

[50] A 1942 municipal ordinance that denied public funds to agencies that refused to take children from all racial groups did not help the problem of lack of placements for African-American children because sectarian agencies still did not have to take kids outside their religious groups. So, in practice, only the Protestant agencies were faced with the loss of funding, and many simply relinquished public funding after the ordinance rather than accept black children. Those who were held to the rule were able to give various excuses for not taking black children and made it known that anything above a fairly small percentage of black children was unacceptable (Bernstein 2001: 56).

[51] The family court probation department did study families if it was decided the case did not need to be in court.

government's role in child welfare and child protection in New York City included a small set of shelters, foster homes, and adoption assistance agencies, but they mainly subsidized voluntary foster care agencies and children's institutions (Kahn 1961).

Although this period saw the creation of many public services in New York City, these did not benefit everyone equally. White, unionized workers gained the most, while the poor, who were increasingly people of color, benefited less. At the same time, they were largely excluded from newly expanded federal safety net programs such as ADC. The institutions that made up the child welfare system changed little and still dealt mainly with these poor families. Although neglect was still conflated with poverty and criminality, the children involved were more likely to be Black and faced discrimination in terms of placement and services. The next decades saw the increasing numbers of Black children in child welfare and a profound shift in ways of understanding child maltreatment corresponding with the creation of new policies and state agencies to deal with it.

1960s - 1970s: "Re-Discovery" of Child Abuse and the Creation of Modern State-Run Child Protection Agencies

This period brought a renewed attention to the problem of child abuse, now largely discussed in medicalized language, and the creation of state-run agencies that aimed to protect children from abuse at the hands of individual caretakers rather than a broader focus on children's welfare. Various protest and rights movements arose in the 1950s and 60s—the civil rights movement, feminism, the Native American movement, anti-Vietnam war protests—and the 1960s saw a general questioning of societal norms and traditions surrounding marriage, sexuality, gender roles, dress, schools, childhood, etc… (Zinn 2003: Chapters 17-19). These trends brought a concern with family violence to the forefront:

> Combined, the movements raised critical questions about the sanctity of family privacy, and the importance of family togetherness at all costs. The movements created an atmosphere in which child abuse, wife-beating, and incest could again be pulled out of the closet. Moreover, the critique of family violence was situated in an atmosphere of criticism of more accepted forms of violence as well—military, political, and cultural (Gordon 1988: 25).

In other words, in a climate of cultural change and in the midst of assaults on the idea that family life should be private, a renewed attention to violence within the family flourished (Nelson 1984). The policies that were constructed to deal with child abuse in the 1970s, however, were constrained by an increasingly conservative political climate that criticized large-scale social spending, especially on the poor (Pleck 1987; Nelson 1984).

As early as the mid-1950s, there were calls to create specialized government agencies to deal with reports of child abuse and neglect. Many social workers and others involved with child welfare focused on the supposed increase in juvenile delinquency and argued, like Polier in the 1930s, that children being neglected needed to be helped before they became delinquents. In 1956 the first national study of the prevalence of child abuse and neglect was conducted and documented that, in many places, there was no agency to deal with the problem, while in cities private agencies, the SPCCs, were left to deal with it.[52] However, little was done about this situation, until the "discovery" of the "battered child syndrome" by the medical profession in the early 1960s (Pleck 1987: 164-66).

When the use of x-rays in pediatric departments of hospitals became more common, doctors were able to document childhood fractures and see evidence of a series of fractures which might indicate child abuse. In 1962, when The Children's Bureau held a conference about how to reduce child abuse and neglect, medical professionals, especially Dr. C. Harry Kempe,

[52] The survey was presented at a conference and communicated to the Children's Bureau which then began to lobby for a state agency in every location that would investigate allegations, offer services, or, if necessary, call the police to remove a child from a problematic home.

took a leading role. Kempe coined the term "the battered child syndrome" [53] and argued that, if presented with a choice between parents' right to custody and a child's safety, the bias should be in favor of safety. Since doctors were often reluctant to report these injuries, laws requiring reporting were needed. [54] The term "battered child syndrome," and the fact that it came from the medical profession, went a long way towards focusing attention on child abuse and bringing it to the attention of federal and state governments (Nelson 1984).[55]

Those who pushed for a government response to the problem of child abuse argued that it could happen in any class group, and this made proposals to Congress for government involvement in families seem warranted. This shift in focus removed child maltreatment from an association with poverty policy, which at this time had again become politically unpopular. As a result of these developments, between 1963 and 1967 every state passed a bill requiring reporting of child abuse by certain professionals and set up "hotlines" or other methods to allow anyone to report suspected cases (Pleck 1987: 169-73). That "no other piece of modern social legislation has been so quickly adopted by all the states" (Pleck 1987: 173) reflects the level of public concern about severe child abuse and the fact that that the proposed solution was relatively simple and low-cost (Nelson 1984). However, most states were not prepared for the enormous flood of calls they received after the passage of mandated reporting laws,[56] so child protective services had to be expanded across the country. Horror stories of children removed

[53] It was first used in a report published in the prestigious Journal of the American Medical Association and later publicized by the press.
[54] Doctors were reluctant to report such injuries as possibly caused intentionally by a parent, either not wanting to go to court or fearing libel suits (Pleck 1987: 167).
[55] Calling it a "syndrome" implied that parents who beat their children were somehow "sick" and deserved help and treatment rather than criminal prosecution, and hinted that the disease could somehow be eradicated. This was part of a larger trend towards medicalizing various personal problems such as drug use and alcoholism (Nelson 1984).
[56] Reports increased nationwide from 9,500 calls in 1967 to almost 300,000 in 1975 to 669,000 in 1976, leading one expert to equate child abuse reports to 911 callers who were unable to distinguish "between life-threatening crimes and littering" (Ashby 1997: 137, quoting Douglas Besharov).

after false accusations or removed for very little reason quickly came to light, leading some experts to complain that too many children were removed for even "marginally inadequate childcare" (Ashby 1997: 137, quoting Douglas Besharov).

The New York State reporting law went into effect on July 1st, 1964 and required cases to be reported to the Bureau of Child Welfare. However, several months after the law was passed New York City officials complained that doctors were still reluctant to report suspected cases of abuse (1965). My research about the agencies involved in dealing with reports was not able to clarify exactly who was responsible for conducting investigations at this time. It seems there were various agencies responsible for investigating in the first years after the reporting law's passage and that by 1968 the public agency had taken over.[57]

By the early 1970s, the U.S. Senate again took up the problem of child abuse and discussed solutions beyond reporting. Walter Mondale, chairman of the recently created Senate Subcommittee on Children, was personally interested in the issue and held hearings on federal funding for child abuse prevention.[58] The hearings were dominated by testimony about severe child abuse and by a medicalized view of the "epidemic" of child abuse and the need to stop the "cycle of violence" before the victimized child grew up to become "a juvenile delinquent, a murderer, assassin, or a child batterer" (Pleck 1987: 177). As in earlier times, the majority of cases were about neglect and related to poverty (Pelton 1989); however, a narrow medicalized and individualized focus allowed both liberal and conservative law-makers to support the

[57] A New York Times article from 1965 refers to investigations being done by the SPCC in Queens (Jaffe 1965). A 1967 nationwide survey of child protective agencies reported that there were both public agencies and SPCCs in Queens, New York, and Brooklyn (The American Humane Association Children's Division 1967). A 1968 New Times Article states that the Bureau of Child Welfare did investigations (Perlmutter 1968). Interestingly, according to New York State law, SPCCs are *currently* authorized to conduct investigations, but none exist.

[58] Mondale had previously attempted to pass a more comprehensive bill to fund social services for children which was vetoed by Nixon who objected to its funding of public child care; however, a narrow focus on child abuse meant he was eventually successful. As Mondale once quipped: "Not even Richard Nixon is in favor of child abuse" (quoted in Pleck 1987: 176).

proposed intervention, The Child Abuse Prevention and Treatment Act (CAPTA), which passed easily in 1973.

Under CAPTA, states were required to meet federal guidelines for reporting, investigating, and providing treatment for child abuse and neglect in order to get federal money. "Child Abuse and Neglect" was defined as a single category: "the physical or mental injury, negligent treatment, or maltreatment" of a child under 18 by a "person responsible for the child's welfare under circumstances which indicate the child's health or welfare is harmed or threatened" (quoted in Nelson 1984: 14). State agencies were allowed to remove endangered children from abusive *or neglectful* homes for three days during which time they had to bring the case to court to file for custody in order to keep the child out of the home (Ashby 1997: 135-37). Funds were made available for child abuse prevention, but these could only be used in cases in which the child would have been eligible for Aid to Families with Dependent Children (the new name for ADC since 1962) (Shireman 2003), again showing the link between poverty and maltreatment. Little thought was given to foster care itself and what to do after children were removed which would cause profound problems in later years (see below). After CAPTA, in New York City, Special Services for Children (the new name for the older Bureau of Child Welfare; the name was changed in 1969[59]) was responsible for investigating all reports of abuse and neglect that were called in to the "State Central Registry" (New York's child maltreatment reporting hotline).

Changes in federal AFDC policy also greatly impacted child welfare during this period. In 1961, the Secretary of the U.S. Department of Health, Education, and Welfare, Dr. Arthur

[59] It is not clear why the name was changed and what the concrete changes in the agency were. However, there was a high-profile death of a child "known to the system" that year investigated by the mayor's office which might have precipitated the change (1969).

Flemming informed states that they could still create their own rules regarding "suitable homes" to which aid would be given, but that they could no longer use the mother's conduct to deny funding to the child. This rule was put into place in response to public outcry over the mass expulsion of tens of thousands of black children from the welfare rolls in Louisiana (Lawrence-Webb 1997), a practice that was common across the country whenever local officials felt the rolls were getting too large or black labor was needed (Piven & Cloward 1993: Chapter 4). Under the "Flemming Rule" (which was made law by later amendments to the Social Security Act) states were required to report families that were neglectful to the court system and to provide services "to address parents' inability to properly provide childcare" (Lawrence-Webb 1997). If the child was removed from the home, money that would have gone to the family would then be used to pay for foster care (Hacsi 1995; Frame 1999).

In many states, caseworkers who were responsible for determining AFDC eligibility were not qualified to provide help in situations of maltreatment. Therefore, if abuse or neglect was suspected, many removed the children from the home (Lawrence-Webb 1997). One nationwide study, conducted in 1963, found that over "51% of children served by public agencies were either in foster care or receiving some kind of foster care" (Lawrence-Webb 1997). A study of 1,048 families whose children had been placed in foster care in New York City in 1963, found that 14% had been "referred" by welfare officials, the only sources with higher percentages were the police (19%) and hospitals (17%). The "Flemming Rule" thus

> placed welfare mothers' parenting under greater scrutiny while a bridge to child protection was established through foster care. If mothers were deemed 'unfit' even after social workers provided services, federal monies could be withdrawn from the mother but were still available to the child through foster placement" (Frame 1999: 729).

After this change, the numbers of children in foster care overall (Hacsi 1995) and the percentages

of black children (Roberts 2002; Billingsley & Giovannoni 1972) increased dramatically. Despite the fact that the modern system was created out of concern with severe abuse, poor children were still those most often removed from their homes, usually for neglect. During this time, at the national level, the regulation of poor families through child welfare shifted more directly to the state and was focused increasingly on families of color.

At the state and city level, this period brought important changes to the court system. In New York State in 1962, The Family Court Act was passed which expanded the jurisdiction of the Domestic Relations Court. This act required stricter rules of evidence and greater attention to due process, and gave children the right to counsel (Sobie 1987).[60] In neglect matters, the child was no longer the named respondent, as the Act focused blame more squarely on parents (Sobie 1987: 162). At this time, the right of children to be assigned lawyers grew out of a Children's Rights Movement[61] that argued that children were not radically different from adults and should be included in the larger 1960s-era vision of "self-determining persons who could make claims recognized by law" (Grossberg 1993; see also Guggenheim 2000; Guggenheim 2005). Although the early decisions regarding children's legal rights mainly applied to delinquency proceedings, courts were also required to assign lawyers to children in abuse and neglect cases by federal law

[60] The court had jurisdiction over most matters of family law: child protection, child support, paternity, termination of parental rights, juvenile delinquency, persons-in-need-of-supervision (a new category for "status offenses," i.e. offenses committed by children that would not be a crime if committed by an adult), and family offenses (domestic violence) (Sobie 1987). Divorce was left in Supreme Court (note that in New York State "Supreme Court" is not an appeals court but a trial court). I am not sure why this decision was made, but it continues the pattern of a "two-tier" legal system originally set up under English poor law and imported to the U.S.—one for the poor and another for everyone else (tenBroek 1971).

[61] This was a "movement" mainly of attorneys who worked for legal changes in family court practices, although there were a couple of books written about the topic as well. They defined themselves as a "Children's Rights" movement, drawing on the rhetoric of the Civil Rights and Feminist movements, but they were definitely not "grassroots" and not many people outside of the world of child welfare would have knowledge of their existence (Guggenheim 2005).

in 1974, a practice that was already in place in New York City (Guggenheim 2005).[62]

The fact that children were seen as having, at least in some way, rights as individuals, and therefore the right to lawyers, had important consequences for the child welfare system, especially in New York City. Specifically, it led to the founding of the Juvenile Rights Division of the Legal Aid Society (JRD) which, by creating a set of lawyers who worked exclusively for children, paved the way for various class-action lawsuits on behalf of children in the child welfare system which led to important changes (Guggenheim 2006). The most important of these suits was Wilder v Bernstein,[63] filed in 1973, which argued that the entire foster care system in New York City was unconstitutional due to its public funding for religious agencies, and because foster care denied black children equal protection under the law and violated the right of black children not to be detained without due process (Bernstein 2001).[64]

By the time the suit was filed, the foster care system had changed little from its origins: children in need of placement were placed with private agencies, largely organized along religious lines, which received most of their funding from the government. The city had very few

[62] Alongside these discussions of the importance of granting children rights similar to those held by adults, courts continued to uphold parents' rights to raise their children as they saw fit and acknowledged that children did not have the capacity to take advantage of rights in the same way as adults since they remained dependent in many ways. Opposition to children's right talk quickly emerged, warning that children needed adult guidance and protection and that these were also "rights" that would be lost if children were left to decide their lives for themselves (Grossberg 1993).

[63] The case of the lead plaintiff in the suit, Shirley Wilder, a teenager at the time, typified many of the problems faced by black children in need of placement. After the death of her mother and, later, her grandmother, she was sent to live with her father. After running away multiple times from his home due to beatings and harsh treatment by her stepmother, her father finally brought her to family court to have her "put away." The court found she needed a residential center where she would get psychological help, but she was rejected by every private agency (the only agencies that provided this kind of treatment) and had to be placed in a state "training school" after spending several months in a detention center that was supposed to have been closed more than a year before. The center was found by a federal court to be "so hazardous and unhealthy that they amounted to cruel and unusual punishment" (Bernstein 2001: 8).

[64] If children were placed in institutions for juvenile delinquents, which were operating as jails for children, but only found to be neglected, they did not have the benefit of any hearing finding wrongdoing.

placements—mainly temporary shelters and institutions meant for juvenile delinquents[65]—and state law still required that children be placed with an agency of the same religion as their parents when possible. In practice this allowed agencies to reject children of different religious backgrounds. What had changed since the 1940s was that children were more likely to be placed in private homes rather than institutions, and, most significantly, the population of children in foster care and institutions shifted from the children of recent immigrants, largely white and Catholic, to largely Black and Protestant. Since the agencies (especially the best agencies with the most help for troubled children) still remained mainly Catholic and/or Jewish, it became very difficult to find placements for Black children.

Black children were still left in city-run "temporary" shelters for long periods of time and many judges labeled neglected or abused Black children "delinquent" so that they could be placed in state-run homes and schools (Polier 1972; Bernstein 2001; Guggenheim 1990; Rosner & Markowitz 1997). Many agencies, including Protestant ones, still refused to take more than a few Black children (and even then preferred lighter-skinned children) and lack of city oversight of the agencies meant there was little the city could do to hold them accountable (Bernstein 2001).[66] Examples of blatant discrimination also came out as the Wilder case proceeded. For example, nuns at one agency reported that, through the 1960s, they took children of unknown race to the Museum of Natural History to be classified by an anthropologist as part of their placement decision-making process. Agencies routinely asked about skin color (and sometimes

[65] The conditions in these institutions were horrific: children faced extremely harsh punishments including solitary confinement, sexual violence among the children was common, buildings were in disrepair, and there was no psychological treatment available (Bernstein 2001).

[66] In fact, until 1971, the city had no count of the numbers of children in care, where they were located, and how long they had been in care, nor did they have information about how many homes agencies had, what openings were available, and what programs they offered and how they were run (Tobis 1989). Caseworkers in the Bureau of Child Welfare simply called agencies and gave a brief description of the child to each until they found an opening (Tobis 1989; Bernstein 2001).

whether the child's hair was straight or kinky) and accepted lighter skinned black children before darker skinned children (Rosner & Markowitz 1997: 1848).

In part because the Wilder case threatened entrenched interests (especially the powerful Catholic Church who ran a majority of the agencies) and the entire structure of the foster care system, it took 14 years before it was settled. The eventual settlement required that:

- Children be placed on a first-come, first-served basis unless parents expressed a strong interest that their child be placed in a sectarian agency, in which case efforts would be made to accommodate the request;
- Children be provided with opportunities to practice their religion if placed in an agency of a different religion;
- Children be provided with access to family planning information and services[67];
- Agencies be prohibited from displaying "excessive" religious symbols in common areas (Guggenheim 1990: 624-626).

Two years after the settlement was put into place, children were not placed on first-come, first-served basis as part of a concerted effort to find appropriate placements for their needs as stipulated by the settlement. Instead, caseworkers continued to make placements haphazardly, calling agencies and accepting any opening. Most disturbingly, although the system was now serving Black children almost exclusively, differences in skin tone still affected the likelihood a child would find placement (Bernstein 2001: 373).[68] The creation of state-run child protective agencies to conduct investigations did not affect these foster care practices in New York City—private agencies still provided this service and it proved difficult to stop discrimination. In the following decades, at both the national level and in New York City, reform efforts shifted to the foster care system itself, while the treatment of poor parents became increasingly harsh and punitive.

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[67] Catholic agencies were allowed to refuse to provide information and birth control, but they had to allow the child to get these services elsewhere. Two years later, the city was still fighting the birth control provision, a position Mayor Koch took in order to appease politically powerful Catholics (Bernstein 2001).

[68] The attorney for the plaintiffs filed contempt motions, and the case continued to be fought until 1999, when the settlement was incorporated within the court decision in the Marisol case (see below).

Late 1970s - 1980s: "Foster Care Drift," Attempts at Reform, and the "Crack Epidemic"

By the mid-1970s, in the midst of a worldwide recession, the American economy was faltering, with unemployment and inflation both steadily rising. A fiscal crisis hit New York City as banks that had been loaning the city money for years refused to continue and demanded reforms that would reassure investors (Zinn 2003: Chapter 20; Freeman 2000: Chapter 15). Freeman describes this as, essentially, an upper-class power grab as

> financial leaders saw an opportunity to undo the past, to restructure New York along lines more to their liking than those drawn by decades of liberalism and labor action. They wanted less and less costly government, fiscal probity, and the desocialization of services and protections for the working class and the poor (Freeman 2000: 258).

As a result of the crisis, the city was forced to make drastic cuts in city services, which "had the effect of repositioning" city institutions "as second-rate entities" (Freeman 2000: 272). Harvey refers to the New York City fiscal crisis as a "test-run" for a wider application of neoliberal ideology and policy. The basic idea, in other words, was to enact policies that would re-instate "market freedom" and curb state spending on social programs (Harvey 2005). These changes were pushed by business leaders who sought to "lower wages by reducing the influence of unions and cutting social programs that not only raised taxes but offered an alternative to poorly paid jobs" (Katz 1989: 138). The effects of these economic and political changes were devastating to working-class and poor New Yorkers—they were hit hardest by municipal austerity measures and many were laid-off from city jobs. Working-class and poor communities deteriorated and much available housing was abandoned, while some landlords even turned to arson to get whatever money they could (Freeman 2000: Chapter 15; see also Susser 1982). Meanwhile, city spending priorities were shifted to central business districts and towards creating a favorable business climate (Freeman 2000; Harvey 2005).

The 1970s was also a period of accelerated economic restructuring. Deindustrialization, the move of manufacturing overseas (Bluestone & Harrison 1982), and the growth of a two-tiered service economy (with highly-skilled and highly-paid professional jobs on one end and low-wage, informal, and part-time service jobs on the other) greatly exacerbated inequalities, increased poverty and homeless, and led to the created a "dual city" of very well-off professionals and increasingly impoverished communities (Mollenkopf & Castells 1991). The growth of the informal economy in poor neighborhoods sometimes took the form of illegal drug selling, increasing violence both within communities (gangs and domestic violence) and in the form of state-sanctioned violence like the "war on drugs" and the increasing incarceration of poor and minority people (Bourgois 2003(1996); Mullings 2003; Sharff 1998; Wacquant 2001; 2008). There was thus "a process of social polarization, not just inequality: the rich are becoming richer and the poor are becoming poorer in absolute terms" (Mollenkopf and Castells 1991: 401). These divisions tended to follow lines of race and gender as the higher paid workers were "predominately male and white," while those at the bottom were "diverse ethnic minorities, often differentiated by gender" (Mollenkopf and Castells 1991: 402). Given all this, "harsher mechanisms to maintain order and control" were necessary, leading to an increasingly "law and order" mentality among policy makers and "tough on crime" politics (Mullings 2003). This was accompanied by the rise of rhetoric that blamed the poor for their own poverty and charged that providing money to impoverished families was itself a cause of poverty as it created "intergenerational" dependency and irresponsible mothers (Williams 1995).

All of these changes led to increasing numbers of children living in poverty and increased need for family services, but policy efforts sought to contain costs and limited money for these programs. During the 1960s and early 1970s, the foster care population nationwide and in New

York City increased, largely due to the "Flemming Rule" (Tobis 1989; Pelton 1989).[69] An abrupt halt to the increase in the numbers of children in foster care in New York City was then brought about by the mid-1970s fiscal crisis and increasing fiscal conservatism and by a renewed social work emphasis on avoiding removal whenever possible (Tobis 1989: 105). Increasing numbers of children in foster care, along with research documenting its harms, led to reform attempts nationwide (Pelton 1989).[70]

In New York City, reforms in 1979 attempted to bring the foster care system under the control of city government and to control costs by instituting a system of performance standards and sanctions. The city took control of the placement of children with foster care agencies and increased oversight of city contracts to private agencies. This was part of a general move by city governments nationwide to control costs and ensure that government programs were "accountable" and "cost-effective" through audit (Shore 2008; Power 1997; Strathern 2000). Under these reforms, agencies were subject to yearly reviews in which their performance was measured,[71] and, if they performed badly, they were subject to sanctions such as reduction in the size of the program or even canceling of their contract altogether. Finally, under a "preferred placement" scheme, the city was to place more children in the highest performing agencies and reduce the numbers placed in underperforming agencies.[72] Tobis, a researcher who worked at the

[69] Nationally, the number of children in foster care rose from an estimated 272,000 children in 1962 to 319,800 in 1972 (Tobis 1989: 105). Pelton estimates that, by 1977, the foster care placement rate per 1,000 children nationwide had risen to 7.6, up from 3.7 in 1961 (1989: 6). In New York City, the numbers of children in foster care hit a peak of 24,732 in 1975, up from 16,121 in 1960 (Tobis 1989: 103), and, in 1977, the mean length of stay for children in foster care was 5.11 years (Tobis 1989: 107).

[70] This research, which had been accumulating for over a decade, showed that many of these children might have been helped in their homes, that they were experiencing long stays in foster care which often meant moving to multiple homes, and that there were harms associated with removal and foster care (Pelton 1989).

[71] Areas measured included how many children were visiting with their parents regularly; reports of abuse/neglect while in foster care; and whether children were receiving proper food, clothing, medical and dental care (Tobis 1989).

[72] In general, agencies improved performance until the mid-1980s when a "bed crisis" hit and the city had trouble finding any placement at all for many children. For example, the percentage of agencies meeting the goal of two

city during this time and was involved with these reforms, has documented how they were systematically undermined by politically powerful private agencies.[73] Although there were some short-term improvements, city control and the quality of agency services were not significantly increased (Tobis 1989).

A wider "permanency planning" movement within child welfare in the mid- to late-1970s led to policy changes at both the state and federal level. Influenced by the theory that children needed a secure and permanent connection to a "psychological parent" (Goldstein et al 1973),[74] permanency planning was an effort to ensure that children placed in foster care would not experience long periods in foster care and multiple moves from foster home to foster home. This was to be accomplished by planning for a permanent arrangement (either return home or adoption) quickly and by reviewing the cases of children in foster care periodically to ensure this occurred. The movement did not, by and large, focus on preventing placement in foster care in the first place, but rather on dealing with the large numbers of children who were placed (Pelton 1989: 79-80). However, federal and state laws did attempt to mandate foster care prevention efforts, likely in an effort to control costs. In New York State, The Child Welfare Reform Act of 1979 required that preventive services be offered before a child was placed in foster care, provided funding for these services (which was open-ended and reimbursed cities and counties 75% of the cost), and required the state to develop standards for assessing whether foster care

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visits per month increased from 51.79% in 1981/82 to 59.6% in 1984/84, and the percentage of agencies meeting targets for providing basic medical care increased from 56% in 1982/83 to 72% in 1986/87 (Tobis 1989).

[73] Performance standards were significantly lowered or even eliminated, more cases were not considered in rating performance, fewer assessments were actually done, and agencies' improvement plans were not monitored. The preferred placement scheme was only in place for one year and sanctions were almost never used, except against smaller agencies not connected to the politically powerful affiliations of Catholic and Jewish agencies (Tobis 1989).

[74] See Chapter 4 for the assumptions behind permanency planning.

was necessary and for promoting permanency.[75] The law also denied state reimbursement to agencies that did not create standards for foster care placement, who violated these standards, or who failed to implement permanency planning. It also placed a ceiling on funding for foster care (Tobis 1989; Sobie 1987).

At the federal level, the Adoption Assistance and Child Welfare Act, which used the New York State law as a model (Tobis 1989), was passed in 1980. It similarly aimed to prevent foster care placement when possible and promoted adoption if reunification was not feasible. This law continued federal funding for foster care, but made receiving it contingent upon a state plan to reduce the numbers of children in care for more than two years, a written case plan for each child, and reviews of their placements every six months. It also created more federal funding for preventive programs and required that agencies make "reasonable efforts" to prevent foster care placement and towards family reunification. Finally, it stipulated that, before a child could be placed in foster care, a judicial determination that leaving the child at home would be "contrary to the welfare" of the child and that the agency had in fact made reasonable efforts be made (Reich 2005; Shireman 2003). In the early 1980s, as a result of these changes, the foster care population did drop nationwide (Pelton 1989; Wexler 1995; Reich 2005; Roberts 2002), and the numbers of children adopted from foster care also increased (Pelton 1989). Funding for preventive services, however, was inadequate and was much smaller than funding for foster care (Pelton 1989; Reich 2005; Roberts 2002; Wexler 1995).[76]

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[75] The law also made adoptions easier by reducing the amount of time for adoptions to be finalized and providing funding for adoption services.

[76] Roberts, for example, cites research which found that the amount of federal money spent for child welfare increased dramatically from 1981 to 1995 (from $.5 billion to $4.1 billion) but the percentage of this that went to preventive services decreased over time (Roberts 2002: 142). By 1988, 77% of funding available for foster care, adoption, and child welfare (including prevention) went for foster care and adoption (Pelton 1989: 97) and by 1993, the federal government spent $.12 for every $1 spent on foster care (Roberts 2002: 142).

By the mid-1980s the numbers of children placed in foster care again increased (to about the levels recorded in the late 1970s). The increase is commonly attributed to the crack cocaine "epidemic" (see, for example, Reich 2005: 43), but the causes are more complex than this.[77] What is important, and what the following section will discuss, is the *way in which crack cocaine was dealt with* and how this was related to an increasingly conservative political climate that took a "get tough" stance on crime, especially drug-related crime, and tended to blame the poor, especially poor women of color, for their own poverty and for various social problems. In this context, parents who used illegal drugs, especially poor women of color who used crack cocaine, were demonized and dealt with criminally or through child removal. I want to be clear, however, that the drug trade, which became a more important part of the informal economy of inner-city communities in the mid-1980s, did have deleterious effects on these communities. Violence escalated (Mullings 2003), and, since crack cocaine also was also one of the first drugs to pull in large numbers of women, children were affected (Humphries 1993). My critique of how crack cocaine was dealt with is not meant to deny these negative effects. Rather, it is to highlight the fact that the problem was dealt with in a largely punitive manner by removing children from their homes and/or by criminal and civil prosecution. The provision of drug treatment, preventive services to the family, and concerted efforts to avoid placement were not the solutions tried (Wexler 1995; Gomez 1997; Humphries 1993; Ortiz & Briggs 2003; Roberts 1991; 1997; Young 1994; Zerai & Banks 2002). According to Wexler (1995), a panic about drug abuse and its

[77] As Pelton and Tobis point out, changes in the numbers of children exiting foster care also contributed to the increase. In the late 70s and early 80s there was an increase in the numbers of children leaving foster care and then a decrease in those rates and a new "revolving door" or "churning" phenomenon in which children were in care for relatively short stays but were likely to be placed again (Pelton 1989; Tobis 1989). This change seems to be linked to waning support for family reunification as well as to a willingness to remove children, which, in turn is linked to a larger conservative political climate and lack of support for helping poor families who were disproportionately families of color.

effects created a climate in which removals to foster care seemed the only solution while there was reduced pressure to explore and fund other alternatives.

This panic over maternal drug use and "crack babies" (who were portrayed as almost exclusively African-American) is part of a longer history of the "racialization and biologization of poverty." Rather than a larger concern with the problem of prenatal drug exposure, public discourse focused on poor women of color who used crack. This was despite the fact that women of all races and classes use drugs while pregnant and alcohol use and smoking are more common and generally more harmful. Through the discourses around "crack babies" (as well as the earlier idea of the culture of poverty), "a biologically suspect and racialized U.S. 'underclass' was produced through a description of kinds of reproduction and childhood in a way that rendered its members—and particularly its children—intrinsically pathological and completely irredeemable" and thus unworthy of help (Ortiz & Briggs 2003: 40). Widespread beliefs about the dire consequences of exposure to crack cocaine *in utero* as well as inflated statistics about the rising "epidemic" of crack use led to

> the legal and child welfare systems work[ing] very had to make women who used crack cocaine during pregnancy suffer. Between 1985 and 2000 more than two hundred women faced criminal prosecution for using cocaine and other drugs during pregnancy and tens of thousands lost their children to foster care" (Ortiz & Briggs 2003: 44).

Hospitals began to institute drug testing programs that almost exclusively affected poor women and women of color[78] and many women lost children immediately after birth if they tested positive. When the foster care system was unable to handle the children removed, funding for and the capacity of the system were increased (Ortiz and Briggs 2003: 47). In New York City,

[78] Often testing protocols were in place only in public hospitals and applied to women who had not had prenatal care or who were on Medicaid (Roberts 1991). According to Zerai and Banks, these policies were "less a means of protecting children exposed to cocaine *in utero* than they are a way of repositioning and anchoring poor Black women within a system of 'unjust power relations'" (Zerai & Banks 2002: 6-7).

the child welfare system was overwhelmed: informants who worked in the system during that time described a flood of cases and an inability to keep up. Beginning in late 1985 in New York City a "bed crisis" began to emerge in which caseworkers had a very difficult time finding homes for children, largely due to a declining number of foster care beds, and children spent long periods in offices and hospitals awaiting placement (Tobis 1989).[79]

During this period of increased fiscal and social conservatism, attempts were made to reform the foster care system and deal with the problem of children placed unnecessarily and left to linger in care for long periods. These attempts at reform fell short, however, as prevention and reunification efforts were underfunded. By the 1980s, poor mothers of color were increasingly dealt with in harsh ways and were disproportionately vulnerable to child removals. The following decades would see an even sharper move away from supportive services for poor families of color.

1990s – Present: Assaults on Family Preservation and Continued Reform

In the 1990s, in the context of a strong political right and the hegemony of neoliberal ideas, attacks on both welfare and the child welfare system intensified. This period saw a continuation of forces creating increasing inequality and the culmination of several decades' worth of "harsh and racist representations of the poor" (Goode & Maskovsky 2001a: 7) in the passage of "welfare reform." Economic polarization and further dismantling of welfare programs

> inevitably created a host of social problems that the state has elected to solve in part by incarcerating a historically unprecedented number of poor people…This and other police-

[79] The numbers of beds decreased rapidly as private agencies stopped making them available in response to ongoing efforts by the city to regulate them (Tobis 1989: 188). Multiple stories in city papers attributed the crisis to larger numbers of children who needed placements and attributed that problem, in turn, to crack cocaine although these children were removed from their parents for various reasons. One article, for example, with the headline "Babies of Crack Users Fill Hospital Nurseries" admits, late in the article, that a "survey of children awaiting foster-care placement last week found 100 in city hospitals, with more than half of them children of parents who used drugs" (Kerr 1986). It seems that "more than half" was probably below 60% or the article would likely have given a higher number if it had been found.

> state strategies indicate that the state's new role is to regulate the poor through surveillance and incarceration, not through supportive services" (Goode & Maskovsky 2001a: 6).

The dominant political ideology of the 1990s, neoliberalism, represented a "faith in the economic, social, and moral attributes of unhindered competition and unregulated markets" but was not a simple-minded attempt to shrink the government overall (Goode & Maskovsky 2001a: 8). The state still was to play a role in protecting the market, in surveillance and policing, and in attempts to change the behavior of poor populations through mandating work and other "responsible" behavior. This can be seen clearly in the intertwined welfare and child welfare changes made during the mid-1990s.

Proposals to "end welfare as we know it" drew on conservative ideas that welfare itself was a cause of poverty and argued that stricter work requirements and even time limits might be necessary (Waldfogel 2004; Sidel 1996). Some media and political accounts explicitly linked welfare to child abuse and neglect: "By highlighting Latina and African-American alleged child abuse and neglect, the media frames welfare as a matter of race and paints all single mothers as immoral, deviant, dysfunctional—and solely responsible for every physical and behavioral problem of their children" (Williams 1995: 1191-1192).[80] These images underpinned calls by conservatives, led by Newt Gingrich, to end welfare benefits to unwed mothers and use the money to house their children in orphanages instead (Ortiz & Briggs 2003; Williams 1995). Although Gingrich was widely criticized for the remark and had to back-pedal, conservative commentators did push the idea that foster care would be better than leaving poor children with

[80] Williams (1995) gives the example of how the case of a mother in Boston, who was accused of abusing her young son, was tied to welfare and sparked debate over reform of the system in the state legislature. Newspaper accounts of the case highlighted her mistreatment of the child, her drug addiction, and the fact that she received AFDC and four generations of her family had been on welfare. Her abuse of her son was part of the larger picture of an irresponsible mother, and it was implied that her irresponsibility was an outcome of her receiving welfare.

their mothers. A story in the Atlantic Monthly, for example, portrayed "group homes" and other institutions as pleasant and orderly. Although "intimacy" was absent,

> in the paradoxical world of 'child protective services' an institution may be the first home some children have ever known, providing their first chance to sit down to meals with other people at regular times, blow out birthday candles, and be taken care of by adults who do not hit or even yell" (Weisman 1994).

The conditions in poor homes were thus implicitly or explicitly compared to foster care and foster care was made to seem the more appropriate place for children. The well-documented problems that children removed from their parents developed were not well-publicized, although child welfare professionals did acknowledge that long stays in foster care and frequent moves did harm children (Lindsey 1994: 58-59; Roberts 2002; Shireman 2003: Chapter 6; Wexler 1995).

Two major policy changes at this time reflected these conservative views. First, in 1996, The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) was passed. This Act repealed the main form of cash assistance available the poor, AFDC, and renamed it Temporary Aid to Needy Families (TANF) which was to be funded through annual block grants to the states and matching state money. TANF placed a five-year lifetime limit on welfare benefits, from which only 20% of the caseload in any state could be exempted, and Congress gave states the freedom to shorten this limit or to extend it by continuing to give benefits with state funds (Bryner 1998: 175-179).[81] The law also placed strict work requirements on those who received cash benefits, although some exceptions could be granted.[82] Finally, the law gave states incentives if their recipients met work requirements and bonuses if they reduced out-of-wedlock births without increasing abortions (Bryner 1998: 178-79).

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[81] Teenage parents cannot receive benefits unless they live with an adult and regularly attend school. States may deny or reduce benefits to children born while mothers are on welfare or if women refuse to establish paternity.
[82] Within two years of welfare receipt, those receiving benefits have to participate in work activities. Some exemptions can be granted, at states' discretion, to parents with young children or to one of the parents in a two-parent household who must care for a severely disabled child.

The year after PRWORA was passed, the Adoption and Safe Families Act (ASFA) made important changes to federal child welfare policy and similarly placed limits on the amount of help to which poor families would be entitled.[83] Although the law did not explicitly deal with poverty, most of those involved in the child welfare are below or near the poverty line and the main source of funding used to support children in foster care remained linked to eligibility for AFDC. As one of the bill's few opponents, Rep. Patsy Mink, commented during debate:

> First you take their money away. Then you force them into desperate conditions of poverty. Then you deem them unfit to raise their children…and place [the children] in foster homes. Then after 18 months you put the children up for adoption. Whose family values do we stand for?

McGowan and Walsh trace the passing of ASFA not only to a general climate of disdain for "undeserving" poor mothers, but also to concerns that the child welfare system was another way the government was spending too much on the undeserving poor. Conservatives pointed to the sheer growth of the child welfare system as well as to an increase in kinship foster care[84] which "stirred enormous public anger about the possibility for relatives of 'bad' parents boarding their children simply to obtain extra money from the state."[85] Along with data that showed that a particular type of family preservation service was found to be less effective than originally

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[83] Most of the provisions of ASFA were originally part of PRWORA (Ortiz & Briggs 2003).

[84] The increase followed a 1979 Supreme Court decision that held that family members were entitled to the same foster care payments as other foster parents.

[85] Although written after ASFA was passed, an article by Heather McDonald in the City Journal in New York sums up the concern here: "The nation's foster care system has given rise to an unnoticed and deeply troubling reality: not only has it accepted the inevitability of legions of abused and neglected children, but it has made them into an integral part of the inner-city economy. For every child put into foster care, the foster family—which may be complete strangers or only a slightly different configuration of the child's birth family—gets a subsidy two to three times larger than what ordinary welfare pays. Whole communities of grandmothers are living on the money they receive for their abused or neglected grandchildren. Welfare advocates treat foster care payments as just another routine way to pump government money into troubled neighborhoods… Rather than working to ameliorate these hard realities (i.e. drugs and 'the explosion of the traditional two-parent home into a dizzying array of intersecting family fragments') the foster care system runs a great risk of enabling them. It allows families to accommodate, and even profit from, their dysfunctions" (MacDonald 1999: 42).

thought, these concerns raised questions about family preservation services in general which culminated in the passage of ASFA (McGowan & Walsh 2000: 13-14).

The concern overtly addressed by ASFA was that "efforts to reunite children with their birth families have favored parental rights over a child's safety and need for stability in care" (Stein 2000: 587) and that children were spending too long in foster care. Much support for the law was gained by pointing to a small number of "horror stories" that represent the small numbers of cases that involve serious abuse.[86] Told in "lurid newspaper accounts" of children who were killed or seriously injured by their parents, "the implication [was] that lives were lost because social workers were attending too much to family preservation and reunification" (Stein 2000: 587; see, for example, Murphy 1993; MacDonald 1994). Thus, under AFSA,[87] the "key principle" governing decisions about child placement is that "the child's health and safety shall be the paramount concern."

AFSA is also guided by the principle that foster care is temporary. To this end, it requires that "permanency planning" begin immediately, and that permanency hearings be held within 12 months of the child's removal from their home. States are also supposed to encourage "concurrent planning" in which caseworkers simultaneously plan for the child to return home and to be adopted. The law placed time limits on how long a child could remain in foster care before the state should move to "free" the child for adoption. Under AFSA, termination of parental rights must be initiated for a child who has been in foster care for 15 of the last 22 months, except in certain circumstances.[88] The act further provided various financial incentives

[86] Lindsey goes so far as to refer to abuse as the "red herring" of child welfare (Lindsey 1994).
[87] All quotes in this section are from the text of the law itself—Public Law 105-89.
[88] Unless the child is cared for by a relative (states could chose not to exercise this option), if a "compelling reason" why termination would not be in the child's best interests is documented, or if the state has not provided the services in the parent's case plan.

if states increased the number of adoptions and gave them access to technical assistance to help meet adoption goals. It also provided tax breaks for families who adopt "special needs" or "hard to place" children.[89] These benefits are not means tested, and, interestingly, "minority" children are included as special needs or hard to place (see Ortiz & Briggs 2003: 51-52). The law finally clarified the term "reasonable efforts" by listing certain situations in which reasonable efforts are not required: in the case of an abandoned infant, a child whose parent has committed murder or manslaughter of a sibling or for a child whose parent has committed a felony assault resulting in serious injury to a child.

However, the law did not completely abandon family preservation or the idea that reasonable efforts were required. It reauthorized "family preservation and support services" (i.e. money to provide services to parents in an effort to avoid placing the child in foster care), and added some funding for "time-limited family reunification services" (i.e. those that aim to help a parent regain custody). The services listed here include counseling, substance abuse treatment, mental health services, temporary childcare, and transportation to and from any services. The list indicates that parents' individual problems are seen as the only cause of child maltreatment despite evidence of the connection between poverty and child neglect.[90] In addition, the

[89] These are in addition to subsidies already provided to families who adopt a child from foster care.

[90] The law has been criticized on a practical level by child welfare professionals who believe it will not actually fix the problems of children waiting too long for permanent homes as severing parental rights does not guarantee the availability of adoptive parents (Guggenheim 1996). In addition, the law does nothing to address systemic problems with child welfare such as lengthy court delays, problems accessing services for parents, caseworker training and turnover, and a lack of clarity about what "reasonable efforts" are and how they should be made in the vast majority of cases who do not fit the exemptions to making reasonable efforts laid out in ASFA (Moye & Rinker 2002; Stein 2003). All of these factors are key reasons why children remain in foster care for long periods of time but were not acknowledged as playing a role. Finally, legal scholars have pointed out the constitutional issues raised by ASFA in terms of the due process rights of parents (Wilkinson-Hagen 2004; Guggenheim 2005; 2007). On the other hand, others have argued that ASFA is good public policy because of the emphasis it places on child safety and its efforts to find permanent homes for children (Bartholet 1999 is the most prominent and has sparked the most discussion). Some have criticized it as *not being child-centered enough* as it contains an exemption to time limits if a child is living with a relative, does not adequately fund preventive services, and leaves intact the financial incentive to keep children in foster care longer (Erickson 2000; Gordon 1999b).

emphasis on time limits for reunification services disproportionately affects the poor families of color who are most likely to receive them.

Despite the overt concern with severe child abuse and the harms to children that result from long foster care stays, the hearings leading up to ASFA show clearly the conservative views behind it and the role of race in understanding child welfare problems. Policy makers seemed focused on poor families of color and in limiting their access to services, and the case examples cited were often *not* cases of extreme abuse. In my own analysis of one senate hearing, I found that the "fact" that "certain families…simply cannot be fixed" (United States Senate1996: 1) is mentioned several times and it is asserted that we (i.e. the wider society) should "simply give up on certain classes of parents" (United States Senate 1996: 26). The choice is clearly set up, then, between risk/parents' rights and safety/children's needs. Although who these "certain classes of parents" are is left vague, many other references in the testimony and senators' comments seem to be code for poor, inner-city, female-headed, families of color. For example, in the opening statement to the hearing, there is a significant mention of "the crack cocaine epidemic" as a factor in the "crisis" in child welfare. Other descriptions included: having "too many children" (eight in an example provided in the senator's opening statement), "drug-abuse" or drug-selling (United States Senate 1996: 28), and "a rat-infested apartment with people screaming and yelling, in a dangerous neighborhood" (United States Senate 1996: 12).

At the same time that these policy changes and debates were going on at the national level, important changes, largely pushed by attorneys, took place in New York City. At the end of 1995, a class-action lawsuit on behalf of children whose cases had not been investigated and had suffered severe abuse in their parent's homes or in foster homes was filed. The lawsuit, known as Marisol, charged that the Child Welfare Administration (CWA) was not adequately

monitoring children who were returned to their parents nor were caseworkers appropriately planning for a permanent home for them and providing needed services while they were in foster care. Further, the lawsuit charged that the CWA was failing at practically all aspects of their jobs. In 1996, in response to the lawsuit and to the high-profile death of a child "known to the system," Mayor Giuliani restructured CWA and renamed it the Administration for Children's Services (ACS). The new commissioner created a comprehensive reform plan that "all but equated child protection with child removal" (Bernstein 2001).[91] It stated that "any ambiguity regarding the safety of the child will be resolved in favor of removing the child from harm's way" and that only when families demonstrated that "their homes are safe and secure" would children be returned to their parents (Bernstein 2001: 437).[92] Child welfare cases that stemmed from poverty were increasingly handled as crimes: "Poor mothers were led away in handcuffs because they had left a child unattended while trying to buy milk at the grocery store, or because a child had wandered away during a family eviction" (Bernstein 2001: 438).[93] This change in agency policy thus came down hardest on poor mothers for matters related to poverty. This shift was in keeping with other aspects of the Giuliani administration which emphasized a punitive "tough on crime" approach.[94]

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[91] In response to the city's own attempts at reform, litigation of Marisol was stopped and, instead, a panel of nationally recognized experts in child welfare who "without the adversarial taint" would recommend reforms and monitor their progress was appointed (Bernstein 2001: 439). The settlement would also fold the principles in the Wilder settlement into the final decision. For the next two years, a panel from the Annie E. Casey foundation monitored reform and published a series of reports.

[92] He also instituted reforms aimed at increasing accountability in the agency.

[93] This general attitude was also reflected in the judges Guiliani appointed. Among child protective judges he appointed who are still on the bench (11), 3 were formerly prosecutors in District Attorney's offices in the city, 2 worked for the city law department prosecuting juvenile delinquents, 2 had been attorneys for the child welfare agency, and one was a former criminal court judge. The other three had worked in the Mayor's office, worked in appellate courts, and worked as a law guardian and at various jobs in family court.

[94] Scopetta did however push "neighborhood-based foster care" as a model for a new system and spoke publicly about the need for more drug treatment services and more preventive programs as budget cuts under Guiliani had taken a toll (Bernstein 2001).

An important development in terms of allowing parents to have input into how the child welfare system works, the founding of the Child Welfare Organizing Project (CWOP), occurred in 1994. This organization has been instrumental in creating limited mechanisms for parents to influence ACS policy and in pushing for the hiring of parent advocates in various child welfare agencies and at ACS.[95] They have also worked for parents' rights to have parent advocates at important conferences where decisions about their families are made. The goal behind this is to ensure that parents have advocates who can intervene in order to ensure that ACS treats parents with respect and offers the help they need rather than simply rushing to remove their children. Although this is a potentially positive development, it does not seem that this has changed prevailing practices. Poor mothers who are caught up in child welfare still have little say in what will happen to their families and are vulnerable to losing custody of their children.

As this discussion has shown, child welfare has always affected poor families far more than other families and has always been closely related to, or intertwined with, ideas and policies about poverty, its causes, and its solutions. Despite a persistent belief that parents' rights to their children are important and should be protected, and rhetoric since at least 1909 that children should not be removed from their families "for poverty alone," removal of the child in these cases (a majority of which are closely related to poverty) has more often been the intervention made. In general, more money has been spent to support children away from their parents (whether that be in private homes or in institutions) while services for families and help in improving material conditions of their lives has been suspect. Definitions of neglect have tended

[95] Their website has a list of accomplishments including forming an active Parent Advisory Work Group to ACS and a Parent Advocate Advisory Council to the commissioner and creating and teaching a peer-led Parent Leadership Curriculum. Over half of the graduates have gone on to work as Parent Advocates in foster care, preventive, and legal services organizations, and 70% of them were able to reunite with their children. Advocates also guest-lecture at local schools of law and social work and have helped to develop curricula for child welfare professionals.

to blur the lines between the willful denying of care from children and the inability to provide for them adequately, moral concerns about family and maternal behavior have been central, and family issues and responses to conditions of poverty have been criminalized. Although this aspect of American policy and practice has been often guided by a concern for children, it is also a piece of how poor families and populations have been regulated. Furthermore, as the child welfare system has come to deal almost exclusively with the problems of poor families of color, it has become even harsher and more punitive. Often, the system focuses on policing these families and on providing foster care services rather than on providing the help that struggling parents need (see Chapter 6).

Chapter 4:
Underlying Assumptions and Daily Practices in Child Welfare

This chapter explores the child welfare system and the assumptions behind its practices through a brief overview of the process a child welfare case goes through. I will discuss all possible stages, but cases can end at various points along the way. I will also discuss the ideal time-line and events that should occur, but I will point to some common roadblocks and delays which I found in my research. Before looking at the process and the reasons why it occurs as it does, however, the larger orientation and goals of the system must be examined.

The child welfare system, as it exists today, has narrowed significantly to a focus on the investigation of child maltreatment at the hands of individual parents and caregivers and to making decisions about how to best protect children from this abuse and neglect. The system focuses more on investigating particular allegations to determine whether or not they seem to be true than on assessing the overall needs of the family so that children's broader welfare can be protected:

> The initial contact with the family is reactive and investigative, concentrating on gathering information to confirm or disprove the allegations made by the reporter. Investigators and families are also keenly aware that the information being collected during the investigation might be used as evidence in future court proceedings. To the extent that parents are seen as perpetrators, it is assumed that they are part of the problem, not part of the solution. It is also assumed that parents will not cooperate without the use or threatened use of state authority (Waldfogel 1998: 69)

As in a criminal investigation, it is assumed that parents are at fault and will not cooperate without the threat or use of state authority in the form of court-ordered services or child removal. Thus, child welfare is closer to policing, at least at the beginning of cases, than to helping (Lukens 2007).

In addition to this investigative focus, child welfare takes what Lindsey refers to as a "residual approach" wherein the state only becomes involved in a family when it is already in crisis and a child's needs are not being met. "In this perspective the child welfare agency becomes a kind of triage, a battle-front hospital where causalities are sorted and only the most seriously wounded receive attention" (Lindsey 1994: 2). Due to the declining availability of services and help for low-income families (Lukens 2007), child welfare cases act as a method of screening families so that only those most in need receive (limited) help, often only after children have been placed in foster care.

In understanding child maltreatment, its causes, and its solutions, the child welfare system takes an individualistic approach which McConnell and Llewyn refer to as the "parent-as-problem" model. Despite "the consistent finding of social disadvantage among families subject to child removal, social and environmental stressors play only a minor role in workers' understanding of causation" (McConnell & Llewellyn 2005: 555). Instead, caseworkers tend to attribute family problems to "parental pathology/dysfunction or incompetence" and focus on these deficiencies to justify removing children (McConnell & Llewellyn 2005). This orientation stems from a medical model of child abuse (i.e. that abuse is a result of individual pathology and a "disease" that can be cured by helping parents overcome their pathologies) and leads to a set of practices that focuses on "guilty parents" and tends to provide education and counseling services to them (Erickson 2000; McConnell & Llewellyn 2005) rather than help with material circumstances. Due to the focus on individual pathology, certain solutions become more "thinkable" than others: "When parental deviance is the foremost explanatory factor, child protection authorities are more likely to 'see' children in need of removal rather than families in

need of support" (McConnell & Llewellyn 2005: 561; see also Golden 1997; Guggenheim 2006; Lindsey 1994; Parton 1999; Waldfogel 1998).

Finally, child protection practice and policy in recent years has reflected the idea that the rights and needs of children (narrowly defined in terms of safety or freedom from serious harm at the hands of parents) should come first and be the main criteria in decision-making. This often leads to seeing children's rights/needs as being opposed to the rights/needs of parents[96] (Kline 1992; Collings & Davies 2008; Guggenheim 2005; Anglin 2002; Golden 1997). This orientation leads to a situation in which the removal of children from parents rather than providing services is seen as the best solution, especially as efforts to help parents who are largely poor women of color are increasingly suspect (see Chapter 3). This supposed opposition between the rights of children and parents has led to an increasing reliance on courts to deal with cases of child maltreatment as courts are seen as the proper venue for weighing competing these rights and needs.

The Reporting Process

A child welfare case begins when a call is made to the State Central Register of Child Abuse and Neglect (SCR) in Albany via a 1-800 number. Anyone can make a call and can choose to remain anonymous. However, there is, by law, a category of persons who are "mandated reporters" by virtue of their profession. This means that, while doing their jobs, if they have "reasonable cause" to suspect a child is being maltreated or might be harmed by their parent or caretaker, they have an obligation to call. The list of professionals with this obligation

[96] A government report from British Columbia, for example recommended that: "The Ministry's policy should state clearly that the protection of the child is paramount, and should not be overshadowed by a desire to help parents improve their lives and abilities" (Anglin 2002: 245). In other Canadian cases parents who challenge the removal of their children are constructed as "acting in *their* individual—or selfish—interests…and as having 'vested interests' rendering them incapable of 'impartial' consideration of the child's best interests" (Kline 1992: 407).

is lengthy and includes all medical and mental health professionals, social workers, substance abuse counselors, school officials, child care workers, law enforcement officials, and researchers on some federal grants. All mandated reporters are immune from liability regarding a report if they act in "good faith" which is presumed to be the case if they report within the context of their job. At the same time, failure to report is a criminal offense and can leave the individual civilly liable and at risk of losing their job. Materials posted on New York State's website for mandated reporters expressly encourage professionals to report if they have *any* suspicions that a child is being maltreated.

Mandated reporting laws grew out of a concern that professionals were seeing severe abuse but were not reporting it; thus, the laws are written specifically to encourage reporting and to limit barriers to doing so (see Chapter 3). Initially, reporting was seen as an easy and low-cost solution to the problem of severe child abuse. However, as laws about who has to report and what has to be reported expanded, the numbers of reports quickly became overwhelming, especially given inadequate budgets (Besharov & Laumann 1996; Hutchinson 1993; Lukens 2007). This has lead to constant discussions of child welfare as a system "in crisis" (Lindsey 1994; Parton et al 1997; Waldfogel 1998) and to concerns that reports are too often made needlessly without actually creating a situation in which all reports that *should* be made *are* made (Besharov & Laumann 1996; Hutchinson 1993; Lukens 2007).

When a call is made to the SCR, the operator asks the caller to describe their suspicions or what they have seen. They will then decide whether or not to accept the report and send it to the local child protective office. I was told by several informants that there are differences among operators in how they choose to "screen in" calls or not, with some operators giving more scrutiny to reports than others. For example, the mandated reporter I spoke with (she is a

therapist for children in a school in a very poor section of Brooklyn) told me a story about calling the SCR twice in order to trigger an investigation. The first person she talked to did not accept the report, so she (the reporter) was advised by her supervisor to call later. The new operator, with the same information, accepted the report. This illustrates both that there are differences of opinion about which cases warrant investigation or not (Besharov & Laumann 1996; Hutchinson 1993; Tumlin & Geen 2000), as well as the difficult judgment calls involved.

The Investigation Process

When a case is screened in, an Oral Report Transmittal (ORT) is generated which has the basic information about the family given to the SCR by the caller—the number of children, their approximate ages, their names, the parents/caretakers names—a list of all prior reports and whether they were "indicated" (i.e. the caseworker found evidence of maltreatment) or "unfounded" (i.e. no evidence was found), and a narrative containing the allegations as given by the caller. If the caller was a mandated reporter, their name and contact info is listed, and this information is listed for other callers unless they opt to remain anonymous. The ORT is then sent by computer to the Administration for Children's Services (ACS) Field Office that is responsible for the area of the city in which the family lives. Each field office is divided into multiple units, most of which are "Protective Diagnostic" (PD) units and are responsible for investigating various kinds of cases. There are also specialized units that take only educational neglect cases involving children over twelve years of age[97] and others that take cases called in by hospitals (they receive many of the abuse cases as well as cases of women and children who test positive

[97] By age 12 the child is assumed to have some control over going to school and so the case could be truancy. At younger ages, it is assumed they are not in school because the parent is intentionally keeping them home or is not taking them to school. Therefore, the case is probably educational neglect.

for illegal drugs at birth). There are also Emergency Children's Services (ECS) units who take all cases that seem serious that are called in after regular business hours.

Units are composed of five Child Protective Specialists (CPS), and two supervisors (a "Sup I" and "Sup II"). The Sup Is are often referred to as "Super Caseworkers" because they do not actually supervise the other workers, but instead carry their own caseloads (they can be assigned more difficult cases). They are available, however, to provide help and guidance to the other workers. The Sup IIs have a supervisory role: they assign cases to the CPS staff, review their cases, and sign-off on many of their decisions. The next level of supervision is the Child Protective Manager (CPM), each of whom is responsible for four units. They have the ultimate authority to decide what intervention will be made in a case and can override the decision made at lower levels. They also are responsible for reviewing and signing-off on all "high-risk" cases. According to one CPM, the majority of cases are defined as high-risk.

At the field office, the case is given to a unit appropriate for the kind of case and that covers the geographic area (usually the divisions are along lines of "Community Districts" or CDs) in which the family lives (there is a rotation system). The ORT first goes to the Supervisor II and she[98] assigns it to a caseworker. The supervisor can assign the case on the basis of simple rotation or might decide a particular caseworker is well-suited to handle a case or that a particular case might be too complicated or difficult for a new caseworker. If the caseworker who has dealt with the family in the past is still in the unit, it might be given to them. I was told by several caseworkers that particularly difficult cases—those that involve severe abuse, fatalities, or that might end up in the media—are sometimes given to particular caseworkers who are very experienced and can be counted on to do a thorough and competent investigation. I even

[98] Most caseworkers and other professionals in the child welfare system are women, therefore I use she to refer to them in the abstract.

heard that one of these caseworkers in Queens took a leave of absence after having a nervous breakdown from the pressure of being assigned to difficult and high-profile cases. This practice reflects the fear of negative media attention if a case were to end in tragedy and represents an effort to guard against it (see Chapter 5).

Once a caseworker is assigned she must go to the home and attempt to physically see the children and speak with the parents within 24 hours. In conducting her investigation, which, again, aims to assess the truth of the allegations rather than to comprehensively assess the family's needs, she should interview all members of the household (this includes parents and others "legally responsible" for a child); collect basic demographic information (including birth certificates, Medicaid information, and Social Security Numbers); get a list of all caretakers (babysitters, fathers who live in other households, etc…); and obtain information about the children's doctors, therapists, medications they take, any "special needs" they have, and their teachers and schools. Caseworkers are also supposed to speak to doctors, school officials, and any other "collaterals" that are warranted to get their assessments of the child and information about whether medical and educational needs are being met. They might also ask parents to take drugs tests and will ask about their own medical or mental health needs/providers if allegations (past or present) involved drug or mental health issues. Within seven days, the caseworker must complete a "safety assessment" of the home. This checklist includes items such as the presence of smoke detectors, window guards, adequate sleeping arrangements, cleanliness of the home, adequate food being available, enough clean clothing, that utilities and bathrooms are in good working order, and that there are no fire-hazards. This is used to determine the basic level of safety in the home, and any safety issues are to be dealt with immediately.

The caseworker will also complete a "risk assessment" within 30 days which evaluates various risk factors such as the number of prior reports, inadequate housing, limited financial resources, alcohol or drug abuse, domestic violence, etc… which are thought to be able to predict which children are more likely to be maltreated in the future (see Chapter 6 for more on this subject).[99] The caseworker notes the presence or absence of these factors and a risk score is generated by computer. Cases that are high or very high risk should be kept open for services, and cases can be classified at this level of risk even if the initial allegations in the case are not found to be true. Although risk assessments do play a role in the possible provision of services, their primary role is to classify which cases warrant services and which do not since it is not possible to provide services to all families. If services seem warranted it is usually another caseworker (either from another branch of ACS or at another agency) who will conduct a more comprehensive assessment of what is needed.

Caseworkers have 60 days to make a determination about the allegations in the case. If there is credible evidence of maltreatment, the case is marked "indicated." If not, it is marked "unfounded" or "unsubstantiated." This determination happens in consultation with supervisors and must be approved by the CPM. Supervisors can ask the caseworker to gather more information, to double-check things, to ask questions in a different way, or can even change their decisions. The strict timeline for investigation, in the context of high caseloads, creates pressure on caseworkers and means they often work long hours. Despite their best efforts, this timeline is not always met, although more experienced and skilled caseworkers are more successful than others (see Chapter 5).

[99] These factors were found to be correlated with subsequent abuse or neglect in a sample of cases from the city.

If the case is unfounded, it is generally closed, but services may be offered. If a case is indicated, there are several steps the caseworker can take. In order, corresponding to the level of risk from low to high, she can: 1) close the case,[100] 2) offer services to the family and then close the case, 3) insist on services and keep the case open to monitor that the services are done (usually telling the parent that if they do not "engage in services" they will either bring them to court or take their child to foster care), 4) go to court to ask that services and certain behaviors be mandated for the parent, 5) go to court to ask for a removal, or 6) remove on an emergency basis. It seems that in most cases in which there is a removal it is done on an emergency basis; I saw caseworkers come to court first far less often. As one caseworker put it: "Because if there's immediate danger in the home, I'm not waiting for a court order to tell me to remove the kid. If the kid is unsafe, I take that kid out, regardless of whether I have a court order or not. We have emergency powers." Sometimes, in serious cases, family conferences will be held to try to work out the situation as well. These include "elevated risk conferences" where the parent is told about the seriousness of the caseworker's concerns and asked to get into services immediately or the child might be removed or court intervention sought. Very recently (since about the Fall of 2007), "Child Safety Conferences" are held right as ACS is planning to ask for the child to be removed to foster care. These aim to arrange for the child to be cared for outside the home, often by a relative or family friend.

[100]One caseworker told me that closing an indicated case with nothing else being done does happen, but the agency is trying to get away from the practice. I asked why this might happen and she gave me this example: "[L]et's say you suspect that the parents uses drugs, but the parents refuse to come in for a drug test and everybody else says, and the mom's behavior indicates that she might be using drugs, and you might have heard from someone else that she uses drugs, and she did use drugs a few years ago. But there's no evidence right now to say that she does. Legally, you can't file the case because your kid is going to school, he's happy, he's healthy. You might indicate that case, but there's nothing to file, and the mother refuses services. There's nothing you can do with that."

The number of conferences like these has been steadily increasing in the last decade or so. This is partly a result of activism by parents who have been through the system and who have called for a greater voice for parents in the decisions made about their families. These conferences are touted as a way to involve parents in the process and to give them some say in how their family will be dealt with. They are meant to be democratic with all sides being allowed to contribute. Although the ideal is that parents are given a say in what will happen in their case, in my limited experience with these conferences, this ideal is not met. Instead, conferences are very "top down" with the ACS officials explaining what will be happening in the case and informing the parents about what they have to do. At most, parents might be asked who they would like to care for their children if they are removed, but the final decision about whether or not that will happen rests with the foster care agency who screens potential caregivers.

In some cases, informal arrangements are made to avoid foster care but still ensure a child is removed from a situation perceived as dangerous. For example, a grandmother might file for temporary custody so that the child will be out of the home, but the foster care system will not be involved. Or, for example, if one parent hit the child and is willing to leave, they will be asked to do so, and then an order of protection will be obtained to exclude the parent from the home. In this case the parent might be mandated to obtain services—like anger management—but they will have to pay for them on their own. Monitoring of the family to ensure the order of protection is followed is often, but not always, done in these kinds of cases. I will describe the process of making decisions about how to intervene in cases in Chapter 6.

If foster care or court intervention is the plan for the family, the lawyers who work for the city and handle all child protective cases in family court will generally be consulted (one is assigned to each field office) to make sure that the basic legal criteria for abuse/neglect exist

before these interventions are sought. If a child is removed on an emergency basis, the caseworker must either get the parent to sign a form which gives consent to place the child temporarily in foster care, and then bring the case to court within three business days, or, if the parent refuses to sign or is not present, she must go to court within 24 hours. In general, this rule is followed, but not always. One law guardian complained that this is not always done, and a couple of the parents I spoke with reported it took longer for their case to be brought to court than what is supposed to happen by law.

Partly because of the tendency to see an almost inherent conflict between the rights of parents and children, the role of the courts in child protection has increased in recent decades (Parton et al 1997). Courts become the forum for weighing these competing sets of rights, and it is important to note that children and parents each get a lawyer to protect their interests. Married parents, and sometimes even siblings, can also be given separate lawyers. The courts further serve as a way to oversee the activities of child welfare agencies (see below). The family court is responsible for weighing the evidence of harm to decide whether state intervention is warranted or not, and this structures how cases are handled from the beginning. The goal is that the rights of parents to raise their children are respected but balanced with the child's right to safety so that children are only removed from their parents' custody in circumstances of harm or severe risk (but see Guggenheim 2007; Bailie 1998 for a discussion of how the daily practices of family court do not protect parents rights). Chapters 7 and 8 will examine the day-to-day operation of the family court to see to what extent this goal is met.

Foster Care Prevention, Family Supervision, and Foster Care Agencies

Once the investigation is completed or the court is involved, the case moves to a different caseworker. If the child remains with their parents, the case goes to an intensive foster care

prevention program such as the Family Preservation Program (FPP) within ACS or to a similar program at a foster care prevention agency. If the family is under supervision by the Family Court, it goes to a Family Support Unit at ACS. If the child is in foster care, a foster care agency is given the case. There are numerous foster care and preventive agencies around the city. They are private agencies with their own policies and procedures (within the larger state and federal laws, rules, and regulations), but might more properly be called "quasi-governmental" because a large portion (and in the case of newer and small agencies practically all) of their budget comes from the state and city and because many of their practices are bound by government regulations. They are referred to as "contract agencies" by those who work in the system because they are bound by contracts with ACS. If they lose these contracts, they will most likely close (or be incorporated into another agency) due to lack of funds and clients. Most of the contract agencies deal almost exclusively with families that are referred to them by ACS or mandated to participate in their programs by ACS or the family court.

The idea behind prevention programs is that they provide intensive services over a short period of time in an effort to avoid foster care placement. Caseworkers are supposed to have small caseloads so that they can visit the family often, make referrals, and keep tabs on the children's safety (Lindsey et al 2002; Gelles 2000; Roberts 2002). Apart from caseworker visits, services might include counseling, referrals for drug and mental health treatment, help applying for public assistance or Medicaid, and/or homemaking services. An important assumption behind these programs is that families are in a *temporary* crisis that can be solved mainly through having a caseworker readily available to them. These programs are supposed to ensure that caseworkers have small caseloads which allow them to spend a great deal of time with each family, making almost daily home visits and closely following-up with services (Lindsey et al 2002). Often,

however, there are not enough of these programs available, caseworkers are not able to spend most of their time with parents, and the services for which parents need referrals are not available. Most importantly, this short-term, individualistic approach, which has a tendency to focus on counseling and home visits, cannot solve the complex problems such as dangerous neighborhoods, lack of jobs, substance abuse, and poverty that plague many of these families (Roberts 2002: 137-139). I also found that this kind of intensive casework often served as another level of surveillance rather than help as preventive caseworkers were told to report problems to ACS immediately rather than attempt to solve the problem (see Chapter 6).

When cases are transferred to the contract agencies, efforts are made to connect families with agencies near their homes and to place children with family members or in their neighborhoods. However, in many cases children are placed in other neighborhoods or boroughs, and some parents are not able to find services and agencies near them due to long waiting lists (especially at preventive agencies). This can make it difficult for parents to comply with caseworkers mandates in order to avoid foster care placement (see Chapter 6) and can make reunification difficult (see Chapter 9).

The Family Court Process

If the family court is involved, the legal process begins with the attorneys for ACS filing a petition in family court in the borough in which the case is being handled, generally where the children live. This process begins every morning around 9 am when caseworkers come to court if they removed a child or if they are seeking a removal. They discuss their case briefly with a supervising attorney who asks for general information about the case and the evidence the caseworker has collected to see if there is a cause of action under the law. A “cause of action” means that the allegations fit the legal definition of neglect. They sometimes also ask how the

caseworker conducted their investigation. If the attorney is not satisfied that there is a cause of action or are unsure, they can send the caseworker to get more information or can defer the case to be filed later.

If the attorneys decide to file the case, they will then talk about what they will be asking the judge to do, or what "relief" they will be seeking. There are three choices: 1) Parole[101] the child to their parent, which means the child will stay in the home and the process of obtaining court-ordered supervision of the home will begin. "Court-ordered supervision" means that the parent will have to comply with certain conditions in order to retain custody. Usually this means enrolling in particular services and allowing caseworkers to come to their home to monitor the family. It can also mean that the parent has to enforce orders of protection that keep boyfriends and/or fathers away from themselves and/or their children, that they must not use drugs, and/or that they cannot use corporal punishment, among other things. 2) Parole the child to a relative, which means the child will be removed from the home and placed with a relative who will not be a foster parent nor will the home be supervised by a foster care agency. 3) Remand the child, which means placing them in foster care, either with a relative or in a "non-kinship" foster home. The court can issue orders of protection in any case. The casework side of the agency, ideally, has the main responsibility for deciding which option they want, but the attorneys do have some input and can advise them as to whether or not the judge is likely to approve what they are seeking. However, it is not always the case that caseworkers have decided what they believe is going on in the home and what intervention is warranted. At other times, cases are brought to court precisely to substantially involve another set of decision-makers (see Chapter 8).

[101] I will discuss the idea of "parole" as used in Family Court in Chapter 7.

After all this is decided, the case is assigned to an attorney. The lawyers are divided into teams of several attorneys who have intake on a particular day of the week. The team leaders (who are supervising attorneys) assign the case to an attorney in the team that is to get cases that day. Generally, they will attempt to match cases on the basis of concerns like caseload, but might also assign more straightforward cases to newer attorneys and more difficult ones to more experienced attorneys. Once the case is assigned, the attorney talks to the caseworker to get more detailed information to use in drafting a petition. The petition is a legal document which explains why the child is a neglected or abused child, who is responsible for the maltreatment, and, if applicable, why the child was removed or should be removed from the home, and the reasonable efforts made to prevent the removal. Petitions are drafted with legal aims in mind—i.e. proving and winning a case (the process is important and will be described in more detail in Chapter 8). When the petition is drafted, it is checked by a supervisor and then filed with the court clerk. Copies of all the petitions filed that day are then taken to the offices of the Legal Aid Society whose attorneys are assigned as law guardians for the child. Given that parents' and children's needs/rights are assumed to be almost automatically in conflict, the law guardian is in court to advocate for the child's best interests. The law guardians similarly work in teams whose members get cases on particular days of the week. If there is no "conflict,"[102] an attorney "on intake" for that day will be assigned the case.

Each judge also takes cases on a particular day. So the judge "on intake" that day is automatically assigned the case, unless the family is/was before another judge then it might go to

[102] For example, if a parent is being represented by the criminal defense portion of the Legal Aid Society, they cannot represent the child. Also, if it seems that there is a conflict between the interests of the children in a case, multiple law guardians might be assigned and only one will be from Legal Aid. If there is a conflict, the case is given to another institution or to a member of the panel of attorneys available to be appointed by the court.

her[103] or unless the case is to go to Family Treatment Court (a special court that deals with drug cases).[104] Because there are a relatively small number of attorneys who do these cases, but more importantly because of how cases are assigned, sets of lawyers get to know one another quite well, might have several cases together, and are often in front of the same judges. According to the lawyers, this makes things go more smoothly because they can be in contact and get to know how the others work. However, I found it also heightens the feeling of many parents that "everyone is against them," that all sides are "working together," and that they have no advocates in court.

In the afternoon, the second part of the intake process begins when the attorneys assigned to the case, and the parents, if they are present, are brought in for an initial hearing with the judge. The parents are asked about their income (judges vary on how detailed this questioning is). The vast majority of the time, I would estimate at least 95%, they are eligible for assigned counsel which means they make no more than 25% more than the poverty line. If eligible, an attorney will be assigned to them. Court appointed attorneys are members of the "18B Panel" and are often referred to as "18Bs."[105] The 18B panel is a set of independent lawyers who have been accepted to the panel by virtue of having expertise in family law, and they are paid by the state rather than their clients. Recently, new "institutional" providers, The Bronx Defenders, the Center for Family Representation, and the Brooklyn Family Defense Project, were given

[103] I refer to judges as she since most child protective judges are women (15 out of 22).
[104] The discussion that follows applies to the regular "child protective parts" in Family Court and not to Family Treatment Court which handles cases in which drug abuse is the main allegation. These courts have a slightly different procedure. There are no trials; parents must admit their drug problem at the beginning of the case (essentially waiving their right to a trial and allowing a finding of neglect to be entered against them from the inception of the case). Then the case moves rapidly to a dispositional hearing where the parent is ordered into drug treatment appropriate for their situation. They are also given counseling and random drug testing through the drug treatment court itself. These cases are generally done more quickly and services begin much more quickly.
[105] "18B" refers to the section of the law that authorizes assignment of counsel to the "indigent."

contracts to represent parents in child protective cases.[106] These are groups of lawyers, social workers, and parent advocates who work together to represent and help parents. If it is their day to get cases, one of their lawyers is assigned.

The judge will then review the petition, and the ACS attorney will ask the judge to approve they relief they want. The judge decides whether the allegations warrant the intervention sought. If she finds that the child is at risk in the home and thus needs protection, she will then order court supervision or the placement of the child in foster care. The legal standard for finding that a child should be placed in foster care is that he/she would be in "imminent danger" or at "imminent risk" if allowed to remain in the home and so removal would be in his/her "best interests." The judge must also rule on whether or not the agency made "reasonable efforts" to prevent the removal or if they should not be required due to the severity of the case or its emergency nature (such as if a child was in extreme danger or a parent was, for example, arrested and not available as a caretaker). In general, these hearings are very short. It is rare for the petition and the evidence for reasonable efforts to be examined, nor is there generally questioning of ACS and their plans for the family (see Chapter 7).

If the parent is present, they might be given the opportunity to request, through their lawyer, that the judge have a full hearing about the case which will require ACS to prove that the child would be at imminent risk. If they cannot, the child will be returned. Referred to as a 1028 hearing, this happens rarely (see Chapter 7). More commonly, the parent will be able to request that their child be placed with a relative or family friend, but this will only happen if the foster

[106] Institutional providers in three boroughs (Brooklyn, Manhattan, and the Bronx) submitted proposal and were given contracts to take over this work. The institutions chosen had been taking on child protective cases for several years, but they were not given cases in court. Parents had to find out about them and ask to have their cases accepted. They were fairly small and could not take on many cases. Under the new contracts, they are given all cases that come to court a day or two each week, and, with the new influx of funds, they are hiring more staff. The plan currently is for them to eventually take about half of the cases.

care agency decides that they are suitable and their home is appropriate.[107] If a parent has not been asked to come to court or was not in contact with the caseworker to receive the information that they should come to court, this can put them at a disadvantage in that they will not have the opportunity to provide information that might change the outcome of the initial hearing. Also, if the child involved is older (over around age 11 or 12, but this varies between law guardians), and they are present at court (which is rare), they can speak with their law guardian and tell her what they would like to happen. If they say that they wish to remain home, for example, their lawyer can advocate for this and possibly sway the judge. In my experience, what a law guardian advocates for generally carries more weight than what a parent asks for, so if an older child is present, they have a good chance of having what they want happen, either staying home or going to foster care.

After this initial hearing, the case proceeds as a legal matter which I will discuss only briefly here. Basically, the ACS attorney tries to prove the allegations and the parents defend themselves. The law guardian is there to represent the child's interests, but how this happens varies by the age of the child. There will generally be a series of court conferences and appearances to make sure everyone has been properly served with court documents and to work out issues regarding visitation, to explore "kinship resources" (i.e. family members that are willing to be foster parents), to talk about what services the parent will be doing, etc… Eventually a fact-finding hearing will be held in which the judge decides on the truth of the allegations in the petition. Alternatively, there can be a settlement of the case so that a finding can be made without a trial. It is very common for cases to go on for a year or more before a

[107] A person cannot be certified as a foster parent if they have an ACS or criminal history or if evidence or drug abuse or other similar problems is found. In addition, their apartment must be safe and have adequate space, including separate rooms for boys and girls.

fact-finding is held or a settlement reached (see Chapter 5) and settlements are far more common than fact-findings (see Chapter 7). After the fact-finding or settlement, if there is sufficient evidence against the parent, a finding of abuse or neglect is entered against the parent which stays on their record until their youngest child is 28 years old. This finding will bar them from many jobs. It is rare for a parent to win a fact-finding hearing or to end their involvement with family court without a neglect finding (see Chapter 8).

After a finding is made, a dispositional hearing is held. This is the first time parents can actually be ordered to complete services, but they are generally told they must do so from the beginning, and services are often a condition of getting more visits and unsupervised visits with their child. For these reasons, many parents have done some or all of the services demanded of them by the time the dispositional hearing is held. At this time there is also a plan made about when a child in foster care might return home, how long the family will remain under ACS supervision after they return home, or how long supervision will continue if the child was never removed.

The idea behind bringing the case to court and going through this legal process is, as discussed above, because courts are ideally a forum for weighing competing sets of rights and ensuring that all are respected. However, family court actually operates in a way in which this goal is not always met, as I will argue in Chapters 7 and 8. Because it is an overworked system and one in which the fear of child harm tends to be a driving force, the rights of parents are not often protected vigorously. However, family court does act as a way to *formally* recognize parents' and children's rights in the sense that particular formal procedures are followed which have the aim of providing a way for rights to be heard and balanced.

As these hearings dealing with the facts of the case proceed, a parallel process of judicial oversight of how the foster care agency is doing its job and/or of monitoring the parents and their services also occurs. This is the second important role of the family court. It is thought that judges will be impartial parties who can hold agencies and ACS accountable for following laws about "reasonable efforts" either to prevent foster care placement, to reunite families, or to plan for a permanent placement for the children. However, judges cannot always closely scrutinize agencies due to crowded court calendars and lack of information, and it is rare for judges to refuse to find agencies made reasonable efforts (see Chapter 5). Thus, meaningful oversight is limited. In terms of reasonable efforts the judge checks to see that visitation is occurring (if the child is in foster care), that services are being offered and proper referrals made, and that conferences are being held. The judge generally also asks the law guardian about the child (how are they doing in the home? Are they in school?). The parent is also monitored and asked if they are attending visits and going to services. These kinds of issues are generally dealt with for at least a few minutes at all court appearances and take up far more time in family court than does scrutiny of the particular facts in the case or of the plans ACS has for a family (see Chapter 7).

If the children are in foster care, by law, after eight months and then every six months thereafter, a "Permanency Hearing" must be held. However, I found that these hearings were often delayed (see Chapter 5). The purpose of these hearings is to ensure that permanency planning is occurring so that children are not left to linger in foster care. For these hearings a comprehensive report about the child and the case is prepared and is supposed to be, but rarely actually is, circulated to all parties two weeks prior to the hearing so that it can be read and the parent can prepare their own evidence if they disagree with the report. During the Permanency Hearing the judge makes two crucial findings. First, she approves a "permanency goal" for the

children—i.e. what the planned permanent arrangement (as opposed to foster care) is for the child. Usually this will be either return-to-parent, adoption, or a concurrent goal of both of these.[108] She must also decide whether or not the agency has been making "reasonable efforts" towards the goal. A finding that reasonable efforts have been made is necessary in order for the state and city to be reimbursed for foster care costs with federal funds.

According to Erickson (2000), the idea of "permanency planning" comes from a particular psychological view about how children best develop, namely the "psychological parent" theory (Goldstein et al 1973). According to this theory children's different sense of time and need for continuity requires "a stable and uninterrupted relationship with one caregiver." Foster care is thus damaging for children due to the likelihood that they will be moved from home to home during the usually long stays in care (Erickson 2000: 82). This theory has been criticized for being based on limited observations and ignoring evidence that children can and do form multiple attachments. This model of what children need is also based on the realities of white, middle-class, nuclear families and does not take into patterns of shared childrearing common among African-Americans (Stack 1974). Nevertheless, it has been widely accepted and used to create policies that aim to give children a permanent home and caregiver relatively quickly rather than allowing parents sufficient time to deal with the issues that led to foster care placement in the first place (Erickson 2000).

Services and Case Management in the Foster Care Agencies

While all of this is going on in court, there is another process at work in the foster care agency. The foster care agencies are responsible for several tasks: 1) finding and monitoring the foster home (including monthly visits to the home and ensuring the child's needs there are met);

[108] Less commonly permanent custody or a plan for independent living, if the child is old enough, can be the goal.

2) creating and coordinating a service plan for the family and ensuring the parent completes the required services; 3) monitoring and coordinating visits between the child and the parents/siblings/other family members; and 4) creating a "permanency plan" for the children (i.e. planning for the child to go home, adoption, or some other permanent arrangement). Caseworkers attempt to make changes in the parents' behavior and monitor parents to decide if and when they are ready to have their children returned. In Chapter 9, I will discuss some of the conflicts between these roles and the recurring problems parents face in terms of services plan and getting referrals for needed services.

A series of conferences are held at the foster care agency throughout the case to talk about and monitor the case. The first conference is to be held within 72 hours of the child being placed in foster care, and is attended by the foster care agency caseworker, the parent/s, and a "child evaluation specialist" (CES, an ACS caseworker who works in the part of the agency that oversees cases once a child has been placed). The purpose is to ensure that everyone is clear about why the child was removed, that parents have the opportunity to suggest family members with whom the child could be placed (often the child is placed in an already certified foster home until family members are found and checked out), and to agree to a service plan so that the parent can begin their services as soon as possible. There is also supposed to be a discussion of family strengths and weaknesses so that this can inform the service plan. However, I did not see this occur in the conferences I attended. This conference, like all the various conferences that are held in a case, begins with an explanation of various "rules" that aim to ensure that all sides are heard and all perspectives taken into account, and a caseworker will usually tell everyone that they should feel free to speak up at any time.

After the 72-hour conference, a conference is held after the first 30 days and then after 90 days. After this initial period, a "Service Plan Review" is held every six months to monitor services.[109] Every parent with a child in foster care is given a list of services that they are mandated to complete (their "service plan") and the caseworker is responsible for making referrals for these services. In part due to the high caseloads carried by foster care agency caseworkers, it is very common for these various conferences to be delayed and for referrals not to be made (see Chapter 9).

Service plans are very often one-size-fits-all and focus heavily on education and counseling services of various kinds (see Chapter 9). Although poverty is often at the root of the problems that families in child welfare face, and although lack of housing, jobs, and childcare are prominent reasons why children are not returned from foster care, services to address these issues are generally handled to towards the end of a case, if at all. Again, practices surrounding service provision signal that the main problems underlying child maltreatment are thought to be individual parents' shortcomings or pathologies rather than systematic structural disadvantages. It is assumed that parents' behaviors are in need of reform in order to ensure the safety of their children.

In addition to the service plan, the foster care agency is responsible for coordinating visits. In the vast majority of cases, visits are supervised at the beginning of a case and generally occur for an hour or two once or twice a week at the foster care agency (the specific number of hours per week will be discussed in family court). As the child's time in foster care progresses, the number/length of visits is usually increased and the level of supervision is decreased. The progression is usually from a few hours of supervised time to a few hours of unsupervised time,

[109] Under a new ACS initiative, some agencies are holding conferences every 3 months. It seems this will be the procedure for all agencies eventually.

to "day visits" (the parent can pick the child up in the morning and bring them back in the late afternoon), to "overnights," and eventually to entire weekends. Some parents are able to speak with their children over the phone, but more often than not I found that this is prohibited.[110]

As the foster care caseworkers prepare to allow the child to visit the parent outside the agency, and especially when it is time to have overnight visits, caseworkers must visit the biological parents' home to assess it and ensure that the parent has all the proper "provisions" for the child. They look for basic safety items such as outlet covers and cabinet locks for younger children, as well as window guards, smoke detectors, and a lack of fire hazards and clutter. They ensure that there is adequate room for each child which means there must be separate bedrooms for boys and girls, no more than a couple of children in the same room, and separate beds for each child. They check that there is enough clothing, food, and other supplies. Finally, they check that everyone living in the home is safe—i.e. that there are no parents or caretakers with orders of protection against them and no adults with criminal records or child welfare histories, for example. If the parent does not have an adequate apartment, overnight and weekend visits generally will not occur. I will discuss the process of reunifying in more detail in Chapter 9 and will outline some of the most common reasons, including housing, why this is delayed.

Termination of Parental Rights

Under ASFA any child who has been in foster care for 15 out of the last 22 months should be "freed" for adoption unless it is proven that it would not be in the child's best interests to do so. As discussed in Chapter 3, this law grew out of the assumption that the main problem with the foster care system was that children were staying in foster care too long and that parents

[110] Foster parents do not always want this contact and there is a subtle tendency on the part of caseworkers to keep foster parents and biological parents from speaking and cooperating. This is despite the rhetoric about the two parties being "co-parents" in the lives of the children that circulates among some at ACS and foster care agencies.

were given too many chances to turn their lives around. Thus, the appropriate solution seemed to be to place a limit on how long children should be in foster care. The timeline chosen was thought to be appropriate given children's sense of time and their need for a stable connection to a single caregiver. It does not take into account, however, the fact that it often takes parents much longer to deal with the complex issues that led to foster care placement. In particular, drug and housing issues can take longer to resolve.

"Freeing" a child for adoption entails a legal procedure in which parental rights for the legal parents[111] are terminated so that the child can be adopted. This process starts when lawyers hired by the foster care agency file a petition in court to terminate the parent's rights on the basis of either "abandonment" or "permanent neglect." Abandonment, legally, is a situation in which there has been no contact between the parent and child, or the parent and the foster care agency or ACS, for six consecutive months. It must be proven that the parent did not visit the child, send any gifts or means of support (money, clothing, food), ask about the child at ACS or the foster care agency, show up for any conferences, return any phone calls or letters, etc… Permanent neglect means that, for a period of 12 consecutive months or for 15 out of the previous 22 months, the parents "failed…substantially and continuously and repeatedly to maintain contact with or plan for the future of the child" (New York State Social Services Law Section 384-B) although able to and despite the agency's efforts to help them remain in contact and plan for the

[111] Not all male biological parents are legal parents. It is common in termination cases for the lawyers to prove that there is no legal father or that a "putative" (presumed) father is actually a "notice father" who is entitled only to notice that his child might be freed for adoption but not to participation in the proceedings or to fight to stop the termination. Basically, a father who is married to the mother within a few months of the child's birth is legally a father and so has full legal rights to the child. A father who was not married to the mother but acknowledges paternity might be a legal father, but is not automatically. He must show he has supported the child financially, visited the child regularly, or been in contact with the foster care agency (Schechter 2006: 399). One family court lawyer has taken it upon himself to argue that this practice is discriminatory and to hold up termination proceedings by fighting for men's right to participate and fight to keep their parental rights. However, there is a lot of case law which has found these laws constitutional. Since many foster care agencies do not regularly seek out fathers, it can be very hard to become a father entitled to consent.

child. In general, proving permanent neglect means showing that the parent has not completed required services, missed many visits, and/or do not have adequate means to provide for the child. Past severe abuse of a child or previous terminations are also taken into account, as set out in ASFA.[112]

As I hope this chapter has shown, the child welfare system in New York City is complicated, with several different agencies involved and the process occurring on both social work and legal levels. In other words, there is a process of "reforming" the parents through services, and of caring for the child while this is occurring, at the same time that proceedings establishing/protecting legal rights and judicial oversight of service provision take place. On one level, this is a single system, in that there is, at least ideally, coordination among these various parts and shared overriding goals, namely to protect children while helping families and respecting parents' legal rights. It is thought that these goals are reconcilable. However, an important issue addressed in the rest of this dissertation is the extent to which these goals conflict and the consequences of them being combined in this way.

It is also important to note that the child welfare system is closely connected to other governmental programs and systems. Parents who come in contact with child welfare authorities often rely on government programs for basic needs, and there is a link between the criminal justice system and the child welfare system. Many children end up in foster care when parents are arrested, and some neglect issues, such as corporal punishment and leaving children home alone, are also dealt with criminally. So, many parents have cases in criminal courts (or domestic violence courts) while they have a family court case. The intersections between these various

[112] It is also possible to terminate a parent's rights on the basis of a mental illness or mental retardation that "presently and for the foreseeable future" makes them "unable…to provide proper and adequate care for a child" (New York State Social Services Law Section 384-B).

systems, which have different rules, aims, and goals, impact the lives of parents (see Chapters 6 and 9). Thus, child welfare cannot be examined in isolation from these other systems and is only one piece of the puzzle of how the state deals with family problems and recreates inequalities.

Finally, I also hope that this chapter has given the reader a sense of how complex this system is, with an array of meetings, conferences, people, and processes to keep track of. For many of the parents I met, dealing with the system was practically a full-time job and they were judged, in large part, on their ability to comply with its demands. This system's complexity and the demands it places on parents have very important consequences which will be discussed in Chapter 9.

Chapter 5: An Overburdened System and Prevention of the Worst-case Scenario

"Protection is a major concern of all components of the Family Court and child welfare system. But in reality, the protection of the system itself frequently overshadows the protection of children" (Lansner 2007: 639).

The child welfare system in the last few decades has narrowed to a concern with child protection, has had to deal with a dramatically increasing number of reports, and has received more public attention. Child welfare agencies have come under attack and scrutiny as accounts of children "known to the system" who were killed or severely injured by their parents are periodically discussed in the media. When these scandals hit, agencies' practices are scrutinized, the death is blamed on caseworkers, and a surge of reports and child removals often follows (Anglin 2002; Lindsey 1994; Parton 2006; Parton et al 1997; Waldfogel 1998; Besharov & Laumann 1996; Hutchinson 1993; Rzepnicki & Johnson 2005). On the other hand, there have also been attacks on the system for intervening unnecessarily in families and interfering with parents' rights (Bailie 1998; Chill 2003; Guggenheim 2005; 2007; Jones 2007; Wilhelm 2002; Wilkinson-Hagen 2004). However, these criticisms are most often leveled by lawyers and are far less likely to be in the mainstream media. As a result of these developments, child welfare agencies are under increased pressure to handle the flood of cases and ensure that they protect all children but do not interfere too much. This has led to a focus on risk assessment and a reliance on the courts as way to ensure, at least formally, that they are acting properly and all rights are respected.

My fieldwork was conducted shortly after the high-profile case of Nixzmary Brown rocked the child welfare system and made some noticeable changes in the numbers of reports and the decisions made. However, a concern with avoiding a worst-case scenario of a tragedy is part of the job of a child protective specialist, judge, or law guardian at all times. Public scandals

make this dynamic more pronounced and out in the open, but there is always a tendency, I argue, to make "cautious" decisions in an effort to protect agencies and decision-makers from blame should a tragedy occur. This chapter will begin by briefly describing the Nixzmary Brown case, the effects of which were still being felt around the agency at the time of my fieldwork, and will discuss how decision-makers deal with the fear that something tragic might happen. I will also provide data about how those who work in the system are overburdened and will demonstrate the negative consequences this has for the families that are caught up in child welfare.

The Nixzmary Brown Case

As I was writing the first drafts of my proposal for this project, I was handed a clipping from the New York Times with the headline: "Placements in Foster Care Are At Lowest Since Mid-1980s." (Santos 2005). This "historic change," as one expert quoted in the article put it, was an outcome of a concerted effort by ACS to offer more services to parents in an effort to preserve families and avoid foster care. Although the article noted that some experts worried this left too many children in harm's way, overall the tone was positive. A few months later, in January of 2006, news of Nixzmary Brown's death broke, and it was linked to what was now seen as a mistaken focus on family preservation.

Nixzmary's family was "known to the system" and several reports had been made by her school for excessive absences and by her teachers who noticed bruises. In contrast to the limited coverage generally given to the other similar deaths that happen every year, this case was widely covered and discussed, in part because of the brutality with which she was treated and eventually killed by her stepfather, as well as her mother's failure to protect her and her possible beating of the girl. For the first three weeks after the story broke, the case was discussed on all local television stations, on NPR, and in all the local newspapers, with multiple stories and

commentaries appearing daily. For the next two years, the coverage lessened, but discussion of the fallout from the case continued as a series of reports detailing the failures of child welfare authorities were released and the trial of both parents was completed.

The vast majority of the press coverage blamed the girl's death on ACS's failure to adequately investigate the case, arguing that caseworkers should have been able to prevent it. The mayor, the ACS commissioner, and the City Council speaker all vowed, almost immediately, to review the case and other similar deaths to see what was done wrong. Coverage in *The Daily News* was especially scathing. An op-ed piece two days after her death, entitled "They Should Have Known," put it this way:

> The underlying question, though, is why they failed to recognized the urgency and see an emergency. By all accounts, Nixzmary was a battered, bruised skeleton. Are the caseworkers so poorly trained? Is ACS that incompetent? An explanation for the failure is not yet forthcoming…Must a child be on fire and running around in circles before ACS suspects there might be a problem? (2005).

Two days later, the ACS commissioner was accused of telling "half truths" in an effort to "conceal his agency's full culpability" (Goodwin 2006). On that same day, another opinion piece linked the failure to save the child to family preservation policies:

> My bet is that a thorough probe will show evidence of a fatal prejudice. By prejudice, I don't mean racial, ethnic or class. I mean a policy prejudice, one that favors family preservation over child protection. Sometimes they are in conflict. Sometimes that conflict can be fatal to children. Family preservation is a wonderful theory and a noble goal…But not all families are equal. Some don't deserve the word "family" at all. To call them that is a triumph of language over reality. And for the government to preserve a hell house that is dangerous to children is to turn a noble goal into an accomplice to murder. (Goodwin 2006)

Here, the blame is placed squarely on a "prejudice" for helping families when not all families are equal and deserve support.

Although some of the Daily News' coverage of the Nixzmary Brown case quoted supervisors about how overwhelmed they were with cases and the pressure they were under, the conclusion was that, although this might have been true, they simply missed their chance to save the child. When reporting on ACS's suspension of some workers and supervisors, the paper complained that the names of the responsible parties were not released and that the top level administrators who were transferred did not lose any of their salary (Kaufman et al 2006). The fact that the agency was consistently understaffed and underfunded was discounted as a factor and calls to place the blame squarely on the shoulders of particular individuals continued.

The New York Times coverage of the case was much more subdued. Their coverage did describe the case as being marked by multiple failed attempts to investigate the case and save the child, and highlighted the need to make sure procedures are followed and investigations are carried out thoroughly. However, it also quoted city officials who stated that this case was not indicative of widespread failures in the system and discussed the case in the context of overworked caseworkers. In a discussion of the office which handled the Nixzmary Brown case, for example, it was pointed out that problems at the office were known to officials at ACS for years and plans to help reduce workload and allow caseworkers more time to thoroughly investigate were not put into place. The office was described as one

> full of peril: high numbers of fresh cases of reported abuse, but strikingly low numbers of children who were taken into protective custody, workers who speak of a daily and disquieting tension concerning the city's emphasis on keeping families, even troubled ones, together whenever possible; managers left to hope that any mistakes that were made would not prove serious, or fatal. The forces at work with the Bedford-Stuyvesant offices have been particularly pronounced, but they have been felt across the city to one degree or another (Kaufman et al 2006).

The article went on to highlight a decline in the number of caseworkers and an increase in caseload as a factor in the tragedy, as well as a lack of training and "miserable morale." It also,

again, cited "family preservation" policies as a problem and quoted a consultant who said that workers had told him that

> Every time they leave a child at home knowing that the family has problems that affect that child's safety, they go to sleep at night in fear that something will happen to that child overnight and that the next morning, when they get to work, they're going to be blamed for what happened (Kaufman et al 2006).

The vast majority of the mainstream media coverage thus made links between this case and mistaken family preservation policies and "bumbling" caseworkers. It was rare to see support for family preservation policies except in editorials in smaller publications such as *The Amsterdam News* and from parent advocates who called on the city not to abandon family preservation in a "foster care panic." In general, however, it was thought that officials, on a large scale, mistakenly attempted to preserve families at the expense of children's safety. That this kind of abuse is relatively rare and that similar deaths happen every year and are also rare was not noted, and it was assumed that all such deaths can be prevented.

An investigation of this case and 10 other deaths of children known to the system conducted by the New York City Department of Investigation (2007), outlined the Nixzmary Brown Case and how it was handled, finding that caseworkers received at least two reports but did not investigate either thoroughly. In investigating the first report, in May, which said the child had missed 46 days of school and her brother reported she was injured, caseworkers apparently accepted stories about the absences and injuries that were inconsistent and/or illogical and did not follow up with the doctors whom the family claimed treated her injuries and could vouch for her health.[113] The second report, in December, was more serious and stated that both Nixzmary and her mother were being battered and the family was scared of the father so were

[113] The caseworker apparently believed the parents story that a burn came from a radiator and did not ask how this was possible in May. She also claimed to have spoken to an emergency room doctor. However, the hospital had no record of it, and he denied talking to her.

not telling anyone. The school counselor who called in the report said she did not feel comfortable sending the child home. This report should have resulted in both a caseworker and a detective going to interview the family, but the procedures were not followed. Although the caseworker saw the child's injuries, she again accepted inconsistent explanations of them and did not interview the children separately (so that the children would not repeat what their siblings said). Caseworkers decided that the case needed follow-up, but, for various reasons, this was not done for more than a month. When another home visit was finally conducted, caseworkers found emergency medical technicians there, and Nixzmary was already dead.

After examining the steps taken in this case and in the others that were reviewed, the report listed several patterns that emerged. The following is a summary and paraphrase of their list:

- Cases were marked "unfounded" when either little investigation had been conducted or credible evidence the allegations were true had been found
- Previous reports about families were not reviewed, which might have alerted caseworkers to patterns in the family
- Caseworkers either did not recognize or did little to reconcile competing or inconsistent accounts of events and injuries
- Investigative steps were not carried out within mandated timelines
- Caseworkers failed to monitor that parents were completing services designed to deal with problems in the home
- Available legal remedies to gain access to homes or compel parents to cooperate with investigations were not used
- In a limited number of cases records were falsified, claiming investigative steps had been taken that had not been taken
- Supervisors failed to provide guidance to caseworkers in conducting investigations and signed-off on marking a case unfounded even when their directives were not carried out (N.Y. City. Department of Investigation 2007)

ACS made various changes in the wake of the case: they disciplined or suspended the workers and supervisors involved, ordered reviews of all open cases, hired more caseworkers, created mechanisms for more cooperation between police and caseworkers in conducting investigations,

and created a new system called ChildStat (modeled on former Mayor Giuliani's CopStat) which would track data about investigations and use scorecards to rate them. However, in talking to caseworkers and other officials during my fieldwork, several problems with the agency that might account for these mistakes were still present. It seemed that caseworkers still did not receive much training in conducting investigations, they were generally overworked, and had little time to conduct thorough investigations (see below).

Effects of the Case on Caseworkers: By the time I began fieldwork in October of 2006, caseworkers, and the agency as a whole, were under intense public scrutiny due to the Nixzmary Brown case and were still dealing with the dramatic increase in reports that followed. The case and the effects it had on the agency and on their jobs was discussed in most of my interviews with caseworkers without me specifically asking about it. Out of the 13 I interviewed, nine mentioned how this case affected their jobs, one mentioned how a previous high-profile case affected her work, and another (who came to the agency after the case) mentioned how high-profile cases in general affect the agency. They all described how the case lead to a large increase in the number of reports. Angela, a Trinidadian woman in her late 30s who has been a CPS for seven years, for example, told me that she had 42 cases at one point after news of the Nixzmary Brown case broke. Some also discussed how everyone felt increased pressure to make the correct decision in their cases as this tragedy made the possibility of a tragedy concrete and immediate.

Caseworkers also discussed how some in the agency made more cautious decisions or scrutinized cases more closely. A CPM, Pamela, an African-American woman in her 40s who has been working at ACS for 11 years, described how media pressure affects her decision-making:

> Tina: And do you feel that that kind of pressure affects the kinds of decisions you make?
>
> Pamela: …In a way - I make sure that I go over something with a fine-tooth comb and making sure that they've [the caseworkers] done everything possible. But you can still do that and something happens. I mean you never know...

However, another supervisor, Dan, a white man in his 50s, stated that high-profile cases do not have an effect on his practices. He stated that he always takes every case seriously and tries to instill "a sense of urgency" in his workers about how they handle cases. By a "sense of urgency," he seemed to mean that he wants them to take all cases seriously and deal with them quickly as if they are a potential emergency.

Several caseworkers talked about the climate at the agency more generally in regard to the kinds of decision being made after the Nixzmary Brown case. Carl, an African-American man in his late 20s who has been a caseworker for five and a half years, commented: "So Nixzmary Brown happened, it was, like, 'Well, remove and ask questions later.' That was the mentality." He went on to say that "*everybody* got scared." On the other hand, some caseworkers did not agree that the Nixzmary Brown case led to more cautious decision-making. Instead, they felt that there are simply differences between caseworkers and managers in terms of how cautious their decisions tend to be and how quickly they might seek to remove a child. Aaliyah, an African-American woman in her 30s who has been at ACS for five years, put it this way:

> I think it's a personality thing because in the two that I've had problems with recently, they came from other areas, and that was you know, they are better at some agencies and this was their behavior prior to Nixzmary so I don't think that's an excuse that they can use, you know? A lot of them are just, although they have degrees in Social Work or whatever, they don't come from a very social work perspective when it comes to our families. They're not willing to ever see themselves in the role of a client and see that something might have been an accident; something might have happened exactly the way the client said it happened.

So, although there was some disagreement, many felt the case actually made decision-makers more cautious. In addition, there was a sense that some are generally more cautious than others.

Effects on the System Overall: More Cautious Decision-Making: Since this case and the media coverage surrounding it, there is evidence of how it affected the child welfare system overall:

- The number of reports of child abuse/neglect increased by about 32% in 2006 over the previous year (Kaufman 2006).
- The rate at which reports were indicated increased from 32.6% in 2005 to 36.6% in 2006 (White et al 2007).
- The average caseload per caseworker increased to 16.6 in 2006, up from 12.2 in 2005 (White et al 2007).
- Filings in family court more than doubled. Increases ranged from 146% in Queens to 240% in Brooklyn (Council on Children 2007).
- Foster care placements increased by 53% in 2006 over 2005 (White et al 2007).
- However, the average number of children in foster care in 2006 decreased by 12% (White et al 2006-2007). Thus, it seems that many children had relatively short stays in foster care.
- The median length of time children spent in foster care increased 20% from 8.2 months in 2005 to 10.3 months in 2006. This is the first time such an increase has been recorded (White et al 2007).

As these statistics show, this case led to a situation where, system-wide, decision-making practices showed important changes.

First, one way to interpret the increase in the number of reports is that mandated reporters and citizens became more aware of child maltreatment and its consequences and made more calls. Another possibility (which is certainly related), is that people decided to call to be "better safe than sorry." I do not have data from mandated reporters (except for one who rarely makes calls and avoids them as much as possible) nor do I have statistics that break down the number of calls based on whether the caller was a mandated reporter or a neighbor, friend, family-member etc… So, I cannot say precisely why calls increased. However, one caseworker, Pete, a white

man in his 30s who has been a CPS for five years, did speculate that there was more of a "better-safe-than-sorry" mentality among reporters:

> I think the mandated reporters are like well, we're under the microscope now, so let's, instead of lecturing the parents, don't do that again and let's just call ACS and have them go inside the home and make sure everything is okay.

Carl, commented that "I think since Nixzmary Brown died, a lot of people are, like, they see the littlest thing; they call it in without really doing some more investigation…" He went on to give an example about a case he recently closed where a repairman at a public housing project knocked on a door, and it was answered by a child who was eight years old. The child was asked if his mother was home and said no. The repairman left and was told by his supervisor to call 911 who called in a report of children left home alone to ACS, and they dispatched policemen to the home. It turned out that the children's aunt was there, but was just in the bathroom. However, because the report was made, Carl had to do a full investigation even though it was clear there was no issue with children home alone. Carl felt this situation was related to heightened awareness of child abuse/neglect after the Nixzmary Brown case.

In addition to changes in reporting, more cautious decisions were made within the agency in general. Let me clarify what a "more cautious decision" means in the context of the range of possible interventions that can be made by caseworkers. Caseworkers have various actions they can take in a case and these actions should, in some way, correspond to the level of risk to the child. As risk increases, caseworkers add layers of services and monitoring to the family which can come from the child welfare agency and/or other social service agencies. If the risk is especially great, services can be mandated by family court and the judge can monitor that they are done. If the situation seems dire the child can be removed to foster care. If it is an emergency, this can be done without waiting for a court order. Each step down the list involves more

monitoring of the family and is thus a "safer" decision. Removal to foster care is, from this perspective, the safest (caseworkers refer to a removal as the ultimate "safety intervention") — the child is removed from a family in which there are allegations of problems that present risk to the child to a foster family. The foster family, since it has been "checked out," is assumed to be completely safe.[114] So, in the aftermath of a tragedy like the Nixzmary Brown case, it becomes more likely that a case will be indicated, that services will be mandated through court, and/or that a removal will be made, and this change is certainly an attempt to prevent further tragedies. It is also, in part, I believe, an effort to show that the agency is becoming more pro-active.

Preventing the Worst-Case Scenario

Although incidents like the Nixzmary Brown case lead to a heightened sense of the consequences of a bad decision and lead to more cautious decision-making system-wide, caseworkers *always* deal with a fear of having a tragedy happen to a child on their caseload and this affects their decision-making practices. In carrying out their mandate to protect children, caseworkers face a great deal of uncertainty and are faced with making decisions about situations that are colored in multiple shades of grey rather than in black and white. They rarely deal with clear-cut cases in which the facts unambiguously show a child is in danger. Instead, most of the cases they deal with have to do with more subtle issues of neglect rather than physical harm or abuse. Caseworkers label most of their cases lack of adequate supervision, or "inadequate guardianship," a catch-all term for various problems such as failing to protect a child in a domestic violence situation or illegal drug use.

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[114] This is made most clear by the fact that caseworkers do not have "risk assessment" paperwork for foster families. ACS Caseworkers are aware that harm to children happens in foster care. However, once a child is in foster care, the responsibility is handed off to a different caseworker at the foster care agency (rather than at ACS) and they are responsible for checking into the foster home and ensuring it is safe. Thus, ACS caseworkers do not have to think much about the potential harm of foster care as they do their daily jobs.

The majority of the cases an average caseworker working in a PD unit deals with include allegations that children do not have enough to eat or clean clothes, that they are not in school regularly, that their parent is using drugs, that they have been left home alone or inadequately supervised, or that they are not getting adequate medical care. These issues, while they can be serious and detrimental to children, are not issues that unambiguously place children in immediate danger or at "imminent risk" of harm and therefore warrant immediately removing the child from the situation. In other words, as the caseworkers would be trained to see it, they deal with risk rather than stark safety issues. They are situations in which the family might be helped to care for the children through services as mandated by the legal requirement that "reasonable efforts" to prevent removals should be made. They are situations in which assessing the risk to the child is a murky matter and one in which not everyone will agree about the best course of action. However, preventing a worst-case scenario of serious abuse or harm is still the caseworkers' job and it looms over their heads, affecting decision making. At the same time that they have to assume that all parents and families are potentially dangerous and may be sources of serious harm to children, they also realize they cannot be in homes constantly to monitor safety, nor can they simply remove all children from their homes. This presents its own challenges in doing this work.

The social work literature on risk assessment in child welfare frequently notes that the mandate to prevent all tragedies leads to more cautious decision-making and that risk assessment itself can be as much about protecting child welfare agencies as protecting children. One review of the use of risk assessment in Australia, for example, argued that risk assessment tools are used to protect agencies from criticism if they were to make a bad decision and it is possible that, for workers, labeling a case "low-risk" is actually a "high-risk" activity and likely to be avoided

(Goddard et al 1999). Although these dynamics are far less discussed in the literature about child welfare in the U.S., Rzepnicki and Johnson do argue that child protection social work is stressful and agencies are likely to "exhibit a 'culture of stress'": "Individuals respond to stress by avoiding anxiety through behavior that is risk averse; agencies respond to stress by attempting to reduce uncertainty through the application of rules and procedures that regulate behavior" (Rzepnicki & Johnson 2005: 396). In other words, the stress of a mandate to protect all children can lead to more cautious decision-making in an effort to limit a certain kind of risk: i.e. the risk of a tragedy following inadequate intervention and the blame that would follow. These dynamics seemed to be a part of the working reality of many caseworkers I spoke to.

Predicting which cases might end with a child being seriously injured or even killed is difficult if not impossible for caseworkers. Cases that end in tragedy are rare, and most of the caseworkers I spoke with had not had such an experience (even those who have been in the job for a decade or more). The numbers of cases agency-wide in which a child "known to the system" is killed each year is small.[115] Risk assessment instruments, as has been pointed out by critics, are not able to predict what will occur in individual cases and the numbers of "false positives" and false negatives is generally high (see Chapter 6 for a brief review of this literature). Caseworkers were thus very aware that they could not prevent every child death. As Pamela, an African-American woman in her 40s and CPM, put it:

> Like right now I mean like god forbid if something happens to the kids, I mean they tort - basically torture you. Like, "What did you do?" "Did you do this?" "Did you do that?" You know, it's like - they don't understand that you can do everything you can do in a

[115] Data from 1993 to 2006 published in *Child Welfare Watch* shows an average of 28 fatalities per year in cases that were known to ACS (out of an average of 53,700 reports per year). However, this number fluctuates as the number of reports fluctuates. In other words, as the numbers of families known to ACS increases so does the number of fatalities. 2006 had, by far, the highest number of fatalities at 45 but also, again by far, the highest number of reports at 61,376 (as compared to 50,251 reports in 2006 and 30 fatalities).

> case, which you're supposed to, but you cannot prevent someone from killing or hurting someone else. That's human behavior.

Although most caseworkers did not talk directly and specifically about how the fear of the worst-case scenario concretely affected their decision making, some did and their comments, reflect, I think, the general concern that underlies most caseworkers' practices. Carl, for example, told me a story about deciding that a mother who had mental health issues could regain custody of her children and then something horrible happened. The mother had never actually harmed the children before, but seemed unable to adequately care for them given her condition, leading to the removal when the case began. The decision to reunify the family was based on the fact that she was compliant with all her services and seemed to be behaving normally. A few days before getting the reunification plan approved by the court, however, Carl got a call from a local hospital saying that the mother was in the burn unit.

> And when I heard this, after I hung up the phone, I started to cry because I was saying to myself, "Had we put these children with her, it'd be a totally different story." And I felt bad and I was, like, saying to myself, "Oh, God." And the lawyers were saying, "Well, at least we didn't put the children back with her because if we had put the children back with her, we could've had two children dead."…And that was the thing. She burnt herself, she set the apartment on fire and she burnt herself so severely that both of her arms had to be completely amputated. And I mean, I just felt grateful that we didn't place the kids with her. After that, that was when I had a change of heart like I think what we do is the best. And I've always looked at it as we're doing what's in the best interest of the children, no matter what it is.

This story illustrates one reality of doing child protective work—tragedies happen and they are not always predictable. Caseworkers must deal, then, with fear of the worst-case scenario and this sometimes leads them to make more cautious decisions. Carl's comments about the incident show how this experience changed his views about his job. Although his comments are a bit ambiguous, in the context of our larger conversation, it is clear that "what we do" is a reference to removing children. In other words, this experience made him think differently about removing

children—that it is in children's best interests rather than an occurrence to be avoided whenever possible.

Pamela mentioned that she "doesn't play" with certain kinds of cases—mental health and educational neglect cases, specifically—because of past bad experiences:

> But I was kind of skeptical with mental health because one time I did that and she flipped out one night and tried to use a knife to hit one—tried to stab one of the kids, so I mean. The doctor had said, "Oh, she's not a threat to herself or others. She's coming," blah, blah, blah. One night kid wasn't doing her homework correctly. She took a knife, almost cut the kid. Luckily there was like six kids in the house and the older ones called the cops and that was that, but mental health is a little –
>
> Tina: Right, so because of that experience you were a lot more cautious –
>
> Pamela: Yeah, I'm just like I want, like, extra documentation or, you know, I would rather—those I'm kinda skeptical on.

After these experiences, she is much more cautious about cases with similar allegations. She asks the caseworkers to investigate more thoroughly and requires extra documentation from school officials and mental health professionals. This documentation is sought so that other professionals can help in making her decision and so that she could point to their advice if something went wrong. So, she is more cautious about these kinds of cases, scrutinizes them more, and is reluctant to leave children in this type of situation without substantial documentation that it is safe.

Not only is there the fear that a child will suffer harm, and most caseworkers do this job because they truly want to help protect children, but caseworkers must deal with the fact that they will be blamed for any tragedy and called to account for their decisions. This scrutiny can be either within the agency or publicly in the press, and it will most likely be both. Here is Carl, talking about a case with a drug-addicted mother:

> And that's a situation where, I know for a fact, that based on how Mom was going [i.e. disappearing for days at a time and leaving her children with neighbors, presumably to use drugs], the pattern she was doing, that something horrible could've happened to those kids and it would've hurt me to my heart to know that I was watching the news and I see – I'm, like, "Oh, no." So that's what I always try to ensure I will never turn on the news and see one of the kids that I service. And I think that's most of the fears of every ACS worker.

This fear of being blamed for a tragedy also leads to more cautious decision-making. Barbara, an African-American in her 40s who worked as a CPS in Harlem for over 10 years prior to the Nixzmary Brown case (she now works in an office that does community outreach), described the pressure one feels doing this job with its tremendous responsibility and knowing that you will be called to account for an tragedy that was not prevented.

> I mean, we do dream about our cases. We do, we dream about them, there's been many times I have turned over in my sleep, and like, "Oh my God, I gotta see this woman," or "Oh my God, I gotta do this paper," you know what I mean? Just being on your mind too much, and just, you know, and it's like a Russian roulette, 'cause you know, you don't know when a kid is gonna die, you don't know, you know, you coulda just seen them, and the mother coulda killed them the minute you left, but it's gonna be your fault. You will have to answer to the board on what did you do or didn't do, and today it's even worse.

Later she brought this issue up again:

> Three years down the line, if a kid dies on that particular case, if you were there. They pull caseworkers, if you was a caseworker on the case five or six years ago, they will pull you and interview you if a kid dies on a case…[T]hey will pull you in and ask you why did you do A, B, C, and D, and you could be reprimanded, you could be fired.

So, on top of the worry that children might be hurt, there is the worry that you will be blamed and that you might lose your job if a tragedy was to occur. As pointed out by the literature on the current preoccupation with risk, risk in this context is a "forensic resource" (Douglas 1992) which can be used to decide who is to blame in what has been referred to as a "scapegoat society" (Beck 1992). Caseworker decision-making is affected not only by assessments of the risks faced by children, but also by assessments of the risk they themselves face if a tragedy were

to occur. These both often lead to more cautious decision-making—more family court filings and more removals.

"We All Get Treated The Same"

The parents I talked to were acutely aware that caseworkers were afraid of failing to remove a child from a very dangerous situation and so were likely to treat them as if they were a potential grave danger to their child. Joan, an African-American mother of five in her 40s, for example, talked about how she hated to be "clumped" together with serious child abusers by ACS caseworkers:

> Oh, no, that's they job. And if I had that job to do, considering what goes on with some of these kids, I'd be the same way. I hate for us to be clumped up everybody as the same. That's what gets me. And I've *never* hurt those kids. When they took M [her daughter], M was getting ready to start daycare, we had just got the voucher, all her shots was up-to-date. She was healthy, she was going to the bathroom, she was very smart. Even ACS worker, the best thing she ever said, she said the child is very well rounded. She said the only thing wrong was the parents were using drugs. She said that child is very taken care of.

So, in Joan's experience, the caseworker's need to be cautious led to her child being removed even though she thought Joan was doing what she needed to do to care for her daughter.

In attending weekly support groups at the Child Welfare Organizing Project, the idea that parents are treated as if they are all the worst child abusers was a common theme. They had a sophisticated analysis of where this comes from that highlighted the role of race, class, and the media. When I first attended one of their meetings, they still had press coverage of the Nixzmary Brown case tacked to the wall along with comments which presented their analysis of it. They posted the New York Post's front page story about the case, shortly after it broke, with a picture of the child's step father that took up most of the page and the huge headline: "MONSTER: Evil, Ugly, Face of Sadistic Stepdad from Hell." Next to this there was a comment: "This is what sells

papers." There was also a story from an email about the mayor of Bridgeport, Connecticut who was forced to admit to a cocaine habit he kept secret for years that came out as a result of a federal drug investigation. The federal prosecutor almost immediately apologized for letting the information get out and asked a federal judge to seal the records. The email, which was sent to parent advocates, points out that the mayor used cocaine while he was in office and that he was also a father. It highlighted the mayor's public statements about how he thought this was a private matter he wanted to deal with privately, and commented that the parents investigated by ACS probably want the same thing but are never given the chance. The comment next to the story and email stated: "Stories like this are seldom told."

The implication of the juxtaposition of these two stories, and the captions, is that there is a double standard with regard to how personal problems such as drug abuse are handled. If you are wealthy, white, and powerful, like the mayor, you will be able to hide your problem and ask people to let you deal with it privately. It is highly unlikely that anyone will call an agency like ACS or attempt to keep you away from your children, much less place them in foster care. If you do not have these class and race privileges, you will not have the choice. Your problems are more likely to come to the attention of ACS who will not let you deal with them yourself as you see fit. Instead, you are likely to have your children placed in foster care. Sensationalized stories that demonize parents fuel the public's desire for agencies to get tougher on child abusers and protect children rather than misguidedly attempt to leave them in their homes. The people who are likely to be caught up in this, again, are not wealthy or white, but poor people of color in the neighborhoods in which ACS involvement is already most concentrated—people who are already seen as irresponsible and undeserving of help. Many of the parents felt they were targeted because of their race and class and treated harshly, especially if they had the misfortune

to be investigated by ACS in the aftermath of a high-profile tragedy. At the same time many of them did admit that they had problems and needed help for them (especially in the case of drug addiction). Instead of help, they often felt they were only being punished.

New York Post Law

The Nixzmary Brown case, and the possibility that this kind of media attention could follow any similar tragedy, certainly affected family court practice as well (see also Lansner 2007). One 18B attorney, Bob, a white man in his 50s, described it as practicing "New York Post Law":

> What motivates the…certainly they wouldn't tell you for attribution, but if you were to ask my colleagues what…motivates Judges, okay, they will tell you quite frankly that we practice New York Post law, and what that means basically is, is that no Judge wants us to let a kid get home - go home and see his name in the tabloids the next day that a kid got killed or maimed badly because of a decision he or she made. And it's always safer to, you know [remove a child or leave them in foster care], and that's what you're…up against [as an 18B attorney].

In other words, much of family court practice has to do with making safer decisions in an effort to avoid blame.

All the attorneys I spoke with talked about the increases in the numbers of cases that were filed after the Nixzmary Brown case and the more cautious decisions that were made. The ACS attorneys felt that more "marginal" cases were filed after the Nixzmary Brown case—those without clear safety concerns in which the agency wanted to supervise the home, or educational neglect cases and others in which the agency would have worked with the family in the past, for example. Here is how Joshua, a white man in his 50s, described this issue:

> Marginal cases have been filed. There are serious cases filed, but when any case we possibly have a cause of action should not necessarily go. Cases that should be in court are cases where valid removals have been done. Those cases have to go to court.
>
> Tina: Right.

> Joshua: And so, or course there's a protective issue. We need to order protection to keep somebody out of the household. Sometimes when there is a realistic chance that people who will not otherwise follow through with the service deemed necessary to make their family situation less hazardous. Sometimes those cases [need to be filed], but any kind of case about educational neglect, for example, goes to court. And that says, some really shoddy reasoning at work here because Nixzmary came in and everyone said "oh no!"

His point is that, because the Nixzmary Brown case was first reported because she was not in school, the agency began to get tougher about all educational neglect cases, and more often brought them to family court to allow supervision of the family in an effort to prevent another tragedy. His comment that this is "shoddy reasoning" refers to the fact that not all educational neglect cases are hiding the kind of serious abuse that was occurring in that case. Joshua added that educational neglect should always be investigated and dealt with, but it wasn't fair or practical to assume that every time a child wasn't in school a serious abuse problem was behind it. Finally, he makes a more general point that not all cases that can be filed should be filed.

Another ACS attorney, Marcus, a white man in his 30s, felt that the change in how they were dealing with cases was actually against the stated mission of ACS:

> I guess with the Nixzmary Brown incident, things have changed more and it seems like they've moved away from the mission statement just out of a sense of fear and there have been a lot of repercussions of that. Then on top of that, just with the number of new cases coming in, called in to the State Central Register, it just seems like another frustrating thing is just the high caseloads and workloads.
>
> Tina: What kinds of changes do you see after - after Nixzmary Brown? I mean I don't know the mission statement of ACS to be honest. So if you could tell me more about, like, what they tell you the mission is and how you think they get away from it.
>
> Marcus: Okay. Well, I feel like [pause] there were four main principles that they imparted to us. One is children are safe. Children's developmental needs are met. Families are strengthened, and permanency is achieved. And I feel like after the Nixzmary thing, there was a whole lot of emphasis on the safety aspect, but some of the others haven't been focused as much. It's, and I don't know if it's 'cause people, I mean, no one wants to be responsible for something happening. So the way decisions are made are only towards safety and not necessarily toward strengthening the family. And then it feels like, it feels

> like some of those things are an afterthought. It's like we file a case so that there's a, so that it's in court. And then the responsibility is off us.

Here, he suggests that the agency is acting in the interests of insuring safety above all else in an effort to guard against criticism that they are not doing all they can to protect children. In addition, he feels that some within ACS bring cases to court to have another set of decision-makers involved and another party to absorb any future blame.

Although this dynamic was more pronounced after Nixzmary Brown, it always exists in family court practice. The process of deciding whether to file a case in court and what intervention in the family to request is complex, with multiple people (lawyers and child protective staff and supervisors/managers) playing a role in making the decision, and, at times, trying to avoid making the decision. Not all situations that might legally fit a definition of neglect must or will be filed in family court, and the child protective staff, in consultation with the legal staff, has discretion about whether to file cases or not. For example, if the child can remain in the home safely, or if a parent willingly complies with services that would alleviate risk, a case might not be filed. Ideally, a determination about what is going on in the home and the level of risk to the child should be made before bringing a case to family court. However, it seemed to me that cases were sometimes brought to court mainly so that another set of decision-makers could be involved. This was described by the attorneys, judges, and caseworkers, at times, as simply a "CYA" (Cover Your Ass) move. When I observed one courtroom in Brooklyn, for example, the judge pointed out a couple of cases she felt were in this category that could not have been filed—significantly, she did not dismiss them.

Marcus hinted at the reasons he thought these kinds of filings were being made:

> I guess it depends on the situation, but it feels like in some of those cases, they're more towards *punitive* or more towards thinking they *won't be held responsible* if the case

> comes to court. Where if, you know, if it's deferred, especially if the manager defers it from legal, you know, they are at some risk, I suppose [in other words, if something bad happened later they could be blamed], because the caseworker side will say, "Well we sent it there because we thought it should be filed, they convinced us not to" or whatever "and we didn't." But it seems like it goes both ways because sometimes the cases are only brought to cover, or they perceive it as, *covering themselves*, by bringing the case and they don't particularly, they're not strong one way or the other whether it's deferred or not, it's just "at least we sent it to legal to decide." [emphasis added]

Here, he hesitates and does not say directly that these cases should not be filed; however, he feels that some cases are at least questionable. He observes that cases are sometimes filed to be punitive or to protect the agency from the criticism that they did not do everything they could. In other cases, child protective staff comes to court in order to involve another set of decision-makers so that blame can be shared or deflected in the event of a problem.[116]

In observing the screening process in family court, I saw several cases being screened in which the child protective staff felt there was a problematic issue in the home but there were differences of opinion about whether to file the case or not. For example, I witnessed a caseworker, while waiting to speak to an attorney at court, literally on his feet, ranting to his co-workers about being sent to file a case he felt was entirely unnecessary. This case involved a mother under court-ordered supervision who would not let the caseworker see her children. At the time, she was living with her mother after her oldest child was hit and killed by a car. The grandmother told the caseworker she was grieving and did not want to see the caseworker, and

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[116] A couple of the caseworkers I interviewed had a very similar assessment of why the decision is made to file a case and felt that managers would push them to file (which takes up an entire day) when it was not necessary. For example, Carl stated:

> But I think the three managers that I've had, only one manager was, like, "Seek legal," or "Go get a legal," *every* case. If we disagreed on whether a case should be indicated or not, "Get a legal." It's like…and we'd go get a legal and the legal department would take a look, say, "Okay. Your manager needs to make a decision on this case." Once again, it's on the manager. The manager's saying, "Okay. Well, we need to go to talk to her [the attorney's] manager." So then you go to talk to her manager and her manager's, like, "We hired you as a manager to make decisions like this.
> Tina: Right.
> Carl: "Make a decision."

that they would let him visit later. He told his co-workers this was another example of managers "covering themselves." The attorney agreed the case did not need to be filed and deferred it.

Filing large numbers of cases in an effort to protect the agency from blame had an effect on the families that were involved with child welfare before the case, as Marcus discussed with me:

> So those cases are all here and they take up the calendar and then I think even the kids who may have been closer to final discharge at some point, I think everything slowed down with that because people are taking a second and third look to make sure everything's right.

In other words, decision-makers became more cautious with returning children, which, when combined with the overload in court calendars and caseloads, slowed down the process of returning children to their parents. As another ACS attorney, Katherine, a woman of Middle Eastern descent in her 30s, put it: "But the agency really, really sort of buckled down on their idea of returning children from that point forward because nobody wanted their names in the newspaper." This is seen in the fact that the median length of time children stayed in foster care increased dramatically in the year following the Nixzmary Brown case (see above).

Although many attorneys directly linked the filing of marginal cases and more cautious decision-making to the Nixzmary Brown case, Sandra, an 18B attorney and white woman in her 40s felt that, in general and at all times, making the decision that a child is at "imminent risk" says more about efforts to protect ACS than it does about the actual risk to a child:

> I don't think the decision on imminent risk really is about the risk to the child in most cases. I think it's about the risk to the system. I think, you know, ACS doesn't want another Nixzmary, the judges don't want to appear on the front page of the Daily News, and so imminent risk has taken on—it's like everybody's *hiding* behind it, and that it doesn't mean, here in New York County, what it means in Syracuse County [outside New York City in upstate New York]. In Syracuse County, I think it really does mean, "We're only gonna take your child away if we find you standing over the child with a bloody

> knife" or, you know, "we go to your house and there's no food at all in the house, and the children are hungry." Here, it means, "If your house is dirty…"

Thus, although the Nixzmary Brown case made the phenomenon more pronounced, there is often a tendency to make "safe" decisions in an effort to avoid blame. It seems that the Nixzmary Brown case, since it was on everyone's minds, provided a way to discuss the issue. Now I want to turn to the topic of the workload faced by caseworkers, attorneys, and judges and the effects this has on family court practices and how families are treated.

Child Protective Caseloads and Their Consequences

When I spoke with caseworkers, after between a year and two years after the Nixzmary Brown case, their caseloads (or the caseloads of caseworkers who are in the units described to me by the Sup IIs) ranged from seven to 32, with most workers having a caseload of between 15 and 20.[117] Official statistics on the average caseload of child protective workers reflect the sharp increase in cases that my informants reported. In the two years prior to the Nixzmary Brown case (2004 and 2005), the average caseload was 12.1. In 2006 it jumped to 16.5 and, in 2007, it remained high at 15.1. Many of the caseworkers I spoke to, however, told me that they believe these statistics are not accurate and do not adequately reflect the stress, pressure, and overwork they face. Some went so far as to say that the agency actually lies about caseloads. Here is how Meredith, an African American woman in her mid-20s who has been a CPS for 17 months, and who is, in her own words, a "bubbly" person, describes the stress:

> We don't get paid for what we do. We really do work 24/7…He says, the commissioner

[117] Marilyn, the caseworker who has only 7 cases, describes herself as a veteran (she has been at the agency 6 years) and talked explicitly about her skills at "moving" cases. In other words, she conducts investigations quickly and has the institutional knowledge that enables her to transfer cases to other workers. Aaliyah, the caseworker with 32 cases, works currently in an FSU (Family Support Unit), and so is not investigating. Instead, her job is to monitor families with monthly or bi-weekly home visits (usually for a designated period of time by court order) and check that they are getting the proper services and are compliant with them. When she worked in a "Hospital Unit" she had an average of 12 cases. She is an experienced worker (she has been at the agency for 5 years) and commented that she was good at working her caseload down.

> says 12 to 15 cases, that is a lie because only during the summer may we have 12 to 15 cases. During the school year, you could have anywhere from 15 to 20, and the help that you're supposed to be getting from your supervisors, whether it's your CPMs, it's not help. It's barking down on you, and it's not just me. I'm just saying what I've noticed. Barking down on you like, "Why hasn't this get done? What hasn't this get done?" So on and so, and I'm just like, wait a minute. How am I supposed to get this done? I have this case due, and I have that case due, and this case takes precedence over that case because mom said this, and blah, blah, blah, blah, blah. And with all the things that we have to do and get them done by a certain deadline, we don't have the time to do it. That's why the work piles up, because, at the end of the day, the caseworker is just saying, "Fuck it."

Here, Meredith describes how caseloads become central to how the agency and the caseworkers within it are judged.[118] The agency is under pressure to show that they are keeping caseloads manageable for their workers as this is seen, in turn, as a way to measure the likelihood that they make good decisions. It is assumed that only when caseloads are small can caseworkers deal with each case thoroughly and make the proper intervention. However, many caseworkers felt the agency manipulated numbers and hid the reality of caseloads that continued to be unmanageable. In addition, caseworkers are judged by how well they complete concrete steps on their cases—the steps that are necessary to close the case and move on. So, ironically, the focus is shifted to the performance of these steps and not on the adequacy of the decisions made.

Most of the caseworkers told me they found their caseloads unmanageable. Each case has a rigid timeline to be followed (see Chapter 4) and there are multiple demands in terms of paperwork, visits, collateral contacts to be made during the investigation, and family court obligations (preparing reports, being present when hearings are held, and filing new cases which is an all-day process). I asked, Zadie, an African American woman in her 20s who had been at the agency for about two years when I spoke with her, if her caseload of around 18 was manageable:

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[118] A comprehensive discussion of the role of audit in contemporary governance is beyond the scope of this chapter, but the concern with caseload is part of this larger "audit culture" (see Shore 2008; Power 1997; Strathern 2000).

> No, but you do what you have to do. It's not really manageable. What is hard is trying to see families on a bi-weekly visit and then to have to do court reports, to speak to collaterals, and then to do notes and documentation and then still getting other cases, and then if you get a high-risk case that really may have problems or may concern you, you have to really focus on that case because in worry of, you know, the children or anything like that, so. To me it's not manageable…I've had cases where I've had probably three or four that needed to be, that were over-due, and I got in a new case and I couldn't even really actually address those three or four cases that needed to be closed because I had to work on this new case, run around, go see the doc, speak to the therapist, do this, make visits, try to find this out, find that out…

Most of the caseworkers I spoke with shared Zadie's view. Angela, for example, told me that she felt the agency did a good job of attempting to thoroughly investigate each case and she found this the biggest strength of the agency. However, she felt that the caseloads they carried made this "admirable" goal unattainable:

> I think they try essentially to get a thorough investigation. And admirable, yes, but feasible, no. Because the amount of cases that we have, it's just not—sometimes it's not possible… [T]he basic things are absolutely important in any investigation. They would help you make a strong determination on a case, but it's difficult to get to them and to do all of them because there's just not enough time in a day, but they're necessary.

Several caseworkers shared Angela's view that doing thorough investigations was very difficult given their caseloads, and when I asked what they would change about the agency if they could, they described various ways to split up the work involved in handling a case to make it manageable.[119] Caseworkers, then, felt overworked and described how their caseloads prevented them from keeping up with all their work, thoroughly investigating, and making the best decisions possible.

[119] As they envisioned it, this might involve having one person do the investigation at the home and the home visits while another worker could make the calls to doctors, schools, and other "collaterals." Yet another worker could make service referrals and monitor that services are being completed.

Family Court Caseloads

Caseloads at family court were similarly high and difficult to manage. ACS attorneys reported anywhere from 90 to 150 cases, with the lowest number in Queens and the highest in Brooklyn. Here, the count refers to cases, but a case is likely to have multiple children involved and can become quite complicated. The caseload numbers I found are in line with what has been reported by Child Welfare Watch and the New York City Public Advocate, who further note that the American Bar Association recommends that attorneys representing child welfare agencies should have caseloads of no more than 50 (Feldman 2005-2006; Office of the Public Advocate for the City of New York 2006).

Law Guardians reported caseloads of 140-295 clients (i.e. children). The lowest number came from a new attorney who reported she hasn't worked her way up, as it were, to the caseloads carried by her colleagues, while the high number came from an attorney who only represents teen-agers who are close to ageing out of foster care (she has a full-time social worker to help with her cases). This is in line with what the Legal Aid Society (which is the agency that takes most cases as law guardians) reports as an average caseload of between 200 and 300 clients in 2006, up from 150-200 clients in 2005 (Council on Children 2007). Judges reported having well over 600-900 open docket numbers, but complained this did not fully capture their workload since counts do not reflect the increased workload that came along with new legislation, which took effect in 2006, requiring "Permanency Hearings" every six months rather than every year as previously (see also Council on Children 2007).

Parents' attorneys, because they are technically private attorneys and have control over whether or not they will take on a case, were less likely to report high caseloads.[120] However, there is pressure in court to accept all cases offered because judges will not go forward if the parent is not represented. In addition, the relatively low per-hour rate the attorneys make ($75/hour[121]) means that many take on large numbers of cases. Despite all this, one Family Court Judge told me she often has to seek out attorneys to take on parents' cases and often has to beg, cajole, or even threaten. I saw this happen one day in her courtroom: she had two cases in which parents needed lawyers and the court officers were unable to find someone willing to take them. She finally called in one of the coordinators of the 18B panel to enlist her help, telling her that if no one came forward she would draw names out of a hat and just assign the case to them.

Some Consequences of High Caseloads in Court

The fact that court calendars are extremely crowded and most caseworkers and attorneys on all sides have high caseloads has various consequences both for the people who work in family court and for the families that are involved with it. First, it contributes to the huge delays that are endemic to family court (see also Council on Children 2007; Office of the Public Advocate for the City of New York 2002; 2006; Guggenheim 2005; Guggenheim & Gottlieb 2005; Lansner 2007). During my observations, I noted when the next hearing was scheduled and how many dates the parties had to try before finding a date and time during which everyone would be available. If the next court appearance needed a short amount of time (15 or 30

[120] 18B attorneys, being independent, have more control of their working conditions. Law guardians and ACS attorneys, because they work for organizations, have specific intake days and cannot really turn down a case, unless they can convince a co-worker to take it. This difference is one of the reasons the city gave contracts to "institutional providers." These providers work more like the Legal Aid Society or ACS in that they could set up intake teams and ensure that attorneys are assigned to all the cases on a particular day.

[121] This rate was only increased in 2004 from $40/hour for in-court time and $25 for out-of-court time. I was told by attorneys who were practicing before the change that they stayed in court as much as they could, which made it difficult to have detailed meetings with their clients.

minutes) it would generally be possible to schedule a hearing within a couple of weeks, but even that was often difficult when a time could not be agreed upon. If more time was needed, appearances generally would be scheduled for anywhere from three to, more commonly, six months later. It was everyday practice to schedule full fact-finding hearings over the course of a few months in order to find enough time. It is also normal for cases to go on and children to be in foster care for a year or more before a hearing is held to determine if the allegations were true or for a settlement agreement to be reached. These delays often mean that children remained in foster care. Also, because of crowded calendars and the difficulty getting all the attorneys in the courtroom at the same time, it was not uncommon for a judge to hear cases long after 5 pm and sometimes even as late as 9 pm.

The following two cases are concrete examples of these problems. I observed one part of a fact-finding hearing in November of 2006 in which the hearing had been started six months earlier, in May. On this day, the ACS attorney (they present their case first) was just beginning to make her case and was questioning her first witness, the caseworker, about when she received the initial report (this is generally one of the first questions asked). In other words, six months after the process of deciding the facts of the case was scheduled to begin, nothing of substance had occurred. I also witnessed a termination of parental rights fact-finding hearing in October of 2006. The initial termination petition was filed in September of 2004 and was still not completed. During this time another child was born to the mother (who tested positive for drugs). That child's case was completed—the mother was not visiting the child or engaged in any services so it was dispensed with quickly—and a termination petition was filed for that child. The delays meant these children were not freed for adoption. In part, the length of time this case took was due to the fact that the foster care agency needed time to track down the fathers of the

children and give them notice of the proceedings. However, there were two six- to seven-month long adjournments due to scheduling problems. On the day I saw the case, it was adjourned yet again, this time for four months, because the attorneys who filed the termination petition had not provided needed records to the other attorneys. This phenomenon is common, leading Martin Guggenheim to argue that if, as a society, we were really worried about the length of time children are in foster care and about achieving permanency quickly, we would not let these delays occur (Guggenheim 2005; see also Stein 2003).

Delays in family court had numerous consequences for the families involved. Parents were often frustrated about having to go to court, waiting for several hours, and then having their case adjourned. For many parents, this meant missing entire days of work which put them at risk for losing their jobs. Not only did parents often feel their time was wasted, but any issues that needed to be resolved, such as getting visits with their child or needed services, were not dealt with. These delays also contribute to long stays in foster care for children and delays in reunification or adoption. An ACS attorney, Katherine, when asked what she thinks the goal of ACS and her work within it should be, stated:

> I think in my mind is reunification. That's the way that the law is written. The point is for reunification of the family. It's not taking kids away from parents and never giving them back. But we don't move fast enough and cases linger. Cases are before courts for years. Three, four, five. I mean I have cases that I still started with [she has been in the job for five and a half years]. So I mean, that's, I think that's sort of telling.

One concrete way that court delays and high caseloads delay reunification is that Permanency Hearings in which the judge approves the goal for the children are very often adjourned more than once. When they *do* occur they are often *pro forma* as there is no time for a full hearing. Several judges complained to me that the permanency report, which provides the information the judge needs in order to approve the goal and ensure that the steps towards it are

being taken, is done at the last minute, if at all. This means that no one has read it when they go into the courtroom, and the parent is not given a chance to respond and correct any problems them might see or anything they disagree with. Another judge told me that she finds that many times the reports contain "stale" information, so she is unsure about what is currently going on in the case. And yet, most of the time little discussion takes place, and no evidence is presented apart from the report. Despite these problems, judges rarely refuse to find that an agency has made reasonable efforts. Occasionally, however, they do delay making a finding in order to give the agency time to correct any problems. One judge I spoke with told me that she is fairly certain the agencies would not be reimbursed for a least some of what is spent to support children in foster care since many hearings are held late in violation of both state and federal law. In general, then, permanency hearings did not seem to serve their purpose in ensuring that the foster care agencies were taking the necessary steps towards reunification or another permanent plan for the child. Parents were not always getting the services and visits to which they were entitled and children were left in foster care longer, but the court could not remedy the situation.

Huge caseloads also affect everyone who works in family court. ACS attorneys and law guardians all described large caseloads that were difficult to manage and having to make "triage" decisions about what to prepare for and what not to. Everyone I spoke with described simply not being able to devote enough time to each case in order to do everything that needed to be done. If there is not adequate time for preparation, things fall through the cracks:

> But when you have this amount of cases, you know, things can fall, you can have, if you're not on top of it, you can have adjournments because you forgot to subpoena records. Or you did subpoena them, but you never followed up and it turns out that for some reason with them, or whatever the reason is, the records never came, that can cause adjournments. And once a case has been adjourned, you don't know when the next one will be.

ACS seems to recognize these problems, so they "allow" attorneys to come into their offices on Sundays to catch up on their work. Many attorneys reported that they did this sometimes two or three times a month; others regularly stay in the evening to complete their work.

I also observed many 18B attorney who spoke to their clients only a minute or two before each court appearance, and almost all the parents I interviewed reported that their lawyer did not explain what was to happen in the case, much less prepare what they would be arguing for or how to defend them and push for what they needed (see Chapter 7 for more discussion about this issue). To take one example, I attended what was to be a fact-finding hearing with two parents. The lawyer approached us about five minutes before the hearing was scheduled to begin and asked the parent what he wanted his defense to be and then turned to me (I had never met him and was only in court to observe) and said "What are you going to be testifying to?" It seemed quite clear both to me and the parents that he had not prepared a case. This lack of preparedness which stems from high caseloads, on all sides in court, leads to multiple adjournments and prolongs cases. This, in turn, very often delays reunification if the child is in foster care. It also means that parents are not always defended nor is information presented on their behalf.

Most attorneys also felt that too much court time was taken up with matters that could or should be dealt with elsewhere by caseworkers and social workers at ACS or foster care agencies. They linked this to the problem of their high caseloads. I witnessed attorneys and judges, on multiple occasions, express frustration that time was used to decide on which days visitation would occur, whether a referral for a court-ordered service had been made or not, whether or not a foster mother was bringing the child on-time for visits, etc… ACS attorneys, in particular, although they all acknowledged that caseworkers are overwhelmed and have, as one attorney put it, "crushing" caseloads, were also very vocal about how some caseworkers did not

do their jobs so that attorneys could focus on the legal aspects of the case or on working out issues that could not be resolved in any other way. One ACS attorney, Katherine, specifically talked to me about how she felt that she acted, at times, more like a social worker than an attorney:

> I'm an attorney, but I feel as if I, you know, a lot of my work comes down to like doing social work, which I'm not trained to do. Which is sort of on-the-job training. You know when I said earlier that I sort of wanted to get into a social work type of a thing [i.e. she became an ACS attorney because it was working in the context of helping children and families], I didn't mean it in terms of I wanted to be like an MSW.

Court time is often taken up with making referrals and dealing with visitation because caseworkers are not doing these things adequately.

One judge I interviewed told me that she felt that things were going less well since the Nixzmary Brown case and the new permanency law. She said they used to strive for "best practices" and now often do not even do "better practices." She has found that many caseworkers are not coming to court with required reports or having made the proper referrals. She added that ACS attorneys complain about these things to her off the record. Since the caseworkers are technically their clients, they are under pressure not to state these complaints publicly, and many ACS attorneys will fight against a judge making a specific order for services because it leaves the agency open to fines if the order is not carried out. This judge told me she has threatened to subpoena the caseworkers' supervisors to testify about what they have been doing if things do not go smoothly. Another judge told me she finds she has to threaten to hold agencies in contempt of court for not doing their jobs. I never witnessed a judge actually holding an agency in contempt; although I saw many of them threaten this. Part of the reason they do not seems to be that judges are appointed by the mayor and criticizing a public agency in this way, and costing them money, would probably not be looked favorably upon. Another common tactic was to raise

their voice at caseworkers and/or order them out of the courtroom for a few minutes or a few days to take care of something. So, although judges do have some power to enforce reasonable efforts requirements, this is often limited to informal means such as threats. Again, this situation means that families do not always get the services they need, reunification can be delayed, and the court is not as effective as it could be in holding agencies accountable.

To take one example of this general problem, I witnessed a court appearance in which a child (along with his four siblings) had been removed from his mother, in part because he had a serious mental health issue that caseworkers felt she was not addressing. The child was placed in a pediatric psychiatry ward, and the judge asked the caseworker and the ACS attorney about his diagnosis. When they could not tell her she angrily ordered them to find out this information and told them to return the following week. When they returned, a few days later, they still did not have information about the child, and admitted that neither the caseworker nor the law guardian had visited the child. At this, the judge told them, sharply, to "get a diagnosis and visit this child" since he isn't "just a number on a piece of paper." The mother complained that she was not allowed to visit her son either. At this point, it had been 10 days since the child, who was only 10 years old, was put in the hospital and no one had visited him or checked on his diagnosis and treatment.[122] This is one clear example of the ways in which this system does not always serve the needs of either children or their parents.

I am not, however, arguing that *none* of these matters need to be in family court. Many times parents and caseworkers have trouble coming to agreements about services and visitation, and many parents told me that they did not feel they were getting the services to which they were

[122] In another case, this same judge, in a conference, asked what services the mother had been referred to. The caseworker began to say that they were having a meeting in a few days to come up with a plan. The judge cut her off and snapped (almost yelled), "refer her to drug treatment. Just DO IT."

entitled. Others complained that their parental rights (such as the right to decide about medical care for a child, to be involved with a child's school, or the right to see the child), which they retain while their child is in foster care, were not respected. Bringing these matters up to a family court judge can sometimes resolve these problems. However, it did not seem to me that these issues were raised *only* when the dispute could not be settled elsewhere, but often because caseworkers were not attending to these matters properly, in part due to high caseloads.

As I have shown, the child welfare system is overwhelmed, under-staffed, and under-funded. This only adds to the stress created by public expectations that child protective services should prevent all tragedies. Caseworkers, judges, and attorneys are all under pressure to make good decisions and this can, especially after a tragedy is discussed in the media, lead to more cautious decision-making: more cases marked substantiated, more families taken to family court, more children removed to foster care. High caseloads and crowded court calendars are not only unmanageable for staff, but they often harm families and make it difficult for caseworkers and other officials to fully investigate cases, give each family adequate attention, and give each case adequate oversight. When everyone is overwhelmed it is more difficult for parents to get the services to which they are entitled and which are required for reunification. It is also difficult to get a judge to order that agencies provide them. What is most troubling is that the delays that too often exist in family court are an important reason why many children have long stays in foster care.

The tendency for the public to focus on the horrible abuse of a relatively few children sets up a situation in which is it easy to think in terms of parents vs. their children. This seems especially easy to do when it is mainly poor families and families of color involved, who are already demonized in many ways. Often, in this way of thinking, the solution to the problem of

child maltreatment is foster care rather than services for parents. That services are not always readily available also makes this choice more logical. This is not to argue that all parents can be helped to care for their children properly, nor is it to argue that cases of horrible abuse should be ignored. Cases like Nixzmary Brown's are horrible and immediate. Rather, it is to argue that the larger context needs to be more well-known: most children are neglected, not abused, and general social conditions such as poverty, racism, unemployment, poor housing, lack of medical care, underperforming schools are also dangerous for children. To put this into a medical metaphor, maltreatment of children is less like an acute infection (as it was portrayed in the 1970s) and more like a chronic condition that has both individual and environmental causes. However, the system is geared towards preventing serious cases of abuse and the interventions often made in families have to do with making cautious decisions with a narrow view of child safety as the paramount criteria and as a way to ensure the agency is not blamed for future tragedies. This kind of focus makes it difficult to provide services to families in an effort to strengthen them and improve the lives of children. Even after removal, it is often difficult for parents to get what they need in order to regain custody. It seems that this situation is tolerated because it mainly impacts poor families of color who are already, in many ways, demonized and seen as undeserving of help. In this climate, the child welfare system deals with families in a punitive fashion, with removals and court supervision, while services are inadequately provided and cases are allowed to drag on.

Chapter 6:
Surveillance, Class, Race, and Power in Reporting and Caseworker Decision-Making

This chapter discusses child welfare reporting and how caseworkers decide whether neglect is occurring and when it is severe enough to require removing a child from his/her home. It aims to address the question of why poor families of color are more likely to be investigated by child protection agencies and have their children removed from their care. Part of the answer lies in the level of surveillance to which they are subject, surveillance that most middle-class families can avoid (Appell 1997; Roberts 2002). This is a prime example of how, "rather than surveillance indicating a rationalized and distributed imposition on individual privacy…surveillance is often applied selectively and with varying intensities according to one's social address" (Monahan 2006a; see also Lyon 2002; Gilliom 2001; Campbell 2006; Eubanks 2006). More specifically, surveillance, or what Campbell calls "technologies of suspicion" (such as drug testing), "continue to be used coercively on populations constructed as incapable of self-governance" (Campbell 2004: 79).

The surveillance system that these families are subject to is not only made up of state agencies specifically charged with enforcing child protection laws—the family courts and ACS—but also encompasses various "private" and other agencies whose ostensible purpose is to provide services for poor families. As discussed in Chapters 2 and 3, the role of philanthropy and other helping agencies in the governing and regulation of poor populations through child welfare is by no means a new phenomenon. However, it is reinforced by general trends under neoliberalism. As Campbell notes, "state control of disciplinary mechanisms has a complement in our time of neoliberal divestment in state functions—especially policing—that diffuse into and become coextensive with the private and corporate sectors" (Campbell 2004). In the case of child

welfare, not only "private" agencies, but also poor communities themselves are caught up in this web of surveillance, as I will demonstrate below. Another significant trend under neoliberalism is the "simultaneous retreat from social programs and an advancement of social control over the public" (Monahan 2006b: 110). Although child welfare has always been marked by concern and help for children combined with various practices that aim to control and reform parents, families, and these potentially dangerous and troubled children, it has become increasingly harsh in recent years and can be seen as one element in larger efforts under neoliberalism to deal with increasing racial and class inequalities in punitive ways (see Chapter 3). In this chapter, I will explore to what extent the helping aspects of child welfare are overtaken by its policing functions.

Regarding how decisions are made about child neglect and when it is severe enough to warrant removing children from their parent's care, it is clear from much of the social work literature that neglect is imprecisely defined (National Research Council 1993; Waldfogel 1998; Gambrill & Shlonsky 2000; Gillingham 2006)[123] and that caseworkers have a degree of discretion in decision-making (Arad-Davidzon & Benbenishty 2008; Britner & Mossler 2002; Daniel 2000; English 2002; Gambrill & Shlonsky 2000; Jones 1993b; Rossi et al 1999a; Schuerman et al 1999; Tumlin & Geen 2000; but see DePanfilis & Scannapieco 1994). [124] This leaves room for class and race biases (Appell 1997; Roberts 2002; Hill 2004) as well as for intuition and variations in individual's willingness to remove or desire to avoid removals to affect decision-making. There is also a tendency to define neglect in terms that make it hard to

[123] As anthropologists and others have pointed out, maltreatment is culturally defined, varies among groups, and changes over time (Korbin, et al. 2000; Korbin 2003; Hacking 1992; 1995: Chapter 4; 1999: Chapter 5).
[124] There is also evidence of variation between states in the number of cases accepted by hotlines (Waldfogel 2004), in substantiated reports (Besharov & Laumann 1996), and in numbers of children placed . This also suggests differences in decision-making since there is little evidence that rates of maltreatment vary.

distinguish from poverty, leading conditions of poverty to be labeled neglect (Pelton 1989; Roberts 2002; Krane & Davies 2000; Swift 1995). I found that these were tendencies in the cases I encountered in my research. The few ethnographic studies of child welfare that have been conducted have also found that parents' behavior towards caseworkers also plays a role in how decisions are made (Reich 2005; Parton et al 1997), and my data is in line with these results as well.

Although ACS uses a formal risk assessment instrument that aims to standardize decision-making, I found that caseworkers are allowed discretion, so similar cases are apt to be decided in different ways. However, there are a few types of cases in which the child is almost automatically thought to be a great risk and thus is likely to be placed in foster care. Further, the caseworkers I spoke with did not discuss their use of these instruments; instead they talked about the subtle criteria they had when making decisions and referred to specific cases. To explore these issues I will provide two detailed case studies. In examining these I will discuss these subtle criteria as well as evidence of class biases and ideas about race that might influence decision-making.

This chapter begins with the issue of how reports are made and who is more likely to be reported. From there, I examine the character of surveillance in child welfare in the context of neoliberalism. The third section of this chapter will discuss the two roles a caseworker's job combines (helper and investigator), the tensions between them, and how the tension was handled by workers. I will consider here the issue of to what extent helping is overwhelmed by surveillance and social control in child welfare. The fourth section will discuss risk assessment, while the fifth will provide cases examples in order to explore how caseworkers make these difficult decisions. Finally, I will discuss the importance of parents' compliance in shaping how a

case will be handled and explore some of the power issues involved.

Why are Poor Families of Color More Likely to Be Reported?

It is clear from statistics regarding the families involved with child welfare that poor families and families of color are more likely than others to be reported to ACS and other child welfare agencies (see Chapter 1 for New York City Statistics and Chapter 2 for a review of the literature). At least part of the reason for this lies in the level of surveillance to which they are subject (Appell 1997; Roberts 2002). For example, most cases in which women are tested for drugs while giving birth are poor women of color (Siegel 1997). In New York City, a positive test most often results in an ACS report which very often can mean removal of the child. So, despite the fact that drug use crosses racial and class lines (Gomez 1997; Humphries 1993; Roberts 1997; Siegel 1997; Young 1994; Zerai & Banks 2002), poor women or color are more likely to be caught and are vulnerable to having their children removed.

Caseworkers tend to visit particular neighborhoods more than others and particular schools and hospitals, according to caseworkers, call in reports more often than others. One supervisor in particular was quite clear that there is bias in who is reported, and she told me, as an example, about a particular emergency room doctor who makes calls frequently. She doubts his reports and anticipates that an investigation will not find a problem. So far, she has been correct in this assumption. She told me that, in her estimation, he simply "had issues" he hadn't dealt with, and it was clear from the rest of the conversation that this was her polite way of referring to his racism. She also told me that private schools, when a child is absent (which can equal educational neglect, and can therefore warrant a report), will first call the parent to find out if there was a reasonable reason. In contrast, public schools, especially in poor and minority neighborhoods, will automatically call in a report when a certain number of absences occur. So,

it seems that institutions and individuals that are more likely to serve poor families of color are also more likely to make reports.

One attorney I interviewed, Carrie, a white woman in her 30s who used to be a Child Protective Specialist (CPS, or ACS caseworker), agreed that some schools rarely make reports and told me, as an illustration of this, about a school where she had to explain who she was:

> Carrie: it's kind of confusing to me that some schools have never heard of ACS. I actually went to a school once, a public school -
>
> Tina: Really? Where was it?
>
> Carrie: I was in—it was in Rego Park, which is a very middle-class, very mixed-race, ethnicity, whatever, it's actually—I used to live in Rego Park…I went into the school, they didn't really understand what I was. I had to explain to the principal, "You know that mandated reported training you go to?" "Yes," "If you were to call in a case, I would be the person who'd come." "Oh, okay."

This incident highlights the fact that certain schools—those that serve more middle-class children—are not as familiar with ACS and make few reports.[125]

In listening to the stories of the parents I met and how they were first reported to ACS, it became clear to me that their interactions with public hospitals, public schools, social service agencies, foster care preventive agencies, and the police placed them in a situation in which their lives could be examined by mandated reporters who then reported them. Poor families of color are more likely to be in contact with these agencies and officials than are white middle- and upper-class families who, for example, are not likely to be in contact with the police and can purchase the services they need rather than rely on public services. Joan's story is a prime example, and, when compared to the case of a wealthier family I saw in family court, illustrates the kind of surveillance poor women of color are under, surveillance that white, middle- and

[125] According to ACS statistics, there were 197 reports, involving 265 children in 2007 (or 1.4% of the children living in that CD) in this neighborhood. Although not the CD with the lowest numbers of reports, it is substantially lower than the CD with the highest number (see Chapter 1, Table 5).

upper-class families are able, in general, to avoid.

Joan is an African American mother in her 40s who has had a long history of crack cocaine use. Her older children were placed in foster care years before I met her and were later adopted by her aunt. When we spoke, it had been almost a year since her youngest child was removed from her care after she had begun using again. She was living with her daughter's father at the time in a building owned by his mother, and he was the main caretaker for the child while Joan worked full-time as a nurse's assistant to support the family. Joan became depressed after the death of her best friend, attempted suicide, and was psychiatrically hospitalized. "Because it was a city hospital," she said, they gave her a drug test which was positive. ACS was then called and the ACS caseworker sent a foster care prevention agency to work with her. They (the preventive agency) helped her find an in-patient treatment program, but there was a delay in enrolling because Joan had no health insurance to pay for it as she had lost her union insurance when she was fired after her drug use was reported, and her Medicaid was not yet active. Although she could not enroll fully in a program accepted by ACS, she did go to group meetings until her insurance was activated. Since she was planning to go into an inpatient program as soon as she could, the preventive agency was going to close her case and allow her to retain custody of her daughter. Joan felt that things were fine at that point.

A few days before her case was to be closed, however, a report that her partner was sexually abusing their daughter was made anonymously. This was quickly shown to be false, but during the investigation, the ACS caseworker asked Joan to take a drug test, which she failed, and looked into her police record and found she had been arrested after a physical fight with her partner, something she did not tell the caseworkers about. Because of her history, her arrest, and the delay in entering an inpatient program, the ACS caseworker decided to remove her child,

despite feeling the child was well cared for. Because Joan used a public hospital to get mental health treatment, she was tested for drugs which set off a chain of events that eventually led to the removal of her child when she could not pay for drug treatment due to her job loss, and when a caseworker was able to search police records electronically and find she had been arrested.

Joan's case is in direct contrast to the case of the only wealthy, white family involved with ACS that I observed during my fieldwork. This family was reported to ACS by a police officer who claimed to have seen the father kick the child and call her a bitch in a public park. The initial allegation turned out not to be true, and the children were quickly returned to the family. However, during the course of the investigation, the mother's severe depression and drug history, which had never been reported to ACS by anyone, came to light. The father admitted to the ACS caseworker that his wife's psychiatrist told him not to leave her alone with the children because it was not safe, and one of the children reported to his law guardian that his favorite thing to do with his mother was to spend time with her in bed (which was taken as evidence of her severe depression). Despite all this, the law guardian told me she was in favor of leaving the children home because the mother would be getting good psychiatric care. The ACS caseworkers accepted the father's promises that he wouldn't leave her alone with the children and knew this was possible due to a severance he had from a Wall Street job and his ability to hire childcare. In similar cases I came across involving poor families, this serious mental health issue led to the children being placed in foster care. [126] This family's case was completely dropped after only a few months and they were no longer subject to mandated services or monitoring by ACS caseworkers. In this case, the parents were able to purchase mental health and drug treatment for

[126] In one case involving a poor family I witnessed in family court, a father without an independent source of income who was living in the home promised he would not leave the children alone with their mother. The children were still removed , and no one considered help with child care to prevent a removal.

the mother privately, and these providers never called ACS even though they clearly felt she might present a danger to her children. Because the father had the resources to continue to pay for high-quality treatment for his wife and to be home full-time to ensure she did not endanger the children, their children were left in their custody.

The class differences between these two families meant they were subject to different levels of surveillance. In Joan's case, she relied on public institutions for mental health treatment, and those institutions subjected her to drug testing and then reported her to ACS. After she was reported, a foster care prevention agency was placed in her home to continue to monitor her drug use, and ACS continued to follow her case, putting them in a position to eventually learn of her arrest. The wealthier mother, in contrast, was able to get treatment from a private doctor and, because her husband was able to stay home and, presumably, because she was a paying client, her drug problems and severe depression were not reported. No agency followed up on her treatment or ensured the father stayed home to protect the children. Even when they were reported to ACS and these problems came to light, they were able to regain custody and were trusted to continue to ensure their children's safety because of the material resources to which they had access. In contrast, Joan's inability to get treatment, her arrest, and her ACS history cast doubt upon her ability to care for her child and she was removed, even though she was mainly cared for by her father. These two cases show the role of class differences in structuring both which families are reported to ACS and which are able to retain custody of their children.

Surveillance under Neoliberalism

Not only are poor families of color more likely to be under surveillance that leads to ACS reports, but this surveillance takes a particular form that, although not new (see Chapter 3), fits

with general trends under neoliberalism and is reinforced by them. These trends are 1) the increasing privatization of social provisioning at the same time that social control is strengthened in various ways and 2) the shifting of various state functions to private agencies and citizens themselves (Goode & Maskovsky 2001a; Katz 2006; Monahan 2006a; b). In this section, I will discuss the extent to which various helping institutions (both private and public) and poor communities themselves are drawn into surveillance through mandated reporting laws and a familiarity with the system and how this situation might make some parents reluctant to seek help or interact with others for fear of ACS reports. I will also explore the question of whether or not institutions whose purpose is to help poor families of color are drawn instead into surveillance of these families.

Many parents I met were reported to ACS by agencies whose ostensible purpose is to provide help and services to families: public schools, social services agencies, and foster care prevention agencies. Some parents even experienced calls to ACS that were made with little evidence of maltreatment or that were used as threats. For example, two mothers I spoke with had had public school officials threaten to call ACS. In Maria's case (she is a Latina in her early 30s with four children who receives public assistance), her son was acting up in school (she describes him as "hyper") and the teacher, rather than attempting to discipline him, would either send him immediately to the principal or call and tell her she had to pick him up or she would call ACS. Maria had to rush to the school on almost a daily basis to pick him up; he was rarely allowed to remain in class enough to learn, and she would then have to ensure he was cared for.

Here we see a situation, at least from Maria's point of view, in which school officials, rather than working to educate her son and deal with his behavior problems so that he could learn, threatened her with calls to ACS so that she would take him out of school and they would

not have to deal with them. They had no evidence she was mistreating him, but used ACS as a way to force Maria to deal with his problems. Here, rather than providing for his education, both Maria and her son were punished—Maria with the constant fear of a report and the constant trips to school, and her son by a denial of his education. Maria was eventually able to get the board of education to pay for her son to go to a private school, and she no longer had to deal with threats of an ACS report. She reported the new teacher was working with her on his behavior issues, and he was learning a lot more. This example shows a stark contrast between public and private schools in terms of their willingness to make reports to ACS.

Although their overt aim is to prevent foster care placement, foster care prevention agencies place a mandated reporter in a position to carefully watch a family and their parenting practices because they generally require frequent caseworker visits or services such as a homemaker to help out several hours a week. Rather than preventing foster care placement, in many cases they are a source of reports that actually lead to removals. Preventive agencies make it clear to workers that they must call in a report if they have any concerns for the child's safety or they can lose their jobs. There seems to be little leeway for *them* to decide what situations are safe for children and which are not rather than reporting to ACS. This lead some mothers to resist having a preventive agency assigned to them because they were seen as not providing help, but rather as simply another method of surveillance. For example, Trisha, an African-American mother (see Chapter 1 and Appendix 2), informed her preventive caseworker she began using crack cocaine again, and her caseworker attempted to avoid making a report to ACS, instead encouraging her to continue treatment and resist using again. She thought that Trisha could safely retain custody while dealing with her addiction. An ACS official, however, eventually received a copy of Trisha's positive drug test and removed all the children. The preventive

caseworker was fired for not making the report. Here, rather than helping to prevent foster care placement by providing services and support for parents, the prevention agency was expected to act as surveillance, watching for possible continued drug use or maltreatment that was to be immediately reported. Trisha's relapse was seen, by ACS officials, as an automatic risk to the child that had to be dealt with by foster care placement rather than as an ongoing problem for which she needed help and support so that placement could be avoided.

Some mothers I spoke with, on the other hand, did feel that their preventive agencies provided them with important help and were very pleased with the services they received. Interestingly, in these cases the preventive agency caseworker was either replaced or fired because they were perceived as "too close" to the family. This led officials at either their agency or ACS to question their judgment and maintain that they should have reported what was going on in the home rather than continuing to help the family. Irene, a Latina mother of 5 in her 40s, for example, told me that her preventive agency worker came with her to court to argue on her behalf and against a court finding that she was neglectful. He was dismissed from her case at the request of an ACS attorney.

These experiences with preventive agencies, whether seen as positive or negative by the parents involved, call into question how effective preventive agencies are at preventing foster care placements and how they might, at least in some cases, be used as a method of surveillance rather than help. It often seems that their overt purpose—to support families and avoid foster care—was overwhelmed by their role as another agency to look for risks to a child that are reported and then likely to be dealt with through foster care placement. If these agencies are perceived as providing too much support to parents and not enough surveillance to protect children, they are likely to be removed from cases. Here, again, their role as surveillance is

expected to be paramount.

Not only are various helping agencies drawn into surveillance, sometimes to the detriment of their roles as service providers, but poor communities are drawn in as well. Reports to ACS are common in poor neighborhoods around New York City (see Chapter 1 for statistics), and so many people are familiar with ACS and the possible consequences of an investigation. In these neighborhoods ACS reports are used almost as weapons in disputes among families and neighbors or by batterers against their former partners (see also Roberts et al 2006: 8; Roberts 2002; Voices of Women Organizing Project 2008). In contrast, I heard no stories of ACS reports being used to get back at people in middle-class and wealthier neighborhoods where reports in general are rare. One caseworker, in talking about this phenomenon, explained it to me this way:

> You do have cases where I'm the jilted ex-girlfriend, and I decided to hell with it. I know ACS will be in their life. I'm gonna call ACS just to fuck with them. It's happened. And unfortunately, we have to investigate and go out on every single case no matter what.

This caseworker explained that people in many poor neighborhoods are familiar with ACS and aware of how the agency can become involved in people's lives. Thus, they understand that reports can be a way to "fuck with" people because an ACS report will require having a caseworker come to your home; look through your cabinets, refrigerator, and bedrooms; and question you and your children about intimate matters of family life. Parents are very aware that the result can be the removal of their children.

ACS is thus very often experienced as a negative and punitive agency and not as a positive one that might provide help. Maria, who has never lost custody of her children, nevertheless explained vividly how stressful and anxiety-provoking the investigation process is:

> But it's just to the point, like, now, still to now, my kids, if somebody knocks loud, it could be housing, it could be anything, they'd be, like, "Ma, ACS is at the door," my little ones 'cause they're, like, traumatized… And I'm, like, now no one's allowed to even knock on my door. You have to whistle in order for me to know that it's someone

> that I know because I get paranoid, you know? …And then, like, and my kids' father calls me and argue, and they'd [her children] be, like, "Don't argue with him 'cause you know he's gonna call ACS." I'd be, like, "But, you know, what am I supposed to do? Stay quiet?" …It's like you can't live life the way, you know, you really want to, real calm and—because these people just come into your life, as I hear and, you know, and especially now after the Nixzmary when they should have been doing something about it. But the way they come in and then they don't investigate. They just come and grab up your kids and all that, it's like—no, it's just, it traumatizes me…Like, the other day, the door, they knocked real loud. It was my neighbor to let me know she was going down. And I'm, like, no, no. And I started screaming at my kids, "You see that loud knock and those rooms a mess? You see?"

This is a dramatic account of how reports can create tension, fear, and suspicion. Maria feels she cannot argue with her abusive ex-boyfriend, has her friends whistle instead of knock, and gets nervous when people come to the door. Her children are also scarred and she yells at them about relatively minor matters out of fear about how things would look if someone from ACS were to come and investigate. In other words, the process of investigation itself causes anxiety and strains family and neighborhood relationships in the poor communities of color in which ACS is a constant presence. Thus, even reporting a family is an effective way to get back at or harm others and is detrimental to these communities as a whole (see also Roberts 2008).

A social worker at a child welfare conference I attended reported that she has found there was a fairly widespread fear of "catching a case," especially immediately following the Nixzmary Brown case (Roberts et al 2006), and this phrase was used in support groups I attended as well. The social worker talked about one of her clients and explained that the idea of "catching a case" conveys "the experience of how this family was thinking about this in terms of a contagion, in terms of a virus, in terms of something that was being spread, and how it affected her relationship with every service provider that she had been involved with" (Roberts et al 2006: 8). Fear that one might "catch a case" caused many parents to be cautious when talking to neighbors and service providers. They were often reluctant to divulge problems for this reason,

even if it meant forgoing needed help.

Not only is the investigative process stressful and painful, but reports can also make retaining custody of children difficult, even if reports are unfounded (i.e. the caseworker finds that there is no evidence of a problem). ACS policy is that caseworkers should take past "unfounded" reports into account when making determinations on new cases. I attended a public forum at which a deputy commissioner explained that their policy is to assume that an unfounded case does not mean that there was no problem in the home, but rather just that the caseworker could not find sufficient evidence. Under this way of thinking, a string of reports could indicate that there is an ongoing problem, and so caseworkers are to take them as evidence of a problem. This practice is understandable—sometimes caseworkers do not investigate fully and a series of reports could very well indicate a pattern. However, it also ignores how reports are used in poor communities of color and the incentive for mandated reporters to be "better safe than sorry" and call in a report even if they have little evidence that the child is in danger. Caseworkers were aware of this policy and discussed with me that they found it often inappropriate.

A father whose children had been placed in foster care and has been working as a parent advocate since he regained custody several years ago described the effects of this policy: "You not getting along with somebody, they call ACS. Only gotta do it a couple of times then they came – and they check somethin' and it's all right. But if they keep gettin' called, you got a case." In other words, a few reports might not be taken as a sign of a serious problem and the case could be quickly closed. However, if there is a string of cases, suspicion will increase and it is likely that a case will be kept open and the family will be expected to cooperate with further home visits and services or might be taken to family court or have their children removed. So, simply having multiple reports can lead to an increase in surveillance and monitoring and

possibly loss of custody.

Although this is not, by any means, a complete discussion of the issue of ACS reporting and why it is that certain families are more likely to be reported than others, it does highlight two pertinent issues. First, part of the reason why more reports are made about poor families of color, and about more middle-class black women, is that they are likely to rely on various public services for their basic needs—public schools, public hospitals and doctors who accept Medicaid, and public assistance—and these institutions are more likely to report than others. I did not come across cases in which a report had been made by a pediatrician paid for by private insurance or from a private school or a public school in a wealthier neighborhood, which seems to indicate (along with disparities between Community Districts that tend to fall along class and race lines) that they are rare.

Second, the form that surveillance takes in child welfare demonstrates how various private helping institutions are part of state policing and control efforts that have come to prominence under neoliberalism. For many of the mothers I met, the various agencies they are in contact with, whose ostensible purpose was to help, were experienced as surveillance and as agencies looking for problems that would then be reported to ACS, rather than as agencies assessing needs and providing assistance. In other words, rather than this set of agencies (both public and private) being about social provisioning, they are, as is seen in various realms of governance in the context of neoliberalism, about social control and surveillance instead. In addition, it seems that the surveillance system extends beyond state agencies and encompasses both private agencies and individual citizens. Reports can be made without consequences and poor communities of color have become familiar with ACS since they are the subject of a majority of reports. This creates a situation in which ACS reports are used to get back at others.

That individuals use child welfare in this way demonstrates the extent to which it is seen as a punitive system rather than a helping one. In this context, many poor families of color were afraid of "catching a case" and this did, at times, strain relationships and cause parents to be reluctant to seek out needed services or divulge their problems fearing the loss of their children (Roberts et al 2006). In this way, the surveillance system that these families are subject to extends outward, as it were, involving its subjects in surveilling each other. Most importantly, extensive and regular ACS intervention in poor communities of color affects these communities as a whole. It plays a role in straining community ties and in making children more insecure. Further, by discouraging people from divulging problems and seeking help, this state agency helps perpetuate problems that are already concentrated among the poor and people of color (see also Roberts 2008).

The Caseworker's Dual Role

In this section, I want to look more closely at what the caseworkers' jobs entails and to what extent they are able to balance the two roles their jobs combine: service provider and child protective investigator. Although caseworkers attempt to combine these two roles by being up front with parents about their jobs and/or by emphasizing one side of their work over the other, these two roles are in tension and it seems that, often, the investigative/law enforcement side of their job becomes the most prominent. As discussed in Chapter 2 and mentioned above, one prominent feature of neoliberalism is a shift of resources away from social provisions and towards surveillance and social control. Here I will further explore whether this is a feature of the child welfare system as well.

Caseworkers' official title at ACS is "Child Protective Specialist or "CPS" and, as the title clearly signals, their job is to protect children from abuse and neglect. They investigate

reports and assess the safety of the situation in which a child is living and the risk they face of being harmed. Using their judgments about safety and risk, they decide what interventions to make in the family. The children are their ultimate "clients" and it is their safety and well-being that is paramount. However, caseworkers must also follow the mandate that removals should occur only in an emergency situation in which a child is in immediate danger or at "imminent risk" (a legal term which will be discussed in the following chapter) of serious harm. According to state and federal law, "reasonable efforts" to prevent removals should be made except in these extreme circumstances (see Chapter 4). So, caseworkers also must assess the needs of the family and help them access services that might mitigate risk or eliminate or ameliorate safety concerns. But, they must do so in a context in which services are often difficult to find and there are not enough resources to provide help for all the families who need it. Service provision can be simple—they can instruct a parent to get an order of protection against an abuser, they can help them fill out an application for food stamps, they can refer them to another service agency—or more complex—listening to parents vent, counseling them about family problems, fielding phone calls when further crises come up. Marilyn, a Latina woman who has been a caseworker for six and a half years, described it to me this way:

> Our job is to protect children. Okay? Parents are involved, and we are to stabilize *them* in order to protect our children. So our initiative is to service as much as possible. If all of that fails, then we have to do our job [i.e. remove the children from the home]. But we have to prove to the court, prior to removing a child, that we have exerted every possibility.

Thus, caseworkers actually combine two roles—an investigative role and a helping role.

These two roles are inevitably in tension, and caseworkers described how this conflict could lead to uncomfortable situations or to a feeling that neither role was satisfactorily completed. Amy, a white woman in her 40s who worked at ACS as a CPS for five and a half

years, discussed the complexities of investigating while also telling people you are there to help them:

> But then what was kind of hard for me sometimes is that the more information you got, you had to develop a relationship with them to get the information, and then this is the information that I'm using against you. So the agency wants you to go, and they call, they call us caseworkers, really they want you to be a social worker but its law enforcement that you're doing. I'm investigating this case as if I were a detective, trying to gather information for a case that I might file against them. That's law enforcement; that's not social work. And the agency, I feel, always had an issue with that, because they really wanted to say, like, oh, social workers like to help people, and we're gonna put in services and we're gonna – but initially, that's not my job. That's what sometimes it turns out to. Sometimes it makes you feel a little –
>
> Tina: Schizophrenic?
>
> Amy: Yeah, that, you know.

Here Amy describes a basic contradiction faced by all case workers: their role is to both help and do law enforcement. They are investigating but also need to build rapport with their clients to get information and in case they will provide services and need to have a clear sense of the family's needs. As Amy describes it, this position can be uncomfortable.

Caseworkers attempted to deal with this uncomfortable situation in two main ways. First, they attempted to make it clear to parents what their role is. Marilyn described what she says to parents:

> I do not lie to any of the clients. The minute I go in, you know, I tell them, "This is a report. These are allegations. It is up to you to show me different. If you can't prove to me that these allegations are not true, then this case can end up being indicated. It can end up being in court, and it can end up being a removal. It all depends on what you tell me. And I hope that you're truthful because I can assist you with services and anything else that you may need, from housing services, furniture, clothing, food." I explain all that to them. But I also tell them, you know, that I have to do my job. "And if your children are in imminent danger, and you are failing to protect your own children, I have to protect them from you and whoever else is around them."

Caseworkers are trained to approach parents in this way and to tell them that they must protect

children and this could include removing them from the home. On one level, and for Marilyn, this is just a fact they tell parents and caseworkers felt this is simply being open with parents about what might happen and what their role is.

On another level, however, telling a parent they can remove their children was seen as a threat by some parents I talked to. Presenting themselves as being there to possibly remove their child led some parents to feel that their caseworker was hostile, automatically looking for the worst, judgmental, and/or looking to remove their child rather than offer help. As Trisha described how her caseworker approached her:

> Yeah, they just treated me like you know I was a bad person. You know, "You shouldn't be using drugs; you got kids, why are you using drugs?" And listen, you know, "you don't do this, you're not gonna get your kids back," and all.

So, for Trisha, being approached in this way signaled to her that the caseworker automatically thought she was a bad mother and was not there to offer help. Other parents said explicitly that they did not trust their caseworker or felt she did not like them or had it out for them and came with the intention of removing their child. Leslie, an African-American mother in her 40s, stated:

> I don't know what her agenda was, but I don't think it was trying to help parents. I don't think it was trying to help in any way. Her agenda was, you know, she didn't like me and it was obvious, so she took them away.

In other words, for Leslie, the caseworker was not perceived as someone who might offer help but as someone who was there to punish her and take away her children. So, a caseworker telling a parent that she has the power to remove children, although it is an attempt to be up front about their role as a caseworker, also has the effect, in many cases, of interfering with the process of building rapport, assessing needs, and providing services.

The fact that the caseworker has the power to remove a child can also be used to get parents to cooperate and/or to accept or "engage in" services. One caseworker, Alicia, an

African-American woman in her 30s who has been a caseworker for nine years, commented to me that she explicitly tells parents what they need to do to avoid having their children removed, giving them a list and a deadline, generally the 60 days she has to complete her investigation. Caseworkers, unless they go to court to obtain a finding of neglect and then an order for services, which is a very lengthy process (see Chapters 7 and 8), have no actual power to force a parent to accept services. What they can do, however, is point out that they have the power to remove children and that parents can avoid this by taking specific actions like getting services or cooperating fully. This is often effective in securing compliance. So, in this way, caseworkers are not offering help that may be accepted or refused, but rather force compliance by letting parents know that the alternative may be losing their children. Having caseworkers combine law enforcement and helping roles thus turns the process of providing help into a coercive one.

The second way that caseworkers try to deal with this tension between their two roles is by emphasizing one side of their job over the other. However, many of them felt that having to do both made it difficult to do either well. Carl, an African American man who had been a caseworker for five years, emphasized the helping aspects of his work, but talked about how the emphasis on investigations being completed in a short time period, and then, if possible, closing the case to move on to the next investigation short-circuits his efforts to provide meaningful help:

> We come in, as an agency, and we're told we have 60 days to conduct an investigation. And in such a short, minimal amount of time, we can't really, we as workers feel we can't really effectively do our job because I'm only seeing a family, you know, twice per month. So out of 60 days, I'm seeing this family four times. So what real value can I add and bring to the family if I only see you four times out of 60 days? And what issues am I really resolving in a 60-day period that have manifested, let's say, you know, for a five-year period or a three-year period?

Notice that he refers to his "job" as helping families with their issues, but he feels he cannot do

this given the time constraints of investigation. Later in the interview, when I asked what he would change about the agency, he again returned to the issue of how he can help families:

> It's very difficult to address and service all the service needs in a family when you have time constraints. You know, sometimes families come around towards the end of the investigation, not necessarily their very first week. You have to engage them. You have to develop a rapport with them until they can trust you…

Here he points out that getting parents to trust you so that they will accept services in a meaningful way that might lead to family change is time consuming, and he does not have the time to do it effectively.

Marilyn, on the other hand, takes the approach that she is an investigator, not a social worker:

> I'm not a social worker. I'm an investigator. I don't go to the home to try to fix their problems. I go to the home to assess for safety and immediate danger and refer to stabilize the home.

However, she still has a mandate to provide services when appropriate, so her tactic is to refer for services and move the case to someone else to monitor them, when possible.[127] For Marilyn, then, her job is to investigate, and she attempts to have others provide services when possible.

Although caseworkers juggle these two roles in these ways and attempt to manage the conflict by being clear with parents about their roles, Marilyn acknowledged that there is a tension between the two roles that does not seem to disappear:

> They [parents] still fear ACS because they feel that we're just about removing children. They're very skeptical when I tell them, "You know, if you comply with services, we can stabilize you. We can assist you with this." And it's not until they see that all these things are in place that they come to trust me. Understand? In the beginning, it's just like, "I'm not telling you much because you're going to betray me and remove my kid if I tell you this." So it's kinda hard to service a community that comes with that idea already.
>
> Tina: Right. And plus, that's, in a way, the reality… [that the agency can and does

[127] That she is adept at this is evidenced by her extremely low caseload (at 7 cases she was the only one below ten; see Chapter 5).

> remove children if parents tell them information that they believe means a child is in danger]
>
> Marilyn: No, it isn't. It isn't the reality. Okay.
>
> Tina: You don't think?
>
> Marilyn: No, I don't because that's not the way I work….I can't tell you how other people work, but that's the way we're trained to do this job. Like I told you, that case where FPP was there for *seventeen weeks* is a perfect example of what I'm telling you. And all the services that we put in for this family [before finally removing the children to foster care]. And all of that failed, so what else can I do? My hands are tied at that point. You know, but that's our job. It's very hard to do this job because how do you explain to someone that you're trying to help them when all they see is you as the enemy, and they never trust you.

Here, Marilyn acknowledges that her clients treat her with suspicion because they realize that she can remove their children, but argues that they do not have any reason not to trust her. This, she points out, is because she isn't simply a child snatcher; she does removals only as a last resort. However, it is hard, she says, to provide services and gather information because many clients distrust her from the beginning.

Parents I spoke to agreed that they could not trust caseworkers. They reported that they understood all too well that what they said to a caseworker could be used as proof they had neglected their children, so they did, indeed, keep information from them. In Joan's case (see above), she deliberately never told officials about the incident in which she was arrested after fighting with her partner, but it eventually played a decisive role in her child's removal:

> And this report [the one alleging sexual abuse by her partner and the last before her child was removed] came in November. But when that new report came they went through the system somehow and found out I had got arrested because I didn't tell preventative services. I didn't tell nobody. I got arrested on a Sunday. I came home Monday night. *This is not something you're supposed to tell*. Certain things you tell them. I didn't know that they can go and find these things. I swear to god I didn't know that. [Emphasis added]

This example shows not only how parents know what can happen and are then strategic about

what they tell caseworkers, but also the kind of surveillance they are under, made possible by computer technology whereby caseworkers can access information about parents from other systems.

Other parents, who were less savvy about child welfare, reported feeling manipulated into divulging family problems by a caseworker offering help. They then were shocked and extremely angry and hurt when, rather than being offered help, their children were removed. Sandra, a white 18B attorney, told me several stories in which her client's children were placed in foster care only on the basis of their statements to caseworkers. Usually, these statements were made after caseworkers had encouraged them to answer questions honestly so that the caseworker could help them with family problems:

> Sandra: The caseworker says, "We're here to help you." She's [the mother] a really nice woman. She thinks, "Oh, great. These people are here to help me." She admits that she smokes marijuana. Right? Into the case records it goes. Into family court we come, blah, blah, blah… They get this other client to take a drug test.
>
> Tina: This case - were they filing to just try to get her — get supervision and court-ordered services or were they trying to take those kids to foster care?
>
> Sandra: They did – they didn't take the kids, but what happened is because she smokes marijuana, they violated her, and now they want to take the kids away. So, I mean, it all relates back to this initial thing. *What* is she doing telling people? Now, in the criminal justice system, you can't go in and say that to people. You have to tell them they have a right, so all these cases, a huge number of these cases are *made on statements* by the parent to the caseworker.

Sandra told me she had come across many similar cases and felt that caseworkers who presented themselves as helpers led to parents admitting problems. Then, rather than using these statements as evidence of a problem for which the parent needed help, the statement was used as evidence against a parent in family court and later as a reason to remove the child.

It quickly became clear to me that having caseworkers be both service providers and a

type of law enforcement (without the normal rules law enforcement must follow to protect individual rights) creates tensions for both caseworkers and parents. Caseworkers sometimes find it uncomfortable or even impossible to do both, while parents, often realizing the potential outcome, do not reveal all information and are reluctant to ask for help they might need. When parents are less savvy about the system, they are likely to tell caseworkers things that can have negative consequences. However, even those who try to avoid this can sometimes still face a situation in which the caseworker learns negative information about them. It seems to me that combining these two roles creates an adversarial situation (Waldfogel 1998) in which service provision is extremely difficult, if not impossible. As in the cases cited above, the law enforcement and surveillance aspect of the caseworkers' job becomes by far the most prominent, especially in a climate in which fear of a tragedy conditions much of agency policy and caseworker actions. If parents had more access to services outside of child welfare, they might be more willing and able to get needed help, but, too often, child welfare, which is feared in many ways, is a main way to access needed help (see Chapter 9). Child welfare is thus a part of neoliberal governance in which the state's role in social provisioning has been eclipsed by its social control and surveillance functions.

Risk Assessment and Variation in Decision-Making

In this section, I want to take a broad view of how decisions about whether or not to intervene in a case through services or foster care are made. Generally speaking, a caseworker evaluates the level of risk to the child: low risk cases can be closed, high risk cases can result in removal. Safety and risk assessment instruments do exist and they are meant to guide decision-making in order to make it more uniform. However, most researchers who have studied risk assessment have found numerous problems with their design and implementation and that they

do not allow for precise prediction of which children will be seriously mistreated (Hughes & Rycus 2007; Gambrill & Shlonsky 2000; Leschied et al 2003).[128] Hughes and Rycus point out that the measures in these instruments are

> often poorly defined, nebulous and ambiguous, overly global, illogical, imprecise, and very subjective. Some are quite simply inaccurate. These measures often leave considerable room for interpretation by different raters, and at times, the descriptors that delineate the different degrees of risk are virtually indistinguishable (Rycus and Hughes 2002). This makes it possible to score the very same behaviors or conditions at more than one risk level… (Hughes & Rycus 2007: 94).

It is also not entirely clear how caseworkers actually use risk assessments (is it a way to make decisions or only another piece of paperwork to complete?) and some studies have found that they do not necessarily standardize decision-making (Kang & Poertner 2006; and see a review by Hughes & Rycus 2007; but see Sullivan et al 2008 who found perceptions of risk did not vary between experienced and inexperienced caseworkers). One study in particular found that caseworkers inflated risk scores in cases in which they removed a child, which suggests that these tools can be used to *defend* decisions rather than make them (Lyle & Graham 2000).

Interestingly, these assessment checklists were never mentioned by caseworkers in my study as directly playing a role in their decision-making. Caseworkers described the information they tended to look for and this seemed to correspond to *some* of the items on the list (others were not mentioned).[129] However, none of them talked about going through the list when

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[128] For example, many of the "factors" that point to high risk, although they have been found to be associated with maltreatment, have not been empirically tested and it is unclear whether or not they represent causes of maltreatment. In addition, "classifying a particular family as high risk does not mean we can accurately predict whether or not maltreatment will reoccur…In fact, the majority of families classified as high risk do not subsequently abuse or neglect their children" (Hughes & Rycus 2007).

[129] The elements they discussed that matched the list were: prior reports, inadequate housing (health and safety hazards and/or overcrowding), financial resources limited or mismanaged so that needs were not being met, domestic violence or serious conflicts with other adults, alcohol abuse or drug abuse problems in the last two years, serious mental health problem, caretaker recognizes and attends to the children's needs, caretaker views the abuse/neglect situation as seriously as the caseworker. The other items were: the child was with a foster parent or substitute caretaker in the past, children under one year old in the family, caregiver has reliable and useful social

conducting their investigation or using the scores generated to make a decision. It is my hunch that these instruments tend to be more about documentation than assessment and are, as others have argued, a way to justify decision-making and protect the agency (Lyle & Graham 2000). For example, one caseworker told me that she has made a removal and then filled out the checklist. In addition, the checklists are completed on a computer, so I doubt they are referred to when caseworkers are visiting homes and interviewing parents. However, I was unable to observe caseworkers doing their jobs, so they might play more of a role than was apparent from interviews.

I did, however, find that the agency has some fairly strict policies about removals in certain cases, and it also seems that caseworkers take the same set of factors into account when making decisions. There seem to be four key factors: the severity of the incident/issue/allegation, the age of the child, the history of prior reports and problems, and the parent's willingness to comply with caseworkers and with services. Judgments about severity are used to draw lines between when a child is in immediate danger or at very high risk of harm and therefore should be removed to foster care and when the child is at less risk of harm and services could be offered to diminish the risk. Compliance, along with the content of the allegations (if they seem to be true) is used as a way to gauge risk. If the parent complies with services, this is taken to mean that risk is diminished because the parent is attempting to make changes and because ACS and other service providers will monitor the situation. The age of the child comes into play in caseworkers' thinking about the level of risk. Older children are thought to be generally at less risk—they can supervise themselves to an extent, they are assumed to be able to seek help if they are being injured, they are more independent and can make their own decisions, etc… Prior reports are

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support, caretaker has limited cognitive skills or a disability, caretaker applies realistic expectations of all the children.

taken as evidence that the situation is chronic and that attempts at change through services might not be successful. How individual caseworkers weighed these elements and where along the continuum they drew a line between low and high risk varied considerably (see below and Rossi et al 1999b).

Some kinds of allegations, however, are almost automatically viewed as very severe and thus presenting an immediate safety issue that warrants the removal of the child from the situation: 1) having a serious, diagnosed mental illness and not taking medication; 2) giving birth for the second time to a baby who tests positive for drugs; 3) allowing a man into the home in violation of an order of protection when the children are present; and 4) using illegal drugs and not enrolling in a drug treatment program. These rules can sometimes be (but are not always) very rigid. For example, Amy told me a story in which children were removed from a mother with a very old order of protection when the caseworkers went to her home and found her ex-husband in her apartment (he was now quite old and in very ill health and she was helping him fill out paperwork for Medicaid). The children were removed on an "emergency" basis even though he was clearly not violent and there had been no incidents for years. They were returned shortly thereafter when it became clear the mother was no longer "with" him, and he was practically never there and presented no risk.

Apart from these situations, caseworkers can judge severity and compliance quite differently. It did not seem that risk assessment instruments had standardized decision-making, although I do not know how much variation existed before they were introduced. Most of the cases caseworkers handle are not clear-cut and are open to interpretation: medical neglect (child not receiving adequate medical care); educational neglect (child not attending school); corporal punishment; inadequate food, clothing, and shelter; and "inadequate guardianship" (cases in

which there is domestic violence, drug/alcohol abuse, and mental health issues). In my conversations with caseworkers and in my observations of the process of filing cases in family court, it became clear that caseworkers are allowed a degree of discretion in their decision-making about how to intervene in these cases and there does not seem to be a set of clear-cut criteria such that a particular indicated allegation or a particular event automatically leads to a certain intervention. Cases with very similar allegations can be handled quite differently by different caseworkers, different managers have different ideas about whether a child should be in foster care or not, and there are disagreements between managers and caseworkers about their cases. As Carl put it:

> You'll have one manager that's quick to say, "Let's go remove." And then you'll have another manager saying, "Okay. Let's put services in first. Let's see, you know, let's do this."…You have managers that will push workers to go file in court quicker than other managers. You have some mangers that will make a case indicated based on little information whereas, if you took the same case scenario to another manager, they'll say, "Oh, we really don't have nothing here." Some managers tend to indicate cases because they want to cover themselves. "Oh, we did indicate it."

To take a concrete example of differences of opinion about how to handle cases, compare these statements about corporal punishment. Carl told me that, since the Nixzmary Brown case, any bruise or mark will lead to a removal:

> I think they're quicker to remove now since Nixzmary. I think if there was a bruise, it was, like, "Okay. We want to know how did the bruise happen. What were the circumstances?" And it's, like, "Okay. You know, the child was getting smart with Mom. Mom hit him out of reaction. Okay, Mom, we need to get you into anger management. We don't think that the child needs to be removed, but, Mom don't hit the child. Don't do this, don't do that." Now, Nixzmary Brown, a kid comes with a bruise - [snaps his fingers]
>
> Tina: You yank them just like that?
>
> Carl: Gone.

On the other hand, Angela said she would be more likely to remove a young child with a bruise

she felt was caused by a parent. In addition, she places a lot of weight on how the parent talks about what happened:

> Most of our cases, I would say, were, the majority are, a one-time incident, where the kid does something, mom got upset, and she hit him with a belt and he sustained a bruise. Those cases for me aren't removable cases. You shouldn't be removing a child... [But, w]hen you interview a child and your child tells you exactly what happened… that this parent just whacked this kid with a stick, and then the parent tells you the complete opposite, for us, we feel the that the child isn't safe there because the parent is almost justifying their actions to injure the child. And you can't leave that home without thinking, oh my God, is this kid gonna get in trouble when we leave the home? Is he gonna be hurt even worse when we leave?

In other words, if parents admit to the use of corporal punishment which caused an injury and are willing to get counseling, she is less likely to remove the child.[130] For her, removals in these cases are not automatic as they are for Carl. So, although risk assessment instruments attempt to make decision-making more uniform, and some kinds of cases are almost automatically deemed high-risk, there is still substantial variation in perceptions of risk among caseworkers.

Subtle Aspects of Decision-Making: Case Examples

Now I want to turn to a more specific analysis of how decisions are made that will illuminate the subtle criteria used in making decisions, such as a parents' "judgment" and compliance, as well as the role of intuition in decision-making. In addition, these cases illustrate

[130] To take a second example of variation in assessing risk, Aaliyah told me about a case that involved an allegation of medical neglect made by an emergency room doctor who treated a child, age 2½, who was brought to the emergency room when he had an asthma attack. For the nine days prior to the emergency room visit, the child had a fever, on and off, that peaked at a 103. When the emergency room doctor heard this, he called in a report. During the course of her investigation, Aaliyah was told by the parents that they believed the child was teething and were not concerned because the fever was not constant and was relieved by medication. They also said they talked to their regular pediatrician who advised them about how to care for the child and agreed it was probably not a severe problem. Given this information, Aaliyah and her supervisor agreed that she was to gather a bit more information, but barring any huge revelations, they would mark the case unfounded and close it. Aaliyah explained she could relate to the situation—she went through teething with her own child—and she felt the mother took appropriate steps to care for the child. However, a new supervisor reviewed the case and felt that the case should be indicated because she felt that nine days with a fever was serious and that the child could have died. She told me she was still arguing with the new supervisor about this because having an indicated case would harm the family further—the mother and father were Caribbean immigrants and were trying to pursue careers in fields that could be closed to them if they had an indicated case on their record (he was a teacher and she was in nursing school).

the role of class and race in decision-making and some of the ways in which problems associated with poverty are recast as individual failures and labeled neglect. In my interviews with them, caseworkers generally were reluctant to make general statements about how their decision-making and would often turn to specific examples to talk about how they do their jobs. Most of them told me that their interventions depend on the concrete facts in a case and that they must make all decisions on a case-by-case basis. For this reason, I have chosen to structure this discussion around case studies.

Case 1: Meredith, "Gut Feelings," and Class

Meredith, an African-American caseworker in her mid-20s who was relatively new to the job (she had been a caseworker for about 17 months), told me a story about having a feeling that something was wrong in a home and how she followed up on her hunch. This case illustrates the discretion that caseworkers have, how they can rely on intuition, and how their own ideas about what is a proper environment for children and how to ensure children get what they need influence decision-making. The report in this case alleged that a teen girl was not in school; however, when Meredith looked at "the priors" (i.e. the prior reports) on the family, she saw that the mother had been "noncompliant" in the past, so she was prepared to find something serious even though it was "only" an educational neglect case. When she was able to talk to the mother and assess the home, she found that the apartment was very dirty, a ceiling was falling in, there was little food in the house, and there were not enough beds for the children. However, the children reported that things were fine, the younger children were in school and doing well, and there seemed to be no serious safety issues. Therefore, Meredith and the more experienced co-worker she took with her to conduct the investigation decided there was no reason to remove the children.

However, Meredith questioned whether the children were really okay in the home and asked her co-worker about whether the conditions—the scarcity of food and lack of beds—might warrant a removal. Her co-worker explained that the home situation was adequate, but suggested she could come back "to see how they live." Meredith was not satisfied with leaving the children in the home, despite her co-worker's arguments, so she made a couple of other visits until the situation came to a head:

> Meredith: Then I went, and it wasn't sitting with me. So I went back I went back the next day. So the next day, I go back, and I see that just a head of lettuce and peanut butter and a half a box of pasta. No food.
>
> Tina: When you say it wasn't sitting with you, what do you mean?
>
> Meredith: Because, for some reason, it just felt like the kids were scared to tell me what was going on. I feel like there was a lot – instead of educational neglect, I feel like it should have been called in for a lot of other things. Like, when I first met the mom, I knew for a fact that she was abusing drugs because you see the brownness and the darkness on her lips and the way her teeth were so – the way she was so grey. She had marks on her arms, and I was just like –
>
> Tina: Like, she was cutting herself or something?
>
> Meredith: No, like needle marks. So I was like, "This mom is using." I just felt that. I'm just like, "Something's going on." Even during the whole interview, she was playing with her nose. She was just like **[sniffs]**, you know, fidgeting so much. I was just like, "You know what, let me just make sure." So *thank God* for the next day that I went, and I saw that they had nothing. And the mom, even, she was like, "Oh, I just went to try to get PA [public assistance] and food stamps," and she was like, "None of the money was there. I think I was sanctioned." So on and so forth. So I told my supervisor what I saw and everything like that, and she was like, "You know what, let's remove these kids." I said, "Thank you, God."

In other words, Meredith followed up on her hunch that the mother was using drugs and visited the home several times to see if things were really okay. When she found there was no food in the home, this was enough to justify removing the children, even though the mother explained that she was sanctioned by the welfare office and had no money for food. Meredith did not

believe this explanation and assumed these conditions were a result of the mother's drug use. After the children were removed, the mother was told to take a drug test for family court, and it was discovered that she was in fact using drugs (marijuana and cocaine). The teen was placed in foster care (and was, at the time of the interview, in danger of having her own newborn removed from her care) while the younger children were sent to their fathers.

Meredith reported that after they were removed the boys finally admitted that they did not always have food, had only a few articles of clothing, and had seen their mother use cocaine. They did not divulge this information earlier, Meredith said, because they wanted to stay with her; in fact they were very distraught and crying when they were removed. She reported that they were doing well with their fathers and that she was happy she made the removal as the boys were able to have more to eat and better living conditions with their fathers who both had steady jobs. Interestingly, Meredith did not report that she had thought about whether or not services might have helped this family and, instead, blamed the mother for the conditions. The conditions Meredith found could have been due to the mother's drug use and her negligence, but these could also signal problems associated with poverty—lack of access to drug treatment, poorly maintained housing, and welfare sanctions—and assisting the mother with finding treatment and working out her housing and welfare problems might have been tried. It was also not clear if the children's fathers had been paying child support while the children were in their mother's care. If not, assistance with this might also have helped the situation.

During our interview, Meredith told me that, in general, she has been shocked by what she has seen as a caseworker: "I was raised in Long Island, so for me to be living in the city and seeing the way people live, it's just like, some of these things are so crazy to me." Although she did not make the connection specifically in her statements, it seems that this has conditioned how

she thinks about her cases and her "gut feelings" about whether or not children are safe in their homes. When talking about going to the home in this case for the first time, she described being scared because the building was dilapidated and there were trashcans near the door (which likely meant rats, she added) and having to get up the courage to go to the door. She also described being shocked by the conditions of the home while the more experienced co-worker she took with her did not seem concerned and saw no reason to think about a removal. Her shock at these conditions led her to feel they were not appropriate for children and that the children needed to be removed to a better living situation.

It seems that several factors were taken into account in making the decision to eventually remove the children in this case. First, the prior reports on the family led Meredith to be worried about what she would find. Although she did not directly say so, these prior reports were likely taken as some sign that things were not right, and the mother's lack of compliance in the past signaled that she was not attempting to address the situation.[131] Second, Meredith relied heavily on her intuition that something was not right and on her assumption that the mother's behavior indicated a drug problem. She returned to the home more than once until she was able to find conditions that would allow her to make the removal she felt was warranted since she had no solid evidence of the mother's drug use. This is not to discount the role that these judgments play in decision-making—after all, the mother was using drugs.

Third, I think Meredith's personal feeling that this was no way for children to live played a role in her decision to investigate until she could find a justification for removal. Meredith found conditions of poverty such as these shocking since they contrasted so dramatically with her own middle-class childhood. It seemed easy for her to feel that these conditions are

[131] In the literature on child welfare decision-making, it has been found that prior reports are an important predictor of which children will be removed (Rossi et al 1999a).

dangerous for children and to blame the mother for them. In this case, the mother's drug use, rather than poverty itself, was seen as the source of the problems in the home. So, the case was considered neglect on the part of the mother and services were not seen as an appropriate response. Since drug use is seen as almost automatically risky to children, and since Meredith felt the mother was to blame for these conditions and would not work to remedy them, the removal of the children, rather than other ways of ameliorating the situation, was warranted in her mind. Meredith clearly felt the boys were better off with their fathers and was happy she found a way to make that happen.

Case 2: Compliance and a Mother's Judgment.

This case, related to me by Marilyn, a Latina woman who has been a caseworker for six and a half years, involved a Latina mother who lived in a shelter with her three children (ages 9, 6, and a newborn). She was smoking marijuana, not always getting her children to school, and leaving them with "inappropriate caretakers," i.e. neighbors and friends in the shelter who had criminal and ACS histories as well as a boyfriend with a criminal history. This case illustrates how ideas about judgment and responsibility, which are subtly tied to class and race, are used in deciding what interventions to make in a case. Marilyn described monitoring the family for several months because she never felt that the children were at enough risk to be removed from their mother. Preventive services were placed in the home and that agency continued to offer services for over four months.[132] During the time Marilyn monitored the case, the mother continued to use marijuana and admitted she had a history of depression, and so she was sent to get a psychiatric evaluation and medication. She was warned not to leave her children with inappropriate people and was caught doing so, so Marilyn took the case to court to get court-

[132] This program generally has a limit of around 2 months.

ordered services and supervision.

At court, the mother was given conditions under which she could retain custody: that she get mental health and drug treatment, that she not leave the children with inappropriate caretakers, and that she keep her 19-year-old boyfriend out of her home because he had a criminal history and there was an allegation he was sexually abusing her older daughter. The condition that the boyfriend be excluded from the home stayed in place even after the sex abuse allegation was proved to be false. While the court case was ongoing, Marilyn found the boyfriend in the home on a visit and the children said he was always there, and the mother continued to use marijuana. Marilyn made a surprise visit early one morning and found other friends sleeping in the apartment. Finally, after several months, the mother was late for a court appearance. At this point the judge asked ACS what they planned to do, and they decided to remove her children.

Marilyn emphasized that both the mother being late to court and being caught with the boyfriend and others in the home as the decisive factors in the children's removal. The reasons, such as lack of transportation, that she might have been late were not investigated or taken into account. Interestingly, the mother's continued drug use and the perceived lack of compliance with her mental health services (she had missed appointments) were not the decisive factors. On one level, the condition that the mother keep these people away from her children is reasonable—from the caseworker's point of view these people have criminal and ACS histories, and therefore are potential dangers:

> I explained to her…"It's like you can barely take care of your own family *on your own*, and you're adding more problems by having all these strangers coming into your house around your children." Not to mention she had – there there was one prior case where the oldest child was almost killed at the age of two by her supposed fiancé. You understand? So now, you're showing me that you haven't learned from your prior experience, and

you're still allowing people that you just met to be around your kids. [Emphasis added] The comment that the mother could barely care for her family "on her own," paints her as an irresponsible mother who does not learn from past experiences. It also discounts the fact that few parents care for their children on their own. Middle-class families regularly purchase child care or pay for after-school programs, sometimes from "strangers," and many parents regularly have family and friends provide child care (Lareau 2003; Hansen 2005; Colen 1995). It is possible that this mother relied on her friends and partners to help with her children in the same way, especially given the lack of affordable, quality child care available for even working families (Douglas & Michaels 2004; Foderaro 2008; Hansen 2005; Michel 1998; 1999). Marilyn also emphasized that everyone this mother was in contact with had either an ACS or a criminal history or both and asked me, rhetorically "What are the odds of that?" It is actually not that strange given the high rates of ACS and criminal justice involvement in the communities served by Marilyn's unit, Central Harlem.

Marilyn also stated that she felt the children were at some risk, but not in *danger*, throughout these months of monitoring. The children never said they were harmed by the boyfriend or the other people the mother left them with, and the allegations of sex abuse were quickly show to be false. The times the caseworker caught other people in her home the mother was also present so she could supervise the children to ensure no one was harming them. Nevertheless, the mother was seen as continuing to place her children in danger and as unwilling to learn from her past mistakes and comply with what was seen as best for her children. It also seems that this mother was seen as more interested in her boyfriend and in her social life than in protecting her children, which, again, paints her as irresponsible and selfish.

I believe that Marilyn's class position, in part, conditioned her view of mothers such as

this one. Marilyn is Latina and described herself as being from the "same community" as her clients, but she does not live in a situation of poverty like most of her clients. She is college educated, married, and has a job that, although not a high-paying one, does provide stability and benefits. Marilyn described this case early in our interview and ended her comments about it by saying that most of her cases involve families who live in public housing or shelters. I asked her why she thought that was and she stated:

> Well, its - it has to do with, I think, with, uh, arrested development. A majority of people haven't grown up and still have a teenage mentality, and they have arguments with neighbors, and they're calling in on each other and stuff like that. I think that within the educational system, they cannot relate to the service needs of the community. You know, the staffing. For example, most of the families that we service are a one-parent household and mostly women. You understand? Where the father may be incarcerated, out of the picture, don't *know* who the father is. It's very limited the support that they have. Unemployed, okay, no high school education. So it's a lot of really negative stuff that's already there. You understand? And if they didn't value an education for themselves, they certainly don't value it for their children. You know?

Later in my conversation with her she used this concept of "arrested development" again: "They [i.e. parents] haven't grown up. They haven't had the opportunity to become adults." She added that these parents do not see their problems because they have never known anything else and so do not seek out services. In these comments, she hints at the constraints parents face; however, her comments also pick up on common discourses surrounding poor people in the contemporary U.S. that blame them for their own poverty and argue that their own irresponsibility is to blame (Goode & Maskovsky 2001a; Neubeck & Cazenave 2001; Quadagno 1996; Roberts 1999; Zucchino 1995).[133] She, too, views her clients as irresponsible, even childlike, and so they

[133] Another variation of this discourse came up in my conversation with a CPM, Pamela, an African American woman who has worked at ACS for 11 years who told me that:

> You know, people have to learn. You can't have all these kids with all these different fathers and, you know, expect to be okay. It's not gonna be okay, and you don't have the education to balance that out, to go out there and have a decent job. They don't understand that, and sometimes the system itself, you know, fails everyone because if you're allowing them to stay on Section 8 for years and years - and they're cutting that down now where you have to - After five years, you have to be on your own. And I think that's pretty

cannot, in her mind, be trusted to care for their children. She also seems to feel this is part of the reason they are in situations of poverty in the first place. In short, their problems are related to personal failings and not to structural inequalities.

Significantly, these discourses are overtly "color-blind" in that they make no direct reference to race (Mullings 2005) at the same time that it is clear that women of color are being referred to. Negative views about poverty in the contemporary U.S. have become increasingly tied up with race, so that when "welfare queens" or even simply "welfare mothers" are talked about, it is assumed that these individuals are women of color who live in inner-cities and that their own irresponsibility is to blame for their poverty (Gilens 2000; Williams 1995; Quadagno 1996; Roberts 1997: Chapter 5). Marilyn and other caseworkers have picked up on this form of "color-blind racism" and it likely conditions their views of their clients of color and how they make decisions in their cases, making them more likely to see the mothers they come in contract with as irresponsible and potential dangers to their children rather than as loving but struggling mothers. These subtle forms of racial ideology might play a role in why it is that black women are more likely to have their cases indicated and their children placed in foster care (Hill 2004; 2006). The idea that these mothers (and fathers) have not grown up signals, in Marilyn's mind, that they are not responsible, cannot be trusted to do what they have to do, and make questionable decisions. Thus, intense surveillance and a focus on compliance, even regarding sexual partners and having guests in one's home, is warranted. If mothers resist making the changes required, removal of their children is a likely outcome.

> good because it – "I don't have to work. I can stay home. My rent is paid. I get food stamps. I have cable, food, a nice decent apartment. Why should I work? I get SSI for one or two of my kids. Why am I working, you know? To do what?" So that's the kinda thinking that they do.

Here she blames having "all these kids" with "different fathers" and a system that allows people not to work and be supported as a cause of many of the problems she sees with the cases she supervises.

Power Dynamics in the Investigation Process: Struggles over Compliance

In addition to the role of race, class, and subtle judgments about parents in decision-making, the use of compliance as a key factor points to important issues of power in child welfare. A focus on compliance is reasonable and acts as a kind of "shorthand" to help assess the level of risk a child faces in their home and as a way to measure when risk decreases. Compliance is taken to mean that parents have acknowledged their problems and are taking steps to remedy them.[134] On the other hand, compliance is also a matter of the differential power held by caseworkers and parents in these interactions. It can be the decisive factor in the decision to remove or not, such that cases in which the situation seems to place the child at the same level of risk can be handled differently on this basis (Reich 2005). As I have said, parents know (and if they do not are told) that the caseworker can remove their children and that complying might allow the children to stay in their custody. Caseworkers also make it clear that they can take parents to family court if they do not comply.[135] Thus, there is pressure placed on parents (intentionally or unintentionally) for them to cooperate fully, to comply with caseworker directives, to admit to their problems (even if they might not agree that there are problems or share the caseworkers idea of what they are), and to generally defer to the caseworker. If they refuse, the state, through the family court, can come in to enforce their cooperation. Thus, the caseworker is in a position of great power over the families on their caseloads.

Caseworkers look favorably on clients who are compliant in the sense of being

[134] For example, a parent who has a mental illness and is not taking medication is seen as a risk to the child—they might lose control of their actions and harm the child, or just not be able to function and neglect the child. If they are complying with their treatment—taking their medication, going to their appointments—they show they are taking care of the problem and making it more likely they will be able to care for the child.

[135] One caseworker talked at length with me about how he does not like to offer services to parents in situations where there is very little risk to the child. This is because, he said, if they do not comply, he will be pressured to bring them to court even though the initial issue was very minor. Once a case is in court, it takes a significant amount of time for parents and is likely to drag on for years (see Chapter 7).

cooperative with them and properly deferential. They are suspicious if parents do not let them into their homes, do not answer all their questions, or do not comply with requests (such as a request to submit to drug testing), all things that are within parents' legal rights. When parents refuse to cooperate in these ways, it is highly likely that they will, at the very least, be taken to family court, or at the worst have their children removed. Thus, parents have little ability, practically speaking, to control what information they give to caseworkers, what requirements they will comply with, or to shape the terms of the interaction (see Eubanks 2006; and Gilliom 2001 on the same dynamic in the welfare system).

One parent I spoke with, Robert is a prime example of the lengths some parents will go to in order to prove themselves to caseworkers and avoid further interventions in their family. Robert is a single father raising his two children after kicking their mother out of the home (ACS was involved) due to her drug use and an incident in which she threatened him and both children with a knife and slashed the children's bike tires. He has dealt with false reports made periodically by the children's mother. He told me that "when they [caseworkers] say jump, I just say 'how high?'" When a caseworker asked him to take a second drug test after the first was negative, he went voluntarily into a *month-long* outpatient drug-treatment program to be drug tested and prove to her he was not using. Here, he shows his deference in an exaggerated way and opens himself up to a high level of very personal and intensive surveillance, so as to "get her off my back."

On the other hand, a parent who does not cooperate and/or reacts negatively will be viewed suspiciously and their behavior taken as a sign the child is at greater risk in the home. For example, if a parent does not answer questions, does not allow the caseworker access to their home or their children, or does not comply with caseworkers requests, it will usually be assumed

that they are hiding their problems and/or are unwilling to change. If a parent reacts in a manner that signals to the caseworker that they do not believe there is a problem, it will be assumed that they are, again, unwilling to change. A parent who reacts in an angry or defensive manner is generally seen as having an "anger problem" that requires management and counseling and as likely to lash out at or behave violently toward their child. This is based on the assumption that if a parent is not controlling themselves and being even-tempered in their interaction with the caseworker, then they probably do not control their anger around their child and are likely to hurt them when the caseworker leaves. Marilyn even stated that she feels a parent might retaliate against the child because they had to deal with an ACS case. If a parent is arrested because they have left a mark or bruise on the child, she will try to place the child in foster care, even if a family member is willing to take care of the child, which can be done by family arrangement without court intervention, or with a custody rather than foster care case. She explained her rationale for this by stating: "After a while, they may say, 'I'll take care of them temporarily,' but then who's going to take care of the kid when the mother comes out of jail? She's going to be angry with no services and may harm the child even more. It's done because, 'Now, you put me in jail.'"[136] Caseworkers thus take anger very seriously and tend to assume that parents will take anger out on their children.

One mother, Irene, a Latina in her 40's and the mother of five children, told me that she was sure that her angry reaction to caseworkers led to the removal of her children:

This hospital had called ACS and said that the knee bruise - the bruising on her knees and

[136] Marilyn thus preferred a foster care arrangement and a child protective case because the parent would then be subject to court directives about services, the foster parent's home is monitored, and the agency has more control over the access the parent has to the child and when the child is returned. If a relative files for custody, the situation is not monitored and services are not ordered. In other words, the child welfare agency has no control over the situation and it would be possible for the mother to just resume caring for the child with no monitoring and no services.

> stuff was abuse and that if I knew what was going on, and I said, "As far as I'm concerned, she's a child, she plays, she gets hurt or whatever." And then they was like, "No, that's more than playing." I said, "Well, you know, y'all take it as whatever." So I guess I didn't speak right to the emergency worker that came out, because I got hysterical. I said, "Why y'all removing my kid? You know, I want to see my daughter." I was there. I wanted to let my daughter know she not coming home. So I told her - I told the family what the basically like, you know, "I don't care what you believe you know. I know I'm not – I'm not a bad mother. I'm do what I gotta do." So they removed all kids.

Here, her denial that anything was wrong and her anger at the assumption that she caused her child's injury played a role in her child's removal. Caseworkers connected her anger at them to the bruises seen on her child.

Caseworkers' concern with anger is an understandable response, especially in cases in which the child has been injured when being punished. Children are vulnerable to violence and anger (especially when they are young) and it is reasonable to wonder whether an angry outburst at the caseworker signals a larger problem. However, anger on the part of a parent is seen as a problem even in cases in which the parent's anger seems justifiable and might not be directly related to the harm a child has suffered nor signal anything about how the parent will treat the child. In one case I observed in family court, for example, caseworkers had removed a child from a home on an emergency basis late the previous night due to the mother's anger. The case was reported to ACS by a guidance counselor who was told by a young girl about an incident that had occurred over a year ago in which her mother's boyfriend had tried to kiss her. The girl mentioned it again and said she was, understandably, uncomfortable around him and he was back in the home. The incident had been reported when it first occurred and the case was substantiated and then closed because there seemed to be no other problems, it was a one-time incident, the mother put him out of the house, and the other children reported having no problem with him. At that time the court could not get involved because there was no sexual abuse (the man had not

actually kissed her).

When the caseworkers arrived at the home to investigate the new report, the mother was irate and angrily pulled on the child's arm to show them that she had no bruises and was not in danger. The caseworkers found no other problems, and the girl said that nothing new had happened—she just did not like that the boyfriend was back. Since it was late, they decided to ask the man to leave the home until they could continue their investigation the next morning, and he agreed. The caseworkers thought the matter was handled but had to call their CPM to clear it with her. The CPM, however, felt that the mother could not be trusted because she was so angry and that the children had to be removed. The caseworkers did so and were in court when I heard about the case to file the petition and have it approved by the judge. After much deliberation and attempts to get *any* information to show to the judge to justify their removal decision,[137] the lawyers concluded that there were no grounds to remove the children, so they were immediately returned. This is certainly an extreme case, but it demonstrates clearly that a parent's reaction to a caseworker has a lot of weight even in the absence of evidence of risk or harm to the child. *Any* anger can lead to a perception of danger to the child and to a removal (see also Reich 2005).[138]

In addition to expectations about compliance and parents' attitude towards caseworkers, parents are expected to have an attitude perceived to be properly centered on their child and willing to do anything to keep custody. Expressions of love for their children and a willingness

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[137] Any evidence of another incident and order of protection keeping him out of the home, for example.

[138] To take a more typical example, Pamela told me a story about a woman and who had a "hard life, went through a lot" including the death of a child at the hands of an ex-boyfriend (he burned the baby to death). Columbia Presbyterian hospital called in a report because she was speaking very harshly to another one of her children who was going through treatment for cancer:

> And she can be a little - I mean her voice is very abrasive, and I told her, I says, "I understand that you may not be beating him or hurting him to the point where, you know, doing it - I really think that the children - the way you speak is - can get you in a lotta trouble." She went to court, had that same boisterous attitude. The judge got fed up, remanded the children.

Here, again, it seems that the woman's "abrasive" attitude became the decisive factor in how the case was handled.

to do anything are seen as positive and other reactions as negative. As Amy put it, if a parent says "'I do have a drug problem and I'm willing to go into services, please don't take my baby, I'll do anything, I'll do anything' - then you're much more likely to work with them." Mothers especially need to show that they are focused on their children and not on themselves. For example, I witnessed two cases in family court where a mother had left her children home alone. In one, she maintained she had hired a babysitter and left them home overnight so that she could stay with her boyfriend who lived closer to her new job. Caseworkers were suspicious of her claim to have hired childcare and believed she made up the story about the job and simply left them alone to spend time with her boyfriend. She was able to regain custody, however, after proving she had been at work. Another mother, who was with her boyfriend when they both were arrested after a traffic stop (that was how the case came to the attention of ACS), claimed to have left her children home alone for a few minutes while she went shopping. She did not regain custody after the judge decided that her story was not credible. The judge stated on the record that she believed the mother was not going to get food but was going to stay the night with her boyfriend.

The difference in these outcomes has to do, in part, I believe, with the mother's ability to claim she was sufficiently centered on her child. The mother who appeared to be placing her desire for a night out with her boyfriend over her children's safety was not able to show she would not place them in danger again and so they remained in foster care.[139] On the other hand, the mother who proved she was working to support her children was able to get them back.

[139] A very suggestive comparison to this case occurred in May of 2007 when a 3 year-old British girl, Madeleine McCann was apparently abducted from a hotel room in a resort. Her parents left her and her twin siblings alone in the room while they had dinner nearby. Most of the news coverage, at least in the U.S., presented them as loving parents who were victims in a tragedy along with their daughter. However, at least one morning news anchor did ask, tentatively, if they felt they had made a mistake by leaving the children alone. The desire for a night alone on the part of a married, white, professional couple was seen as legitimate in a way it never was for the poor women of color involved in child welfare.

However, it is interesting the degree of suspicion these women, both poor women of color, were under and that the initial assumption was that they had cavalierly left their children in danger in order to fulfill their own sexual needs. This seems to be related to common images of black "welfare mothers" who represent "a woman of low morals and uncontrolled sexuality, factors identified as the cause of her impoverished state" and of black women more generally as over-sexualized (Collins 1990: 78; see also Roberts 1997). Here, again, is the idea that women of color, especially poor women of color, cannot be trusted to behave responsibly and care for their children properly. Instead, they are assumed to be irresponsible and careless mothers.

Caseworkers differ in how much they let their client's attitude affect their decisions, however. One in particular, Amy, was very tolerant of "difficult" or even angry clients. She told me one story of going to great lengths to help a grandmother who was trying to get custody of her grandchildren who were in foster care in another state. No one else wanted to support this and simply refused to sign the required paperwork, "principally because she's so difficult to get along with." However, she felt that the grandmother "really loved them" and would be good for them because of the resources she had. As an example of this Amy discussed how the woman took them to Disney World and how she bought them everything they needed.[140] That this grandmother had resources due to her class position probably played a role in why Amy worked so she could get custody and could see her as "good for" the children. However, Amy also told me another story of a case involving a poor woman that she handled similarly.[141]

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[140] She also told me that the grandmother and her husband were wealthy mental health professionals and "she didn't have to wait in line, she didn't have to wait for people to call her back. You know, she just got the kids whatever they needed…But I'll never forget that I had to go right to the top **[laughs]** to fight with them. I just had sort of like a gut feeling that yeah, she's a pain in the ass, but she's good for these kids."

[141] Whenever Amy made a home visit, the mother "would open her door she had a very, very loud mouth and scream. 'Fucking white bitch is here again. Everybody line up' - meaning her kids." Amy did eventually remove the children in this case, but it did not seem that the mother's attitude was a factor in her decision (at least as she told me the story). It seems Amy is more willing to overlook people who are a "pain in the ass" or even visibly angry at her

In addition to being compliant in the sense of being cooperative and even-tempered, there is also pressure to share the caseworker's analysis of family/personal problems and to deal with them in a way that follows their directives and conforms to their time-table. In Olivia's case, for example, the caseworker decided that having two children live with her in a single room was not adequate and that she needed to move into a homeless shelter. Olivia, an African-American woman in her early 40s with seven children, ages 8 to 16 who looks older than her years, argued that she was weeks away from getting a Section 8 voucher that would enable her to find her own apartment and that they could manage for a few weeks. The caseworker did not accept her view of the problem and the best way to solve it and then removed her children.[142]

In addition to having a rigid idea of what steps a parent must take to remedy a given situation, there is also a lack of attention to why compliance might not occur and the constraints parents face. Parents are expected to be able to deal with their problems relatively quickly and to take action, often with little assistance, despite their circumstances. Getting services that fit with a parents schedule and are convenient and appropriate to their situation can be very difficult (see Chapter 9). However, if there is a delay in getting services due to an insurance problem, for example, as in Joan's case, caseworkers often feel the parent is refusing to comply or simply dragging their feet. They usually feel that the delay places the child a risk, and so they might remove the child, rather than taking into account the lack of health insurance. In this way, again, parent's problems are individualized, and it is assumed they should be able to deal with them and

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and can separate this from anger that is taken out on children. However, Amy did react differently to this mother than she did to the grandmother, which likely has to do with the class differences between them. She had no words of praise for the poor mother and did not say she specifically saw her as "good for" her children.

[142] A more common scenario is for caseworkers, in cases involving domestic violence, to demand that a mother get an order or protection to keep their abuser away from themselves and their children. If mothers have other methods of keeping themselves safe, or if they argue that he should be allowed to see his children unsupervised, this will often lead to the children being removed.

"take responsibility" for their own lives despite material constraints. Some caseworkers, in contrast, are more aware of the constraints parents face and are more flexible in what they expect of them. Carl, in particular, was very conscious of the limits of the services he has to offer and talked at length about how he has a hard time finding services that actually meet his clients' needs and are convenient for them in terms of location and scheduling. He resists telling parents they have to do services and taking them to court when they have not done them unless absolutely necessary. Despite this variation, I found that, in general, caseworkers had very neoliberal ideas about compliance and expected parents to deal with problems individually, ignoring the constraints they faced. If they did not comply, removal was often the result.

The data presented in this chapter makes some important contributions to our understandings of the surveillance of poor families of color, how child neglect is defined in child welfare decision-making, and why certain families are more likely to be involved with this system. First, my ethnographic data provides support for the idea that one important reason more poor families and families of color are involved with the child welfare system than are other families is that they are under a level of surveillance not likely to be experienced by wealthier and white parents. Public services such as hospitals, schools, general social service agencies, and foster care prevention agencies are all involved in this surveillance system which extends outwards as well, incorporating members of poor communities of color who also make reports. Thus, although the child welfare system in New York City has never been strictly within the state and has always included private agencies and entities, its workings are in line with recent trends in neoliberal governance in that various forms of law enforcement and surveillance extend beyond the state and into everyday life (Campbell 2004; 2006; Katz 2006; Monahan 2006a; b). This level of surveillance and family disruption has a corrosive effect on daily life, destroying

trust and straining community ties, making children more insecure, and causing parents to be reluctant to seek help for their problems. These effects are concentrated in poor communities of color, exacerbating the problems they already face.

In addition, although the child welfare system ideally encompasses both service provision and law enforcement, it seems that the service provision aspects of the system are overwhelmed and the system as a whole becomes about surveillance rather than help. This is related to the climate in which child welfare work occurs—a climate in which mistakes are not tolerated, agencies are expected to prevent all tragedies (see Chapter 5), the problems faced by poor parents are blamed on their own shortcomings, and parents are seen as undeserving of help. This situation makes it increasingly difficult for parents to find help for personal problems in a time in which the state is reducing its social provisioning functions more generally. Thus, child welfare is definitely part of the "double movement between increased social control and reduced social provision" (Campbell 2006: 59).

Parents' ability, which is largely determined by class, to get help for personal problems and provide adequate child care also plays a role not only in how they come to the attention of authorities but also in terms of the outcomes of their cases. For example, Joan's hospitalization left her vulnerable to drug testing, and her inability to get treatment for her drug use due to her insurance problems played an important role in why her child was placed in foster care. In contrast, the wealthier mother was able to retain custody of her children because she was able to purchase high-quality care and had a partner who was able, thanks to a large source of income, to take time off from work to ensure that his children were adequately cared for. Thus, class plays an important role in how lines between good mothers and mothers who are thought to present too great a risk to their children are drawn.

In looking closely at particular case examples, it seems that the decision-making process in these cases is complicated and several factors are at work which become more apparent when an ethnographic approach is taken (see also Reich 2005). Caseworkers sometimes rely on their intuition about cases and often judge parents by an implicit comparison between their lives and the lives of middle-class families. For example, in Marilyn's investigation she talked about the mother not being able to care for her family "on her own" and expected her to not have "strangers" in and out who had criminal or ACS histories. Parents inability to get services such as drug treatment, or to provide clean and safe housing and food, or adequate childcare, which likely stem from poverty, are often taken out of the larger context of these parents' lives and labeled neglect, an individual failure or irresponsibility.

In reading some caseworkers comments about the parents they come in contact with closely, it is also apparent that various racial discourses that are overtly color-blind play a role in their decision-making. It becomes easy for caseworkers to assume that the women of color they see are irresponsible, do not learn from past mistakes, and are willing to put their own desires and sexual needs over their children's safety. Thus, it becomes easy to see them as unacceptable risks to their children rather than as struggling mothers. It seems that, although most caseworkers are also black and Latino, they draw, at least to some extent, on larger stereotypes about poor, black mothers and these affect how they see their clients and understand their lives.

Finally, it seems that caseworkers evaluate parents' "judgment" in how they live their lives and parent their children, their attitude towards the caseworker, their willingness to comply, and their presentation as a parent "willing to do anything for their children," and use these, along with their assessments of the severity of the case and how much risk they perceive the child faces in the home (factors that are central in social work discussions of decision-making), in deciding

their cases. Thus, parents are expected to behave in ways that are sufficiently deferent and cooperative and that show a willingness to change and become active citizens who take responsibility for their own lives. In this situation, parents have little control over what they divulge to caseworkers and can be subject to intensive and very personal surveillance, in some cases extending to the level of who they have as sexual partners, who they socialize with, and their consumption patterns. This kind of intense control over daily life and profound family disruption is disproportionately experienced by poor parents of color, especially mothers, while white and middle-class parents are able to deal with family problems on their own and in a far less disruptive way. In the next two chapters, I move to the next step in the life of a child welfare case: the workings of family court where state interventions in families are approved and monitored.

Chapter 7: The Legal Construction of Unfit Parents, Part 1

Article 10 of The New York State Family Court Act governs basic procedures for child protective proceedings in family court—when the court has jurisdiction, the process used, and the legal definitions of abuse and neglect that apply. The beginning of Article 10 explains its purpose:

> This article is designed to establish procedures to help protect children from injury or mistreatment and to help safeguard their physical, mental, and emotional well-being. It is designed to provide a due process of law for determining when the state, through its family court, may intervene against the wishes of a parent on behalf of a child so that his needs are properly met.

In other words, the procedures and rules used are meant to *both* protect children *and* provide due process to determine when the state should intervene in family life against a parent's wishes.

In this chapter, I will examine how the family court works in practice and to what extent these two aims are balanced. In general, as I will demonstrate, it seems that the balance is tipped towards child safety and the decision to supervise families or place children in foster care happens with little scrutiny. The culture of family court is such that, in many cases, parents are assumed to present risks to children. There is little opportunity or incentive to question the decision to intervene in family life, especially in the context of the real fear of a tragedy and the extremely high caseloads that limit the time available to deal with each case (see Chapter 5). I will divide my discussion in terms of four aspects of family court practice/culture: 1) the basic legal framework that governs procedures, 2) the bureaucratic nature of day-to-day practice, 3) case processing, and, finally, 4) the bureaucratic language used by court officials and the common views they hold of parents which draw on larger discourses of race, class, and neoliberalism.

The Legal Framework

This section will briefly explain basic legal issues in family court that impact the balance between safety and due process and how easy it is to find that parents have neglected their children. As I am not a lawyer or a legal scholar, this will not be a detailed, exhaustive discussion; instead, I rely on explanations from lawyers and judges, as well as on a textbook about New York State Family Law written by a child protective judge in Manhattan (Schechter 2006). First, Family Court is not a criminal court and has no power to criminally prosecute parents or punish them for their actions in the usual sense of levying fines, imposing probation, or ordering incarceration. Instead, the court's purpose is to deal with cases in which children are at risk in a home in order to protect them by either 1) ordering the parent or guardian to comply with specific conditions and services in order to alter the behavior thought to place the child at risk, or 2) keeping a parent or guardian away from the children, and/or 3) placing the child in foster care.

Because Family Court is a civil rather than a criminal court and because of the nature of the cases it deals with, the legal framework used deliberately makes it relatively easy for child welfare authorities to prove a parent has abused or neglected his or her child. First, the standard of proof in family court is a "preponderance of the evidence," i.e. that it is more likely than not that the allegations occurred. In addition, there are various rules of evidence that are loosened, given that, in these cases, the evidence available about what happened is often limited:

> The acts charged almost always occurred behind closed doors, and the victims may be too young to testify in their own behalf. Even an older child who could tell what happened to himself or to a sibling may be unwilling to do so, out of fear or dependence or love for the perpetrator. When the abuse has been administered as a form of "discipline," the child may blame herself and believe that she has been placed in foster care because she misbehaved. In its procedures and evidentiary rules, Article 10 attempts

> to provide due process to the accused, but at the same time to accommodate the special problems of proof present in a child protective case. (Schechter 2006: 371)

In other words, the law takes into account the difficulty of proving these cases and loosens the rules to accommodate this.

There are several specific ways in which the rules are loosened. First, the rules of evidence are relaxed to allow certain records, reports, and conversations to be admitted as evidence which would not be allowed to count as evidence in other courts.[143] The rules about what counts as proof are loosened in three important ways. For one, proof that a parent or guardian neglected one child can be used to prove that another child is likely to be similarly neglected, and, therefore, a finding of neglect can be made which applies to all the children of that parent (Schecter 2006: 371). In other words, it is not necessary for a parent to have specifically done or failed to do something to every child in the family in order to have them all deemed neglected children who are entitled to court help.[144] Second, if proof is offered that the child's injuries were unlikely to have occurred but for the acts or failure to act of a parent, this is seen as proving that abuse or neglect has occurred unless the parent can prove that the harm

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[143] Hospital, therapy, and child protective records, which would be considered hearsay in other courts (and thus not admissible), can be admitted if they meet certain conditions. Reports made to the State Central Registry are also admissible as evidence if they were made by a mandated reporter. In other words, their reports of suspected abuse and neglect are taken as evidence of abuse and neglect since it is assumed they will not make a report without seeing risk to the child. Conversations that are confidential and cannot be brought into other courts as evidence—those between spouses, doctors and patients, and counselors/social workers/psychologists and clients—are not privileged in family court. For example, if a parent admits to a doctor that they caused an injury or were using drugs, the doctor will be required to submit records of the conversation or testify about it (in addition to the fact that, by law, he must report what he has learned). Finally, statements made by a child outside of court can be admitted as evidence without the child testifying. However, this final type of evidence cannot by itself be considered proof.

[144] For example, if only one child was hit by a parent with a belt and bruised, all the children in the home could be deemed neglected. The children not specifically hurt are deemed "derivatively neglected" and could be removed from the home. This can happen (but does not automatically happen) even in cases involving a child who was born after mistreatment which occurred in the past. For example, if a mother had a drug addiction and her children were placed in foster care, and she then has another baby, he/she will generally also be placed in foster care. ACS policy, as of May 2008, was that the process of removing a baby born to parents with children in foster care would be practically automatic, unless a borough supervisor signed off on a decision not to remove the child (Kaufman 2008).

happened another way. This can be difficult or nearly impossible for parents to do, in many cases. For example, in one case I encountered a mark on a child was thought to be a burn, caused by the father, but he and the mother both said that the child was injured in a fall. The child remained in foster care along with his two younger siblings (when I met them it had been nine months). Since the parents had no solid proof the child had fallen, the father was kept from having *any* visits with the "target child" (i.e. the injured child).[145] So, this rule means that parents are often automatically assumed to be the cause of harm to their children, and it can be very difficult to prove otherwise.

Third, and the rule that is most commonly an issue in family court, in cases of parental substance abuse, if it is proven that the parent used drugs or alcohol to the extent "that would ordinarily produce a state of intoxication or substantial impairment of judgment" then, again, the burden shifts to the parent "to prove that the child is not likely to be harmed" (Schecter 2006: 372). If they cannot, the child is deemed neglected. I *never* witnessed an attorney attempt to argue that a parent's drug use was not affecting their child. I did observe, but only a couple of times, an attorney attempt to argue that there was no proof that the parent was using drugs at all (they were unsuccessful). In general, if there is any evidence whatsoever of a parent's illegal drug *use*, their attorney will strongly urge them to either admit their use in court or waive their right to have a trial. It is almost certain that the judge will make a neglect finding anyway and settling without a trial allows the case to move forward much faster. Any illegal drug use, from cocaine to marijuana, in other words, is considered almost automatically harmful.

[145] In another case, the parents left a child with a baby sitter, and, according to them, she injured the child's arm (it was either broken or dislocated). The child stayed in foster care for about four months before they could convince the judge they had not caused the injury.

One 18B attorney, Bob, a white man in his 50s, described how he sees the rules of evidence and what counts as proof in family court in this way:

> I think the point is that the deck is stacked against the parent to begin with. The rules of evidence, for example… [what is allowed as evidence] is stacked against them. For example if you took a case in Criminal Court on the same charges with the one in Family Court, first of all, it's a higher burden of proof [in Criminal Court], and the reason they made a lower burden in proof [in Family Court] was to, you know, to actually catch these guys, but it becomes so low, okay, that it's ridiculous. Secondly…whatever the child says is sacrosanct and maybe in most cases I would admit that…does the child have any motivation to lie, particularly when he's been battered or abused, but in some cases, you do, particularly where you have teenagers.

In other words, in terms of the balance between parents' rights and the safety of children, the scales are tipped to make it easier to prove that children are at risk from their parents and often very difficult for parents to prove they are fit parents who do not present risks to their children (for legal analyses, see Chill 2003; Guggenheim 2007; Wilkinson-Hagen 2004).

Bureaucracy and Routine in Family Court

What Actually Happens During Court Appearances

After my first few days of observation in family court, I came to see that a large part of what went on there was, on the one hand, bureaucratic and consumed with tasks such as ensuring proper procedures were followed, checking to see that reports were on time and signed, making sure everyone involved was properly notified of the proceedings, trying to figure out where documents needed for a hearing were, and, especially, scheduling the next hearing. Or, on the other hand, what I came to call "herding cats": time spent figuring out if a particular case had all the parties and lawyers present so it could be called, calling to other court rooms or offices looking for lawyers, wondering where Mr. So-and-so went, he was just here a minute ago, wasn't he? Another major part of the time in family court is spent adjourning cases, which can

occur if needed people and/or information are not present or available.[146] Out of the 308 court appearances I witnessed, 96 of them involved only bureaucratic matters or were adjourned.[147] The time spent actually dealing with cases—activities such as having trials, approving settlements, and dealing with issues of child placement, service plans, and visitation—did not take up nearly as much of the court's time as these routine bureaucratic and procedural matters. This left most parents extremely frustrated at the long periods of time they spent in family court, the vast majority of it in waiting rooms, only to find that nothing had changed in their cases.

Most importantly, when substantive issues in the case were dealt with, *far more* time was spent dealing with visitation, services, and the child's foster care placement than was spent deciding whether or not a removal or court-ordered supervision of a family seemed justified, or whether or not the allegations in the case appeared to be true. In other words, *most* court time was spent reviewing and administering the activities of supervising a family or monitoring a child's placement and the parents' service plan. In contrast, very little time was spent scrutinizing the decision to become involved in a family in the first place and in what way. As one 18B attorney, Sandra a white woman in her 40s, put it, what goes on in family court is

> an administrative procedure to try to change the behavior [of parents] that some caseworkers find problematic. At its extreme there are people, and I can see this, that can't at any given moment, or maybe forever, raise children, and they present too much of a problem to the raising of children. But I would say that they make up a very small percentage of the people that are in family court, and many people in family court are simply there, it seems to me, because they make caseworkers nervous, and - and it's not law in the sense that - the legal arguments are so often unavailing, and if the judge just gets some sense that some child is gonna be hurt or some judge is gonna be blamed, they'll err *invariably* on the side of removal.

[146] This is not different from other courts, especially criminal courts. For a similar account of the day-to-day workings of Bronx Criminal Court, see Feige (2006) and on Cook County (Chicago), see Bogira (2006).

[147] This does not take into account the times a case that was on the calendar was simply not called because it was clear nothing could happen because, among other things, court staff knew not all the parties were present, records had not been received for a trial, or a witness was not present (which is common) and there were no other issues (such as services or visitation) to deal with. These instances were appearances, and so are not included in my count; therefore, the number of times cases are simply adjourned is an underestimate.

In other words, in her opinion, much of family court is administrative and bureaucratic and aims to change the behavior of the parents who come before the court, who are overwhelmingly poor and either African-American or Latino. It is not law, as she knows it, in the sense that legal arguments or discussions of parents' rights make little difference in the context of the very real fear that a child might be hurt and they might be blamed. Instead, the proceeding becomes about altering parental behavior and dealing with matters related to the child's foster care placement. Her comments reflect what I observed in family court—very little time was spent scrutinizing the decision to place a child in foster care, or deciding if allegations were true, while a lot of time was spent with either bureaucratic matters or dealing with services for parents and the child's placement in foster care. Thus, parents have very little opportunity to challenge state intervention or the allegations in their cases.

It's A Job

I also often observed the ways in which the job of working in family court became routine while the importance of what was going on, from the family's point of view, was lost in the shuffle. In court waiting rooms I frequently observed attorneys who were simply in such a hurry to go to their next case that they would not explain what was happening fully. For example, one day while waiting with a parent in a very small waiting room in the Bronx, I overheard a father trying to ask his lawyer for an explanation of what had just happened in court. She explained, tersely and while trying to walk away, that the children were coming home, but ACS would be supervising him. He continued to ask questions about what, precisely, this would mean, and told her he didn't want anyone in his house telling him what to do. Rather than addressing his concerns she snapped "it's the best you can hope for" and walked away. Here it

did not seem that she was working on her client's behalf to limit state interference nor did she take the time to explain the process.

In addition to not explaining the proceedings, parents' attorneys often disregarded the importance of a hearing to a parent and attempted to delay it so that it would better fit with their own schedules. For example, I sat in the back of a courtroom one day in which a 1028 hearing was scheduled. The mother had been in court when the child was placed in foster care and the hearing was scheduled at that time. However, the father had not been present, but he was in the courtroom on this day and also wanted the hearing.[148] A lawyer was found to assign to him, but he refused to have the hearing for his client, which is not unreasonable as he had just met the father and had no time to prepare. The mother's attorney suggested postponing the hearing until the following week and left to get permission for this from her client. A few minutes later she came back and reported that the mother would not wait for the hearing, at which point the two attorneys started a conversation about how unreasonable she was being. Of course, from their point of view, waiting would have given them more time to prepare and might allow them to make a better case that the child would not be in danger in their home. However, they did not remember that this hearing, from the mother's point of view, was an attempt to get her child back in her care nor did they understand why she might not be willing to wait.

Brandon, an 18B attorney of Indian descent, was candid in his interview with me about having this kind of attitude (i.e. getting caught up in the routine nature of what is happening rather than seeing the impact these decisions and delays have on families) and where it comes from. I asked him how often parents are told to come to court when a case is first filed and what the consequences would be if they were not. He explained that if they are there on the first day,

[148] Parents have separate cases and what happens, legally, with regard to one does not carry over to the other. If the mother had won the 1028 and he had not asked for it, the child would have been returned to her, but not to him.

he can push for a detailed hearing and attempt to either stop the process of having the child placed in foster care or begin the process of having them returned if they had been removed on an emergency basis, *that day*. If the parent is not present, they will not be assigned a lawyer and the process proceeds without them. In this case, they will be told to come to court generally a week later to get a lawyer and only then will they be able to do anything to intervene. By this time, they will be held to the higher standards usually required to regain custody of a child in foster care and it will be far more difficult (see Chapter 9). If at this time the parent wants to argue that the child should go home, they can still ask for a 1028 hearing, but it will not happen immediately and will instead occur within the following three days. Brandon commented:

> It doesn't seem like a big difference. Like, oh what's the big deal between one and three days? And I don't have any kids, but I gotta figure, you know, having your kids taken away from you for one day or two days, not knowing when and if you're ever gonna get 'em back and, you know, these people know. In the communities they live in, this is a routine thing that goes on and they know how long it can take to get their kids back…It's a major deal, and I think the people, even the lawyers and me included, you probably get to the point that you get so immune to stuff… And you end up thinking that way because this is what just happens. Routine. And three days to me is nothing. Three days to them is probably like a big thing. I have other families that I have to deal with between now and the three days. I have my own schedule I have to deal with, with whatever else I have to do….

These attitudes, which are related to the often crushing workloads faced by those who work in family court, often led to situations where simply getting through the day became the focus rather than advocating for parents' interests.

Parents: No One Explained, No One Cared

When I first began talking to parents about their cases and their lives, I asked them about their family court case and what was happening. At first, I was surprised when practically everyone told me that they had no idea and simply showed up in court, went before the judge for a few minutes, and came out having no idea what had happened, if anything. Often, they

complained, they had been sent home without seeing the judge at all. I came to see that this is the norm, however. Many parents expressed frustration that things were not explained, and told me they felt their lawyer was doing nothing to help with their case. Many complained that their phones calls were not returned and that their lawyers did not take the time to talk to them, meet with them, or provide explanations. This left many unsure about what was happening. As Ramel, a young African-American father with four children put it:

> Ramel: We go in there, and it's like the only thing they ask us is -
>
> Tina: Your name and relationship to the child **[laughs]**.
>
> Ramel: Yeah, name and relationship to child, that's what they - and after that, I don't understand nothing - **[laughs]** I don't understand anything else, and the lawyer never explains anything to me. *Never*.
>
> Tina: Do you have - have you had any time to really sit down and talk with her? It's a her, the lawyer?
>
> Ramel: Yeah. She **[inaudible]** -
>
> Tina: Or you kind of see her five minutes before -
>
> Ramel: - only that one time. And when I went to court the last time, I approached her, she said okay, yeah, the file's on the inside, but she never came back out to discuss anything with me about the case - *never* came back out. And next thing you know, we've been called -

And Leslie, an African-American mother of two, told me:

> they gave me a lawyer and he was a joke. He was a joke. I didn't really even know anything that was going on. He talked over my head. I didn't know anything about it. I only know my kids wasn't there and they took 'em away. That's about it.

When I asked her to tell me more she added: "He just didn't care. It was obvious that he had no interest." Many parents had similar experiences of lawyers who were not available to explain the process and what was happening and who showed no interest in them or their cases.

A few parents told me that they attributed this attitude to the fact that they were not paying clients. As Simone, an African American mother of two from a middle-class background who describes herself as living like a poor person since she is not currently working stated, "I think that's because we're not private clients. They don't get paid by the hour. They get a flat rate, and it's definitely reflected." Another mother, Irene, a Latina with a working-class job and five children, felt that attorneys also make certain assumptions about their clients which leads them to feel that explaining the process is not necessary:

> He's not helpful. Like they don't - they already used to like - I don't want say parents that are ignorant, but most of the parents that come in there are minority, you know. And not much of an education, and no jobs. They on welfare, social security or whatever. You know and - they [lawyers] don't think that, you know, maybe this parent might come in with a brain, you know and, know a little bit about the system.

It is clear from her comments that Irene believes parents are looked down upon because they are poor and minority and assumed to be unable to understand the system or when they are not being served adequately.[149]

Many parents understood that not being informed about their rights and the process in family court put them at a disadvantage. As one parent advocate explained:

> You know…that survival book [a publication of CWOP]? I used to come in and get those and give it to 'em so they can learn about the laws, different terminologies in the courts. And you know, things like that. You know, 'cause you gotta be well prepared when you go into a Family Court or they eat you up. They eat you up and you never get your kids back.

Here, he acknowledges that parents must understand the process so that they can ensure their rights are respected and so that they can see if they are getting adequate representation. If parents

[149] Although I believe that Irene is probably correct in her feeling, it is also the case that some of what parents experience comes from the fact that attorneys are overwhelmed and often simply do not have time to explain the process, even if they are inclined to do so. Even some clients who do not fit the "profile" that Irene cites here have a similar experience. Shortly after my fieldwork was completed, I had an extensive conversation, over email, with a professor who was dealing with the child welfare system and had contacted another researcher to ask what, exactly, her lawyer was recommending she do to settle her case. She was unable to get an explanation from her lawyer.

are not knowledgeable, and many were not, the process of family court and regaining custody became much more difficult.

I did find that some parents had better experiences with family court and felt that their lawyers were helpful or that they were able to learn more about their rights. They had this experience either because they had attorneys from the new institutional providers (see Chapter 4 for a description of them) or were lucky enough to get a particularly conscientious lawyer. I spent time in family court with both lawyers at the Bronx Defenders and with one of their clients, so I was able to see how they approach parents first-hand. When they were assigned, they made a point to sit with the parent and go over the petition to explain what it said, what would next happen, and to ask the parent for their side of the story. This allowed them to begin preparing a case on behalf of the parent and to gather information that would put them in a favorable light immediately. It also provided information that sometimes enabled them to intervene and attempt to challenge proposed ACS interventions. They also had parent advocates talk to the parent to provide emotional support and referrals for services. They are able to do all this, in part, because they have lower caseloads and support staff to help with other aspects of their jobs. At the same time, however, they practice in this way because of a commitment to social justice and to ensuring their clients get high-quality representation and understand the process.

A few other parents told me that they had an idea of what was going on either because they had been through it before or obtained information from other sources. One mother, Amanda, a Latina in her 50s with four children, told me that she called her godson when her children were removed and he made phone calls and looked up information for her. Another father, Henry, a young African-American father in his 20s, had a family member who was a criminal defense attorney who did research and told him that he was entitled to ask for a 1028

hearing. He was extremely angry that no one had told him this before. The CWOP Parents' Survival Guide contains information about family court, the terminology used, and the rights that parents have, and I met some parents who found this resource. Despite these exceptions, however, most of the parents I met had negative experiences in family court and left feeling that they had no strong advocates to help them through the difficult process of regaining custody or who would fight to get their side of the story and their perspectives on their parenting and their families heard.

Move-it-Along: Case Processing and Pro Forma Hearings

In the following sections, I want to examine the on-the-ground practices in family court as a case proceeds. I will discuss the process of writing a petition, the first appearance in which the judge authorizes state intervention in a family, and 1028 hearings in which parents can challenge the decision that their child would be at imminent risk in their home. These are important parts of a case in which child welfare authorities and judges make decisions about whether neglect seems to be occurring and whether the child is at enough risk in the home to justify placing them in foster care. Next, I will talk about fact-findings and settlements which are the ways in which a judge makes a final finding about whether or not neglect has occurred. Throughout, I will examine these practices in the context of a system that is overburdened and under enormous pressure to avoid tragedies (see Chapter 5). A discussion of the concepts at work in making these decisions and how, specifically, they are applied will be the subject of Chapter 8. Here, I will argue that these day-to-day practices make it difficult for parents to retain custody of their children or to argue that ACS intervention into their lives is unwarranted. The nature of this bureaucracy and the common practices at work leave little room, too often, for sustained examination of allegations and/or for questioning the proposed solutions offered by ACS to

dealing with children at risk. Instead, due, in part, to large caseloads and crowded court calendars, much of court practice is about "moving" cases, i.e. dealing with them in the quickest way possible so that there is time to deal with them all.

Petition-Writing

As explained in Chapter 4, when a case is brought to family court it is screened by the ACS attorneys, and, if it is to be filed, they write the petition. The aim is to craft a document that will get the relief they want and allow them to prove the case later on, and attorneys take into consideration whom the judge will be when writing them. For example, specific dates of drug tests might be put in to emphasize that a parent is still using despite being in treatment. At other times, dates will be left out to skirt the issue of a parent who is not in treatment but has *not* been using recently either. Brandon, who was an ACS attorney before becoming an 18B, told me this about writing petitions in general:

> You draw up the petitions at ACS, 'cause I used to do it, you beef 'em up. They're like resumes. You know what I mean? If somebody does something you exaggerate it. You put it in the best way that's gonna get you the relief that you're asking for.

Sandra felt that many petitions would not stand up in court for this reason and suggested to me that "everybody should just take a deep breath and put them to their proof [which is rare, see below] because their cases fall apart *all* the time. *All the time*." In other words, she felt that questions should be raised about allegations rather than assuming they are completely true and backed up by evidence.

In my observations of the intake process I witnessed this kind of "beefing up" on a few occasions. For example, I witnessed a case in which a mother was accused of neglecting her daughter by not ensuring she went to school, not getting her medical treatment for hip pain, and kicking her out of the home with nowhere to go. It was not entirely clear to the caseworkers,

however, that the mother had actually been the child's caretaker when she was not in school or getting medical attention (i.e. it was not clear these problems were her failures). There were also at least three stories about the day the child was either, depending on the story, thrown out of the house or left. The attorney eventually decided that the story about the child being thrown out was likely "bullshit" but it was left in the petition anyway since it was the most serious allegation and the one most likely to result in foster care placement (children are generally not placed in foster care for educational neglect and only placed for medical neglect in more extreme circumstances). Since initial hearings to approve the intervention sought and fact-finding hearings to determine the "truth" of the allegations are very rarely thorough (see below) exaggerations like these often are not uncovered and stand as a record of "the facts" in the case, making a neglect finding more likely.

The Initial Hearing:

In this hearing, the judge is asked, essentially, to find that the case warrants government intervention into the family and that the agency has acted properly. In general, I found that these serious decisions were made relatively quickly, with the proceeding lasting only a few minutes. Sometimes the judge asked a question or two of the ACS attorney about the case and what the agency was asking for and why, but many times they did not and ruled on the basis of the petition alone. Given the phenomenon of "beefing up" petitions, this means exaggerations cannot be discovered by questioning of the caseworker about what she learned and how she investigated. It was very rare, in my experience, for the judge or the law guardian to seriously question and/or oppose what ACS asked for or to question the ACS caseworker about exactly what efforts were made to prevent the removal. The practice of having a *pro forma* hearing at this stage is so ingrained that attorneys from the Bronx Defenders told me that when they

attempted to force questioning and scrutiny at these hearings they were literally heckled by fellow attorneys. This situation is, in part, due to overloaded court calendars which leave little time for a full hearing. At the same time, this is also related to the "New York Post Law" phenomenon (see Chapter 5) and to the fact that the judge is appointed by the mayor and reluctant to go against another city agency (Lansner 2007). These factors create a situation in which judges have very little incentive to challenge ACS when they seek to intervene in families and incentive to avoid doing so. In addition, the fact that most parents attorneys are relatively poorly paid and overworked, means that they do not always have the time or interest to fight these interventions vigorously.

I sat through the initial hearing during a total of 60 cases over a period of observing intake all day for two full weeks as well as five additional afternoons. In only 13 of these (22%) were *any* questions raised about what ACS requested. In eight of these cases (or 13%), the judge did not make an order contrary to what ACS requested, but simply asked for more information about why a particular request was being made, stated their surprise at the request made, or, most commonly, questioned where the agency planned to place the child/ren. For example, in one case the judge questioned why court supervision was needed if the parent was currently cooperating with services. After being told that the caseworker recently learned the mother had used corporal punishment on the child more than once, and so the case seemed more serious, the judge approved the intervention. Most of the questions raised had to do with *where the child would be placed* and *not* with *whether or not* the intervention was warranted. In other words, it is *extremely rare* for the validity of a removal or intervention to be questioned.

In only five cases (8%) did the judge order something other than what ACS requested. In one of these cases, the judge deferred making a decision about sending a baby born with a

positive drug test to foster care without exploring a mother-child inpatient drug program, but the baby remained in the hospital and not in the mother's care.[150] So, although the judge did question ACS, this was still a "safe" decision. In another two cases, ACS wanted to parole the children, and the judge ordered they be remanded instead. Although caseworkers who had met the family and assessed the situation felt that the children were safe in the home, court officials decided that this was too risky and ordered the child to be removed. ACS did not object to the judge's decision which was a safer one than they themselves had made. In only two cases did ACS ask for a remand and were granted a parole. In other words, out of 60 cases I witnessed at intake, in only two cases (or 3%) did the judge find a removal was not warranted. On only a couple of occasions did I see the judge hold a full-blown hearing with careful questioning of ACS, the steps already taken, and their proposed solutions. Most of the time, instead, judges deferred to ACS in terms of assessing risk and would authorize their proposed solution with very little, if any, questioning or scrutiny. Law guardians rarely asked for full-blown hearings either, although they are charged with ensuring that the children's needs and interests are protected and, presumably, this would include avoiding unnecessary removals.[151]

1028 Hearings

Once a child is placed in foster care, parents have the right to ask for a 1028 Hearing in which ACS must prove the child would be at imminent risk. If they cannot, the child is returned immediately. Statistics about how often 1028 hearings occur and their outcomes are not kept as far as I know, but, judging by my observations in court, they do not seem to happen very often. I observed court proceedings in three boroughs and spent two to three weeks in each court. In

[150] He told the ACS attorney that only after caseworkers had tried to find a program would he agree to find that the agency made reasonable efforts and rule on whether to remand or parole the child.
[151] See Guggenheim (2006) for a discussion of why law guardians tend to focus on the potential harms faced by children at the hands of their parents and not on the potential harms from removals.

Brooklyn, I saw only two requests for 1028 hearings and heard of two cases in which 1028 hearings had been held in the past. In Manhattan, I saw two requests for 1028 hearings, was present at four court appearances that were scheduled 1028 hearings that *did not happen*, and heard a court conference on one case in which a 1028 had been held in the past—significantly this was the only case I saw involving a fairly wealthy, married, white couple, who were able to hire excellent attorneys. I only saw one 1028 hearing. In Queens, I saw two requests for 1028 hearings, and witnessed six hearings. I also witnessed a hearing about a motion to modify an order of protection to allow a father to return to a home that the judge stated she would be treating as "akin to" a 1028. Although I cannot say for certain, I believe that there are generally more 1028 hearings in Queens than in the other boroughs because their court calendars are less crowded and things move at a slightly slower pace. In my experience, the court simply feels less harried and hectic.[152] It seems that less crowded calendars allow the lawyers more time to speak with clients and to prepare for 1028 hearings. I also think it creates a culture in the court where lawyers can feel freer to ask for these hearings, knowing there is more time for them.

In addition to the issue of time available in court for 1028 hearings and for discussing the possibility of having them with clients, there are other institutional and legal reasons why they are rare. As Brandon put it:

> I have to assess whether or not I can win the hearing. And if I can't win the hearing, I won't ask for it. Because number one, I don't have all the evidence. I just got the case. I need to get the case records. Number two, I don't know the parent at all. I've never interviewed them. I don't know how they're gonna do on the witness stand. Number three, if there's any potential criminal liability to it, you don't want them spilling their guts on the witness stand and Number four, you basically, you have to make the decision that if they're gonna testify now, whatever they say, they can bury themselves in the trial of the family court case.

[152] In fact, when I was talking to the judge who supervises all the family courts in the city about observing in court, he suggested that I observe more in Queens because the calendars are less crowded.

In general, a parent will meet their lawyer for the first time while they are in the courtroom sitting before the judge. There is simply not time to talk with the parent, review the case carefully, and see if a case might be made for the children to return home. As Bob explained to me, if you pick up a case and ask for a 1028 hearing, the attorney generally only has two days to prepare, but even that time is likely to be filled with other cases and other hearings. At this point in the case, the ACS attorney will always have more information about the case because they talked to the caseworker when writing the petitions and have access to the files, which gives them a distinct advantage. Because these issues limit the ability to successfully challenge a removal, 1028 hearings are rarely requested.

It is also more likely than not that the parent will lose a 1028 hearing. As Brandon put it: "I think the majority of reasons why you don't [ask for a 1028] is because on a remand it's, because a case is so bad...Take a dirty house. If your house is in that condition on the day that I ask for the hearing, you can't win the case." In other words, there are certain issues that are simply seen as presenting risk to the child, and it is relatively easy for the agency to convince a judge a child is at "imminent risk" (the standard for removal) if left in the home. Again, and as discussed in more detail in Chapter 5, judges are under pressure to avoid any situation in which they might be blamed for leaving a child with their parent if a tragedy were to occur, and so they are likely to agree that the risk justifies a removal.

Statistics regarding the outcomes of 1028 hearings are not kept (as far as I know), and so I cannot say for sure how often the result is that the parent retains custody. One activist I spoke with said that, in his experience, parents "winning" a 1028 is very rare, and he speculated that ACS refused to provide the statistics because it would be a "smoking gun" that would prove how anti-parent the system is. My data suggests that the reality is a bit less clear-cut. I observed

(seven) or heard about in detail (two), nine 1028 hearings in which I know what the outcome was. In four of them, or slight less than half, the children were returned to the parent.[153] In the other five cases the children remained in foster care.[154] I also heard about one 1028 hearing in which the agency failed to prove imminent risk and the child was to be returned. However, ACS appealed the ruling and the child remained in foster care while the appeal was ongoing. That 1028 hearings are rare suggests, I think, that attorneys only ask for them if they feel they have some chance of winning (or maybe if a parent refuses to take their advice not to have one), and they seem to feel they will not win most of the time. I think my finding of less than half of these cases being "won" by a parent supports their impression.

Even in cases where there is a greater chance of convincing a judge a child will not be at imminent risk, the rules of evidence in 1028 hearings are looser than in other child protective hearings in that hearsay is admissible; thus, it is possible for information that will reflect unfavorably on a parent to come out that might not have come out if the 1028 had not been requested. So, for example, a caseworker could testify they were told a certain thing had occurred, and if this seems reasonable or credible, it could count as evidence that a child was at risk. In other hearings it would not count as evidence. Thus, many attorneys are hesitant to call for a 1028 because, not only are they likely to lose, but they might also allow evidence against their client that would not otherwise be heard to be added to the record and used against them in the event that a fact-finding hearing were to occur later.

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[153] Two of these were cases in which a child with a medical problem (cerebral palsy and a seizure disorder) was left "unsupervised" in the care of an older sibling or a teen babysitter. In the third, an allegation that a father had kicked his young daughter and called her a bitch turned out to be likely false. In the fourth, a father who had been excluded from the home after he broke the mother's arm was allowed to return to the home after it was proven that it had been a one-time incident that the children did not witness, that he was now in counseling, and that neither the children nor the mother were in fear of him.

[154] Three of these cases had to do with drug allegations, one with a young child left home alone when the mother went out with her boyfriend, and the last involved a teen mother with a mental health issue.

Despite the barriers that kept many attorneys from asking for 1028 hearings, attorneys from the new institutional providers and one 18B attorney, Sandra, had a distinctly different take on the issue of these hearings. The institutional providers told me they were planning to "really litigate" these cases and would be allowing clients to exercise their right to a 1028 hearing. They were partly able to do this because they had smaller caseloads and support staff such as social workers and paralegals that most 18Bs cannot afford. In addition, they were overtly committed to social justice and felt that parents needed strong advocates.[155] Sandra found 1028s similarly important and told me she limited the numbers of cases she handled so that she would actually have time to do them. She felt that asking for 1028s shows her clients that she is willing to make noise and fight for them and shows the judge that this parent wants their child and will fight to get them back. She thought this might cause the judge to look more favorably upon them. For this reason, she thought they were important.[156]

To summarize the sections on petition-writing, initial hearings, and 1028 hearings, although the purpose behind bringing cases to family court is to balance the goal of reducing risk to children with parents' rights, it seems that very little about family court practice actually provides an opportunity for decisions made by ACS caseworkers to be reviewed and for parents to challenge their children's removal in a significant way. Many hearings are pro forma and little questioning of ACS and their plans about how to intervene in a family is conducted. For various institutional reasons, it is rare for parents to exercise their right to a 1028 hearing to ask ACS officials to prove their child will be at imminent risk if left in their home, and law guardians and

[155] One ACS attorney felt these attorneys were asking for these hearings far too often and that it was only slowing people down and wasting time. The attorneys from the new institutional providers reported that they were "hazed" (their word for it) at court, which included heckling by other attorneys when they asked detailed questions and pressed for full-blown hearings.

[156] When I asked if she thought that high caseloads were the reason there are not more 1028 hearings. She said that this might play a role, and, that as her colleagues say, "hearsay is admissible, blah, blah, blah." I asked, "So you do not buy that argument?" She told me she has heard "horror stories" but thinks 1028s are nevertheless important.

judges have little incentive to question ACS decisions to intervene in families. Due to strong pressure to avoid being held responsible for a tragedy, decisions that are safer from this point of view (i.e. removals) are often authorized with little scrutiny.

Settlements and Fact-findings

In terms of legally concluding a case, there must be, at some point, a finding made about whether or not the parent has neglected their child. This section will examine the practices surrounding how this is done. A finding is made through either a "fact-finding hearing" (similar to a trial in criminal court) or a settlement.[157] Settlements avoid a time-consuming trial, both in terms of time before the judge and time spent by the lawyers preparing their cases. They also avoid the hassle of finding large chunks of time in which to conduct a trial, which is extremely difficult. In my experience, settlements, which usually result in a neglect finding against the parents without a trial, were *by far* more common than trials, which is similar to practices in criminal court as well (Feige 2006). One judge told me specifically that she finds she has too many cases to allow her to manage things fairly and expeditiously. She thus pushes for the parties to resolve as much as they can among themselves as long as the children are safe and their needs are being met. A parents' attorney stated directly that the system would not work if parents did not make admissions and that this was simply the family court equivalent of plea bargaining in criminal court.[158]

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[157] The types of settlements are: 1) an admission, i.e. the parent will state that all or part of the allegations are true; 2) a "1051A submission" which means that the parent submits themselves to the jurisdiction of the court, waives their right to a trial, and allows the court to enter a finding against them; or 3) an Adjournment in Contemplation of Dismissal or "ACD," which means that no finding will be entered and the parent will be given a certain amount of time (usually six months or a year) in which they must comply with certain conditions. If they comply, after the period is up, the case will be dismissed and no finding will be entered against them.

[158] He further complained that fact-finding hearings are likely to be adjourned if an attorney or caseworker is not present or if records needed for the trial were not available (even if this was due to attorney error) which leads to cases dragging on. However, if his client (i.e. a parent) is late or misses a court date, it is likely that the ACS attorney or the judge will have a hearing "by inquest." This means that the judge will look at the evidence presented

The specific facts of the case, the parents' conduct, and the preferences of judges and lawyers, among other factors, also help shape which of these "routes" (i.e. settlement or fact-finding) a case will take. For example, if the allegation is that a parent was using drugs and not in a treatment program, and ACS has a record of positive drug tests, most attorneys will tell their clients that the best thing to do is settle the case, allow the judge to enter the neglect finding, and move on with the process of having the child returned. Some attorneys will push for this to be done in a way that spares their client having to actually state that they neglected their child. However, some judges and ACS attorneys will push back for a specific admission by the parent in court because of a belief that the parent needs to take specific responsibility for their actions.

In general, parents' attorneys told me that they often avoid going to a trial because it seems that the allegations are basically true, and it would just be a waste of time. As Brandon put it, "you can try the case if you think that it's tryable, but you know, most of the time the allegations are kinda true. There's not really a way to get them off. So I would say settlement." In my experience, a parent actually winning a trial is exceedingly rare, and one attorney who has worked in family court for years has stated, citing statistics from the court, that judges rule for ACS in 99% of fact-finding hearings (Lansner 2007). One ACS attorney, Marcus a white man in his early 30s, told me a story which illustrates the ease with which ACS attorneys can win their cases. He took over a case from another attorney which he and his supervisor felt, at the very

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by ACS, but the parent's attorney will not be allowed to present a case. The outcome will practically always be that the parent will be found to have neglected their child without the parents having the opportunity to defend themselves. I witnessed this occurrence several times in family court and met two parents to whom this had happened. In one case, Emma and James showed up for the hearing a couple of hours late (they said they were confused about the time) and, an inquest was held, finding that they had neglected their daughter. The judge did agree to "vacate" (i.e. erase or nullify) her earlier finding and scheduled another hearing for several months later. Not all judges will agree to do this, however. It also seemed apparent that a parent not showing up was taken as evidence they did not care about their children and had insufficient interest in doing what was necessary to regain custody.

least, would be difficult to prove. In addition, some of the allegations did not fit under the definition of neglect, so he was considering withdrawing the case. Specifically, there were allegations that 1) the mother had threatened someone physically, but there was no good evidence for this, she denied it, and it was not clear the child was even present; 2) she had left the child with someone in a homeless shelter for 12 hours; and 3) she had refused to take a parenting class. Marcus told me that the first two allegations were "borderline" as to whether they could be defined as neglect because they did not present risk to the child and were not a failure to exercise a minimum degree of care (see Chapter 8) and the third allegation definitely could not be considered neglect. In presenting his case at the fact-finding, he did not ask any questions about items one and two, but the judge did and then entered a finding of neglect on the basis of *all* the allegations. This is one extreme example of how inclined most judges are to find that parents are neglectful, whether or not the allegations are serious, likely to cause harm to the child, or even fit under the legal definition of neglect.

A final factor in why trials are not common is that, when a child is in foster care, the judge has already made a determination that the child was at risk and, as long as the allegations fit the legal definition of neglect (which, if they did not, the case *probably* would not have been filed in the first place) it would be practically unthinkable to then rule that the parent did not neglect the child, especially since the child has likely been in foster care for many months, a year, or even more. On a very common-sense level, it would be akin to saying "Oh, there wasn't really a problem here" which would mean there had been no legal basis for denying custody. The fallout from that would be tremendous, I would imagine: lawsuits, press coverage, loss of jobs, etc… Even if the family was "only" under ACS supervision while the case was ongoing, it would still be hard to then find the parent had done nothing to neglect the child.

For these various institutional and legal reasons, then, the vast majority of parents who have cases in family court *will* come out with a finding of neglect against them. This legal finding has important consequences in that it could be held against them if they became involved with the child welfare system in the future, and it will bar them from jobs at daycare centers, medical settings, schools, etc… It was also an extremely hurtful process for many parents who felt they did care for their children despite their problems and the allegations against them. Being labeled neglectful was profoundly contrary to how they understood themselves as parents. Again, it seems that, formally, parents do have legal mechanisms they can use to defend themselves, but, in practice, they will almost certainly be labeled neglectful if their case is brought to court.

Language and Views of Parents in Family Court

In this section, I turn to the third aspect of family court practice—that of language and views about parents. I will begin with a discussion of the bureaucratic language used at court and the role it plays in allowing court personnel to distance themselves from the enormity of the decisions they are making and the profound impacts they have on families. I will argue that these types of "distancing behaviors" make a profound intervention in a family into a routine bureaucratic matter that is little reflected upon or questioned and relatively easy to do. Next, I will describe some of the callous comments made and jokes told around court and will show how these signal that parents are seen mainly as a set of problems that place their children at risk rather than as struggling parents in need of help (either in terms of their personal problems or in terms of legal advocacy). This has the effect, I believe, of making supervision of these parents and/or the removal of their children seem to be the best way of dealing with risk to children. Finally, I will discuss, in more detail, attorneys' (especially parents' attorneys') views of parents and how these views affect how they do their jobs. I will conclude with information from parents

about how they understand their treatment by court personnel and how it affects their experiences in court.

Distancing Through Bureaucratic Language

Issues in family court are dealt with in a technical and/or bureaucratic language that masks the human consequences and emotions that are dealt with there and the enormity of the decisions being made. It is language that can sometimes make it seem as if the issue being discussed is not a family and the difficult decisions about when the state will become involved in their lives and in what way and who will care for the children. I think that this language acts as a method of "distancing" by which the emotions and consequences of decisions made in family court can be pushed to the side and where it becomes easy to forget that the custody of children is at stake.

For example, when a child is formally placed in foster care, the term used is "*remand*" rather than "removed" from their home and their parents or even "placed in foster care." If a child is removed from their home and placed with a relative who will not be a formal foster parent, that child is "*paroled*" to this caretaker. This means that the caretaker will not be subject to background and other checks by a foster care agency and monitoring by a foster care caseworker, nor will they receive foster care money. The term "parole" is also used when a child remains in a parent's home and the parent is subject to supervision by ACS and has to comply with certain conditions (such as engaging in particular services or not using corporal punishment, for example). Parole is a term that is generally used to refer to criminals who are released under supervision before their sentence has been completed. The term is used in family court because a similar process is at work—the child is released to the care of someone (whether a relative or a foster parent found by a foster care agency) who will be supervised. Caseworkers from ACS will

visit the home to check on the child and will be able to move the child to another home if they see fit. In the case of a child being paroled to a parent, the term most closely resembles the usual use of the word, i.e. that the parent is accused of either harming the child or presenting some risk to the child and will therefore be supervised and given a set of requirements to fulfill. In fact, Dorothy Roberts (2002) has commented that family court requirements read very much like parole orders. However, a parole here occurs before it has been decided that the allegations are true. This is unlike what would happen in the criminal context, where the truth of the allegations would be judged first and only if found true would supervision of the person be authorized. Again, this signals how parents are presumed to be risks to their children and in need of supervision from the beginning of the case, with little questioning.

It is common in family court to hear family members, loved ones, and caretakers referred to as "*resources*" for the child. I am not entirely sure where this term comes from or why it has been chosen, but it seems to take the parent/child relationship out of the realm of emotion or even biological ties and reframes it in terms of what parents have to offer to children that will benefit them in a more instrumental way. It is almost a neoliberal way of talking about parenting in terms of the advantages individual parents do or do not provide for their children. It can be seen as referring to material resources and emphasizes what children need from their parents in order to grow up to be more productive citizens. By these criteria, many poor families in court seem to have little to offer.

Parents can be also be called various other things, Ms. So-and-so, "*respondent*," respondent mother/father, or, informally as "mom" or "grandma." I never heard anyone talk about "dad" which reflects both that men are not as often involved in cases and that they are not seen primarily as caretakers, as women are. The use of these terms seems contradictory and

alternate, it seems to me, between an emphasis on what parents have done wrong (respondent) vs. the fact they are a parent (mom, respondent mother), and between familiar and distancing language (Ms. So-and-so and mom), or even between more and less respectful terms (mom and Ms. So-and-So).

That these terms are used is partly a matter of jargon, but I think they also serve as a way for the lawyers and judges, and, to a much lesser extent, caseworkers, to distance themselves from the enormity of the decision being made and the emotional consequences their actions have on families. Instead of asking to remove a child from a parent and send them to live with a stranger or a relative, for example, the ACS attorney asks the judge to "remand the child to a foster care resource," and for "the respondent to be allowed visitation two times per week," a clinical description that masks what is really occurring. The lawyers who work with one of the new institutional providers were very clear that they felt the language used in court allowed ACS and court staff to push to the back of their minds the enormity of what they were doing. While observing these attorneys I was told that one of them was involved in an "altercation" (I gathered there was yelling) with an ACS caseworker who did not allow a parent say goodbye to a child they were "remanding" that day. In her (the attorney's) opinion, ACS caseworkers did not want to see this parting because they would have to face that it is difficult and traumatic for both the parents and the children. She added that the court officers and other officials also like to "dance around" what they are doing by using the legal term "remand" rather than naming what they are doing more clearly. Of course, the idea that caseworkers try to avoid witnessing or talking about removals so that they do not see the emotions involved is an exaggeration in the sense that caseworkers, generally, are the ones who physically remove children and cannot avoid witnessing it (most removals are done from a home and the parent is present). In my

conversations with caseworkers they talked about how difficult this was, especially the first time they did it. However, caseworkers also stated that they do try to distance themselves, emotionally, from removals.[159]

After talking to caseworkers and attorneys for ACS, however, I believe that different methods of distancing oneself from the removal process are sometimes used by everyone who has to work in this system. But I would argue that, in general, family court personnel are more likely to use language to skirt the issue of what is occurring, in large part, I think, because they are more able to. First, and most importantly, attorneys, judges, and court officers are almost never present at a removal as it has generally been done before the case comes to court or if it has not, it will not occur in their presence. In addition, they do not get to know the families and children in the same intimate way as caseworkers. Law guardians, for example, meet the children, but only see them for an hour or so every few months. The generally do not ever see them interact with their parents. Judges and the other attorneys do not get to know parents as parents and human beings, but only learn about them from court records and family court testimony. In these contexts parents are reduced to certain negative characteristics or labels, such as drug user or domestic violence victim, while their lives and the contexts in which they live are absent. Caseworkers, on the other hand, are more likely to see parents with their children and

[159] As Marilyn told me: "It's difficult when you have the kids crying, even after the mother hit them or did whatever it was, and they don't want to leave their mother, okay. It takes a toll on me. I'm a human being. I have a child. So it's very difficult, you know, to remove a child that still wants to be with their parent… They cry. Everything - everything just happens, and you got to just suck it up 'cause you're the professional. You know, I - I've been accused of having a mean face **[laughter]**. But I have to. After a while, it's not that you don't care, but you have to - to desensitize yourself and say you're protecting the kid, and if she gets herself together…they'll get the kid back." She realizes that removal is traumatic, but deals with her feelings by distancing herself, reminding herself that reunification can occur, and lessening the blow, if possible, by placing the child with relatives.

have seen their homes and spent at least a bit more time getting to know them and seeing how they parent.

It is also the case that many of the attorneys I met in family court were young, often directly out of law school, and many of them do not have children. This seems to be especially true among law guardians and ACS attorneys given the higher turnover rates among them, while 18B attorneys are much more likely to be older and have children of their own. Several attorneys even specifically brought this issue up in interviews and commented that, since they did not have children, they had to imagine what a removal would be like for children and their parents, often by reference to how they might have felt as a child. Some attorneys who represent parents also stated that they felt that not having children made it easier for law guardians and ACS attorneys to be judgmental about how parents care for their children, and by extension, easier to feel a removal is justified.[160]

All in all, it seems that this language is a way for court personnel to distance themselves from the decisions they have to make on a day-to-day basis. This is not surprising, given that these decisions are difficult but must be made. It is understandable that they will be discussed in ways that make the decision seem routine and turn the people involved into "cases" or "clients"—usually thought of as a sum of problems. However, turning family court matters into bureaucratic routine also means that these decisions are sometimes made quickly and with little scrutiny or attention to the variations in the situations that must be dealt with and the impacts families will suffer.

[160] I heard one 18B attorney, during an informal discussion about an upcoming "Bring Your Children to Work Day," when he was told that ACS would be participating, quip: "But they don't have children. They're not allowed to, right?" Although he was joking, the idea that they would not be allowed to was a reference, I think, to the fact that having a child would make it harder to do this job.

Callous Comments and Joking

I often witnessed disrespectful or callous comments made about parents and families by attorneys between cases or in hallways and elevators. One 18B, for example, talked about how parents are "all messed up" or how they were all "stupid" because they "admit to using drugs." This assumption, that all parents are "messed up" or unfit to raise children, seemed common among court personnel. I heard attorneys and court officers openly make fun of parents and their problems between cases, laughing about their explanations for their behaviors. For example, in one case there were allegations of domestic violence and police reports describing violence. The mother denied that things were as bad as they said. She stated that they only argued and she wanted to stay with him. After the case her attorney laughed about her denials and made jokes about how ridiculous he found them. This kind of view, that parents deny problems, which implies they are unwilling to change, makes it easy to argue that the best solution is to deny them custody of their children since offering help seems almost futile.

These kinds of jokes and comments also sometimes included the extended families of parents, such as grandmothers and aunts whom parents wanted to be kinship foster parents for their children. When these individuals are suggested as potential foster parents, it is always explained that they will need to be checked by ACS to see that 1) their home is safe and has enough rooms and beds, and 2) that they do not have an ACS history (these criteria exclude many potential kinship foster parents). Many ACS attorneys and law guardians seemed to assume they would find something that would disqualify the relative. This is common, but not nearly as common, it seemed to me, as these comments suggested. On one occasion, for example, a law guardian consented to place his clients with their grandmother temporarily but commented, in court, with the grandmother present, that "unless something's wrong with

grandma" and he had to ask for a remand, their next court appearance could be short. On another occasion, I heard a law guardian make jokes about how messed up the parents were and laughingly comment "you think I'm going to consent to send the child with their relatives? I don't think so!" Here, the perception that parents are not fit to retain custody extends to family members as well.

There are several ways to read this kind of joking and disrespectful talk in family court. First, the courthouse is a workplace for these attorneys, and it is a tough place to work. I spoke with an older attorney who told me he used to work in family court but found that he would have a couple of drinks every night when he got home, so he decided to switch to handling divorces which he found less depressing. I personally grew to almost dread walking into the building after only a few months of observations since most of what goes on there is emotional and can be difficult to deal with. It is therefore understandable that joking behavior would occur as one way to cope with the job. Second, none of the families that come before the court are without problems of one sort of another, so these kinds of comments come from seeing family after family with similar issues and from seeing parents who deny problems that exist or who are unable to cope with them.

However, I also found these kinds of comments and jokes troubling. I would argue that, at least on some level, they are related to the fact that the vast majority of parents who come through this system are black and Latino and most live at or below the poverty line, while the attorneys and judges are more uniformly white and practically all middle-class (at least by virtue of their income and education). Because of these differences, attorneys and judges have likely never experienced the conditions under which most of these parents live. In addition, they are exposed to only a portion of what these parents' lives are like—namely allegations from

particular moments in time or characteristics and labels like "drug addict" or "domestic violence victim." All of these factors, I think, make it easier to see parents as only the sum of the problems they are facing or as a set of risks to their children, rather than as parents who love their children but are struggling. This, I believe, makes these signs of disrespect more common and leads to a subtle perception of parents, from the moment they walk into the courthouse, as risks to their children and unfit parents.

Views of Parents

In my interviews and informal conversations with parents' attorneys I found that they talked about parents in contradictory ways, making derogatory statements about them at one moment, but also recognizing how larger structures contributed to the difficulties they faced at another moment. I also witnessed comments in court that signaled how parents were viewed by judges and attorneys. Several themes arose from these interviews and comments, and the following discussion will go through each, briefly. After outlining the themes, I will discuss the significance of these views in terms of how likely it is that parents will be seen as neglectful and how likely they are to get strong legal advocacy.

"*If they don't care, I don't care*": Many 18B attorneys commented that they would "fight for a parent" (i.e. work to get more visitation or to have their children returned) *only* when they felt that the particular parent was one who was basically decent but being treated unfairly. If they felt that a parent was not trying hard enough to get their lives in order and to regain custody, they would not fight for them as vigorously:

> So my thing with these people are [sic], if they care, I care. If they don't care, I don't care. That's really what it comes down to…a lot of times people don't care. They get their kids taken away or whatever. They look at it as a vacation. Other people they really don't have an interest in getting them back. It's really weird. They don't do the stuff that

> they're asked to do by the Court. They always have a new excuse every time they come in.

Parents who made too many excuses, did not show up for appointments, did not show they had accepted responsibility for what happened, or who blamed everyone else for what was happening to them were cited as examples of those for whom they would not fight as hard. In other words, attorneys had their own criteria for who they saw as a "bad" and a "good" parent and this often came down to an evaluation of how responsible and compliant they were. This is certainly related to high workloads: when you have too many cases decisions about what to focus on will need to be made and it is simply not possible to defend everyone to the same extent. However, it also discounts why parents often do not see themselves as neglectful and the structural reasons why they might not comply such as lack of transportation, or inflexible work schedules, for example (see Chapter 9 for a full discussion of these common barriers).

Culture of Poverty Discourse: Another 18B, Rafael, who explained that he came from a family of Puerto Rican immigrants without much money like many of his clients, discussed his clients using a mixture of, on the one hand, a racially coded discourse that is commonly used to talk about poor people, and especially welfare recipients, more generally (Gilens 2000; Mullings 2005; Quadagno 1996; Roberts 1997; 1999; Williams 1995), and, on the other, complaints about the system being unfair and blaming people for problems that are not their fault. He complained about clients who wasted money on cable and cell phones and who told him they did not care if their child was taken because they would just have another one. He added that he wondered if they were so willing to have more children because they could get more welfare money. He also said that they would sign their children into special education classes only so that they could get social security money. Finally, he complained that too many immigrants were getting services

when it was possible, under immigration law, to exclude them from the country altogether. In other words, he tended to see his clients as irresponsible, lazy, unworthy of help, to blame for their own poverty, and as taking money from the government that they did not need.

Neoliberal Discourse: Attorneys also talked about how parents needed to take responsibility for their lives and stop expecting to get help without making an effort to improve themselves. Brandon, for example, told me that:

> I try to tell these people that now you're at a crossroad. Here you are. I'll help you…But you have to make a decision. The drugs have to stop. You're hitting your kid, you have to stop. Your house is messy, clean it up. Why are you on welfare? You're 25 years old…Go to McDonalds and get a job…I tell them, I'll write you letters…Forget about, you know, McDonalds only pays me, you know, $6-7 per hour. You know what I tell 'em? You're gonna get benefits. You're gonna get all this other stuff…Start making decisions for yourself and we'll help you…You sit them down and, you know, I don't coddle them. I yell at them. I seat them in a corner, I scream at them. I ask them why they're being stupid. What are they doing? Do they want to lose their kid forever?

This kind of talk about parents is related to the culture of poverty discourse, but focuses on neoliberal arguments that the poor need to take responsibility and be forced, maybe harshly, to work to end their poverty. Again, this ignores structural constraints faced by parents and is a distorted view of how likely low-wage service jobs are to make a significant improvement in parents' material realities.

Middle-Class Expectations: 18B attorneys told me they felt that parents were being held to high standards that did not take into account the barriers they faced created by a lack of resources. Brandon, for example, told me he feels parents are held to a "perfect parenting standard":

> So like a perfect parenting standard would be like, I don't know, definitely no drugs, no alcohol, completely spotless house, home all the time with the kids. You know? Kids are going to school, doing well in school. You're there to pick them up right on time. You're there to drop them off right on time. They're never left alone at school. They're never left running around outside past 8:00 when it's dark… No corporal punishment. Everybody

> should be put in time outs. Everybody should like, you know, it's sort of like this new psychology way of raising children in which I, frankly speaking, have a hard time with. But I think that's kind of what this whole standard is… But that's what it seems to me. If you make any error in judgment with your children and the person who's hearing your case or prosecuting your case has a subjective view that that's not okay in their book, they're gonna come after you.

Here, he describes a standard of perfection that is time- and resource-consuming with little room for errors in judgment. It would require a parent to have ample time to spend with children rather than working, flexible schedules and the ability to take time off, the ability to purchase help with housekeeping or a partner with which to share chores, the ability to cope with all personal problems, and insurance to pay for treatment if needed. It is a standard difficult to attain for the majority of parents involved in child welfare who are poor and raising children alone with little access to childcare, inflexible jobs with long hours, lack of health insurance, etc… The philosophy behind these expected childrearing techniques, i.e. that children should be negotiated with and given "time outs" rather than physically punishment, are also not shared.[161]

Judges and attorneys also often disregarded how parents' material circumstances affected their ability to care for their children or to comply with court and ACS directives. These issues will be discussed in more detail in Chapters 8 and 9. Here, I want to cite two small examples. In one case the child was paroled to the mother (the allegations were not clear) and the caseworker reported that the child was fine in the home. When told that the mother was not able to be in court in the middle of the day because she was fearful of losing her job, the judge replied, "Did you tell her she could lose her child if she doesn't come to court?" She ended the hearing by telling the caseworker to tell the mother she would issue a warrant for her arrest if she was not in

[161] Bob told me about a case in which he thought ACS officials were expecting his client to be "mother of the year" when she was doing her best to make a better life for herself. She was living in a "hellhole" of an apartment and had left two teenagers in New York while she went south to find a job and a better place to live. She was blamed for her efforts to improve her situation and branded an irresponsible mother who simply abandoned them.

court next time. In this case, the judge completely disregarded the importance of the mother's job and the likelihood that she really was unable to take time off without the risk of losing her job and the income she needed to support her children.

In another case in family treatment court, a father was found to have neglected his children because he had not protected them from their mother when she went back to using cocaine. Both parents were Latino, were eligible for assigned counsel (so they are living near the poverty line), and they had four children. He testified that he saw no signs she was using again and assumed she was drug free because she had completed a drug treatment program and was doing well. Furthermore, he worked two jobs and long hours almost seven days a week (generally from 6:30 AM to Midnight) to support the family and allow her to stay home with the children. Therefore, he was not in the home to see what was happening. He also stated that her drug of choice was cocaine, and since she was not losing weight (a sign she exhibited in the past when using heavily), he had no reason to believe she had started using again. He was questioned by the judge, law guardian, and ACS attorney about why he did not either 1) move out with the children, 2) kick her out of the home and keep her away from the children, or 3) question her more about whether she was using. He explained that he supports her and they could not afford to live apart. In addition, who would watch the children if she was not allowed to? He also stated he rarely saw her due to his long hours which were necessary to support the family. The judge made a neglect finding against him and stated that working these jobs was no excuse for not knowing about her drug use. She lectured him about how he needed to "protect" his children from her, and if he did not know about her use, then he was unable to protect them. The children remained in foster care. The judge ended by telling the father that he should consider quitting one of his jobs so he could talk to his wife and that they should go to counseling to "open up to

each other more." It was hard to imagine how this family could afford any of these solutions and hard to see how counseling would solve these complex problems that stem from their lack of resources.

Acknowledgment of Structures of Inequality: At the same time that court officials hold parents to middle-class standards and speak of them in disparaging ways, they also recognize, at times, that parents are facing structural barriers (though they do not use that terminology). Many attorneys and judges acknowledged the fact that most of the parents in court are poor people of color, struggled to explain why that was the case, and asked for my opinion as they were truly trying to understand it. Their own theories about the disadvantages parents faced focused on them coming from "different worlds" than the attorneys and judges, on their poverty and lack of education, and sometimes even on the court system itself. For example, Brandon told me that:

> You know, the attorneys and the judges, we come from a different world than where these people come from for the most part… And so their rules are different. What they do is different and they're getting judged by a system that doesn't really understand them. You know what I mean? That's one problem.

Bob had a similar feeling, and complained that the court either ignores how parents are different—as when judges used legal jargon to explain important facts like the ASFA time-line—or the parents' perspective is not respected—as in the case of parents from the West Indies who did not see anything wrong with smoking marijuana but were told they were neglectful.

Rafael asked me, rhetorically, why all the parents in family court are black and Latino and answered his own question with "oppression." He further complained that judges thought they were better than the parents because they had more money, and chastised caseworkers who brought parents to court when their children were late for school but did not bother to investigate why. As examples, he cited one case in which it turned out that the school bus was dropping the

child off late and another in which the mother had to take both a bus and a train to get to a school that was far away. In both cases the mother was blamed although she was not the cause of these transportation problems. He also pointed out that there were not enough people working in family court or ACS who spoke Spanish and/or could take into account cultural differences. Poverty and education were also acknowledged as barriers to meeting family court standards. As Brandon put it:

> But at the same time, those people don't have the money, they don't have the education. They don't have anything so that they have to - so they can do what I call the perfect parenting thing… They can't do it. And I don't even know how the wealthiest most well-off family can always be a perfect parent.

Here, he acknowledges that parents in family court do not, in general, have the resources to meet the standards they are held to.

It was clear to me that many who worked in family court had views of parents which tended to blame them for the conditions in which they lived and downplayed the role of structural inequalities in shaping their lives. They further held them to expectations that are reasonable for families with a stable job and income but difficult to reach for the poor families of color who are the vast majority of those brought to family court in child protective cases. That these views are held is not surprising given that neoliberal and culture of poverty discourses are the dominant representations of poor families, who are assumed to be families of color, in the larger culture. These expectations and discourses make it easier to imagine these parents as unfit and as risks to their children rather than as loving but struggling parents. It also allows attorneys to make decisions about which clients to "fight for" without taking into account the constraints parents face in "getting their lives together" and behaving in a way seen as sufficiently responsible. So, at least some parents who need help to regain custody are not given this help. At

the same time, however, many attorneys *were* aware of the differences between themselves and these parents and were trying to grapple with why it was that they only saw poor people of color come through the courts' doors. At times they were able to point to the larger inequalities that impacted their lives. This is testament to the fact that working in family court is a difficult job and many do it because they *do* want to help children and/or see defending parents as important. However, their own jobs are difficult and there is generally not sufficient time or resources to help all clients.

Parents: They Look Down On Us

The general attitude of many attorneys towards their clients is apparent to the parents I spoke with. First, several told me that they felt they were treated just like everyone else who was caught up in "the system," and this was a common topic of conversation at parenting skills classes and support groups. In general, many had the feeling that parents with drug problems or who had used corporal punishment, for example, were treated as if they were serious child abusers or parents who had abandoned their children and did not care about them. Many parents felt that this attitude (i.e. that all parents are the same and they are all horrible and possibly not worth "fighting for") stemmed from a history of seeing very serious cases or cases in which parents were not trying to regain custody of their children. Thus, they felt they had to struggle to prove that they were not like those parents. For example, one mother, Mary, a white woman and mother of one child in her 40s, told me that she felt that she even had to prove that she loved her daughter, which she found completely ridiculous given that, in her mind, the only thing she had done wrong was have a cluttered house and need help finding another apartment (her landlord tried to evict her and basically demolished the apartment in order to renovate and rent it for more money). Other parents linked the attitude of many attorneys towards parents directly to the fact

that they were black and Latino and/or poor. They felt that they were assumed to be irresponsible and unable to care for their children adequately or seen as unloving and abusive parents because of their race and class.

Another mother, Joan, who is African American, described how, the first couple times she came to court, she felt her attorney was "looking down on me" and added:

> But that's the way you feel because everybody's watching you because they're taking your child. Oh, yeah, they're watching you. And they're disgusted because here goes another child that we've got to put with strangers and pay for, for your parents acting like idiots. So yeah, and I'd feel the same way. I guess after you see so many. But then everybody, they start to see you as an individual. You always start off in a group even though it's not fair.

Another mother, Claudia, who is also African-American, simply commented that she felt that ACS and family court "needs to become more of a place where people can feel that they can come to for assistance and not feel like they're going to be criminalized, demonized, you know, and acknowledging that we all just want the best for our children. It's just that simple. We really do." As these comments indicate, many parents felt they were demonized and treated as if they are dangerous parents rather than parents with problems who still love their children and want the best for them. This seems to be related to the fact that most parents are poor people of color.

In general, I found that family court provided little in the way of meaningful oversight and judicial scrutiny of ACS caseworkers and their decisions. Although the purpose of bringing cases to court is to provide parents with an opportunity to defend themselves and challenge state interference into their lives, crowded calendars and prevailing attitudes and practices mean that this generally happens in only a formal way. For example, there is a right to have a 1028 hearing, but there is rarely time, parents are not always told they have this right, and many attorneys will not ask for it because they are fairly certain what the outcome will be. In addition, many informal

practices in family court left parents feeling they were being looked down upon and demonized as horrible parents. In many cases, they were held to middle-class expectations of proper child care that are resource- and time-intensive while the structural inequalities that impacted their lives were downplayed or ignored. It was also common to draw on various racially coded discourses about poverty when talking about parents which made it easier to see them as unfit parents who are irresponsible and to blame for their own problems. All in all, the day-to-day practices in family court, in part because it is a court that deals almost exclusively with poor people of color, make it quite easy to intervene in families either by placing them under court supervision or by denying them custody of their children. It is too often *assumed* from the beginning that parents are unfit, while institutional practices make it difficult to challenge these state interventions into family life and provide little incentive to try.

Many parents expressed their feeling that they had no advocates in family court. I found that I was able to observe family court freely when I came on my own, but when I came with a parent, I was questioned about why I was there and sometimes barred from the courtroom. I came to attribute this difference to officials being suspicious of anyone who might be present as an outside advocate for a parent. Recognizing this, parent advocates often told parents that they needed to be their own lawyer—bring in their own evidence, request hearings directly, and learn about the law and their rights—and parents were generally told they would have to insist upon their right to bring someone with them to court.

During my fieldwork, the new institutional providers began taking cases in family court, and these organizations were a hopeful sign that the city and the courts themselves had recognized many of the problems endemic to family court and were attempting to remedy them. These providers, because they work alongside parent advocates and social workers, and because

they have resources that individual attorneys often do not have (other attorneys to cover for them, paralegals, etc…), were able to take more time with parents to explain the process and were more willing to request full-blown hearings and push the courts to question ACS officials. The parents I met who were represented by these attorneys tended to have much better experiences in family court. Even waiting with parents (as much as they were able) until their cases were called helped parents feel they had an advocate. As they take over more of this work, it is possible that at least some of the practices I describe might change.

Chapter 8: The Legal Construction of Unfits Parents, Part 2

In this chapter, I turn to a closer examination of decision-making around child neglect in family court, focusing on how two key, but rather vague concepts in the legal definition of neglect, "imminent danger/risk" and "minimum degree of care," are made concrete and applied in family court. I am interested in what is considered failing to provide a minimum degree of care, i.e. neglect, and when it is thought to be severe enough to place a child at imminent risk of harm. First, I will discuss the law defining neglect, and then I will present my data about the kinds of cases I saw in family court overall. This will give the reader a sense of the various issues that can be considered neglect or a failure to provide a minimum degree of care. I will then discuss the questions raised by parents and attorneys about the legal definition of neglect and its application in court. The next section will look more closely at the cases I saw during the intake process and the factors that played a role in whether the children were remanded or not. Here, the focus will be on court personnel's understandings of risk and when it rises to the level of "imminent risk" of harm that justifies placement in foster care. Finally, I will examine three cases in detail to explore how subtle judgments about parents are used to decide the level of risk a child faces.

I will demonstrate that the legal definition of neglect is quite flexible and allows for a range of issues to be considered a failure to provide care. However, parental problems such as drug use are prominent in family court and these are often seen as, almost automatically, constituting a failure to provide care even in the absence of specific evidence about how these problems, concretely, affected the care parents were providing. These cases are also those most likely to result in foster care placement since they are seen as presenting great risk to children. I will also argue that decisions made in family court tend to see parents' behaviors apart from their

larger context. Parents are judged on particular problems or particular actions and not on the level of care they provide to children overall. In addition, the race and class factors at work in why certain family/personal problems occur and why parents do or not comply with directives and/or obtain help for their problems are similarly ignored. Instead, parental problems and behaviors are seen as individual failures of responsibility and labeled neglect. As Guggenheim has stated, courts are unable to deal with explanations for child maltreatment that take into account structural inequalities:

> the rules of child welfare insist that all systemic explanations for deficiencies in marginal families' capacities to raise children safely at home are out of bounds for consideration or discussion. We enter child welfare within well defined limits of what is up for discussion. If families need certain basic goods such as income support, better housing, child care assistance, respite care, or the like, they are, for all practical purposes, outside the field (Guggenheim 2006; see also Golden 1997; Lindsey 1994; Parton 1999; Waldfogel 1998).

This leads to certain solutions being more "thinkable" than others: "When parental deviance is the foremost explanatory factor, child protection authorities are more likely to 'see' children in need of removal rather than families in need of support" (McConell and Llewellyn 2005: 561). This seems to happen in New York City as the conditions under which mothers (and fathers) live are pushed largely to the side, their behaviors and judgment are assessed, and any shortcomings are labeled individual failures.

The Legal Definition of Neglect

Child protective cases are only brought to family court if they fit under the definition of abuse or neglect as laid out in the New York State Family Court Act, Article 10 Section 12. This law defines a neglected child as a person under 18

> (i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible or his care to exercise a minimum degree of care
> (A) in supplying the child with adequate food, clothing, shelter or education in

> accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or
> (B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision;

To summarize, a child is considered to be neglected if they have been impaired physically, mentally, or emotionally, or if they are in "imminent danger" of being impaired. Since, in many (if not most) cases before the court it is not readily apparent that the child has already been harmed, and the goal is to prevent harm by decreasing the risk the child faces, views about what "imminent danger" means are key to decision-making in family court. A finding of "imminent risk" is necessary to place a child in foster care (if it is thought the risk is less, but the behavior of the parent seems to fit the rest of this definition, the court can mandate services). In addition, a finding that "reasonable efforts" have been made to prevent the removal of the child is also necessary.

Only the parents of and/or "person[s] legally responsible" (PLR) for children who fit into this category (i.e. of "neglected child") can be ordered to complete services and only these children can be removed from their parents. The other key part of this definition is that harm or imminent danger of harm must be a result of a parent or caretaker's failure to provide a "minimum degree of care." In other words, parents are not expected to do everything perfectly and provide the very best care possible, but should be held to the standard of doing the minimum

necessary to keep a child healthy and safe.

The law then goes on to outline specific examples of what a failure to exercise a minimum degree of care can mean: A) not providing for basic needs (including food, shelter, clothing, medical care, and education) if the parent has the means to do so or has been offered means to do so or B) not providing adequate supervision or guardianship. The second half of this explanation includes "excessive corporal punishment" (defined in practice as using an object to hit a child or leaving a mark or bruise in the course of punishing them), misusing drugs and alcohol, and "any other acts of a similarly serious nature requiring the aid of the court." As I will show below, this last category can include a wide range of issues. "Excessive corporal punishment" fits under neglect and is different than what fits the legal definition of abuse. Abuse must include certain sexual acts or injury not caused accidentally "which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ" (Family Court Act, Section 1012, e, i).

As the attorneys I spoke with explained it, the line between excessive corporal punishment and abuse is drawn based on the severity of the injury and was, more or less, as one put it, "a matter of common sense." For example, if a parent spanked a child on the hand or butt and a mark was left, this could be filed as neglect. If the child was cut seriously, given a black eye, beaten severely, had bones broken, or was injured in any way that could cause long-term damage, it would be abuse. Other behaviors that would normally be filed as neglect can also be filed as abuse if they are severe enough. For example, if a parent did not provide adequate food, and the child was found to be severely malnourished, this could be filed as abuse. My experience in family court, however, was that abuse cases are very rarely, if ever, filed in cases in which

actions apart from serious physical abuse or sexual abuse were involved.[162]

It is significant that alcohol and drugs are treated differently under the law and in family court practice. The ACS attorneys I spoke with said they could file a case if the parent was using any illegal drug, not in a rehabilitation program, or testing positive while in a program. However, the child protective side of the agency could decide, they told me, not to bring cases to family court if they felt the child was not in danger in the home. In my discussions with caseworkers it seemed that cases are filed when the parent does not get into treatment and stop testing positive fairly quickly. So, *use* of *any* illegal drug if the parent is not in a rehabilitation program is often automatically taken as placing children in danger. This is because it is assumed a parent taking illegal drugs will not be providing adequate supervision and guardianship unless the parent is in some kind of rehabilitation program, and therefore getting help. As other scholars have pointed out, any use (especially of crack cocaine) is presumed to lead almost automatically to addiction (Reinarman & Levine 1997) and is viewed as completely incompatible with motherhood (Gomez 1997). Only if they are in treatment is it necessary to also specifically provide evidence of harm to the child or other evidence of imminent danger. In contrast to this, the law specifies that, with alcohol, it must be shown that it is used "to the extent that he loses self-control of his actions."

I would argue that this difference in the law reflects, basically, a belief that illegal drugs will automatically create a state in which a parent will lose control of their actions and place their

[162] One attorney told me she saw more abuse cases filed in Queens. An ACS attorney from Queens, Katherine, told me they focused on the *risk* of serious harm in defining abuse: "But once you start hitting the child like near the face, by the eye, that can easily be pled as an abuse case because you've got a protracted risk of blindness. You know? Losing your eye." In contrast, in the other boroughs, it would depend on the severity: if the child was slapped and a red mark was left that would be neglect; if the parent hit the child repeatedly with an object across their face and they had serious swelling and a black eye that would be abuse.

child in danger.[163] It does not take into account nuances about how much is used, when, and under what circumstances, although ACS caseworkers can take these factors into account when deciding whether to file a case in the first place. It also reflects a widespread societal demonization of illegal drug use (especially of use by poor and minority communities) (Reinarman & Levine 1997). The belief that drugs are automatically harmful was made clear to me one day during a conversation I had with an ACS attorney about drug cases, specifically cases in which children were born positive for crack cocaine. I mentioned that the evidence shows these children do not suffer the widespread ill effects that were reported at the beginning of the "crack epidemic" in the late 1980s. He looked at me as if I was completely crazy and argued this could not be true and that crack was extremely harmful to children. Thus, there is still panic about crack cocaine use among some in family court and a belief in its supposedly hyper-addictive properties, harm to unborn children, and extremely detrimental effects on women's ability to care for their children. These beliefs persist despite the fact that research has shown them to be false (Humphries 1993; Reinarman & Levine 1997; Zerai & Banks 2002).

An Overview of the Types of Cases in Family Court

Family court cases involve a diverse list of family problems and situations that are thought to fall below a "minimum degree of care" and have "impaired" or placed children in "imminent danger of becoming impaired." However, there are a few major categories that come up again and again in family court. I will go through each of them in turn, discussing how often each type of case occurred during my observations (see Table 7 for a list of categories and how often they occurred and Table 8 for whether the children were in foster care or not).

[163] I think that specifically defining drug use as neglect probably came in the late 1980s with the "drug scare" centered on crack and the larger war on drugs (Reinarman & Levine 1997). Laws were changed in similar ways in other places, but I do not know the timing in New York State.

Table 7: Cases in Which Allegations/Issues Were Clear (234 Cases)

Type of Case	Number	% of total cases
Drugs	77	33%
w/ Mental Health	13	
w/ Violence (domestic, corporal punishment)	6	
w/ Other issue	7	
Parent Arrested	10	
Excessive Corporal Punishment	29	12%
w/ Domestic Violence	1	
w/ Alcohol use	1	
w/ Domestic Violence and alcohol	2	
w/ Drugs	2	
w/ Mental Health Issue	2	
w/ Medical Neglect	1	
Parent arrested	6	
Domestic Violence	19	8%
w/Child involved/effected directly	3	
w/ Drug use	2	
w/Corporal Punishment	2	
Parent arrested	6	
Educational Neglect	14	6%
w/ No mental health treatment for child	1	
w/ Mental health issue	1	
w/ Past drug allegations	1	
w/ Only teens	6	
Mental Health	13	6%
w/ Drugs	1	
w/ Possible Domestic Violence	2	
Teen Mothers	9	4%
Alcohol	6	3%
Medical Neglect	4	2%
Home Alone	3	1%
Arrests	3	1%
Malnourished Child	1	< 1 %
Abandonment	1	< 1 %
Other	13	6%
Abuse Cases	26	11%
Termination of Parental Rights Cases	16	7%
Total	234	100%

Table 8: Percentage of Children in Foster Care by Type of Case (Neglect cases in which allegations were clear; includes only intake cases where court appearance was observed; 176 cases)

Type of Case	Number	Percentage with Children In Foster Care
Drugs	73	81%
w/ Mental Health	12	83%
w/ Violence	5	80%
w/ Other issue	6	83%
Parent Arrested	7	100%
Excessive Corporal Punishment	25	36%
w/ Alcohol use	1	100%
w/ Domestic Violence and alcohol	2	0%
w/ Mental Health Issue	2	0%
Parent arrested	6	83%
Domestic Violence	18	6%
w/Child involved/effected directly	3	0%
w/ Drug use	1	0%
w/Corporal Punishment	2	50%
Parent arrested	6	33%
Educational Neglect	12	8%
w/ No mental health treatment for child	1	100%
w/ Mental health issue	1	0%
w/ Past drug allegations	1	0%
w/ Only teens	5	0%
Mental Health	11	64%
w/ Drugs	1	100%
w/ Possible Domestic Violence	1	0%
Alcohol	6	50%
Medical Neglect	4	25%
Home Alone	3	67%
Arrests	3	100%
Malnourished Child	1	100%
Abandonment	1	100%
Other	12	50%

First, it is important to note that most cases involve neglect and not abuse. Only 26 out of the 234 cases I observed in which the allegations were clear, or 11%, involved abuse. Another 16 cases (7%) dealt with termination of parental rights in which it was clear on what grounds the agency

was petitioning for the termination. In what follows, I will only discuss the neglect cases. The aim here is to understand what types of problems are fit under the legal definition of neglect and whether, in general, they are deemed serious enough to place a child in foster care. More detailed information about how these decisions are made and what they are based upon will be presented in the following sections of this chapter.

How Cases Were Classified

When classifying cases I witnessed, I labeled them with the allegation that was most prominent—either in the sense that the caseworker presented the case to the attorneys as "a drug case" (for example) or in the sense that one problem was discussed in more detail or in a way that signaled the child protective staff or the ACS attorney found it the most important. In general, it was clear what the main allegations were. However, it is important to note that this does not mean that the main allegation/issue in a case at the time I saw it in Family Court was the same one that first led ACS to be involved with the family. For example, a case might have been reported because a child was not in school and filed for educational neglect. However, if the parent's mental health problem later came to light, this might have become the main issue that was dealt with in court, and thus it would be classified as a mental health case if the educational neglect piece was no longer discussed when I observed it.[164] If, on the other hand, the court discussion made it clear what the initial allegation was and what the subsequent issues were, I would classify the case by the initial allegation and note the accompanying issue. There were also, however, a few cases in which it was not clear what, if anything, might be called the "main

[164] One ACS attorney stated that it was fairly common for attorneys and caseworkers at foster care agencies to lose track of why a case was originally filed. This can make it difficult to ensure that services are provided which address the allegations and can lead to a situation, from the parents' point of view, in which the requirements for regaining custody become a moving target (see Chapter 9).

allegation." Those cases in which multiple problems existed, or that involved issues that were unclear or difficult to classify, I placed in the "other" category. I put cases involving teen mothers into a separate category because, in most of them, the allegations were quite different from the allegations made against adults, and furthermore, because most of these mothers were in foster care themselves, so different issues were involved.

Types of Cases and their Frequency in Family Court

A full third of the cases I witnessed (77 cases) involved drugs, and in a large majority of these the children were placed in foster care. In contrast, cases involving alcohol made up only 3% (six cases) of the cases. Drug cases are so common that special Family Treatment Courts have been created in each borough to deal with cases in which drugs are the main issue.[165] It was not apparent in every case what drug the parent was using. However, I did not hear of a single case involving methamphetamine use and only once or twice did I hear of a case involving heroin. Most drug cases involved either cocaine (usually crack cocaine) or marijuana. In almost 56% of the drugs cases I saw (43), it was not apparent that there was any other issue in the home—the problem seemed to be simply that the mother and/or father had admitted to using and/or failed a drug test and was not enrolled or participating in a drug program (in a couple of cases a parent was in a program but was still testing positive). This includes cases in which a child was born positive for drugs and it was the parents' first child. If another parent or caretaker was in the home, they might also be listed on the petition as what the ACS attorneys sometimes refer to as a "known or should have known," i.e. that he/she knew or should have known about

[165] In these courts, the parent must admit to their drug use at the beginning; then a neglect finding is entered and the judge orders the parents to comply with drug testing and drug treatment. The court has substance abuse counselors and conducts testing, but parents are also often engaged in treatment and testing at other facilities. The aim of these courts is to get the parent engaged with drug treatment quickly and to use court time to monitor their progress, rather than to deal with the facts of the case.

the parent's drug use and taken steps to protect the child or get the parent to stop using.

In the remaining cases involving drugs, other issues were present. In 10 of the drug cases I witnessed, the parents had been arrested for drug-related crimes and led to ACS being involved when someone to care for the children was needed. For example, in one case two parents were arrested when their daughter brought some of their marijuana to school to show it to her guidance counselor. According to the caseworker, the child did not like them smoking, worried that the smoke was harming her younger sibling who had asthma, and had asked them to stop. She brought the drugs to her guidance counselor, apparently hoping that an adult would help resolve the problem. The guidance counselor called both ACS and the police, and when the parents were arrested, all of the children were put into foster care. This case demonstrates the seriousness with which any drug use is taken and the increasingly harsh treatment by the criminal justice system of marijuana use that has resulted in dramatic increases in arrests in New York City in recent years. These arrests are disproportionately of Blacks and Latinos (Levine & Small 2008).[166]

Another issue that commonly accompanies drugs in these cases is mental health. This occurred in 13 of the cases I observed. This combination came up less often in the intake cases I witnessed, which leads to me to think that mental health issues are more likely to emerge as the case goes on. A few drug cases also had allegations of corporal punishment and/or domestic violence (six), and a small number were accompanied by conduct that might signal how a parent's drug use was affecting their functioning (seven): homes that were dirty, leaving a child home alone, not taking a child to school or to a doctor, or leaving a child with a relative or neighbor for an extended period of time. Note that these conditions could also be related to

[166] In New York City, the marijuana arrest rate of Hispanics is nearly three times the arrest rate of Whites, and the marijuana arrest rate of Blacks is five times the arrest rate of Whites (Levine & Small 2008: 4).

poverty itself (lack of health insurance, or child care) or to bad housekeeping. This category also includes one case in which a mother whose children were returned to her under the condition that she co-operate with drug treatment had left a homeless shelter and caseworkers were unable to find her. Given her drug history, it was assumed that she was back on the street and using.

Excessive corporal punishment (where a parent has hit a child, either with a hand or an object, as punishment and a bruise or mark of some kind was left) is the next largest category, making up 12% (29) of the cases I observed. Only a minority of these children were in foster care. 15 of these cases were straightforward: the child had a mark or bruise and the parents had either admitted they had hit the child as punishment or the caseworker had reason to believe the parent had caused the injury (if, for example, the child had reported they had been or are generally punished by spankings), and this constituted neglect. In the rest of these cases, other issues were present: allegations that a father has also hit the mother (one case; but in this case there was no evidence that the children were present or that the police were called[167]); that the parent was abusing alcohol (one case); or that the person who had hit the child had a drug (two cases) or mental health (two cases) problem. Two cases had both alcohol and domestic violence allegations. In six of the excessive corporal punishment cases, the parent (four mothers and two fathers/boyfriends) had been arrested because of the incident.

Although corporal punishment which leaves a mark or a bruise can be thought of as a fairly straightforward issue of a child who has been injured by a caretaker, there are disagreements about whether all of these cases need court intervention, especially when teenagers are involved (see below). In addition, although harm has occurred, these cases are less likely to result in foster care than are other cases in which harm is less apparent or clear. Some

[167] So DV was not the primary allegation, and it would have been difficult to prove that DV constituted neglect.

caseworkers, for example, described how they would not necessarily bring a case with a teen to court, depending on how severe the injuries were, what the child was being punished for, and whether or not it seemed to be a one-time incident. However, cases involving older teens, in which the punishment seems to have been a one-time response to the child's disrespectful, unruly, or dangerous behavior are also, at times, filed in family court and the child removed from the home. For example, I witnessed one case in which a mother argued with her 16-year-old son after he had apparently stolen a laptop computer, and during the fight she bit him (according to her, he was also physical during the fight). On another occasion, he had refused to go to school and she had locked him out of the house so that he could not stay home—he called the police and she was arrested for "throwing him out" and because it was winter and he was not dressed warmly (she said he refused to wear a coat). The teen and his five-year-old sister were subsequently removed from the home, but after a few months, the five-year-old was allowed to return.[168]

The next largest category (8% or 19 cases) involved domestic violence. In these cases, a child who had witnessed, or been caught in the middle of, domestic violence was considered to be neglected. In general, it was the father who was named as respondent in these cases while the mother retained custody of the child with the condition that she enforce an order of protection to keep him away from the home and the children.[169] This practice is a dramatic change from how domestic violence cases were generally handled prior to a class-action lawsuit, Nicholson v.

[168] In another case, a father hit a 16-year old who had been threatening his parents and his younger sibling and who, they believed, had mental health issues and needed treatment. At some point prior to the incident in which the father struck the child, ACS was involved and the parents were told that they had to place him in a treatment facility or she would ask the court to remove him and the younger child. They complied with this, but the facility released him after only a few months. After he returned home, the altercation occurred, the child was removed, and the father charged with neglect. So, in practice, cases such as this in which parents could not find sufficient mental health treatment can fit the criteria of failing to exercise a "minimal degree of care."

[169] In these cases the father is still entitled to supervised visits and could still be required to pay child support.

Scoppetta (the case was filed in 2002 and settled in December of 2004). In this case, mothers who had been charged with neglect for "engaging in domestic violence" and not protecting their children—very often these children were placed in foster care—sued the city over the practice and won. They successfully argued that being a victim of domestic violence did not automatically make them unfit mothers. ACS attorneys were all very aware of this decision and cautious about filing against domestic violence victims.

In four domestic violence cases the mother was also named as a respondent, but the child remained in her care. She was named for a variety of reasons: it seemed both parents were violent, the mother tested positive for marijuana, she did not enforce an order of protection, or a police officer, when arresting the father, stated that it seemed the mother's experience of violence was affecting her ability to parent.[170] In only two cases was the mother named and the children placed in foster care. In one it was not entirely clear which parent had been violent, but the father was jailed and the mother hospitalized, so the children were placed with relatives. In the other, both parents were violent and both had been arrested. In two domestic violence cases there were also allegations that the father hit the child as punishment. In one case the child was injured in a fight between the parents, and in one case it was alleged that the father had a drug problem. In six cases, the father had been arrested (in one of these the mother was also arrested) as a result of a domestic violence incident.

Cases involving mental health (6% or 13 cases) and educational neglect (6% or 14 cases) were the next most common. In cases in which a parent had a mental health issue, the standard for neglect was whether or not the parent was getting treatment for their mental health issue. "Engaging in treatment" was assumed to alleviate the risk the parent posed to the child. In a

[170] In this last case the children were initially removed but quickly returned to the mother. Her case was settled so that she was not found to have neglected the children.

majority of cases the parent was not getting treatment, and the children were placed in foster care. Again, mental health issues came up more often in ongoing cases and were less present in new cases. It seems that only very serious cases of mental health, i.e. where a parent was incapacitated or had had a breakdown of some sort, come to the attention of ACS for that primary reason. However, I did meet one mother who had her children removed from her care after telling a school guidance counselor she was depressed and overwhelmed. The guidance counselor called ACS (her case was no longer in court, so it is not included in my count). In two of the mental health cases I observed it was suspected that the mother might be a domestic violence victim as well, but it was not clear this was the case. In another case both parents were institutionalized for mental health reasons (the father's program included drug treatment).

Educational neglect cases, and most of these children are not in foster care, most often involved younger children who were not in school. However, neglect cases were filed against a parent even when the child was a teenager and was either refusing to go to school or simply leaving after they were sent to school. I observed six such cases. For example, in one the child specifically told her law guardian that her mother tries to get her to go to school but she simply does not want to go and provided no other explanation for why. In another the caseworker believed the mother was home schooling her child but had not filled out the required paperwork. In three educational neglect cases other issues were present: the father had allowed a non-custodial mother with a mental illness to care for the child (they had no information about whether or not she was in treatment so no neglect case was filed against her), the mother had past unfounded ACS cases with allegations of drug abuse, or the truant teen seemed to be in need of mental health treatment and the mother was not following up with it.

I observed nine cases that involved teen-aged mothers, and in a slight majority of these

the children were in foster care. In only two of these cases was the young woman living with her family, and in both of them the teen's mother was also named a respondent. In the other seven cases, the teen mother was herself in foster care, sometimes as a result of a juvenile delinquency case. Here, the issues were related to their delinquency case (as in the case of a mother stopped by the police for driving too fast in a stolen car with her baby in the back seat), to not following rules in group homes (being out late at night with her child), to leaving group homes, or, in one case, for not being in school and leaving her child with her grandmother who was ill.

Cases involving medical neglect in which a parent had not taken the child for medical checkups or immunizations or had not followed up with medication (four cases; most not in foster care); children who were malnourished (one case and the child was in foster care); abandoned children (one case and the child was obviously in foster care); and children left home alone (three cases and all were placed in foster care); came up rarely, making up, altogether, slightly less than 4% of the cases I saw. I also observed three cases in which a parent had been arrested for something not related to the care of their children or to their drug use and yet the child needed to be placed in foster care. The remaining 13 cases involved a range of issues that are more difficult to classify and also includes new cases that were filed when a parent violated terms under which their children had been returned to them. These issues ranged from a mother who was arrested for shoplifting, to parents who were thought to be putting some of their children in danger due to the behavior or mental health problems of their other children, to a mother who refused to press statutory rape charges against her daughter's boyfriend, to a mother who left a homeless shelter and could not be found by a caseworker and so it was assumed she was not adequately feeding or housing her children (see Appendix 3 for the complete list).

Summary: This discussion demonstrates that most cases have to do with problems faced

by parents that are thought to place a child at risk: drug use, mental health, and domestic violence (together these made up almost half of all cases). In some of these cases, there was evidence presented about how the child had been harmed by these issues, but often the fact that these are thought, in and of themselves, to present a *risk* of harm was enough to warrant state intervention. The question of whether their actual care of their children did not meet a "minimum degree of care" was not addressed, at least in court, although caseworkers can take it into account during the investigation stage. In domestic violence cases, it was far more common for children to remain in the care of their mothers, and this reflects an important change as a result of the Nicholson case. It is also important to note that questions about why parents were or were not getting help for these issues were rarely addressed in court. Instead, they were considered neglectful and were likely to have their children removed.

In the other kinds of cases, the harm to the children was clearer, but these cases were less likely to result in foster care than drug and mental health cases. In corporal punishment cases the child has sustained an injury; in educational neglect cases they have missed school. In "home alone cases" they have been left unsupervised, and in medical neglect cases they are not receiving treatment. It was not always clear, however, that the incidents were indicative of a parents "failure to exercise a minimum degree of care," as in cases involving teens in which it was not clear that the parent had acted improperly. In medical neglect and home alone cases, it was not always entirely clear that the problem arose from a parents' willful neglect or whether it had more to do with poverty. For example, in talking with attorneys at the Bronx Defenders, I was told about a home alone case in which a mother had left her young children home when she was called in to work at her Work Experience Program job (WEP, a welfare mandated work program) at the last minute and was told her benefits would be cut off if she did not come in. She

was not able to find childcare and choose to work rather than lose the needed income. When the children were found unsupervised, they were placed in foster care and the mother was arrested. Although I do not have this kind of detail about the home alone cases in my sample from family court, it is likely that these cases also are a result of inadequate childcare arrangements. In fact, a recent New York Times article pointed out that many poor families leave children alone out of necessity (Foderaro 2008) and research shows this is a widespread problem among poor and working-class families (Hansen 2005; Douglas & Michaels 2004; Michel 1998; 1999; Mullings & Wali 2001; Edin & Lein 1997).

In day-to-day family court practice, then, the relatively broad definition of neglect can include cases that stem from parents' problems or from issues related to poverty. Issues such as drug use and mental health problems are assumed to almost automatically place a child at risk and are used to justify intervention while questions about what help might be given to parents to overcome these issues are less often asked by the court. Lack of attention is also given, at least in court, to the question of how, overall, the children involved were being cared for. The definition of neglect can even be expanded to include issues like refusing to press statutory rape charges against a child's boyfriend, refusing to bring a child back home from psychiatric hospitalization when the parent feels the child is still a danger, or shoplifting. Thus, the legal definition allows for much flexibility in how it is applied and individualizes family problems, blaming them on individual parents rather than seeing their structural causes.

Do We Really Need to Be Here? Views on the Legal Definition of Neglect

Both parents and attorneys raised questions about the legal definition of neglect and how it is applied. ACS attorneys complained that the child protective side of the agency (caseworkers and CPMs) asked them to file, and they often did file, cases that fit the legal definition but did

not seem to them to warrant court intervention. They also discussed how these filings increased court calendars and caseloads, and linked the increase in these filings to fear of another tragedy, especially one that would draw public attention. Parents also, in talking about their cases, questioned how neglect was defined and felt that their parenting was judged on the basis of one behavior, or one moment in time, and not on the larger context of how they parented. Many reported that they felt that it was as if any drug use or corporal punishment made them an unfit parent in the eyes of caseworkers, attorneys, and judges. Claudia, an African American mother of two, for example, told me that she feels ACS would do a better job if they kept in mind that every family and every situation is different and so the interventions cannot be identical:

> And that will help you deliver the very best that you can deliver if you deal with that family and where they're at and what's going on with them, not just the incident. Because belie - for me, the incident tells you absolutely nothing - *nothing* about the family. It really doesn't…And one incident does not take away your ability to be a parent…ACS is very judgmental, I think. And I don't know that you have to be judgmental in order to protect children.

Here Claudia points out what I frequently observed: that parents are judged on the basis of a particular incident or problem rather than on how they parent and the level of care their children receive overall. She views this as being judgmental and counterproductive in terms of helping families and protecting children. In the following sections I will discuss parent and attorney views of the definition of neglect more concretely in terms of drugs and corporal punishment.

Drugs

Both attorneys and parents felt that labeling any use of illegal drugs neglect was an oversimplification and that it was not necessary to bring all cases of drug use to family court. Specifically, they discussed several factors that needed to be taken into account when deciding whether to increase state intervention in the family: how often a parent used, what drug they

used, where they used, and how they were able to function in the rest of their life and in caring for their child. An ACS attorney, Joshua, a white man in his 50s who has been an ACS for many years, explained it this way:

> Joshua: I find the definitions are really vague, troubling -
>
> Tina: Definitions of?
>
> Joshua: Of abuse or neglect. However, neglect as statutorily defined, to most parents who are charged with this are really puzzled because of the statutory definition, again, doesn't fit a common sense or lay definition of neglect because - okay, alcohol, you do the alcohol to the point you lose control of your actions, fine. *But drug use is what's puzzling because any - because as the statute is written and read, any misuse of a controlled substance and not being successfully in program, is neglect*… I mean, mere use…I mean you have do it on a case by case basis. If you're leaving your kids alone, going out at four in the morning to score, or do tricks so you can score, that is neglect. Going to a party once in awhile and snorting a couple lines or - you know, that's not necessarily, it depends - it should be dealt with - but, of course, we get a lot of that. I think there must be less people doing hard drugs because of a lot more marijuana cases filed, and I find that kind of ridiculous I guess. (emphasis added)

Here, he points out some of the nuances he feels should be taken into account when deciding whether a case in which a parent used drugs required court intervention and questioned whether use, simply because it is illegal, is actually the same as neglecting a child, especially in cases involving marijuana or only occasional use.

A law guardian I spoke with (who previously worked as a CPS and then as an ACS attorney), Carrie, a white woman in her 30s, when I asked if, legally, it would have to be shown that drug use affected parenting, replied:

> Technically yes; what do we actually see? If a parent's using on a weekend, while their kid's being babysat by somebody else, like staying at grandma's, I would hope they wouldn't bring that case in. Will they? If it's heroin, yeah, they will; if it's crack cocaine, yeah, they probably will. If it's marijuana, they probably won't; if it's alcohol they pretty much can't *unless* the person *loses* control so that they do something *really* bad like assault a police officer.

She reads the statute in the way the ACS attorney above described that judges read it, and

described ACS practice about filing cases that I also observed, i.e. that *use* of illegal drugs is equated with neglect.

In describing her drug case, one mother, Stephanie, an African-American, middle-class mother in her early 40s, specifically told me that she was a "functioning addict" who always kept a job (even while going through treatment when her child was in foster care), a stable residence, and was able to provide "a closet full of clothes" for her daughter. She thus questioned being characterized as neglectful. An African-American father in his 50s, Nathan, who raised his children alone after they were removed from their mother for her drug use and was randomly drug tested for, he estimated, two years with no problems had his children removed after one "dirty urine":

> And what happened was, to be honest about it, I had just got a new promotion on, in The Housing Authority, I work for the city for 30 years. So it was a lot of pressure on the job too - plus taking care of my five kids, and all these years they was testing me because of my kid's mother and I wasn't - I wasn't using no drugs or nothin' like that. But eventually, with all the this pressure, I had picked up some drugs right - like at that time some time for some coke and stuff [later in the interview he explained going out to a club, getting drunk, and accepting cocaine and then being called the next day to give a urine sample]- and I went down and they took a urine, and they took my kids… They tested me for - was like two years. It was like two years or somethin' and I never had a dirty urine. So one dirty urine - they came to my house like a - like SWAT.

Here, he expresses his feeling that it is unfair that one slip-up could be used to remove his children. He implies that the fact he had never used before and that he was under a lot of pressure were not taken into account, much less his overall care of his children. Here, again, any use was considered automatically risky and the care children received was not examined.

These arguments are not to discount the fact that there are cases in which serious drug addiction can lead to parents' inability to care for their children. A couple of the mothers I spoke to *did* consider themselves addicted and described how it affected their children. Trisha, an

African-American mother, for example, told me she sometimes sold her food stamps to get drugs and Joan, another African-American mother, told me she noticed that her daughter would act differently around her because she could tell her mother was "not herself." The point is not, then, that drug use is always compatible with motherhood and that it presents no problems for children. Instead, the issue is that some mothers are more vulnerable to the loss of their children and have fewer resources that will enable them to get treatment. There is evidence that patterns of drug use vary by class and that wealthier women "tend to have a greater capacity for controlling their drug use or getting out of trouble if they don't" (Murphy & Rosenbaum 1997). They are also less likely to come in contract with the criminal justice system, another way that drug use is brought to the attention of child welfare authorities. In addition, it is also not the case that any illegal drug use is completely incompatible with motherhood. However, this is the assumption made in family court and in American culture more broadly.

Corporal Punishment

Attorneys also discussed how not all corporal punishment cases needed to be filed in family court, especially when they involved teens, but also more generally when it seemed to be a one-time response to an extreme situation. Katherine, an ACS attorney of middle-eastern descent, discussed cases like this in detail:

> And I think the cases that hurt me the most is cases where I feel like these people, like sort of acted appropriately because any parent would have freaked out over a kid coming home and telling them this or, you know, if my kid pulled a knife on me. Yeah, you know what? I'm gonna throw something at them to defend myself, maybe, if it's an older child. And maybe that shouldn't be a case that we're filing. Maybe there's another way to go about this case… I had a 12-year-old girl, she comes home and tells her dad, like, I have crabs or something. The father, like, smacks her. I hate cases like that because you know what, not that I believe in corporal punishment on *any level*, but you can sort of understand where that is coming from. And especially if there hasn't been a history of that with this family. This is not the normal day-to-day routine of these people. Maybe court involvement would hinder the growth of this family as opposed to helping them.

In other words, she questions whether cases involving a single incident that is understandable from a parents' point of view should be treated in the same manner as cases in which corporal punishment is used regularly and severely.

Parents also questioned how corporal punishment was defined as neglect and argued that the larger context in which they used it should have been taken into account. In Claudia's case, her 13 year-old son had started to become very angry and would lash out or yell at her in a very aggressive, almost violent, way. In June of 2005 there was an incident in which he, for the first time, acted as if he was actually going to strike her, so she attempted to get him to leave their home. What she referred to as a "physical" but not "violent" altercation then ensued and he finally left the home with two scratches. She called ACS herself, when she could not think of anything else to do, figuring, she said, that their job was "Children's Services," and they referred her to a preventive agency. That agency helped find a place that would provide "respite" care of her son on a very short term basis (only a week) and the caseworker was able to offer some counseling. However, they did not refer her to any kind of service that would teach her how to deal with his anger, and they were unsuccessful in finding a residential center that would evaluate him so he could get adequate help.

While the preventive agency was involved in the family, in November, a serious incident occurred in which Claudia again felt he was going to strike her. She attempted to go to her bedroom and close the door so that he could calm down, but was not able to. Although she was vague about the details (and I did not want to ask given that she was still emotional about the incident) there was then another physical altercation. It sounded like she picked up something to defend herself and did strike him. He called the police, they arrested her, and both her children

were placed in foster care. She described feeling that she was demonized as a bad parent and that the larger context—how she had raised him up to this point, that she had never used physical punishment before, that despite his anger he was going to school and still doing well, how she had asked for help in dealing with the problem, and that he had threatened her physically (she is a domestic violence survivor so threats were especially frightening for her)—were not taken into account. Instead, she said, they focused only on the moment in time in which she hit him, caused an injury, and was arrested. Because that fits within the legal definition of neglect, he was removed.[171]

In addition to the issue of whether or not a one-time incident of corporal punishment should be labeled neglect and brought to family court, there is the larger issue of lack of agreement with the idea that corporal punishment should not be used. Only if cases involved perceived stark cultural differences did officials discuss these differences of opinion. When lawyers in family court heard that I was studying anthropology, several of them told me about corporal punishment practices that were used by "other cultures" or described cases they had seen: Asian families hit children with bamboo or make them kneel on rice, Navaho families would never hit a child, or a family from Mali hit their daughter because she was acting "too American." Or, more simply, I was told that people in "other countries" use corporal punishment and are surprised that the state can tell them not to, and so they must be educated about that. In these statements "other culture" always seemed to mean an immigrant from Africa or Asia, or

[171] He remained in foster care for a year and a half, during which time he did not get help for his anger (the foster mother frequently would not take him to appointments), was allowed to cut school, failed his classes, and picked up a delinquency case. When I asked about her experiences with family court she said: "I left family court saying, 'You know, okay. All said and done, who's gonna tell me how I should of handled that?'...And so maybe if ACS had referred me that first day, possibly I would have found that [a strategy to deal with his anger] out before November. Right?" Instead of offering help, she felt that ACS and the preventive agency did very little and, essentially, waited until things blew up and then labeled her neglectful.

maybe a Native American group.[172]

In observing judges, it seemed that they took corporal punishment very seriously, were willing to place children in foster care or exclude a parent from the home for this reason, and many of them required a parent, at some point during the case, to acknowledge they were wrong for hitting their child. However, on one particular day, I observed two cases involving families who had recently immigrated to the U.S. from former French colonies, either in Africa or the Caribbean,[173] that were handled in a drastically different way. In both cases, the judge explicitly said she wanted to reunite the children with their parents quickly even though both had severe injuries (one child was actually hospitalized), and she took steps to ensure this happened over the objections of ACS officials.[174] Remember that it is extremely rare for a judge to oppose ACS plans to remove children (see Chapter 7). She explicitly stated that she did want the parents to understand that the law is that they cannot use corporal punishment to the extent that it leaves marks, but further commented that ACS needs to change how they deal with these cases because it was not a good solution to place children in foster care when the parents are from places where "they beat their kids." This way of resolving cases was not, in my experience, followed with parents who were not seen as having a "different culture."

Only a few times in my interviews did anyone mention regional, generational, or class differences in parents' views of corporal punishment. One law guardian, Carrie, did mention that people from "down South" believe more in corporal punishment and mentioned that a generation ago, even in New York, it was more acceptable. She seemed more conscious of those differences, in part, because she had been a caseworker prior to becoming an attorney. Emily, a

[172] Europe and much of Latin America and the Caribbean did not seem to be included, for most people.
[173] In court it was specified that they were from Mali, Martinique, and Guinea, and all needed French interpreters.
[174] In one case she overruled ACS and allowed the father to return to the home, and in the other she told the attorneys they should be settling the case so that the parent would not be found to have neglected the child.

white social worker at the Bronx Defenders in her 30s, told me she felt that, in general, living in dangerous circumstances often leads to harsher forms of discipline including corporal punishment among their clients (see also Goldstein 1998). Some attorneys pointed out that their own parents used corporal punishment and that they still "turned out fine" and would probably not have been better off had they been placed in foster care. However, it seemed that no one took possible differences such as this into account in dealing with corporal punishment cases in court. Basically, it seemed that anyone not from "another culture" was assumed to understand that corporal punishment was wrong. So, if they did it, it was a problem and it was likely that the child would either be placed in foster care or the parent would be kept away from the child by court order. No one seemed to question whether there might be more complexity in these cases.

In their discussions of drugs and corporal punishment cases, then, both parents and attorneys felt that the legal definition of neglect was applied in a way which labeled a particular action or moment in time as neglect without taking into account the larger context of parents' lives and their parenting more generally. They questioned, for example, whether their drug use in and of itself made them neglectful parents or whether they were still caring parents who took care of their children. Similar comments were made about corporal punishment cases as attorneys and parents argued that single acts of punishment were routinely taken out of context and the role that children's troublesome behavior played was ignored. Both parents and attorneys argued that parents' actions towards their children should be judged more holistically. As Claudia put it, "one incident does not take away your ability to be a parent." However, there is little room for these holistic judgments in family court, given the fear that cases might end in tragedy, the high case loads, and the ways in which the law tends to simplify cases and judge individual parents on the basis of particular actions or problems.

Assessment of Risk in Court

At this point, I want to turn to the question of how the level of risk a child faces is assessed in family court. It seems that there are patterns in terms of which kinds of cases are more likely to result in a child being removed and placed in foster care and in the factors that lead officials to classify cases high risk. In this section, I will look at those cases in which I was able to witness the intake process and was able to observe how caseworkers justified emergency removals or how they argued that removals should be done and what the final outcome was. I was not able to see the initial court appearance in all these cases;[175] however, as explained in Chapter 7, it is rare for a judge to refuse to grant the relief sought by the ACS attorney. So, the outcomes of cases after the initial hearing are not likely to be different than what I was able to witness. I observed 75 cases in which I have enough information to discuss the allegations and what made the difference between a decision to remove the child from the home and a decision to request supervision of the home (see Table 9 for a breakdown of these cases). I will first outline the types of cases and how likely they are to be classified as high risk, beginning with the kinds of cases most likely to result in a remand. At the end, I will discuss what this data tell us about risk assessment in family court.

[175] Sometimes cases are sent to more than one courtroom, and other times I was not able to stay late enough to see the hearing.

Table 9: Relief Sought in Intake Cases (All cases filed, 77 cases)

Issue	Relief Sought	Number Of Cases	% of Intake Cases Observed	% in which remand was requested
Abuse		6	8%	66%
	Removal	4		
	Supervision[176]	2		
Drugs		21	27%	76%
	Removal	16		
	Supervision[177]	5		
Excessive Corporal Punishment		13	17%	30%
	Removal[178]	4		
	Supervision[179]	9		
Domestic Violence		9	12%	11%
	Removal	1		
	Supervision[180]	8		
Educational Neglect		7	9%	0%
	Removal	0		
	Supervision	1		
Mental Health		4	5%	100%
	Removal	4		
	Supervision	0		
Teen Mothers		4	5%	50%
	Removal	2		
	Supervision	2		
Alcohol		2	3%	50%
	Removal	1		
	Supervision	1		
Home Alone	One case, Supervision	1	1%	0%
Medical Neglect	One case, Supervision	1	1%	0%
Other		7	9%	
	Removal	5		71%
	Supervision	2		
Cases in which allegations were not clear		2	3%	50%
	Removal	1		
	Supervision	1		
Total		**77**	**100%**	

[176] In both sex abuse cases an order of protection was issued to keep the father away from the children.
[177] In one of these cases an order of protection was issued barring the mother from using corporal punishment of any kind. In two other cases non-drug using fathers were ordered not to leave the children alone with their mother.
[178] In one of these cases the child who was hit was removed from the mother and a child who was not hit was left in the home with an order of protection barring the mother from using corporal punishment.
[179] In three of these cases an order of protection was issued to keep the father away from the children. In one of these cases the children were left with the mother who had hit them and an order of protection was issued barring her from using corporal punishment.
[180] In seven of these cases an order of protection was issued to keep the father away from the children. In the other an order of protection was issued directing both parents not to be violent.

In *all* the mental health cases a removal had been made on an emergency basis (four cases). In two of the mental health cases the parent had been hospitalized. In one case the father had left his children alone with a mother who had a history of ACS involvement in her life, including children who were previously in foster care. He asked if he could retain custody if he promised not to leave them alone with her, but the judge remanded the children anyway. In the fourth case, caseworkers made an emergency removal after a mother apparently fabricated sex abuse allegations against the father and took their children, in the middle of the night, to a hospital for an examination. Interestingly, the caseworker was unable to clearly explain why the father presented a risk to the children, except to say that, when the case began, it seemed that he had been violent with the mother. As the investigation continued it seemed that the mother lied about the domestic violence allegations as well, but the caseworker maintained that he was still a danger. He did not retain custody. So, mental health issues that end up in court are seen as presenting high levels of risk to children.

Among the cases involving drugs, 76% of them (16) resulted in the child being remanded to foster care. In three cases the child was paroled to a parent or legal guardian in the home who was not using. In only two cases was the child left in the care of a drug-using parent. In one of these the mother had left her children home alone and had tested positive for cocaine on four occasions. It was not entirely clear why a parole was sought, but two of the four children in the home were teenagers, and the mother had actually left the two younger children in their care, which might have affected the decision. It is also possible that the mother engaged in drug treatment, but this was not mentioned. In the other case, mention was made that the mother was "smoking" (it was not clear whether this was marijuana or crack cocaine), that she had used corporal punishment, and that at least one child had missed school. It was not clear how often or

if all of the children had missed school. Nevertheless a parole was sought. The judge expressed her surprise at this and told the mother directly that she expected the ACS attorney to ask for a remand, but that the caseworker "must have some faith in you" (i.e. that she would immediately stop using). In this case, an order of protection that the mother not use any corporal punishment was put in place.

In the drug cases where the child was removed from the parent there were several factors that played a role in this outcome. In five cases the parent had been arrested or was in violation of their parole. In four cases a child born with a positive toxicology was removed—three of these children seemed to be the first children of the parents, in the fourth case the mother had left a six-year-old with her mother when she went to the hospital to give birth. In the remaining seven cases, other issues were present: mental health (two cases); parents who were fighting while intoxicated; a mother who left her child with her mother (the child's grandmother had filed for custody); domestic violence issues (two cases); and a dirty home, lack of food, and children who were sent to school without socks in the winter. In drug cases, then, using while pregnant and drug use combined with other issues are seen as especially risky to children and drug arrests lead to placements in many cases. However, any use without being in a treatment program can lead to a remand.

Among the seven "other" cases I saw at intake, in five the children were removed from the home, and in two they were left in the home. In one case the child was left in the home because the allegation that the mother refused to plan for a place for him to live when she moved upstate seemed to the judge to be an exaggeration. It seemed that she *had* made arrangements for him to stay with an aunt, but the teen fought with her and refused to stay there, preferring to stay with a neighbor (ACS wanted the neighbor to be the foster parent). The judge literally yelled at

the ACS attorney about how he found this case ridiculous and something that should not have been filed. In the other case in which the child was paroled, the mother had refused to press statutory rape charges. The law guardian assigned to the teen girl jokingly asked the judge during the hearing what the service plan would be, thus showing her feeling that this case was also ridiculous. In the cases in which removal was sought, various factors led to this outcome: 1) a mother kicked a teen out of the home, 2) a mother left her children with their grandmother who was no longer able to care for them, 3) a mother violated the conditions under which her children were returned to her and was arrested for shoplifting, 4) a child presented a danger to his siblings and was removed, and, finally, 5) the mother had a slew of serious problems and seemed unable to care for her infant son. She left him with inappropriate caretakers in the homeless shelter she was living in, was not getting medical care for him, and had untreated mental health issues.

In the cases against teens mothers (four cases), in half the child was removed and in half the child remained with the mother. In one case in which the child was removed the issue was that the mother was AWOL from foster care and was arrested. In the other, she took the child out of the group home at "all hours." In one of the cases in which the child was not removed the mother still lived at home and was being supervised with the baby (who was diagnosed as "failure to thrive") by a preventive agency and her mother. In the other, the mother left the child with his/her ill great-grandmother and was not going to school, but otherwise the child was well cared-for. These cases illustrate the level of supervision teens in foster care are under and how issues that seem to be mainly about not following group home rules are likely to lead to their involvement with child welfare. When teen mothers are seen as behaving irresponsibly in terms of following rules, this is viewed as a sign they are not adequate caretakers, and they risk having their own children placed in foster care.

I saw two alcohol cases at intake. In one the child was left in the home. This case was almost deferred, but the caseworker strongly argued she was being emotionally neglected and not adequately supervised. In the other, the children were taken into custody by ACS after their mother was hospitalized with dementia which was thought to be related to her alcohol abuse. The children's grandmother knew her daughter (the mother) was ill, and had come from Florida to New York to take both her daughter and her grandchildren to live with her. The mother was hospitalized and ACS placed the children before the grandmother was able to make the trip. So, only cases in which alcohol use is very debilitating are likely to end up on court, and the child is likely to be placed in foster care.

About 30% (four cases) of the cases of excessive corporal punishment I observed at intake resulted in the child being removed. In all of them, it was the mother who had hit the child. In three of these, the mother had been arrested for the incident and the children were removed at that time (but only the child who had actually been hit remained in foster care for more than a couple of days). In the fourth, the mother still had an open family court case which had been settled and the children had been returned home under ACS supervision with conditions. Using corporal punishment was a violation of one of the conditions, and so the children were to be removed again. In the other nine cases the children were paroled. In five of these cases, it was the father who had hit the child, and the child was paroled to the mother with an order that she keep the child away from him except for supervised visits. In most of these cases, the mother and the father were no longer living together or in a relationship. In the other four cases, it was the mother who had hit the child, and the children were left with her because she was either engaged in some kind of counseling or it seemed to have been a one-time incident. Again, arrests play a large role in foster care placement. On the other hand, if a parent will accept

services or if it is easy to bar the parent who has used corporal punishment from unsupervised contact with the child, the case is seen as presenting less risk and the child is unlikely to be remanded.

In all the cases I observed at intake involving domestic violence except one (eight out of nine cases), the children remained in the home. Most of the time (six cases), it was a father/boyfriend who had hit the mother, and the children were left with her with an order of protection excluding him from the home. The mother, in many but not all of the domestic violence cases (four), was not named as a respondent in the petition. In one case in which the mother was named, it seemed both parents were violent and so both were respondents, and in the other the mother admitted smoking marijuana and so she was also named as a respondent for that reason. The only remand I observed in a domestic violence case happened because both parents were arrested, and the children were placed in foster care at the time of their arrest. In most cases, the risk children face from domestic violence is dealt with through orders of protection and mothers, who are usually the victims, retain custody.

In none of the medical neglect, educational neglect, or home alone cases were the children removed; however, in the home alone case the ACS attorneys did initially ask for a removal but was overruled by the judge. Medical neglect and educational neglect are generally seen as cases in which services for the family are appropriate because they present lower risk to the child. Home alone cases seem to be very likely, in general, to result in a removal (often because the mother is arrested), but this case happened to be one of the few times that the judge questioned ACS about their plan for the family and the judge seemed to think that the case was a one-time incident and that the mother would not do it again.

In summary (see Table 10), it seems that drug use and mental health issues are very likely

to result in a removal because these issues are thought to present a great deal of risk to the children involved. Only if parents are able to *quickly* access treatment or if there is another parent in the home who caseworkers or judges believe will not allow a parent to be alone with their children, are children likely to remain in the home.

Table 10: Percentage of Intake Cases Resulting in a Removal
(Among intake cases in which court appearance was observed; 62 cases)

Issue	Number	% resulting in removal
Mental Health	4	100%
Drugs	21	76%
Teen Mothers	4	50%
Alcohol	2	50%
Excessive Corporal Punishment	13	31%
Domestic Violence	9	11%
Educational Neglect	7	0%
Home Alone	1	0%
Medical Neglect	1	0%

In general, however, parents with these problems are seen as presenting a great deal of risk to children and a removal is sought. This seems to be because of a belief that parents with these problems cannot be expected to care for children nor can they be expected to deal with their problems without state involvement or while also caring for children. The perceived high risk associated with drug use is also related to the widespread demonization of illegal drugs in family court, especially crack cocaine which is associated with poor Blacks. In excessive corporal punishment cases, removals are also likely, unless it is possible to remove the parent from the child. In other words, if a non-custodial father has used corporal punishment, the child will likely remain in the home with the mother and an order of protection will be issued against the father. In most domestic violence cases, unless the mother is also violent or unless both parents are arrested, the child will remain with the mother as long as she abides by an order of protection to keep her abuser away from herself and her children. If she violates an order of protection, the

child is seen as at a great deal of risk, and a removal is very likely. Other cases are more likely to be seen as lower risk and are then generally dealt with by services.

Interestingly, those cases that involve parents' problems (drugs, domestic violence, and mental health) are those most likely to be seen as presenting "imminent risk" to the children even if the question of the care the parent was providing is not addressed. Those cases in which harm to children is more apparent—children who have missed school, who were left unsupervised, or not given medical treatment—are those least likely to be considered high risk and result in a removal. It seems that parents' problems are seen as presenting more risk to children than these concrete failures of care which are likely to be dealt with through services rather than foster care.

It is also important to note that parents' arrests played a large role in why children were placed in foster care. When an arrest occurred someone was needed to care for the children and foster care was sought for this reason; however, after the parent is released, they will not be able to automatically regain custody and will have to meet the higher standards necessary to get a child out of foster care (for more on these standards, see Chapter 9). Greater police presence in poor neighborhoods of color and more arrests thus plays a role in patterns of placement in foster care and why black children are disproportionately placed. In addition, the prevalence of arrests shows the extent to which the state criminalizes neglect cases involving corporal punishment or cases in which parents cannot provide adequate care due to poverty and a lack of resources. As demonstrated in Chapter 3, the child welfare system in cities like New York became increasingly punitive and intertwined with the criminal justice system at the same time it came to "serve" Black families almost exclusively and as neoliberal ideologies and increasingly racist discourses which demonized poor people of color came to prominence.

Next, I want to examine a few cases closely that illustrate the complexities involved in

making decisions about whether a child is at imminent risk in a home or not, and therefore whether or not foster care placement is needed. In each, there are a variety of factors involved, but I have chosen them because they especially highlight a few important themes: gendered expectations about caretaking; the role of compliance; middle-class expectations of proper parenting; and the role of class in shaping views about credibility.

Case 1: Gender and "Failure to Plan"

I witnessed this case at intake in which a teen girl, who originally had been taken from her mother soon after she was born and tested positive for crack cocaine, had been living with a grandmother most of her life, until the grandmother died. Then the girl lived with an aunt who died as well. These relatives were both legal guardians who had been awarded custody by the family court. After the aunt died, the girl then went to live with a cousin, but the cousin needed financial help to care for her. ACS somehow became involved in the family (it was not clear to me how) at which point the caseworker found the child's biological mother and asked her to come to a conference to make a plan for the child, but the mother did not attend. The caseworker brought this case to court at the direction of her CPM to file a neglect petition against the mother. At first, the lawyers rejected the case and told the CPM there was nothing that would legally constitute neglect. The caseworkers were instead instructed to help the cousin file for custody and get public assistance for the child. However, the CPM remained adamant that they file on the mother. She filed in details the caseworker had not given to the attorneys[181], stating that they believed the child had been living with the mother for several months, that she was not in school, and that she was not getting treatment for pain in her hip. They had also learned that the mother apparently did file for custody of this child in the Bronx before ACS became involved and that

[181] It was unclear if the caseworker simply did not have the information, or if, for some reason, she did not communicate it to the attorneys.

she had, apparently, kicked the child out of her home sometime later. It was at this time that the cousin came to pick the child up which led, eventually, to ACS being involved. When the attorneys heard these details, they decided to file the case and to allege that the mother had kicked the child out of her home without a plan of where she would live, educational neglect, and medical neglect. The attorney assigned to the case was told to draft the petition with these allegations and that they would be asking that the child be remanded so that the cousin could receive funds as a foster parent.

While the assigned attorney wrote the petition, she continued to receive more information from the caseworker and the CPM, and it became clear that no one actually knew for sure if the mother had kicked the child out of the home or not.[182] The attorney eventually concluded that the allegation that the mother had kicked the child out was "bullshit" but it stayed in the petition as a key allegation in the case just the same—the most serious one, in fact, and the one most likely to convince the judge to grant their request to remand the child. Educational neglect with teens and medical neglect rarely result in removals (see above).

It is significant that the attorneys and the CPM decided to file the case against the mother and ask for a remand of the child despite there being another legal mechanism, namely asking the mother to voluntarily place her child in foster care, which would have allowed the cousin to get foster care funds. This remedy is one that is frequently used by ACS, and it would not result in court supervision of the mother. This solution was used in one case involving an uncle who was the legal guardian of a teen girl and actually *did* kick her out of the home and *admitted* doing so because she was too much trouble. In that case the CPM wanted to file a case against the uncle for not planning for the child, but the lawyers told her that this was inappropriate and,

[182] In one story, the mother told the child she could leave, in another she told the child she had to leave, and in yet another she told the child she could not live there if she was not in school.

instead, they should ask him to sign a voluntary placement form, which the CPM admitted the uncle was willing to do. Even after two CPMs and one supervisor all told the lawyers they wanted to file a petition, the lawyers insisted that having him "sign a voluntary" was more appropriate. During this process, one CPM stated that they wanted the uncle to "suffer the consequences" as a legal guardian who was not planning for the child. She clearly felt that the process of family court would be punitive in some way. The lawyer replied, simply, that family court was not punitive, so they would not be filing. I also witnessed a case in which a father, whose girlfriend was unable to cope with her drug addiction, and so he had been caring for her children. He told caseworkers that he was "overwhelmed" and did not want to continue to care for the children. There was no discussion about filing against him for a failure to plan, even though he was unwilling to continue to care even for his own biological child. [183]

I think the difference between how these cases were handled has very much to do with gender and the expectations commonly held about who should be primarily responsible for the care of children. I saw several cases in which mothers were considered neglectful for their "failure to plan" for their children when caretakers they had found were unable to continue to care for the children (often grandmothers who died or became too ill to care for children) or cases in which grandmothers were considered neglectful when they were no longer able to care for their grandchildren due to their poverty or old age. I never saw this kind of case filed again a father or a male legal guardian. In looking at the cases I saw in family court in general, women are named as respondent far more often than men. They are a large majority of respondents,

[183] One mother I spoke with, Mary, complained to me that, after her nine-year-old daughter was removed, the caseworkers at the foster care agency gave her father visits, even though he had not seen her in several years and had never paid child support. His financial support might have helped her avoid eviction which was what precipitated her child welfare case. She wondered aloud why his failures with her daughter were not considered neglect. That the foster care agency caseworker made an effort to contact this father is actually fairly rare, and many fathers I met said they felt they were largely ignored by agencies (see Chapter 9).

except in cases of domestic violence, corporal punishment, abuse, and mental health, and a small majority in drug cases (see Table 11).

Table 11: Percentages of Mothers and Fathers as Respondents (% of total cases in which allegations were clear; 234 cases)

Type of Case	% w/Respondent Mother	% w/Respondent Father	% with Both	% Unclear
Drugs (77 cases)	58%	1%	38%	3%
Ex Corp (29 cases)	41%	41%	17%	0%
Domestic Violence (19 cases)	0%	68%	32%	0%
Ed Neg (14 cases)	79%	7%	14%	0%
Mental Health (13 cases)	46%	0%	54%	0%
Teen Moms (9 cases)	100%	0%	0%	0%
Alcohol (6 cases)	100%	0%	0%	0%
Medical Neglect (4 cases)	75%	25%	0%	0%
Home Alone (3 cases)	100%	0%	0%	0%
Arrests (3 cases)	100%	0%	0%	0%
Malnourished Child (1 case)	100%	0%	0%	0%
Abandonment (1 case)	100%	0%	0%	0%
Other (13 cases)	77%	0%	15%	8%
Abuse (26 Cases)	12%	38%	46%	4%
Termination of Parental Rights (16 Cases)	38%	0%	44%	19%

So, in general, and as found by other researchers (see Chapter 2), mothers are held more responsible for perceived neglect of a child. This reflects the fact that many of these households are female headed, but it also seems that men are held less responsible when they were involved. Fathers are less likely to be subjected to court standards and supervision than are mothers. This demonstrates a double-standard whereby women are punished with court supervision and considered neglectful for failing to care for children, while fathers are not treated in this way, but are held financially responsible for children through child support proceedings.

It was also the case that many caseworkers did not ask about fathers nor investigate them as potential caretakers when children were removed from mothers (see also Reich 2005; Roberts 2002). I witnessed several cases in family court in which fathers came forward to get custody of

children. They were not named as a respondent in the case and were not living with the mother at the time the children were removed. Although they had no allegations against them and there was no evidence that they might not be fit caretakers, they were not given custody and were told that they needed to find a lawyer and file a custody petition or that the caseworkers would be "exploring them as a resource" and would get back to them about taking the child after they were investigated. It was assumed that they would not be proper caretakers, and they had to prove that they were before gaining custody.

I saw one father in court, for example, become extremely angry at being told he needed to be checked out before he could take his son who was removed from the mother after being beaten severely by her new boyfriend. The law guardian on the case, unhelpfully, told him he should be glad that ACS wanted to check out anyone they were going to place a child with (i.e. they don't just give children to anyone without an investigation). She later told me she thought he was being unreasonable and acted "inappropriately," making her reluctant to support giving him custody. One 18B attorney told me this happened all the time and that this cut children off from an entire set of potential family caretakers, not only fathers, but paternal relatives, who are rarely "explored" as potential kinship foster parents.

In short, it seemed that mothers are expected to provide most of the caretaking, and they were held responsible by the court if they were seen to have failed. In contrast, men were often not held responsible for children and did not have cases filed against them as often. This is partly because they are not always involved in families, but it also reflects an assumption that they are not the most important caretakers. Even when men attempted to be involved, it was relatively easy to deny them custody, and they were expected to prove their worth as caretakers even in the absence of any evidence they might not be appropriate parents. This situation is likely related to

pervasive racialized stereotypes about "deadbeat" African-American fathers who are seen as completely uninvolved with their children and as selfishly spending their money on themselves and their time with new girlfriends rather than with their children. "Absent" African-American fathers are often, blamed in the press and in some scholarly research, along with Black mothers, for social problems facing black children such as high-school drop-out rates, drug use, poverty, and gang activity (Hamer 2001). In this context, it is assumed fathers will be absent and will continue to be the cause of children's problems. Thus, denying them custody can seem unproblematic (see also Reich 2005; Roberts 2002).

Case 2: Compliance and Middle-Class Expectations of Proper Parenting

In this case, which I learned about from a 1028 hearing, a primarily Creole-speaking, Haitian immigrant, working as a school bus driver, who had been taking care of his nine-year-old daughter for about a year (the child previously lived with her mother in Haiti), was accused of medical neglect and inadequate guardianship for leaving his child, for an hour or two before and after school, with "inappropriate caretakers," namely two teenage girls and family friends who lived upstairs. Since the child had been living with the father there had been two incidents in which she had had a seizure. The first time this occurred, he was at work and the family upstairs called for an ambulance. It seems that the hospital or the EMTs called ACS when they realized that there was no adult present. According to the caseworker, she found no problems with the home. The child seemed well taken care of, was in school, reported her father used no corporal punishment, and appeared healthy apart from the seizures (which, it seemed, happen rarely). In light of this, the caseworker offered services: she told the father to put the child in day care after school, attempted to provide a visiting nurse to ensure the child took her seizure medication, and monitored the father's treatment of the girl. However, she felt that the father was not cooperating

as he had not followed up when given child care vouchers, had not picked up her medication for a few days, and had not taken his daughter to a specialist as recommended. The second time she had a seizure, the father was apparently present, but the caseworker still felt that he was not doing enough to ensure she was getting medical care and adequate supervision. So, an "elevated risk conference"[184] was scheduled to decide what to do next, but the father did not attend. He testified that he was told it had been canceled. After this, they removed the child.

According to the father's testimony at the 1028 hearing, he had had problems using the child care voucher he was given and then had been unable to get another one because the caseworker was on vacation. When he finally received another voucher, the second seizure occurred, and his daughter was removed. He explained that he had tried to give his daughter the medicine but she sometimes refused to take it. Finally, he described how he worked long hours in order to support her which left him little time to deal with her appointments and sometimes made it difficult to get her prescription. He further stated that he would be willing to let a nurse into his home to ensure the child takes her medicine and to find child care for her.

The ACS attorney asked questions about if he had complied with directives in an effort to show he was not taking her condition seriously nor taking steps to keep her safe, but the father outlined very consistent and plausible reasons for not doing these things—his schedule, lack of communication between himself and the caseworker, and language barriers. What was especially striking was that the ACS attorney asked him if he had changed his work schedule to care for the child after he learned of her condition, implying that this would have been somehow as easy for him to do—an immigrant working at a relatively low-wage job, in which hours are set, for an

[184] Basically, this is a conference held by ACS when they are working with a family and feel that the child is at increased risk despite services or when they feel services are not working. The idea is that all the parties (the parents, caseworkers, and service providers) can discuss an alternate plan to avoid foster care placement. If nothing can be worked out a removal will sometimes be made.

hourly wage—as it might be for a middle-class professional with a more flexible schedule, "personal days," and sick leave.

After all the testimony, each lawyer was given a chance to state their position. The father's attorney argued that his client would be willing to comply with all services and that it was clear the child had been well cared-for. He further pointed out that leaving the child for a couple of hours with teenagers was a babysitting arrangement and not inadequate supervision. I noted that it is also the kind of arrangement readily available to someone in this father's position, while more formal child care or an after-school program might have been impossible for him to arrange. It also seems that he trusted the teens, and they acted appropriately when her first seizure occurred. The law guardian also supported returning the child home, in part, she said, because this was what the girl wanted and also because it seemed that the father was new to the U.S. and to dealing with a child with a serious medical condition. Given that his primary language was Creole and the doctor and the caseworkers provided instruction in English, he likely simply needed more help. In the ACS attorney's summary of the case, he clearly laid out why the child would be at risk in the home. He made the argument that the caseworker was a credible witness, who had tried to work with the father and to provide services that would have reduced the risk to the child, but he did not comply and this continued to place his child at risk. His non-compliance led them to believe that things would not change. The attorney also highlighted the fact that the father had not attended a case conference, the implication being that he was not taking the situation seriously enough. He was portrayed as careless and irresponsible rather than as a single parent with little time and money.

After listening to these arguments, the judge decided to return the child to the home with intensive services, and stated that it seemed to her that the father might simply not have

understood her medical condition and the doctors, and that the case "cries out" for preventive services rather than foster care. She ordered that the father be given help in understanding the doctor's orders (either by getting an interpreter or by getting things in writing) and a visiting nurse or other person to help with the medication. She further ordered the father to obtain childcare for the child because she needs supervision given her medical condition. She added that if the teens upstairs *must* baby sit, they must be told about her condition and what to do.

In this case, there was agreement between the judge, the law guardian, and the ACS officials about why the child was at risk: the father did not ensure she took her seizure medication, and he left her with "inappropriate caretakers." The caseworker's testimony that she believed the child was, generally, well cared-for did not outweigh the factors that were thought to place her at risk. Interestingly, there was no testimony or questioning from a medical point of view about the child's seizures: how bad they were or how they had either harmed or had the potential to harm her. These officials differed, however, in terms of how this risk could be dealt with. I was able to talk to the law guardian on this case, Michelle, a white woman in her 30s, several months after it occurred. When I asked her about a case that she felt was "borderline" in which she had a hard time deciding what position to take, she mentioned this case (I did not ask about it and had not actually recalled that she was involved). She told me that the child had told her very clearly that she wanted to go home, but, as a law guardian (whose job it is to represent her interests) she was ambivalent about taking that position because she was worried about the child's medical condition:

> I was very concerned obviously, about the seizures. I didn't want, you know, her to suffer more seizures. But I spoke to my supervisor and [he] said if the father testifies and says that whole, you know, we'll make sure to give the medication, we'll do this, and we get in-home services, then I should support the child…I felt uncomfortable, but after talking to the supervisor, I felt better. That's what I wanted to do, but I was just worried about

the medical part of it.

Michelle's comments in court also signaled that she felt the father was not intentionally being neglectful nor did she find him a poor caretaker, but rather that he was in need of help. The fact that her client wanted very much to go home meant she was inclined to support sending the child home, and she was able to feel she was not putting the child in danger because services would be in place. The judge agreed with this assessment and ordered that child be returned with services. It seemed this decision was easier given that it was in line with the law guardian's position because, as Martin Guggenheim (2005) has pointed out, and as I observed, law guardians, as the representative of the child's interests in family court proceedings, have a lot of influence.

In contrast to the views of the law guardian and the judge, ACS officials felt that the fathers "non-compliance" meant that services would not alleviate the risk to the child. The caseworker believed that the father was not timely in following-up with the services that ACS required: he had not gotten her prescription immediately and continued to leave his daughter with other children after school. The reasons why these things might have occurred—namely his long and inflexible working hours and his difficulty understanding English—did not change their view that the child was in danger in the home. Instead, he was seen as irresponsible, individually blameworthy, and willfully "non-compliant" and was therefore seen as a risk to his daughter.

Case 3: "Judgment," Class, and Credibility

In this case, another 1028 hearing, the mother's judgment was questioned and used to assess risk to her child, a three-year-old who was removed due to the mother's alleged drug use and mental health problems. The mother was in her early 20s, white, received welfare, and had previously been a victim of domestic violence and was almost homeless when she left that relationship. The case initially came to the attention of ACS when neighbors, in an expensive

building in lower Manhattan, called police with complaints of yelling and fighting coming from the apartment. The mother and her son were living there with the mother's boyfriend who was a former Wall Street trader now investing in restaurants. According to the caseworker's testimony, the initial investigation showed that the domestic violence allegations were probably false, so the caseworker had decided to mark the case unfounded. However, she planned to visit the home a few more times before doing so. On one of these visits, the caseworker was told by the boyfriend that the mother had moved out, and he then revealed that the mother used drugs and that they had met through a mutual friend in a drug-treatment program. He also told the caseworker that the child had found the mother with a needle in her arm, passed out, and showed the caseworker drug paraphernalia that he said the mother had left in the apartment. He said he had offered to care for the child while she went to treatment, but she had refused and left. The caseworker also testified that the mother's therapist and the child's pediatrician both had expressed concern that the mother lived a "chaotic life" and did not provide stability for the child. However, the pediatrician also felt that the child was healthy and well cared-for; an assessment the caseworker stated she shared.

When the case was first filed in court, the mother was asked to take drug tests, but both of the tests she submitted to were inconclusive.[185] The mother had a record of negative tests from an outpatient program, but their testing policies allowed for the possibility that she had provided clean samples from someone else, and so the caseworker did not believe these tests were accurate. Because of all of this information, the decision was made to remove the child. The mother became very upset and hysterical when the decision was made to remove the child, which

[185] In one she had apparently drank fluids to dilute her urine, and in the other she gave a sample of urine that was cold.

the ACS caseworker and the law guardian both took to mean that she was mentally unstable.[186]

The mother's attorney, in his questioning of the caseworker during the hearing, attempted to show that the evidence for her drug use was not conclusive: she had tested negative and it was likely, he argued, that the boyfriend had made up the allegations of her drug use out of spite after she had left his house and broken off their relationship. It was only his word that provided any evidence of her drug use; the caseworker admitted, in her testimony, that she had no other evidence. The mother testified that he drank, was controlling, and that it had seemed he wanted to "save the poor white girl on welfare" and felt he could tell her how to behave. She also denied that she had been using, although she admitted she had used drugs in the past and that her son did have to detox from methadone when he was born. She also explained that she had had to leave an abusive relationship with her son's father (he was incarcerated) and needed a place to live when she moved into the boyfriend's apartment, which was in a better neighborhood. When the mother was questioned by the ACS attorney and the law guardian, she again denied using and repeated her feeling that the boyfriend was controlling and vindictive. She also admitted that she had been diagnosed as bi-polar but was compliant with treatment until very recently when she had had a Medicaid problem and was unable to fill her prescription. However, she was not able to explain the inconclusive drug tests she took in court.

The law guardian's questioning went further than this, focusing on how she had met this man and when she moved in with him. The mother admitted she had not known him long and had not known much about him when she and her son moved in with him. But, she repeated, she needed a place to live. She was asked why she stayed if he was an alcoholic and controlling, and she replied that she left when things got too bad. I witnessed this particular hearing while

[186] Another law guardian in the office asked if she could come to watch this 1028 hearing because she thought the mother was entertaining and wanted to see what she might do this time.

"shadowing" this law guardian as she did her job, and she explained why she focused on this part of the story. She told me she was concerned about the drug use, but equally concerned about the mother's "judgment" in deciding to live with this man after knowing him for only a couple weeks. She further told me that she had spoken with the boyfriend and felt he was telling the truth about her drug use and that he was not "a bad guy," but had just tried to help her out.

After all the testimony, the mother's attorney, in his summary, stated that it was clear that the child had been well cared-for and that there was no solid evidence of her drug use. Thus, the child would not be at risk in the mother's care. Notice that his argument was that she was likely not using, if there had been more solid evidence of her use he probably would not have asked for the 1028 hearing. The ACS attorney stated that there was no reason to believe the boyfriend would make up the allegations or that the drug paraphernalia in the apartment was his, since he was not a drug user. His denials that he used drugs were assumed to be true. That he had met her in drug treatment and obviously has had a drug problem was not taken as evidence he could have been using. Furthermore, the mother could not explain the two inconclusive tests, so they had to believe she was hiding her drug use. As for the negative tests, they were questionable given the testing procedures. The law guardian, in her summary, stated that she was convinced the mother had a drug history, recent, if not current, and denied it to the caseworker. There was no evidence the boyfriend was vindictive enough to make up these allegations—he had tried to help her and her son, it seemed. She was also not taking her medication for her mental health issue, and showed poor judgment by moving in with a man she barely knew, who, according to her, drank. All of this meant that the child would be at risk if returned to the mother's care.

The judge, in making her decision, stated that ACS had proven imminent risk and that the case was not, in her mind, simply about the mother's drug use or whether or not the boyfriend

made up these allegations. She believed that the mother had a serious mental illness and a history of serious drug abuse, that she was not on her medication, and that she had not maintained a stable residence of her own for the child. The judge went on to state that she "credits" (i.e. finds credible and is taking into account in her decision) the information from the psychiatrist about the mother's history and the statement by the pediatrician that she moved constantly, so she felt this was clearly a chaotic life for the child. Further, the mother placed her child at risk by moving in with her boyfriend after only knowing him a week and a half. The judge also said that she found the mother was "defensive" on the stand, and showed that she was not credible and lied to the caseworker. One the other hand, the judge found the caseworker to be very clear and coherent, so her testimony was more credible.

In this hearing, several factors played a role in the decision that was made. First, assessments about credibility were used, in part, to conclude that the mother was likely a drug user who was not taking medication for her bi-polar disorder. Evidence that she had attempted to, essentially, "cheat" on her drugs tests and could not explain what happened and that she had a lapse in her mental health treatment, in the context of her behavior during questioning which made her seem "defensive," outweighed the negative drugs tests from another agency. At the same time, it was interesting that statements by the boyfriend, which are hearsay—he was not present to be questioned about what he told the caseworker he had seen—were taken as partial proof of her drug use (recall that this was possible because of the loosened rules of evidence in 1028 hearings). In addition, I would argue the boyfriend was taken as credible because he seemed to have been helping the mother and the theory that he had made up the allegations out of spite was only backed up by the mother who was not taken as credible. It is also likely that he was believed because of his contrast to the mother in terms of his "respectability." He had a

stable life and an expensive apartment, had made money on Wall Street, and was able to retire relatively young and to continue to invest. This is a stark contrast to a single mother with a drug history, who was not working, did not have a stable residence, and had a psychiatric diagnosis. When all the evidence is weighed in this way, the mother is deemed a risk to her child because of her drug use, "judgment," and mental illness.

Apart from the issue of credibility and the role it played in weighing various types of evidence for the mother's drug use, her judgment was also questioned in that she had decided to move herself and her young son into the apartment of a man she barely knew. Her testimony about his behavior, which her attorney attempted to use to undermine his credibility, was, in the end, taken by the law guardian and the judge as further evidence of her poor judgment. In other words, not only had she not known this man when she moved in with him and did not know whether he would be a safe person for her child to be around, when she saw him exhibiting behavior that could place her child at risk, i.e. drinking heavily, she still stayed. That she moved into his home to avoid homelessness was not taken into account. Her "chaotic life" was seen as presenting a risk to the child. It was interesting that the child's pediatrician and the caseworker both decided that the child seemed well cared-for and did not point to anything specific about her chaotic life that had been detrimental to the child. However, constant moving and living with unknown persons was seen as presenting risk and was weighed more heavily than the things the mother had apparently been doing right. I would argue these assessments come from a certain ideal of raising children that is, in part, class-based. Having a stable home, when you are not working, supporting yourself on welfare, and have just left an abusive relationship, in an expensive city such as New York, is very difficult for a poor woman. However, her problems were labeled as neglect and blamed on her individually—her "chaotic life" was not seen as an

outcome of her poverty and her history of being subjected to violence but rather her irresponsibility, poor judgment, and drug use.

My observations in family court shed light on how the category of neglect is used in practice. Half of cases had to do with parents' problems—drug use, domestic violence, mental health, and alcohol abuse—but there are a range of issues that can be fit within the legal category of neglect. Some have to do with meeting children's basic needs and others with situations in which children have been harmed. Many, however, have to do with parental behaviors that are thought to put children at risk. In many cases, the larger context of how a parent actually cares for their children on a day-to-day basis and the resources, or lack thereof, they are able to access to provide care for children and to deal with their problems are largely ignored by the court. Instead, individual behaviors such as drug use, or particular moments in time such as when a parent, out of frustration, slaps a teen, are taken as risks to the child. These risks can then be used, especially in the case of drugs and mental health, to justify foster care placement. In the case of drugs, it seems this attitude is related to prevailing negative societal views about drugs, especially the drugs more commonly used in poor neighborhoods of color like crack cocaine.

It is also possible to expand the definition of neglect to include issues such as shoplifting and refusing to press charges against a teen's boyfriend after they have had sex. Although not all of these cases result in a child being placed in foster care, they still justified a significant state intervention in family life by allowing the court to require parents to engage in services and to require significant surveillance of their home. More generally, bringing a case to court to supervise the family and force a parent to engage in services in lower-risk cases often creates tension and destroys the trust that parents might build with caseworkers who are there to provide services. This can often be counterproductive in terms of making changes in the family or in the

parent's behavior.

In terms of assessing risk, it seems that the court tends to see any drug use and parents' mental health issues as presenting great risk to children due to the assumption parents cannot be in control of themselves or get help on their own and still raise children. So, in many of these cases, foster care placement is authorized. In cases of domestic violence and corporal punishment, a more common solution is to use orders to protection to keep parents, usually fathers, away from their children. In other kinds of cases, if parents comply with services, they can usually retain custody of their children.

When looking more closely at particular cases, it seems that parents are judged in subtle ways and often held to middle-class standards. All aspects of parents, especially mothers, lives are examined, including, as in the case of the young, white mother discussed above and as in the case described to me by Marilyn (discussed in Chapter 6), who they choose to have relationships with and under what conditions. However, the constraints they face in caring for their children and/or the barriers they face in accessing help for their problems are often ignored and these problems are recast as individual failures and labeled neglect. The poor women of color who are disproportionately involved with family court face numerous problems that stem from their race and class including inflexible job schedules, lack of childcare, and violence and poverty that lead to "unstable" housing situations and "chaotic" lives (Mullings & Wali 2001). However, the structural nature of these problems is ignored by the court. In addition, fathers are often not expected to be caretakers and are either not expected to take responsibility for children or must prove their worth even in the absence of any evidence they might present a risk to their child. This seems related to negative stereotypes of "deadbeat" African-American fathers (Hamer 2001). Sometimes parents are able, as in the case of the Haitian father, to fight to regain custody,

but, as I demonstrated in Chapter 7, the chances to do this are very limited due to crowded schedules, high caseloads, and a culture that discourages this kind of advocacy.

Chapter 9:
Reunification Roadblocks, Parental Reform, and the Recreation of Poverty

Andrew Polsky's concept of the "therapeutic state" (introduced in Chapter 2) is a useful framework for understanding the process of parental reform and family reunification after a child has been placed in foster care. He describes the modern welfare state's therapeutic approach to "marginality" as beginning

> with the premise that some people are unable to adjust to the demands of everyday life or function according to the rules by which most of us operate. If they are to acquire the value structure that makes for self-sufficiency, healthy relationships, and positive self-esteem, they need expert help. Accordingly they become the clients of behavioral specialists, clinicians, and social workers—a group I refer to generically as social personnel… [T]hrough instruction, counseling, and supervision, clients are assisted in overcoming their personal deficiencies and learning to bear the pressures placed upon them. Social personnel can maintain subsequent oversight to assure that clients have not slipped back into their former ways.

Although more privileged members of society might seek out the help of "social personnel" to deal with their problems, the character of this relationship is profoundly different when it involves people who are "marginal" under the supervision of the state. It is assumed that poor people need to be "normalized" and inculcated with mainstream values in order to solve their problems. What is required of them is nothing less than "wholesale personal and family reconstruction," and they cannot choose when to begin and end their treatment as the coercive power of the state can be used to punish them in various ways if they do not demonstrate change: "The state has the legal tools to impose client status upon marginal citizens and the coercive instruments to compel them to remain in that expected position" (Polsky 1991: 3-4).

What has come to be the current child welfare system has its roots in the first arms of the therapeutic state (see Chapter 3), and some observers of the current child welfare system have noted that underlying assumptions in child welfare practice signal a continued adherence to this

therapeutic approach. For example, Reich (2005) describes the goal of "services" in child welfare in this way:

> Because the state has determined that a child's family life is unacceptable, a significant reform in parental behavior and family dynamics must occur before the state will relinquish control and entrust the child's material care and legal custody to his or her parents. The state facilitates this transformation by attempting to resocialize parents to behave in ways that are seen as appropriately parental (pg. 115).

Appell puts it more starkly and argues that child welfare is more about punishing mothers than it is about protecting children and states that often the scope of intervention expands "beyond child protection into every realm of mothers' lives in the name of making them good mothers" (Appell 1997: 579-580). I found similar dynamics in my own research. In addition, parents are often expected to "engage in" and locate services on their own and are told this shows that they have "taken responsibility" and "really care about their children." These views are related to neoliberal ideology which holds that good citizens and parents need to take control of their own lives and not expect help from others. In this way, child welfare is part of creating active, independent citizens and parents who can take care of their children "on their own." Because they are seen as having failed at being this kind of parent up to now, they are expected to be compliant and deferent, and to accept the views of their problems and the proper solutions to them held by child welfare officials.

Polsky also acknowledges that the therapeutic approach has never been the only approach taken by state bureaucracies that deal with marginal populations. Other ways of understanding what makes some groups marginal, as well as issues such as lack of funding, can lead many agencies to adhere to a therapeutic approach unevenly or not at all. The same is true of public child welfare agencies and child welfare policy. It has long been a stated policy at the federal level that children should be with their families whenever possible, and this is codified through

the requirement that agencies make "reasonable efforts" to prevent the removal of children to foster care and toward family reunification after a child has been removed. In other words, families are supposed to be kept together or helped to get back together through services meant to create changes that lower the risk to children. However, more money is spent for foster care than for services that aim to reunify and "reform" families (Roberts 2002: 142; Pelton 1989; Wexler 1995; Reich 2005: 121; Golden 1997: 18). In addition, a continuing debate has marked the field about whether children are better off in troubled families or in foster care, and therefore what actions to take with regard to child maltreatment: spend money to help the family or spend money to have other families raise them (Appell 1997; Reich 2005; Roberts 2002).

Under ASFA federal child welfare policy has shifted away from encouraging family reunification and efforts to avoid foster care with "reasonable efforts," has created a shortened timeline for reunification, and has provided various incentives to encourage adoption. This law, along with resource constraints, such as high caseloads and a shortage of reunification services, comprise the structure within which the child welfare system operates in New York City. These realities often limit the workings of the "therapeutic process" as scarce resources are focused on, for example, finding a potential adoption placement rather than in planning and providing services to reunify the family. ASFA encourages this by shortening the time children can be in foster care and by encouraging adoptions.

Despite these constraints, parents are still expected to behave in ways that a therapeutic approach requires in order to gain custody. For many parents I spoke with, poverty made complying with service plans difficult; however, the structural reasons for non-compliance were generally not recognized and the blame for lack of change remained squarely on the individual (this pattern was also found by Reich 2005: Chapter 5) . Furthermore, for some parents, a focus

on personal change and "working on yourself" became one factor in their deepening poverty as their children were in foster care. If parents were then unable to demonstrate an ability to provide for their children, reunification was delayed further.

In this chapter, I will discuss my findings about the parental reform and reunification process and the ways in which the therapeutic state offers a useful framework to understand how this process works in everyday practice. I will begin with a case example to give the reader a sense of how the process works. Then I will turn to my research findings about service plans, various kinds of delays in the process, and the special roadblocks faced by fathers. From there, I will discuss the kind of attitude that is expected of parents and the changes that services aim to make. The chapter will end with a discussion of how poverty is recreated in child welfare and its role in delaying reunification.

Mary's Case[187]

Mary's example is typical in terms of the barriers that parents faced and the delays they experienced. However, it is not typical in that there was more discussion about what the service plan would be and why certain services were necessary than generally seems to occur. However, I chose this example precisely because these discussions provided valuable data about the thinking behind how and why service plans are devised and when reunification is appropriate. I should also state at the outset that I went to some conferences in Mary's case when another advocate could not attend. Mary did not expect me to directly advocate for her (she has no trouble speaking up for herself), and I said very little. However, it is likely I was perceived as an advocate although I also told everyone I was conducting research about parents' experiences with child welfare.

[187] See Appendix 2 for more details about this case.

Mary is a college-educated, white, single mother, in her early 40s, whose daughter, Julia, age nine at the time, was placed in foster care. This case is complicated in many ways, but the basic allegations were that 1) Mary was not adequately feeding Julia, leading to her small stature (this was labeled failure to provide adequate medical care in the court petition); 2) Mary was mentally ill and a drug user, charges she steadfastly denied (she maintained she made statements about *past* drug experimentation and depression); and 3) that her apartment was unsafe due to extensive clutter and rats. The case came to the attention of ACS after Mary voluntarily placed Julia in foster care for a few weeks when she was facing an eviction. Her landlord was attempting to remove all the rent-stabilized tenants and renovate the building in order to rent at full market price. When Mary brought Julia back home, the agency gave her an "after-care plan." She viewed it as voluntary, so, although she did comply with some aspects of the plan, she did not follow it completely, nor did she answer the caseworker's questions about what she had been doing. For this reason, the caseworker reported Mary to ACS. Julia was placed in foster care on an emergency basis due to the allegations and to the fact that Mary refused to allow the caseworkers into her apartment.

The 72-hour conference (see Chapter 4) was finally held three weeks after her daughter, Julia, was removed,[188] but, after the conference, Mary told me that she was still not clear about what she was supposed to be doing and no services had been decided upon. Parent advocates at the Child Welfare Organizing Project (CWOP) told Mary she would likely need a parenting class and tried to find one for her, but her caseworker refused to refer her. [189] Up until the end of September, when Julia had been in care for five months, no progress had been made on the

[188] An earlier attempt 10 days after the removal was held despite Mary telling them she could not attend due to a housing appointment.
[189] She told Mary she had a specific order in which she wanted the services to be completed and the parenting class was to come last.

service plan until, at a court appearance, the ACS attorney *directed* the foster care agency caseworker to create a service plan which was to include random drug testing, a mental health evaluation, and individual counseling. At that time, Mary was told about the plan, but the caseworker refused to further discuss it or make referrals until the next conference.

A month later no referrals had been made, and Mary, following the advice of parent advocates, asked to have a conference.[190] At the meeting (which began 45 minutes late),[191] Mary attempted to take control by introducing me and stating what she wanted to discuss, but the caseworker's supervisor interrupted her and told the caseworker to run the meeting. After the usual preface about rules and a run-down of what had happened in the case thus far, including the new service plan, Mary asked why she was not told of the new services earlier. The caseworker replied that it was because she had spent her time filling out paperwork (which *is* long and cumbersome) to possibly move Julia to Ohio to live with Mary's sister (a college professor). She added that Mary was not her only client, the implication being that she did not have time to do everything Mary expected of her. The caseworker then explained that the services would need to be done in a specific sequence: first a mental health evaluation (these appointments often take weeks to get), then individual therapy (there are very often waiting lists) and, finally, a parenting class (they only start every 7 to 13 weeks). When Mary protested that this would take a very long time and that she wanted to start a parenting class while waiting for the rest, she was told this was not possible.

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[190] Mary attempted to schedule the conference so that she could bring an advocate. She was told this was not allowed, but she persisted. The caseworker then refused to schedule it so that the advocate could come and told her they would have it no matter what. I was able to attend.

[191] Apparently this is because someone from ACS, who was to act as a third-party reviewer (ACS has an office that monitors case management at the foster care agencies and they are usually asked to attend such conferences) did not show up, but they had the conference anyway, with a manager from the foster care agency who was not assigned to Mary's case as the "third-party reviewer."

By yet another conference, in January, Mary had been assigned a social worker by the family court to help with her case, Rebecca,[192] but still had not received referrals for all of her services. A mental health evaluation was completed, but it had been conducted by someone Mary was referred to through the homeless shelter system. Mary and her daughter had also begun family therapy a couple of weeks prior (with a counselor at the foster care agency), but a place for individual therapy still had not been found and, therefore, the caseworker had not begun looking for a parenting class. I attended the January conference as well, and, thanks to persistent questioning by Rebecca, I was able to gain insight into how caseworkers think about service plans and reunification more generally.

Rebecca asked the caseworker a question that I never saw asked, at least not directly, at any other time during my fieldwork: How will you know when progress has been made and you are ready to recommend that the child can be returned? The caseworker looked puzzled and did not answer for a few seconds but then said that Mary's therapist would decide when she is ready. Rebecca countered by asking: But what change do you want to see? The answer this time was compliance: we want to see she is going to therapy. This back and forth about what specific change was desired and how the caseworkers would determine when reunification would occur went on for nearly an hour, and was mostly like this. Rebecca attempted to get specifics, while the caseworker gave vague answers or answers that boiled down to either "compliance" (i.e. that the mother was going to the appointments) or "everyone has to do x." The caseworker's supervisor became frustrated with the caseworker's answers and pushed her to be specific and to link the services and criteria to the reasons the child was in foster care in the first place. After that comment, the therapist at the agency did jump in to state that Mary's mental health history

[192] She was previously a family court lawyer and has trained agency caseworkers on creating services plans.

meant that she might be in need of therapy.

The most specific information Mary was given about what specific changes were expected of her was 1) that she take responsibility for why her child was in care and deal with those issues and 2) she interact more "positively" with Julia by being more relaxed and enjoying the visits rather than focusing too much time and attention on Julia's grades, what she had been eating, and coaching her to speak properly. This requirement was especially disturbing to Mary. Crying, she told the caseworkers that the visits were her only time to be a parent and ensure her child's needs were being met. The caseworkers did not give a rationale for these measures of change, but it was clear that they believed that Mary did have a mental illness, something along the lines of obsessive/compulsive disorder, which meant that she "expected too much" of Julia and was clinging to a rigid idea of a proper diet despite the fact Julia did not like it and was not eating. It seems that this is why they presented, eventually, these specific behavioral changes, i.e. because they would be signals that she agreed with their assessment and that she was behaving in a way they considered more normal. Rebecca commented to me, after the meeting, that they were, essentially, considering not feeding a child what she liked neglect.

Mary's psychological evaluation through the shelter system found no serious mental health issues,[193] but this did not convince either the caseworkers or the judge, so Mary was ordered to get an evaluation through family court a few months later. This evaluation diagnosed her with Munchausen's Syndrome by Proxy: that she was purposefully making her child ill so that she could get attention from doctors. This was despite the fact that *inadequate* medical care had been an initial allegation. The evaluator also added, Mary told me, "that because I'm so deeply angry at the [agency that made the report]—and I mask it with intellectualism, I have

[193] It did say that counseling might be helpful given the stress from her housing situation and her daughter's placement.

deeper issues I'm covering up—since I'm admitting no wrong doing." In other words, she was also seen as hiding her mental health problems.

Mary had a quite different analysis about what her actual problems were and what help she needed to resolve them. She was adamant that her main problem was actually a housing issue, i.e. her dilapidated apartment and eventual wrongful eviction, and she was anxious to get help to either pay her rent arrears or get another apartment. She continued to maintain that she was feeding and caring for her daughter adequately, and that she was not mentally ill or a drug user. Regarding the mental health evaluation conclusion that she was "covering up" and not admitting to the problem as defined by child welfare officials, she commented: "Yes, I'm angry. Why admit to something I didn't do?" Mary's views meant that, in the eyes of those evaluating her, she was not dealing with her real problems and working to fix them, thus she was not ready to have her child returned.

Mary's relationship with the caseworker also deteriorated. Mary attempted to prod the caseworker, first nicely and then more insistently, into providing the information needed for housing assistance, and when it seemed that the caseworker was ignoring her and causing further delays, she became even more insistent, writing detailed letters to supervisors that openly challenged the caseworker's efficiency, training, and knowledge. This led to an even more tense relationship with the caseworker, who eventually refused to provide the needed information, and, Mary felt, avoided her when Mary saw her at the agency. The caseworker even responded to an email with information and a request for help with one line: "Stop sending me things."

While all this was going on, Mary also had to deal with her housing issue and her public assistance case, both of which required her time and often conflicted with court appearances and visitation. She was forced to miss a housing court appearance that was scheduled on the same

day as a family court appearance, and had to miss visits dealing with what was basically the gutting of her apartment by her landlord in an effort to force her out so that he could charge higher rent. She was eventually evicted and lost her court challenge of his actions. After being chastised by the judge, that "If you have the choice between visiting your child and waiting for the plumber, you had better visit your child," she made sure not to miss future visits. In addition, she was kicked out of her Back-to-Work program when she refused to take a job until she was told what the schedule would be and if it would fit with her visiting and appointments schedule. She eventually had to close her public assistance case for a time and did not always have enough money for food (she lost weight during the case).

As of this writing (July 2009), Julia has been in foster care for two years, which means the foster care agency could attempt to terminate her parental rights. Mary is able to see her daughter, unsupervised, for several hours each Saturday, and through *her own efforts* she has been able to find an apartment, is in counseling, and has completed a parenting class (she had to get a referral from Rebecca). Given that she has done these things, it is unlikely the agency will file a termination of parental rights petition at this point. However, in large part because she has refused to allow the caseworkers to inspect her new home until she gets money to make repairs— in a catch-22 she cannot get this money until the caseworkers state when Julia will be returned and they refuse to do so without the inspection—there is no plan to return Julia and caseworkers are planning to send her to Ohio instead (something that Mary does not support).

This case illustrates several common dynamics in the reunification process and the common roadblocks parents face in regaining custody. First, caseworkers initially created a service plan that looked very much like any other parent's plan and, when pushed to justify these services, often fell back on explanations that "everyone must do this." However, as the case went

on, their analysis of Mary's problems shifted and expanded, as one would expect under a "therapeutic approach." Although the caseworker's and evaluators' view of Mary and her problems had elements of the original allegations (the mental health issue and the child's inadequate nutrition), it was different in important ways. The allegations of drug use were dropped (although she had to continue to submit to random drug tests), but her mental health and Julia's care became clearly linked in a much more serious way than in the initial allegations.

Second, Mary's case shows the importance of what I call "performing compliance." Although Mary did not refuse to comply with any specific service, her anger and refusal to accept the caseworkers' view of her and their analysis of her problems did lead to Julia's continued placement. Again, in a therapeutic approach, this is understandable: in their eyes Mary did not make the wholesale changes in her life that the caseworkers thought were necessary to make her a better mother. Finally, this case illustrates many of the reasons services are delayed. Delays in creating a service plan and making the necessary referrals were caused by time constraints faced by the caseworker but also because other priorities, namely finding a possible permanent place for Julia, took time away from the process of "reforming" the family. From Mary's perspective, she had trouble complying with her visiting schedule while also juggling housing and public assistance matters. In the rest of this chapter, I will look at these dynamics more generally.

Services and Service Plans

In this section I will discuss what directives service plans typically include, how they can expand and shift over time, and what the goal seems to be in requiring these services.

Cookie-Cutter Plans

First, there is the issue of what I call "cookie-cutter service plans." When I asked one family court judge what she thought was done well in the child welfare system and what could be improved, she replied

> I sometimes think that we could do a better job on the assessment and the service plan definition because those are very, very complicated issues, and it's – there seems to be kind of a stock menu of services that get recommended, so it would require probably a higher-credentialed person making assessments, but I think that would improve the outcomes that we have. It seems a little ad hoc sometimes what's being recommended and ordered.

This complaint, that service plans are not well-thought out and individualized for each parent and family, was one I heard from judges, ACS attorneys, parents attorneys, parents, and parent advocates. As one parent advocate told a support group I observed: "We are being asked to do things that waste our time and don't serve us or our families."

Service plans contain a very standard list of services: practically every parent will take a parenting class, and most will be required to go to counseling. Apart from that, parents will be sent to specific types of "programs" (drug treatment, domestic violence programs, and anger management programs) that match their initial allegations. There are very few variations made in order to address the specific needs of the parent. Not all parents felt that they were *not* getting the help they needed for their problems, however. The parents I met who battled addiction, in particular, told me that the experience of having their children taken away did act as a catalyst for them to become more serious about getting treatment and remaining sober. It also meant that they received more help. One father, Ramel, an African American father who began using cocaine as a teenager and crack as a young adult (at the age of 32, has been using on and off for 14 years) put it this way:

> Because we was in a shelter, a family shelter together, which we got no real help… And even if we took steps to do things ourselves, we still didn't get no help…We're getting more help from these social workers now, and it's sad that we have to go through this…I'm not blaming nobody, because we put ourselves through this.

In other words, Ramel was upset that they were not helped until his child was removed. As described in Chapter 5, child welfare has become more coercive and focused on policing; however, many parents of color like Ramel have trouble finding help without having to become involved with it. However, he also talked about how he was actually happy that things happened this way:

> It hurts. I cried in front of the lawyer, I cried in front of a lot of people, because I mean, like I said, I *never*, ever went through this before…I'm happy I'm going through this, though. Because it's an eye-opener, you know? It's an eye-opener. But I don't wanna ever go through this *ever* again. I wanna get through this and that's gonna be it…My son is the cause of me getting my life together, and because this happened, it's not forcing me to get my life together, because I want it to stop…And it's like you know how sometimes you need a motivation to get you going?

In other words, although he wanted to stop using and "get his life together," having to go through the child welfare system provided motivation and meant he received more help: he wanted to make it work so that he could be with his son.

Although concrete services are made available to parents going through child welfare (drug treatment, help escaping domestic violence, housing help, and money for some expenses), parents, and even caseworkers and attorneys, found other services, particularly parenting skills classes, less helpful. When I told attorneys that I was attending parenting skills classes (one ACS attorney quipped, "Oh, so you're under ACS supervision too now?") they always asked me what they were like and told me that they felt these classes did not help anything but were just something the agency did without thinking through whether it was appropriate for all parents. Caseworkers had the same opinion:

> Carl: We hope it fixes it, but it doesn't…Which, a parenting skill class is, the actual content of the classes is it doesn't address anything. A parent that's going to parenting skill classes because they have a drug problem is totally different from a parent that's going to parenting school classes because she had a case indicated for domestic violence or a case indicted for inadequate guardianship. And once again, each case is different and each parent is different…And they don't cover that in 13 weeks.

Parents had mixed views on whether the parenting classes they took were helpful to them, but most reported that they learned little in the way of concrete skills to make them a better parent or even exposure to topics related to their specific situations and to their children's ages/needs. Many, like Olivia, an African-American mother who had her children removed because she could not afford a big enough apartment and refused to go into the shelter system, felt that they were unnecessary:

> Tina: What do you think about the parenting skill classes? Are they helpful to you?
>
> Olivia: No.
>
> Tina: No. **[Laughter]** Not at all?
>
> Olivia: I tell you no, because how could I - I've been a mother since my daughter was, is 16 years old. Never had a problem with ACS 'till this - until now. And my daughter is 16. What can you tell me? I raised all my kids by myself. No man, nobody. Me. So what can they tell me? Not to yell at your kids? Not to talk to your kids this way? Oh, sit down and talk, and maybe they'll talk back? Me and my kids, all my kids have good - good communication…[Y]ou could have told me stuff that, when my kids was little…So it just be wasting my time going there. But I'll go, because that's what the judge wants.

Olivia was also instructed to take a special needs class because one of her daughters had been diagnosed with ADHD. When I asked if it was helpful, she told me she only was taught two things: that she should not go to bed before her children and that she had to remember to always give them their medication. She commented that she found these "dumb, stupid things" that she already knew. For Olivia, she was comfortable as a mother and found these very vague and basic

instructions a waste of time. Furthermore, going to a class was not going to help her find a decent apartment.

Most of the positive comments I heard from parents about parenting skills classes had to do with enjoying the class, being happy to be around other parents going through similar experiences, and/or having a group of people to whom they could vent (either about their case or about the difficulties of parenting). I only heard one mother, Irene, a Latina mother, talk about concrete things she learned in a parenting class that she put into practice with her own children.[194] When I met her, ACS was involved in her family a second time, and she was told to take another class. She said that she did not mind taking it, but felt it was not necessary in her current situation, which stemmed from her daughters' out of control behavior and mental illness:[195]

> "Why do y'all treat people like"– ACS – why do they treat people with the same set of rules… Like if your child gets taken away for domestic violence, and her child gets taken away for child abuse, they offer the same programs to these people. Everybody has, oh - "go to parenting classes, you'll be a better parent for it." Who's supervising this, you know, you really are learning what it takes to be a parent, and that you're not gonna do it again? That was my issue with them. Like, why do you assume everybody that comes through here, *its presumed that they not fit parents*? You know, why couldn't it be, "Oh, she lost it for a minute. She was human." You know. "She's been through so many parenting classes. Why make her go through this again?"

I quote Irene and cite her example because she has hit on one of the reasons why parenting classes are offered to everyone: it is assumed that the people who come through the system, who are primarily poor people of color, do not know how to parent and need instruction in very basic parenting skills no matter what the specific problems they face.

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[194] It was a specific method of discipline using a "modified behavior" chart with specific rewards and consequences for specific behaviors.

[195] She has one daughter who has a serious mental health problem (she has been hospitalized in the past) and was "acting out" (not going to school, being very disrespectful, smoking, having her boyfriend over when her parents were not home, to top it all off she, at 15, has already had 3 STDs). They got into a fight about household chores and the boyfriend; her daughter hit her; and she bit her in the ensuing physical struggle.

Although having everyone take a parenting class makes sense on the surface (presumably, if your children are in foster care it is because you are an inadequate parent in some way), many cases I observed were less about parenting practices that were defined as problematic and more about parental behavior like drug abuse or mental health, or about a lack of resources. For example, I met one mother who was told she needed to take parenting again when she had a drug addiction relapse, and another who was told to take a class after her children missed the first week of school because she did not have money for shoes. Even excessive corporal punishment cases are not necessarily about the regular use of corporal punishment (which is seen as a parenting failure by the system). However, these reasons for being in contact with the child welfare system do not exempt parents from the presumption that they are generally unfit parents and need to be taught parenting. This is what one would expect to happen within a therapeutic state bureaucracy: agencies start with the idea that family problems are caused by individual inadequacies and that it is the job of the caseworker/system to help the parent overcome them. In addition, most parents involved in child welfare are women of color who, according to prevailing discourses around poverty (Goode & Maskovsky 2001a; Neubeck & Cazenave 2001; Quadagno 1996; Roberts 1999; Zucchino 1995; Gilens 2000; Williams 1995), are irresponsible and to blame for their own misfortunes. They are thus seen as in need of personal change to make them productive citizens and decent mothers. It is not enough to deal with the problem that brought the family into contact with the child welfare agency, which might have been related to poverty and lack of resources; broader changes in the client's life and her parenting are required.

There was only one case I learned about in my research in which parents who had children in foster care were not required to take a parenting class. Significantly, this was also the

only case I witnessed that involved a wealthy family, and one of the few that involved a white family (see Chapter 6 for more on this case). This family was reported to ACS by a police officer who claimed that the father had kicked his daughter and called her a bitch in a public park. The family court later decided this report was false, and the children were immediately returned to the parents. Despite the numerous problems later uncovered in the family (the mother had serious mental health issues and an extensive history of heroin use; the father was told not to leave her alone with the children due to her mental health), which in the other cases I witnessed would have likely meant that the children would have been placed in foster care, the children remained in their home and the parents were asked to undertake almost no services. Their lawyers were able to quickly (in only a few weeks) negotiate for their case to be dismissed and no one suggested that they take a parenting class, only that they get family counseling. These parents' ability to care for their children and be adequate, responsible parents, despite the problems in the home seemed to never have been questioned in the way it was for poor and minority families.

In observing parenting classes (which are run by foster care, preventive agencies, or by ACS itself), I noticed that classes were structured in such a way that they were not as helpful as they might be. They seem to be rather "generic" with a fairly standard list of topics: definition of abuse and neglect, child development, the necessity of communication, why corporal punishment is inappropriate and that privileges should be taken away instead, various safety issues (hot stoves, electrical outlets, child molestation), building self-esteem, how to talk to your children about sex, and drug and alcohol abuse prevention for children. So, parents who did not use corporal punishment would be told not to, and parents with teenagers would be told how to baby-proof and how babies develop. Although "special needs" parenting classes (i.e. classes that aim

to help parents deal with children with various illnesses, developmental delays, and behavioral/psychiatric problems) do exist, they are not easy to find and do not seem to be able to address the range of issues encompassed within the label "special needs." So, although parents might not find these classes useful, they are still expected to comply with the directive.

I came to wonder if one of the implicit goals of requiring a parenting class was to see which parents were willing, on the one hand, to comply with the directive and were able, on the other hand, to show up, on time, for anywhere from 7 to 15 weeks in a row. Two of the three parenting classes I attended had elaborate rules about attendance:[196] what was an "excused" and an "unexcused" absence; at what time no one else would be allowed in the classroom; how many times you could be late; and how many times you could be absent before you were dropped from the class. The detailed nature of these rules and the degree to which they were focused on, and, indeed, seemed to be the only measure of what a parent had gotten out of a class, led me to think that showing up consistently and on time was at least as important, if not more important, than what a parent learned. I will discuss what "showing up" might be taken as evidence of later in the chapter.

Expanding Requirements

It addition to standard service plans that are not tailored to individual needs, it is common practice for family court judges to approve service plans that end with "and any other reasonable referrals made by the agency." This phrase allows agencies to add services when they gain new information, but it also gives discretion about what these are. For the most part, parents can be required to complete any service and have very little ability, if any, to question whether they are

[196] The other class was conducted by an activist for parent's rights and he had very simple rules that he did not enforce. His class is in no way typical, and other parent advocates sometimes warned parents against taking his class because they doubted that it would be accepted by all caseworkers.

necessary or not.[197] That the caseworker finds it necessary generally means it will be a requirement. It was also common for parents to be asked to comply with new services close to the time they thought their child would be coming home. As one parent advocate and mother who has been through the system, Stephanie, described this problem:

> You know you've got weekend visits going well, you know? So why can't you just discharge the kids?...But they're dangling this, these kinds of things: oh, you need one more, or you need to do this…Then my question to the caseworker is, "Well, why are you asking my client to do this and we're right at discharge?" "Isn't that something that we should have done before?"

This situation led many parents I spoke with to feel that they were being asked to "hit a moving target" as services that seemed unnecessary or unconnected to the initial allegations in the case were added as their case went on. It was also the case that sometimes, as cases dragged on and caseworkers left or were replaced, the original allegations in the case would be either unknown or lost sight of. All of these issues delayed reunification.

Significantly, anger management and a mental health evaluation/therapy were the two most commonly reported services which were added later and that seemed unconnected to the problems that led to contact with ACS in the first place. It seemed that concerns about parents' anger and the possibility of mental illness (or at least a need for counseling) were concerns among caseworkers and that these services were often thought to be necessary for the kind of broad transformation in attitude and behavior that would make them fit to regain custody.

Anger management classes: These were frequently required of parents even if the case did not seem to indicate an "anger problem." For example, one father, Henry, an African-American father in his 20s, was told he had to take an anger management class because one

[197] Although, ideally their attorneys should be able to argue on their behalf about unnecessary services, my observations and discussions with attorneys showed that judges rarely questioned whether anything was "reasonable" and were generally loathe to go against the recommendations of the caseworker.

police report claimed that he had become violent with the mother of his child, Salina, a Latina also in her 20s (there had been no violence and she later told him that she made the report out of anger after a fight). The caseworkers were not trying to get her to leave Henry for the safety of her children as they would have done had they believed that domestic violence was a problem. Nevertheless, anger management was made a requirement. I also met several parents who were sent to anger management after they had become either angry or aggressive with a caseworker who they perceived was not doing their job. In these cases, anger that was not directed at their children was taken as evidence that the parents presented risk to their children and thus their "anger problems" had to be fixed.

Mental Health Evaluations: Many parents were also required to undergo mental health evaluations, even in cases that did not contain allegations of mental health issues. One reason this occurs is that evaluations are needed to gain access to counseling, which many caseworkers, as in Mary's case, feel that all parents can benefit from. This fits in with a "therapeutic approach" that holds that counseling is necessary to instill proper values or habits. Counseling will be paid for by Medicaid in most cases, so, in order for clinics and practitioners to be reimbursed, the parent must first be evaluated and given a diagnosis which justifies counseling (much like an HMO requires a patient to show that a specialist is medically necessary). Evaluations also provide another expert opinion on the parent's mental health and when reunification should occur. A therapist who works with families in East New York, Brooklyn told me that she constantly receives calls from caseworkers who, in her view, want her to make the decision about reunification for them. She realizes, she said, that her opinion is valued because of her training and that she has a lot of power over the families she helps. For foster care

agency caseworkers who are fearful of making a bad decision, expert opinions like hers about whether a parent is responsible and safe are welcomed.

However, I met several parents, like Mary, who were told to have additional evaluations after one from a clinic they found on their own was not accepted. For example, one couple, Emma and James, who are both white and middle-class, had evaluations from four professionals;[198] however, neither the foster care agency nor the family court accepted them so they were required to have yet another one through the court. In the parents' view, this was done because all the evaluations they were given were positive. The caseworkers, however, explained that, if the couple found their own evaluator, he/she would not be talking to the caseworkers about their case and their history and so would not have a full picture. Emma's 18B attorney argued against this requirement, because, he told me, he has never seen a positive report, or a report without a serious diagnosis, come out of the family court evaluators. Several other attorneys also told me this.[199] In the end, the court evaluation was extremely negative, and it likely played a role in the agency's plans to terminate their parental rights. Many parents were given a more serious diagnosis in these evaluations, and this made it much more difficult to have their children returned. These commonly added services are, again, about personal transformation in terms of attitude and responsibility. They seem to be attempts to create parents (and citizens) who are able to control themselves and are mentally stable enough to care for themselves and their children on their own.

[198] Two clinics they selected, positive reports from a family therapist they found on their own, and one from an expert in forensic psychology hired by their lawyer.

[199] He added, as further evidence of what he saw as the family court evaluators' bias, that their policies dictate that any evaluation that recommends "return to parent" must be reviewed by supervisors but one that recommends continued foster care does not. He speculated that this level of scrutiny is why he has yet to see a positive report.

Service-Plan Delays

In this section I will look more closely at the common problem of service plan delays and examine the most common reasons they occurred. I will divide my discussion into 1) reasons delays occur on the caseworkers' side in terms of creating service plans and making referrals, and 2) reasons parents might delay "engaging" in services and the structural barriers to completing them that they face.

The Caseworker Side

At a most basic level, high caseloads can be a root of delays: foster care agency caseloads average 20-22, which is about twice that recommended as an ideal caseload by a New York State Office of Child and Family Services study (Council on Children 2007). Attorneys who work in family court told me they have noticed that referrals are often not made in a timely fashion and attributed this to caseworkers' workload. As one law guardian, Michelle, put it:

> I can't imagine, as a parent, like trying to get referrals from a caseworker. I mean I can't even get in touch with half of them for simple information.

Parents agreed that this was a problem:

> Salina: They [caseworkers] don't do their job. Damn it. **[Laughter]** That's how I see them.
>
> Tina: What do you mean by that?
>
> Salina: They just don't do they job. Everything that they supposed to do they don't do. Regardless with the services or whatever it is, if I don't go in *the office* to ask, you know, what is it you need me to do, what is it you have to tell me. I won't get a letter in the mail, nobody won't tell me until it's too late. So that's why I make it my business to go at least two or three times a week to the agency and see the worker…And she [the caseworker] be like "oh, I got others cases. I'm too busy." All right, then, but how do you expect for me to do all this stuff if you're not notifying me? So that's why I make it my business to do it…'Cause if you sit here and wait on them there'll be nothing done.

Parents frequently experienced caseworkers who did not keep in touch with them, did not ensure that they knew what they had to do, and did not make needed referrals. Thus, many had to resort to constant follow-up. For many caseworkers and judges, this constant follow-up was framed as a display of "responsibility," "commitment," and an ability to be "pro-active" on the part of the parent rather than a failure of the caseworker. On the other hand, parents who did not follow-up were seen as uncaring and uninterested, and caseworkers felt they were thus not willing to change, not taking responsibility, and not ready to regain custody (Smith & Donovan 2003). Difficulties in following-up, such as lack of a telephone[200] or difficulty traveling to agencies that were far away with little money, were not taken into account. In this way, whether parents "engaged in" services or not was seen as their individual responsibility or failure and as a measure of how much they wanted and deserved custody. As Salina's comments indicate, this problem is certainly related to caseloads. Smith and Donovan found these kinds of attitudes towards parents served "the obvious function of creaming clients so that caseworker's efforts can be invested only in the parents most likely to succeed" (Smith & Donovan 2003: 551). However, there are other institutional reasons for delays that I want to focus on next: 1) difficulties balancing various caseworker roles and objectives, and 2) difficulties finding services.

Is the Service Plan a Priority?: With regards to the first issue, it is important to note that foster care agency caseworkers are responsible for various tasks: monitoring the child's placement, working with the parent so that the child can be returned, supervising visitation, and planning for the child to have a permanent family if reunification fails. These various functions all take time and require different orientations and taking into account various interests (that of the child, the parent, and the foster parent). In recent decades, caseworkers have been pushed to

[200] Several of my informants did not have home telephones. Some were able to get cheap cell phones and pre-paid minutes, but these often ran out.

focus on "permanency planning," which, especially after ASFA, can sometimes mean "concurrent planning." In other words, caseworkers are encouraged to evaluate cases to see which are likely to *not* result in reunification and then plan for this contingency at the same time that they plan for reunification. Most cases that I observed began with the permanency goal of "return to parent," but caseworkers were encouraged to have an eye towards what they would do if this were not to work out. So, for example, they are likely to inquire about whether a foster parent might be willing to adopt or might look for a relative willing to have permanent custody.

Although permanency is a necessary goal (everyone in the child welfare field would agree that having children in foster care for years is a problem and plans must be made to avoid it), balancing these various aspects of a case and the different interests involved is difficult. High caseloads leave little time to do the careful planning required, caseworkers are not always adequately trained, and high turnover means that multiple caseworkers will likely be involved in a case over time, making continuity in planning hard to achieve. However, I would argue that this stance, i.e. of planning for something with an eye towards what will happen if it fails, is inherently difficult even in ideal circumstances. I think it is easy for caseworkers to see children's and parent's interests as opposed, and this seems to be the way of thinking that is pervasive in the child welfare system (see also Guggenheim 2005; Bartholet 1999; Waldfogel 1998). To the extent that most caseworkers feel their job is to do what is best for children, and the structure of this system encourages this stance (see also Smith & Donovan 2003), a focus on what would be the best situation for the child can be to the detriment of working to reunify the family. In most cases the reality is that 1) the parent has been deemed a danger to their child in some way by ACS and the Family Court (foster care agency caseworkers tend to take allegations at face value and assume they are true), and 2) the parent is a poor person of color. This is in

direct contrast to foster mothers who are, it is assumed, safe since they have been investigated and "checked out," and who, although they are also generally women of color, have more resources to create a stable home. When thinking about what would be best for a child, caseworkers can weigh the parent against the foster parent. In simultaneously working toward two goals (return to parent or adoption), or in working for reunification while keeping its potential failure in mind, it is possible, as happened at least for part of Mary's case,[201] that caseworkers opt to focus their efforts towards a permanent placement with a foster parent, which is seen as better for the child, rather than towards reunification (see also Gerstenzang & Freundlich 2005: 8).

In a recent study of concurrent planning in New York State, it was found that caseworkers did have trouble balancing the various demands placed on them and that concurrent planning might lead to deemphasizing family reunification. A majority of caseworkers felt that they "did not have sufficient time to meet the needs of the children and families on their caseloads when concurrent planning was utilized" (Gerstenzang & Freundlich 2005: 15). Furthermore, in focus groups, some caseworkers reported that they had good relationships with parents until they had to tell them they would also be working towards adoption. This created anger and a feeling that the caseworker was not "on their side" anymore. This, in turn, made it difficult to provide reunification services (Gerstenzang & Freundlich 2005).[202] I found similar feelings among parents in my research even when the caseworkers' official goal was

[201] Mary told the caseworker that she did not want Julia to go to Ohio to live with her sister because she had been warned it would take longer to get her back. She was told this by parent advocates who had seen similar cases in which the foster care agency, relieved of the duties of monitoring the child's placement on a day-to-day basis, did even less to help the parent regain custody. Julia has not been moved to Ohio as of this writing, so I do not have first-hand knowledge of this, but it seems possible. Even planning for the child to go to Ohio caused delays.

[202] The study also found that parents felt that they faced barriers in reunification and were not getting the services they needed. They also felt that concurrent planning could provide motivation and that timelines were fair. Parents also said that reunification might take longer than the timeline if they were dealing substance abuse and depression.

reunification only.

Many parents in my study complained that their foster care agency caseworkers focused more on the child and the foster home than on their family. Joan put it very simply: "the worker's only going to do so much because they're not there to work for you, they're there to work for the child." Another mother, Claudia,[203] stated:

> And, you know, even though I wanted the focus to be about me and my family, what I found is that the focus was about the administration, and the foster care administration, and the foster mother. Nothing was really 100 percent about my family and what's going on with my family.

In her case, she was not given help in dealing with her son's anger and violence towards her, and he was not taken to counseling by the foster mother. When she brought this up to the foster care agency worker, the worker told her that she could not tell the foster mother how to run her household. Claudia felt that this directly impacted the length of time it took for her child to come home and the fact that he was only home for a few weeks before there was another angry altercation and he ran away. Pressures towards concurrent planning often lead caseworkers to deemphasize reunification plans which can lead to service-plan delays and to a situation in which parents do not get needed help.

Services can be Hard to Find: Delays are not only about the difficulties caseworkers have in balancing competing goals and interests, but also about the ability to find services with openings. Several ACS caseworkers complained that they did not have adequate resources to help everyone. In addition, not all caseworkers are equally knowledgeable about available services, nor do they have the time to learn about them given large caseloads and high turnover. Thus, sometimes they had trouble making referrals when they fully intended to do so. During my observations in support groups and parenting classes, discussions about needed services and

[203] For more information about Claudia and her case see Chapter 8 and Appendix 2.

caseworkers who did not make referrals were common. Parent advocates often had a much better record of making referrals and finding openings than it seemed caseworkers did. [204] For example, I witnessed a case in family court where ACS planned to remand a child because of the mother's drug addiction and her refusal to go into an inpatient program without her baby. The caseworkers maintained that there were no openings in any mother-child program, and she had to go into whatever program they could find. It took the parent advocate only two phone calls to find an opening at a mother-child program and to get the mother an intake appointment for the following day. I was even asked on numerous occasions if I knew where a parent could get a mental health evaluation or a parenting class, and I began gathering information about possibilities that I could pass along.

A comprehensive account of the availability of services is beyond the scope of this dissertation, but I do want to briefly discuss the availability of parenting skills classes, a service every parent will have to complete, as an example of the problem. One parent advocate at CWOP said that parents call almost daily to ask about available parenting classes, and she is frustrated that she only has a few places to which to send them.[205] Often, parents are told that a class is ongoing, so it will be several weeks or months before another will be starting. I offered to compile a list of classes and found that most were offered at foster care agencies. Although they would sometimes accept clients from other agencies, often there was either not enough room or

[204] One benefit of having a parent advocate is that they can often help with referrals. In fact, in my experience, problems with services were among the main reasons parents sought out parent advocates, along with generally unresponsive caseworkers and lawyers, the myriad barriers to regaining custody that crop up in cases such as lack of housing, and the need for emotional support in dealing with "the system" and/or a child in foster care. Many, but not all, parent advocates have been in contact with ACS (many have regained custody of their children), a large majority live in neighborhoods with high concentrations of families involved in ACS and are similar in race/ethnicity and class to parents affected by the system. They often have experience with service providers and are more likely to know what is available in their neighborhoods.

[205] The ACS program which requires the parents' caseworker to make a referral, classes offered in Harlem at the Harlem Children's Zone, and whatever classes she happens to learn about from other advocates.

they wanted to reserve spots for their own clients. Even if there were slots, parents would again run into the problem of having to wait for the next class.

Delays from the Parents' Side

There are also multiple reasons why services, and thus reunification, are delayed from the parents' end of things as well. These range from issues such as work schedules, inadequate transportation, lack of money, and inactive Medicare cases (generally services are paid for through Medicare), to disagreements about what services might be helpful, to resistance and anger at the process, to simply being uncomfortable with the idea of going to therapy.

Material Barriers: First, keeping up with all aspects of a case is extremely time-consuming. Trips to family court (which can often mean almost an entire day of waiting), various conferences and meetings at the foster care agency, weekly or twice-weekly visits with their children, appointments for services (which can be daily in the case of drug programs), parenting skills classes, and (possibly) meetings with their lawyer, when added to commute times, the likelihood that services will not be in one place, and the probability that their child is placed with an agency far from their home,[206] meant that, for many parents, working towards reunification was a full-time job. In addition to juggling the requirements of a child welfare case, many parents were also subject to the requirements and bureaucracies of various other agencies: welfare, public housing, Medicaid, and possibly the criminal justice system and/or housing court. This sometimes made it very difficult or impossible to attend all meetings, appointments, and

[206] According to ACS statistics, in 2007, almost 35% of parents had their children placed outside their "borough of origin" (i.e. where the child was living prior to removal) and almost 87% have children placed outside their community district. These statistics likely undercount the number of parents whose children are placed relatively far from them. If parents move out of the "borough of origin" the children generally remain in their placements and so they might be farther away but would be counted as being in the same borough. I met a few parents in this situation. In addition, in 2006, in 47% of cases siblings were separated which often meant multiple visiting times (White et al 2008).

visits and be consistently on time, especially when parents had little or no money for transportation.

These reasons for missing appointments, being late for visits, or not getting to services, however, were generally not acknowledged as valid and rarely noted in court reports as explanations for a parents "non compliance," just as they were often not recognized during the initial investigation and risk assessment. For example, I witnessed a termination of parental rights hearing in which one of the grounds for the termination was that the father did not consistently "engage in" therapy. He explained that neither he nor the caseworkers could find a clinic with appointments outside of his working hours. Since he had already lost a previous job due to absences connected to his case, he decided not to risk losing another, and so he went to appointments when he could and skipped when he had to. This was not accepted as an excuse for his "non-compliance" by the judge, and his rights were terminated. Ironically, the other grounds for termination was that he did not have his own housing (he lived with a girlfriend) and their apartment was a walk-up and his child is in a wheelchair. This situation likely had to do with his limited income. This kind of no-win situation was common: if you miss therapy you have not changed; if you lose a job or cannot find housing because of therapy you have not made an adequate "plan" for supporting the child. Even judges who are more sympathetic to these kinds of problems, and will direct agencies to help parents with them, still generally lecture parents about the need to find a way around them, even in the absence of any help, in order to get their children back.

Given these issues, Bob, a white 18B attorney, told me that he has completely changed his mind about services for his clients:

> When I came to the court system and I did this, I used to think I'm helping my clients, you know, they would pile services on the clients. And I used to think that I'm helping the clients because you get into this, and this, and that, and ultimately what you see… [is] that the more services that you're piling on these people and the more hoops that you're asking them to jump, the greater the probability is they're not gonna get their kids back, and now I will fight what I think is unnecessary services.

He went on to explain that he has found that more services means more opportunities for delays and for negative reports about parents to be generated, either because of a professional's opinion or more mundane matters of missing or being late for appointments and visits.

Anger and Resistance: In addition to these material reasons for delays, there are emotional reasons as well. Many parents had reactions that stemmed from, on the one hand, lack of trust in caseworkers and/or a belief, generally based on how their case had been handled or past experiences with unresponsive and punitive state systems, that "the system" or individuals within it had no interest in actually providing help. Or, on the other hand, anger at state interference into their lives and at how they were viewed and labeled. Many parents felt that caseworkers were judgmental, looked down on them, and could not be trusted because anything you told them could be used to keep your child in foster care. For some parents, foster care caseworkers were viewed as agents of surveillance and punishment (although they would not use exactly those words) rather than help. This view was understandable given that caseworkers literally do supervise them with their children and record details about their behavior during visits which will be used to assess the possibility of reunification. Many parents have also come to mistrust caseworkers during the investigation stage as well (see Chapter 6), and I found that not all parents distinguished between ACS caseworkers and foster care agency caseworkers. This is another example of the problems created by a system in which helping and policing are so closely intertwined.

Often, parents would talk about a caseworker "not liking" them or "having it out for" them, but some would sometimes recognize that the patterns in their relationships with caseworkers had "structural" causes in that, as parents in the child welfare system, they were almost automatically presumed to be bad parents and that the caseworker's job was to protect children. Among the parents I surveyed, most of whom had had children in foster care less than eight months, almost 30% reported negative views about their relationship with their caseworkers. However, among the parents who had had children in care for longer, the percentage reporting negative views about their caseworkers jumped to 50%. Among parents who seek help from CWOP and other organizations, the numbers are larger as this is often a reason for seeking help. Even parents who held less negative views of caseworkers reported that having to deal with new caseworkers as their case progressed set them back in terms of being able to trust a caseworker enough to form a decent working relationship.

Mistrust and anger often led parents to delay "engaging in services" or to resist referrals from caseworkers. For example, a few parents I met asked me to suggest places they could get counseling because they did not trust that their caseworker and thought that any therapist they sent them to would only report negative things back to the caseworker. Anger was another common reason for delays in compliance. Leslie, an African American mother, for example, told me it took a long time for her to begin talking to a counselor:

> Three years. I had to battle with myself, get myself together, you know, see a therapist, which I was angry. You know, I didn't wanna see my kids taken away and I'm like I wanna see them, but I had a very good therapist. She stayed with me, she worked through it with me; she's very nice, very nice.

Here, she expressed that she was angry at caseworkers and the system that took her children and that this made it hard for her to "get herself together." However, she found a helpful therapist and was able to eventually regain custody of her children.

Joan commented that, more generally, African Americans have a hard time believing that state structures like the child welfare system might be helpful and so spend their time fighting these systems (see Chapter 6 on negative perceptions of ACS). "I'm not sure why that is," she commented, but she admitted that she used to feel this way, until, after finally coming to grips with her addiction, she saw that some people can provide help without looking down on you:

> But she's becoming, now, because I'm going to the [drug treatment] group, I'm seeing her [the foster care agency caseworker] less as the enemy. Because I didn't want anything to do with none of them. But I put myself in this position. And it's hard to swallow. And I see a lot of them girls angry "the worker, the worker." The worker can't do *nothing* to you if you're *doing* what you're *supposed* to do.

She further explained that her drug addiction had deep roots and was difficult to deal with:

> Joan: You just can't stop like that. You just can't. Even, I don't care how many courtrooms, you just can't stop like that.
>
> Tina: Yeah. Well, especially, it sounds like you had a pretty long history.
> Joan: I've had a long history of it. Yeah. I've got five years here I don't do it. And then when you do it - and it's never because I just feel like it. It's what's happening in my life at the time. My grandmother didn't raise us to go to therapy. We was, whatever goes on in your house stays in your house. And to come to grips with the idea of therapy took a *long time*. Then to come the idea, to the grips of this thing as a disease took a long time. Because I was just, I was just *bad*. You know, I'm a bad mother, I'm a bad person.

Joan initially had a very different orientation to therapy and treatment than caseworkers did. She was uncomfortable with the idea of talking to someone about intimate matters. She was able to "come to grips with the idea of therapy" and overcome her distrust, eventually, but if parents are not able to do this it can make reunification very difficult.

Different Priorities: Finally, what seemed to be a lack of compliance to caseworkers sometimes stemmed from parents having a different idea about what they most needed. During one "permanency hearing," for example, the caseworker complained to the judge that a mother refused to go to drug treatment until she could resolve her money and housing problems. The mother was lectured and told that this was her last chance to enroll before the goal would be changed to adoption. It was common for caseworkers and judges to downplay a parent's concern with material problems like housing and money and argue that they needed to "get their priorities straight" and get the services caseworkers required for reunification instead. This was clear in Mary's case. Several mothers, including Leslie, told me that caseworkers specifically told them they needed to "work on themselves first" and worry about financial matters later. This view fits with a "therapeutic" perspective in which personal problems and behaviors are viewed as most important and what is in need of change. However, as I will discuss later, parents who had not arranged for housing and income would often not be able to regain custody. This view also ignores all the evidence that issues related to poverty are at the root of many problems deemed neglect by the child welfare system (see Chapter 2).

Barriers Faced by Fathers

In speaking with fathers about their cases, it was clear that they faced additional barriers to regaining custody or getting custody of children who had been removed only from their mothers. As discussed in Chapter 8, caseworkers often do not take time to look for the fathers of the children they are removing to see if they are potential caretakers. When fathers come to court to ask to care for their children, they are often told they need to be "explored" (i.e. investigated) by the caseworkers or they need to file for custody, and judges generally order an ACS investigation of the family when deciding custody matters as well. Although I am not certain of

all that these investigations entail, it was clear that fathers are very often not given their children due to their criminal histories, whether or not this history has to do with their children; domestic violence; or drug use. So, it seems that fathers are assumed to be unfit and must prove they should get custody. There is also a tendency to assume men cannot handle caring for their children. In Nathan's case, he wanted to take all five of his children, but was told he should take one or two first to see how he did:

> I tell you I was in the courtroom, they didn't believe it. When a man - I'm tellin' you - it's like they don't believe a man could take care of the kids. And they was like this with me and they was lookin' "And you takin' five?" They said, "We don't know." I said "Man, I want all five of mine. I don't want no two." And I took all of 'em. I said that I want all my - that's why it took me a long time.

He eventually did get custody and has raised them alone for much of their lives.[207]

If fathers are partnered with their children's mother, they are often still not considered when creating reunification plans in the same way that women are. As Trisha put it,

> But they looking at me more 'cause I'm the mother. He's not mandated to do none of this stuff. I am.
>
> Tina: Oh, he's not?
>
> Trisha: Uh uh. [No.]
>
> Tina: He's not, but he does [get tested for drugs] just to -
>
> Trisha: Uh huh - stay clean, you know, because if the kids return home and he didn't do any services, they not - probably not gonna let the kids come home. They gonna think he's still using, so they wanted him to get clean urines and do outpatient, so he doing the thing where he works so he only go like nights. I don't do nothin' so I go every day.

In this case, the caseworkers wanted her partner to demonstrate he was not using drugs, and he was doing so. However, he was not mandated by the court and was not asked to take parenting

[207] One father I met, Robert, had a sympathetic caseworker who looked past his extremely dirty house and his lack of knowledge about housekeeping and child care (his wife had done all of these things while he worked several jobs to support them). She took time to teach him some of what he needed to know.

classes or go to counseling as she was. Joan had a very similar situation. As she put it, "you didn't mandate him to do anything. The mother got mandates all over." Joan's partner was not offered drug testing or treatment (he was also an occasional user) or the means to pay for it, but the judge wanted to see proof he was not using. He was drug tested through a Veteran's Affairs Hospital, but the caseworker at the foster care agency did not follow up and ask for his results, which was delaying the return of their daughter. The agency told Joan she could begin unsupervised visits since they had her clean tests, drug treatment records, and counseling records, but he could not. She had to decline these visits because, as she put it, her daughter is a "daddy's girl" and would demand to see him. Joan found it ridiculous that the foster care agency would not want to keep her family intact and was working more with her than with her child's father, who was her main caretaker before she was removed.

It seemed as if, because mothers were most often raising children alone, caseworkers did not take fathers into account even if they were involved with their children. Instead, drawing on stereotypes of "deadbeat dads," they seemed to assume the man would not be involved. This theme came out in my conversation with Ramel, whose newborn son was removed from both he and his girlfriend due to their drug use:

> I guess because I'm the father, I'm a male, and because – I've been seeing that, and at first when I went to family - family support services, it was like that, too… I was kind of getting a little cold shoulder. Because a lot of males really - unless they show that they're serious about doing what they have to do, a lot of males don't get the respect that the female get, because it's the mother, and I understand that… However, it's not fair.
>
> Tina: So you would say that maybe their attitude is we'll wait and see about this one, and see if he disappears, or?
>
> Ramel: Exactly, **[laughs]** exactly, exactly. And it's past fathers that put that jacket on this. However, you can't put - you can't judge a book by its cover. I love all my kids.

In other words, Ramel felt caseworkers were dealing with him with a "wait and see" attitude. If he demonstrated he was serious and not like other fathers who were not involved, only then they would work with him. All of these attitudes, which assumed men of color would not be involved and fit caretakers, made it difficult for them to gain custody of children.

Performing Compliance

As I have alluded to in previous sections, parents' attitudes and the proper performance of compliance are key in the reunification process, as they are in the investigation process. Demonstrating compliance means attending everything one is sent to and being consistently on-time, accepting caseworkers referrals and maintaining a polite relationship with them, showing "commitment" to children and a willingness to do whatever it takes to regain custody, coming to agree with the caseworker's assessment of family problems and showing that you have "taken responsibility," and adopting attitudes that signal change. Parents' attorneys, like Bob, were straightforward about the necessity of a proper attitude:

> If the caseworker doesn't get along with your client or doesn't like your client, your client is dead…whether she does everything or not, she's dead in the water, chances are she's gonna - you're gonna lose.

In his experience, caseworkers can refuse to give services or "spin" reports to make the parent look bad. But if it comes down to a judge deciding whether the parent's or the caseworker's explanation of what has happened is credible, the caseworker will be assumed to be more credible. In fact, one of the most common pieces of advice given to parents by attorneys and parent advocates is that your emotions *must* be under control when dealing with caseworkers so they will like you and not work against you. One parent advocate even told me that she feels one of her main jobs is to let parents vent to her about the problems they face with "the system" so that they can get it out before talking to their caseworker.

Attendance

There is a huge value placed on *attending* the services required. Whether or not parents have been attending and been on-time to all classes, appointments, conferences, visits, and meetings will be noted in the reports to the judge that update them on the progress of the case and discuss the progress towards reunification. Even when missed visits and appointments were due to a hospitalization, to the foster mother missing the visit, or to problems with transportation or scheduling (18Bs told me they saw this frequently), they were generally included and reflected negatively on the parent. When Mary's caseworker said, regarding her therapy requirement that we just want to see you are going, she was certainly not alone.

On the one hand, using attendance as a measure of compliance is a matter of practicality in a situation in which gauging when a parent has made the changes seen as necessary to regain custody of their children is difficult and not clear-cut. It is almost as if there is so much faith in education, therapy, and "programs" that it is assumed that simply attending will mean that change will occur. However, this is not everyone's view (see below). On the other hand, attendance seems to be used as a measure of whether or not the parent has their life "together" enough to show up regularly and is committed to their children and willing to put the effort into attending. A parent being responsible in this way is thought to be better able to care for their children and in control of their life and willing to change as necessary. The logic of this is understandable, but it also struck me as evidence that caseworkers doubted that parents cared about their children and so required proof of it. In addition, there are structural reasons why it is often difficult for parents to show up consistently and on time. Using attendance to judge readiness to regain custody ignores these factors and reframes them as lack of compliance, lack of interest in children, or unwillingness to change.

Showing Commitment

Although some attorneys, like Bob, worried about "too many" services, many parents, like Destiny, a young Latina mother of three, reported that getting into as many "programs" as they could was one way to prove commitment:

> She said to try to get involved in as many programs as you can, and when you go to court, just say what you're doing so they could see that you busy, you trying to get your kids back. And we supposed to have somebody, like, you know, professionals that works in the program or something vouch for us, saying that we doing all these programs. Because she said it doesn't matter when the caseworker's speaking to say, you know, whatever. It's - it matters when somebody else comes in and say look, they been trying to do what they gotta do to get they kids back.

Caseworkers do generally take being involved in services as a sign a parent is committed to their child and willing to do anything to get them back. It is also taken as evidence the parent has "gotten themselves together" and is now able to be an active citizen/parent who is willing to do whatever it takes to improve themselves. If the professionals involved with these services have positive things to say about a parent, this will carry a lot of weight. Mary told me on numerous occasions that she felt she was being asked to prove that she loved her child by doing what the caseworkers asked and by prioritizing services and visitation over her efforts to secure housing and a source of income. Parent advocates, caseworkers, and some ACS attorneys, law guardians, and judges also told me that a parent who "didn't wait around for their caseworker" but took initiative to seek out their own help would be viewed favorably as taking responsibility and showing a desire to get their children back without relying on outside help (see also Smith & Donovan 2003). This was taken as another sign that they had changed their lives, were responsible, and were willing and able to parent on their own.

Taking on a Deferent Attitude

When I asked Sandra, an 18B attorney, if she found her clients were helped by the services they were offered, she stated:

> I can't think of anybody who's gotten any decent services, actually. Well, I shouldn't say that. A very, *very* small number, and none of - nobody seems to think, really, people are going to get better. It's simply the passage of time, and if they've sufficiently toed the line and stopped being belligerent and become more - have become more supplicant - more like supplicants and stop having that edge of fighting ACS. If they've successfully done that, then ACS thinks everything fine. If they preserve any sense of their own independence and belief in fighting this through…They're absolutely cooked.

After talking with parents and closely following some of their cases, it seemed to me that she is correct in this assessment. Since parents are seen as having failed to be responsible and are in need of wholesale personal transformation, they are required to submit to the advice and views of experts who can tell them what they should be doing differently. If parents are unable to defer to the better judgment of experts, or if they continue to fight suggestions and argue they do not have the problems they are said to have, they will have trouble regaining custody. In Emma and James' case, for example, their relationship with their caseworker became so bad that they would practically shout at one another (I witnessed one of these incidents), and, eventually, the caseworker avoided them as much as she could and just handed them referral letters rather than discussing services with them. They found service providers on their own and made it known that they felt the caseworker was unqualified and that they could do a better job of deciding what they needed and where they could get it.[208] Although they completed the list of services required, the caseworker either decided their services were not "appropriate," or simply ignored what they had done and told the judge they had been doing nothing. An attempt to have their services recognized by the family court failed, as the judge explained that, although the caseworker

[208] They also talked about choosing service providers as their right and shared the common perspective that those chosen for them would act as surveillance rather than help.

needed to talk to them about what they were doing, the parents ultimately would have to follow her directions. [209] After their daughter had been in foster care for more than two years, these disagreements were never quite resolved, and for this reason, among others,[210] it seemed that the agency would move to terminate their parental rights. This case showed a common pattern: caseworkers expect parents to simply follow their directives. Parents who questioned what they were being asked to do faced delays in reunification. They were seen as unwilling to admit their "real" problems and change.

Taking Responsibility

In general, I found that parents who came to agree with caseworkers' definitions and analysis of their problems and showed proof that they would do anything to fix them were successful in getting their children back. Parents who refused to admit wrong-doing, blamed others for what they were going through, or could not prove they were adequately remorseful and willing to change, were likely to have their children in foster care for longer or even to have their parental rights terminated. Many judges would generally require that a parent specifically admit to wrong-doing in court and show remorse or some sign that they had "taken responsibility." A social worker at the Legal Aid Society[211] told me that she specifically wanted to see that a parent was not one "who spends a good deal of their time sort of fighting the system, fighting with the case workers, finding fault what other people are expecting them to do" before she would feel

[209] At this hearing, after their attorneys produced certificates from various programs (including one from a branch of her own agency that she said she had never heard of) and a letter from a counselor, she protested that she did not "have any idea what they were doing" or if "they were really getting counseling."

[210] The main reason was the father's drug history and the fact he had had parental rights to other children terminated over 10 years ago. Although, under ASFA, the child welfare agencies could have legally refused to make "reasonable efforts" with regard to him, they did not do so. In the early stages of the case it seemed they were willing to return the child to the parents, eventually, and even focused on the mother more than the father. Later, it was made clear to the mother that she could separate from him and regain custody. She refused.

[211] Their attorneys are the law guardians in most cases, and their social workers are used to evaluate the case to help decide, if the child is too young, what the law guardian's positions (including about reunification) should be.

the child would no longer be at risk in the home. She felt that an attitude of "fighting the system" meant the parent was not taking responsibility and was trying to deflect attention from themselves and their problems so that they did not have to address them. Instead, she told me, she wanted to see that parents were using the experience of having a child in foster care to "really gain more in terms of their parenting approach."

Social workers who work as parent advocates recognized this tendency and attempted to help parents use their child welfare experience to "really change." For example, Emily a white woman in her 30s and a social worker at the Bronx Defenders, who clearly felt the system was biased and unfair, told me that she has to make sure she does not just commiserate with parents about the system but also helps them get something out of it:

> But we're here now and we have to figure out a way…to get something from this. And it's like a very sick discussion because it's like most people don't feel like they need to get anything from, you know, ACS or Child Welfare. They're very comfortable with their role as parent, or mom, or dad. And, you know, really having discussions around what we've - definitely more with isolated families - that parenting is not instinctual… And if we're saying that…we're gonna take your children, then we have to explain why and put in…supportive services that will actually change what their idea of parenting is and…that's the hardest part of the job.

Here she talks about how her job is a therapeutic one. Instead of fostering an attitude of fighting the system, she encourages clients to accept efforts to change their parenting and actually make those changes.[212] Part of her job is convincing them they are in need of the help offered.

Some mental health professionals were the most adamant about wanting to see "real change." They expected parents to show that they had gained "insight" from therapy and were changing, rather than just going to their appointments, before they would recommend

[212] This is not surprising because she is a trained social worker and therefore has been taught a therapeutic orientation and methods. One parent advocate at CWOP who has "been through the system" told me that she did not think that social workers were truly "parent advocates" and hoped this firm would hire more parents who had been through it.

reunification. These professionals took the most "therapeutic" view in that they did not only expect outward compliance but looked beyond parents' actions for signs of internal change. Rose, for example, a Latina mother whose parental rights were in the process of being terminated when we met, was seen as noncompliant with therapy and as refusing to deal with her problems. Her therapist wrote a report that stated that although she did attend sessions, she failed to see the "intrinsic reasons" for the services required of her and "experience[d] her compliance as a response based purely on extrinsic demand." This was a key factor in the agency's argument for terminating her parental rights.

Consequences of a "Bad attitude"

In many cases caseworkers used parents' attitudes as part of the rationale for either refusing to increase visitation or decrease supervision, which must occur, in most cases, before a child is returned. For example, I witnessed one case in which a mother's unsupervised visits were suspended *only* because she acted "inappropriately" towards caseworkers during visits. The caseworker admitted that the mother did not behave towards her children in a way she found problematic. However, she felt the mother was acting "unstable" and so should not have been allowed unsupervised visits.[213] I also saw evidence that parents' attitudes were a key factor in whether children returned home or not. For example, Michelle, a law guardian, told me about a case in which a child was returned to her father after a 1028 hearing under the condition that he have preventive services in his home (this case was described in detail in Chapter 8). For the months when the preventive agency was in place, "things were going beautifully. We thought the

[213] I did not talk to this mother, so I do not know the source of her anger; however, it kept her from unsupervised visits for several months which delayed reunification. Prior to the supervision change, weekend visits were to start which is generally the last step before "discharge." At the court appearance where I saw the case, her unsupervised visits were reinstated, but she was told the caseworker would "see how it goes" for a few months before she would get weekends. The mother was visibly angry about the delay, and after the conference the law guardian commented on how ridiculous she was being and that her anger meant she was not progressing as she should.

case would be dismissed, like things are going great." When the time limit for having preventive services was reached, however, the ACS caseworker who had originally investigated the case and removed the child was sent to monitor the family. Things quickly "fell apart" and ACS asked the judge to remand the child. Although Michelle was not certain what had happened, she felt that the father's lack of trust in the caseworker meant he was not always returning her calls or cooperating with her and that this had been the problem.[214] This is not only evidence of the role of parents' attitudes, but another example of the tension between investigating/policing and helping/supporting and how this often inhibits effective service provision.

Benefits of a Good Attitude

Compliant parents had a much better chance of getting their children returned quickly. For example, Stephanie, an African-American mother, after losing custody when she gave birth to a second child who tested positive for drugs,[215] was able to get them back more quickly than most of the cases in my study. She described what she thought made the difference. She was very "pro-active" and basically did her attorney's work for her (made all copies, got all necessary records). She had good "rapport" with the courts because she never "acted out" and "was dressed appropriately" and "spoke appropriately." And, finally, she never missed a visit. Her lawyer also commented that she was "very passionate about this" which was also helpful. Stephanie emphasized "not acting up" and stated that in the "toughest of times…when I was still in my early recovery, you know. I never acted out, I never acted out and, sometimes it was just blatant lies." She summed up what led to her family's reunification by stating that "I had established myself as being trustworthy again." Here, she is clear that having the correct attitude was key.

[214] In the 1028 hearing the father testified that he did not trust the caseworker because she lied to him.
[215] She did not want her older child to be removed from her home and wanted to bring her to the caseworkers herself (something I never heard another parent being allowed to do). She was able to "ask nicely" and they agreed.

Another factor in her case and why it was handled so quickly, I believe, is her class status. Stephanie is college-educated, with a master's degree in social work, and was able to keep a job throughout the entire process (which is rare, see below). All this gave her various important resources. Her education and job allowed her to "dress appropriately" and "speak appropriately." Her job also was flexible enough that she could attend court, meetings, and treatment, and it gave her resources to keep in constant contact with her lawyer and to make the copies needed. Her social work training in particular allowed her to understand what was required, and probably made it easier for others in the system to respect her. She was thus far more able to be active in her case and do things "on her own." These resources, both material and "cultural capital," played a role, I would argue, in her ability to make herself "trustworthy" and to interact with the decision-makers in her case in such a way that they would be willing, as she described it, to tell people that she was "decent." Further, she was seen as "passionate" because she was compliant, engaged, and "pro-active," but not "angry" because she was able to control her emotions and could talk to decision-makers as a colleague due to her similar background and education. Due to her resources, she had an easier time proving she was an active and responsible citizen/parent who could take charge of her life and make changes without outside help.

Poverty and other "Material" Barriers to Reunification

In addition to showing compliance and completing all services, parents also must show that they have the ability to feed, house, and clothe their children before they can be reunited with them. For some parents I met this was difficult due to poverty. In addition, involvement with the child welfare system itself was *one* factor in deepening some parents' poverty or in making a more stable economic situation precarious. As much research has demonstrated, the current structure of low-wage work and declining/unavailable public benefits has made the

economic position of poor people in general more precarious in recent years (Goode & Maskovsky 2001a; Mullings & Wali 2001; Hays 2003). For my respondents, the child welfare system was another element in this uncertain landscape as a focus on personal transformation without equal attention to material conditions sometimes made them worse off. This particular form of state recreation of poverty, it must be kept in mind, disproportionately impacts people of color.

Effects of Child Welfare on Parents Economic Conditions

Of the 28 parents I interviewed or got to know well, almost half (13) lost income or housing during the court of their involvement with child welfare. Four became homeless and one was almost evicted. Luckily she had lived in the same building since she was a child and the landlord was willing to wait for rent. Two parents were homeless prior to their children's placement in foster care and were nearing being able to get an apartment, but this was delayed by their child welfare case. Seven parents either lost jobs or were unable to work due to their child welfare involvement. Most of those who lost jobs were able to avoid homelessness by moving in with relatives or through the financial help of family members. I also met several parents who experienced deepening poverty that I was not able to interview partly for this reason.[216] Some of the parents whose economic condition stayed the same were already living in poverty before their involvement with child welfare (6 out of 15). In contrast, only nine parents were able to maintain a relatively stable economic position, and there were several factors that enabled them

[216] For example, one mother agreed to an interview but did not show up. She later apologized and told me her welfare benefits had been reduced, she was unable to pay her rent, and they had denied her request for assistance with the back rent. She had to go to the welfare office and waited most of the day only to *request* a fair hearing. Two weeks later she was evicted (this was in early June of 2007). By chance, I ran into her a year later, selling toys on the street. She told me she was still in the shelter system, and her children had been moved to another foster home and another foster care agency. The new agency wanted her to take another parenting class (for children with special needs), but there would not be one starting for at least 2 more months. She had no idea when her children might be coming home, but an ACS housing program was working with her to get an apartment.

to do this: 1) they had middle-class jobs and education, 2) they had stable working-class jobs and two incomes, and/or 3) they were not heavily involved in the child welfare system.[217]

Causes of Deepening Poverty

The situations of the parents who experienced deepening poverty are complicated and their child welfare involvement was only one of several factors involved. Some were already in precarious economic situations which led to their involvement with child welfare (as in Mary's case), but, for others, things became worse when the government benefits they relied on were reduced or cut off when their children were removed from their care, which left them vulnerable to homelessness. Some parents lost their jobs as a direct result of their child welfare case (as in Joan's case; she was a nurses' assistant) or lost jobs when they had to take time off to deal with their case and their services. Mothers who reported that they were told they should not be working but needed to "work on themselves first" and had been working previously, either had to apply for public assistance or rely on family members when they took this advice.

Most parents told me it was either impossible or extremely difficult for them to hold a job given that most of the activities surrounding their child welfare case took place during working hours and the jobs they had or were likely to get were in low-wage service industries in which schedules were inflexible and unpredictable and missing work very often meant losing the job. Ramel, who was homeless prior to his child being removed from him and the mother, had planned to get a job but was not even going to look, he said, because his criminal record meant

[217] Four were college-educated and had middle class jobs, but only two of these had all their children in foster care for an extended period of time (one never had his children in foster care and the other had one mainly due to the child's mental health issue). Three parents had stable working-class jobs and two parents in the household (two of these families had all of their children in foster care, while the other had one child who was voluntarily placed). One of the remaining two parents has never had her child in foster care and supports herself with a combination of a part-time job, public assistance, and help from her former foster care agency (she is going to college). The other is a father only peripherally involved in his girlfriend's child welfare case (a child they share is in foster care but she has other children and was the only one named, initially, in the case) and has income (he was vague about from what).

that any job he would be hired for would not allow him the flexibility he needed to attend services and see his son. Although, in theory, agencies are supposed to accommodate parents when scheduling visits, meetings, and services, in my experience they were scheduled for the convenience of the caseworkers or for foster parents, often at times that were impossible for parents.[218]

Consequences of Poverty

When parents are unable to secure their *own* apartment or prove they have the resources to support their children, foster care agencies will often refuse to return their children even if there are no other barriers. Living with a family member is generally, but not always, considered a problem, and children will often not be released to a parent in this situation—either due to the family members' child welfare or criminal history or simply because the arrangement is viewed as "unstable." Agencies are supposed to help parents with housing and applying for government benefits, but not all caseworkers are knowledgeable about how to do this or are providing enough of this help, as in Mary's case. Changes in government assistance also mean that resources are not be available and/or are harder to get. It is also the case that children can be released to their parents if they are in the shelter system,[219] but many caseworkers were either unaware of this or did not tell parents because they felt that it was not a stable plan for the children.[220] Parent advocates at CWOP tell parents about this possibility, and I saw two cases during my observations there of children who were returned to their parents in the shelter system in a matter

[218] Agencies must have a pool of foster parents so they can fulfill their contracts and take in children, thus they often cater to foster parents lest they decide it is too much trouble and they "close their homes." Many parents commented that they felt the caseworker was "on the side of" the foster parent.

[219] The rules allow parents to be moved to a family shelter as soon as the children are released (if they have notice and can find a spot). Parents in this situation seem to be a priority.

[220] I once even saw a caseworker refuse to return a child (after the judge had ordered it) because she did not think the mother had found an adequate school for the child who had a "special need." The judge came very close to holding her in contempt, but instead just yelled at her and ordered her out of the courtroom.

of days after they had waited months and had been told that the only barrier to returning their children was their lack of housing.

Even when parents are approved for help, bureaucratic rules can cause delays. In one case, for example, a father, who was not caring for his son when he was removed and was never named as a respondent (i.e. he had no accusations of abuse or neglect against him), waited months to gain custody because he did not have his own apartment. When I saw the case in June of 2007, the child had been away from the parents for over a year.[221] In November of 2006, the father had been approved for an ACS housing grant that would enable him to pay a deposit on an apartment and buy furniture, but the child was still in foster care. His lawyer complained that he had already lost two apartments because he did not receive the grant check quickly enough and so the landlord had rented to someone else. The lawyer, therefore, asked for a court order that the father get the check, that day, as he had an apartment and a lease, and needed the money to pay the deposit. The ACS attorney argued strongly against this and complained that ACS could not release a check until they knew he had an apartment. According to the rules parents cannot get this money directly. They are approved for specific amounts for rent/deposit/furniture and checks are written to landlords or stores (it seems parents are not trusted with the money). Instead, the attorney promised it would be done "expeditiously." The judge was as frustrated by all this as the father was, and ordered ACS to get the check within a week. He even threatened ACS officials with contempt which is extraordinarily rare for this judge who is very soft-spoken and even-tempered.

As other researchers have pointed out (Reich 2005; Appell 1997; Roberts 2002; Golden 1997), much of child welfare practice focuses on the individual shortcoming of parents rather

[221] The first 7 to 8 months of this the child was in foster care while no one pushed to have him placed with his godfather and then for another several months while the father tried to get his own apartment.

than on providing for the basic material needs that would help to improve the lives of most families that come in contact with this system:

> Because so many of the families who enter CPS [Child Protective Services or Child Welfare] are poor, improving their lives will take more than the limited services they are assigned and longer than the time granted. Yet, even with adequate services, no service strategy, however well-conceived and tested, can substitute for the basics of adequate income, housing, healthcare, education, and public safety. But services do not focus specifically on addressing a lack of material resources. (Reich 2005: 156)

An important finding of this study is that the child welfare system itself can become one factor in deepening parents' poverty. If parents are not able to show evidence that they have adequate housing and the means to care for their children, reunification will not occur. As Reich points out, although inadequate housing alone is not a legal reason to remove children from their parents "the bar for minimally acceptable living arrangements is raised once children are wards of the state" (Reich 2005: 130). The child welfare system definitely plays a role in recreating poverty which was then used as a further reason to deny custody to parents. This situation most often effects families of color who are the most likely to come in contact with child welfare.

According to Polsky, a "therapeutic" approach to dealing with poor and "marginal" (as he puts it) families that focuses on individual change rather than structural causes has been a part of state practice in the U.S. for over a hundred years. Although, in many ways, state responses to poverty have altered in the past decade, ending commitments to financially support poor women and children and focusing instead on getting them into jobs and off welfare (Kingfisher 2002; Mink 1998), these "therapeutic" ways of dealing with family problems among poor populations have continued in other areas of state practice. As my research demonstrates, the process of reunifying families in child welfare still focuses on individual behaviors and attitudes and on creating individual transformation of the self. Counseling and education services of various kinds

are seen as most important and some parents are told to "work on themselves" rather than worrying about housing or jobs. Although parents do sometimes get concrete help that they feel they need (drug treatment and housing help most prominently), parents are put through parenting skills classes no matter what their family problems are, many are sent for psychological evaluations and counseling, and parents' emotional reactions to the system are used as evidence they need more help and/or that reunification should not proceed. Although services such as counseling and anger management can be valuable, not all parents are comfortable with the idea of therapy and evaluations can lead to psychiatric diagnoses that make reunification difficult. A constant focus on compliance and arguments that parents need to find services on their own if their caseworkers are not helping them privilege neoliberal requirements that citizens be "active" and "responsible" and not rely on others for the help they need. It seems that the goal of many services is to create wholesale transformations in parents' attitudes and behaviors so that they can become responsible citizens/parents who have their lives "together" enough to raise children with little assistance.

As would be expected in an overburdened system where more funding more goes to out-of-home care for children than to prevention and reunification services, parents face multiple roadblocks in the reunification process. Understaffing, high caseloads, and high staff turnover often leave caseworkers little time to focus on offering services to reunify families while the strains of balancing competing goals and interests can sometimes mean that reunification is not a top priority. Parents' resistance and anger, and especially material constraints of time and money, also create barriers to reunification. However, material constraints are not often acknowledged as valid reasons for "non-compliance." In the end, parents who are able to maintain the proper attitude, comply with all directives, and attend appointments on time have a good chance of

reunifying with their children. Parents who are not able to do this or are not able to comply within the timeframes set by the system risk losing their children permanently.

Chapter 10: Conclusion

As child welfare has narrowed, since the 1970s, to child protection, and as the numbers of reports have grown, agencies have become concerned with the "risk" children face in their homes and that parents present to their children. In this system, the focus is generally on individual wrong-doing by parents, and the rights and needs of children are pitted against the rights and needs of parents. Rather that assuming, as Claudia put it that "we all just want the best for our children," caseworkers, because their job is to protect children from potentially abusive and neglectful parents, investigate in order to assess the truth of allegations and the risk children face rather than to evaluate what needs the family has. The parents I spoke with thus felt as if they were treated, automatically, as potentially horrible parents rather than as parents who might need help to deal with personal problems and care for their children.

By focusing on individual wrong-doing, the larger contexts of parents' lives and the constraints they face, which stem from larger race, class, and gender inequalities, are defined as outside the boundaries of child protection. Rather than taking into account the larger structures that impact the lives of poor children, the state, in the child welfare system, deals with the failures of parents and can only understand these in terms of individual actions and choice which are labeled neglect. In many of the cases I followed, however, it seemed that mothers were struggling with poverty, domestic violence, lack of childcare, difficulties accessing mental health and drug treatment, housing problems, and disinvestment in social services. In focusing on whether or not children were at risk and whether or not parents were complying, the root causes of parents' problems were generally not addressed. This was not, however, due to individual caseworker's biases, but was instead due to the nature of the institution within which they worked.

Caseworkers have difficult jobs with high caseloads, and they realize that they will be held to account if a mistake is made and a child "known to the system" is killed or seriously abused by their parents. They are thus under pressure to make cautious decisions which often means increased supervision of the family or child removals. Although child welfare is also, ideally, about providing or coordinating services in an effort to keep families together when possible, these helping functions are overshadowed by policing and surveillance. Caseworkers are under more pressure to protect children than to provide services and felt that parents were distrustful of them which also made service provision difficult.

Parents confirmed that they felt suspicious of caseworkers (both ACS and foster care agency caseworkers) and that it was difficult to see them as potential sources of help. Instead, they found them judgmental and often felt that they "had it out for them" personally. The fact that caseworkers can remove children was sometimes used, as it has been since the SPCCs in the 19th century, to force a parent to comply with caseworker directives and "engage in" services. Many parents thus experienced child welfare as a negative and coercive "system." That reports to child welfare are used in poor communities of color as weapons, further shows to what extent this realm of state power is viewed as repressive rather than as a potential source of assistance. Parents further felt they had little access to needed services until their children were removed from their care, and they wished they could have been helped with their problems without having to go through the pain of losing their children. The parents I spoke with often perceived that, in many ways, they were being punished with child removal and given a series of hoops to jump through to prove their commitment and love for their children. As Simone told me, "they think that they can punish you into getting sober."

This focus on individual causes of harm to children and the punitive nature of child welfare must be placed in the larger context of neoliberalism and a political climate in which poor populations, especially poor and minority populations, are vilified while responsibility for their poverty and other social problems is placed squarely on their shoulders. Since the 1970s, increasing economic polarization, which tends to fall along racial lines, and the dismantling of important social services that are perceived as benefiting poor people of color who are seen as undeserving have created or exacerbated social problems. These problems have been dealt with by the state "through surveillance and incarceration, not through supportive services" (Goode & Maskovsky 2001a: 5-6). In child welfare, programs that aim to keep families together have been attacked and new limits have been placed on the amount of help to which parents are entitled. In this political context, this system has disproportionately subjected poor people of color to coercive interventions and profound family disruption through the loss of child custody while the problems faced by white families are more likely to be dealt with through less disruptive means. Child welfare, as it has been since its inception, is thus part of the way in which poor families are under surveillance and subject to coercive rather than supportive interventions into their lives.

The Definition of Neglect in Practice

In examining day-to-day decision-making in the child welfare system, it became clear that the category of neglect is a flexible one that can encompass a range of family problems from corporal punishment that results in injuries, to a parent's drug use, to shoplifting, to allowing a boyfriend to stay over when a parent is under ACS supervision. First, large percentages of cases have to do with parents' drug and alcohol use or addiction, mental health issues, and domestic violence which made up half of the cases I observed in court. These problems are sometimes concretely linked to a lack of care for the child or evident signs of the parent's impairment, as in

drug cases in which children were not in school and were living in extremely dirty houses, or as in the case of a mother who was hospitalized because of a suicide attempt. However, having these problems can, in many cases, *in and of itself*, be construed as constituting a "failure to exercise a minimal degree of care" that puts a child a risk. It is sometimes assumed that parents cannot continue to provide care for their children in the face of these problems, and that removal is the best solution if parents do not quickly access help.

The other cases I saw were more closely linked to harm or a direct risk of harm to a child: educational neglect, medical neglect, excessive corporal punishment, malnourishment, and leaving a child home alone. However, not all of these cases are as clear cut as they seem, and it was not always clear that the risks the children were facing were the direct result of the parents' failure to provide a minimum degree of care. In several of the medical neglect cases, for instance, a problem with Medicaid, rather than irresponsibility or a disregard for their children's health, led to an inability to follow-up with medical treatment. In addition, although these cases were more directly linked to children's needs not being met, they were less likely to result in the children being placed in foster care.

Most of what is considered neglect and a significant risk to children thus had to do with behaviors engaged in and/or problems parents had. Specific consideration of how a particular parent engaged in these behaviors or dealt with their problems and how this affected the care of their children overall was rarely discussed. For example, the question of whether or not a mother was a "functioning addict" who was able to hold things together to care for a child or simply an occasional user was rarely directly asked. This is, in part, because of how the law defines neglect (see Chapter 8). Whether or not parents had the resources to access treatment was sometimes similarly ignored, and they were expected to be able to access treatment despite barriers, while

delays were taken as evidence of an unwillingness or inability to change. So, compliance, rather than a more holistic assessment of the care the child was receiving, was often used as an indication of the level of risk.

Overall, the definition of neglect used in child welfare has a tendency to take parental problems out of context, ignoring their roots in structural inequalities, and instead blames individuals. In addition, the larger context of how parents care for their children is lost as they are judged almost solely on the basis of particular problems or particular moments in time. Rather than being seen as parents who need help, they are seen as neglectful and "risks" that children need to be protected from. This label, which is enforced by legal means and difficult to overcome, makes it easy to devalue or ignore what care they have provided to children.

Race, Class, and Gender in Child Welfare

It is clear from my data and from other studies of child welfare by legal and social work scholars, that the child welfare system disproportionately impacts poor families and families of color. In New York City, poor neighborhoods are also the ones in which the most reports of child maltreatment are made and in which the most child removals occur. The families that are investigated and the children in foster care are disproportionately African-American. The combined effects of race, class, and gender inequalities created conditions, for many of the parents in my study, in which they had trouble providing adequately for children or were not able to access help they needed for the problems of drug use, domestic violence, or mental health issues. In addition, their social locations left them vulnerable to intrusive surveillance and brought behaviors such as illegal drug use to the attention of authorities. Finally, these larger social inequalities are at the root of problems faced by poor communities of color as a whole that place children at risk: poverty, lack of housing, inadequate schools, neighborhood violence, the

availability of illegal drugs, lack of jobs, and dilapidated housing. Sometimes these problems were blamed on individual parents and labeled neglect which can lead to the loss of child custody. Blaming these situations on individual mothers and labeling them neglect or a failure in judgment in this way ignores the contexts in which they live and the constraints they faced that stemmed from their race, class, and gender.

Race and class intertwined in the lives of the parents I met to make them more vulnerable to reporting and child removal. As discussed in Chapter 6, they were subject to surveillance that others can avoid due to their reliance on public services such as schools and hospitals and their vulnerability to drug testing. The middle-class black women I met were in precarious economic situations and open to surveillance since they relied on public services and/or when they suffered job loss or an inability to get drug treatment. The increased police surveillance of poor and minority neighborhoods and "tough on crime" policing and sentencing practices, as well as increased police involvement in child welfare matters, also play a role in why some families are vulnerable to child welfare involvement. If a parent is arrested, the children can be placed in foster care and would remain there after their release, even if the arrest was unconnected to childcare or was for a non-violent act. Arrests also played a role in cases that might have dealt with by offering services rather than placing the child. For example, parents who injure a child in administering corporal punishment or parents who leave children home alone are often arrested. This leaves the ACS caseworker little choice but to place a child in foster care. Once the child is placed, it then becomes very difficult for parents to regain custody (see Chapter 9).

The high level of child welfare involvement in poor communities of color affects not only the parents who must deal with child welfare investigations and possible loss of their children, but the community as a whole. As demonstrated in Chapter 6, when child welfare cases are

common, many parents become fearful of "catching a case." Community members become familiar with the procedures of child welfare, the stress a case causes, and the fear of losing custody that is created. Child welfare, in this context, is sometimes used as a weapon against neighbors, family members, former partners, or by batterers against their partners. This, in turn, strains community ties and makes it difficult for parents to trust others. Some parents even become reluctant to seek help from service providers because they fear that, rather than help, they will be subject to increased surveillance and might lose custody of their children. These community-level effects are, again, concentrated in communities of color.

Race, class, and gender play a role in child welfare decision-making as well. Caseworkers and managers are allowed a fairly large degree of discretion in their decision-making. This is in recognition of the fact that every case and every family is different, and it ideally allows for flexible decision-making in order to meet the needs of individual children and families. However, this discretion also allows caseworkers to take into account subtle issues like a parent's "judgment" in how they run their lives and raise their children or to make assessments of their ability to be responsible. These assessments are often influenced by discourses about and stereotypes of poor women and men of color and/or by implicit class comparisons.

Throughout my fieldwork, in many of the cases I heard about from caseworkers or witnessed in family court, parents were held to standards that are attainable by middle-class families, but difficult to reach for poor, or even sometimes working-class parents. Mothers were expected to be able to quickly access help for drug abuse/addiction or mental health problems, to ensure their children were always adequately supervised, to provide their children food and safe housing, to always provide prompt medical attention, and to create a "stable" and violence-free life for them. Lack of health insurance or problems with Medicaid, lack of affordable childcare,

inflexible job schedules, limited availability of drug and mental health treatment, inability to provide care for their children if in-patient treatment was needed, vulnerability to homelessness, and difficulties leaving abusive partners were often not recognized as being central to the risks that children faced or parents' problems. Instead, the mothers' judgment was often questioned or the lack of resources defined as irresponsibility or blamed on drug use. These failures were then labeled neglect and dealt with through foster care and by attempting to alter the parent's behavior or provide them with counseling. These decisions are not only related to class biases, however, but seem to be linked to larger stereotypes of irresponsible and unfit black mothers.

In terms of gender, it is most often mothers who are held accountable for their children's safety and well-being. This is partly due to the fact that many of the families that come in contact with the child welfare system are headed by single mothers. However, there are other forces at work. For example, cases that allege "failure to plan" for the care of children are less often filed on fathers, as women are still expected to be primarily responsible for the day-to-day care of children. In addition, caseworkers often do not inquire about fathers to see if they might be able to care for their children. When fathers did come to court to ask for custody, it was assumed they would not be adequate caretakers, and they were automatically subject to investigation. If criminal records or other problems were found (whether or not this had to do with their children or domestic violence) they often did not get custody. Very often, no petition alleging that they were neglectful or abusive parents was even filed. If their children had been removed from mothers, the father would also not technically be a client of any foster care agency, so he was often left without any help to overcome barriers to gaining custody. In many ways, it is assumed that fathers are not and will not be primary or shared caretakers, so they are often not included in planning or given the help they need. It seems that this is closely related not only to gendered

expectations about child care but also to stereotypes about fathers of color, namely that they are "deadbeat dads" who refuse to care for their children and to perceptions that black men are dangerous and criminal and therefore not suitable caretakers.

Caseworkers and family court officials also draw on racialized ideologies about the irresponsibility of poor women and use these to justify surveillance or the removal of their children. Although direct references to race were not made, these "color-blind" discourses are nonetheless racialized. Caseworkers talked about mothers in ways that drew on larger stereotypes of black women as irresponsible, careless mothers who are to blame for their own poverty due to their poor choices and overly sexualized. This was clear in how Marilyn described her clients as having "arrested development" (Chapter 6) or when Pamela told me that her clients "have to learn" that

> You can't have all these kids with all these different fathers and, you know, expect to be okay. It's not gonna be okay…[S]ometimes the system itself, you know, fails everyone because if you're allowing them to stay on Section 8 for years and years - and they're cutting that down now where you have to - After five years, you have to be on your own. And I think that's pretty good because it – "I don't have to work. I can stay home. My rent is paid. I get food stamps. I have cable, food, a nice decent apartment. Why should I work? I get SSI for one or two of my kids. Why am I working, you know?

Her statements draw on stereotypes of poor women of color who have "too many children," are lazy, unwilling to work, and willing to take government money rather than getting a job (Mullings 1995; Quadagno 1996; Roberts 1997; 2002). These stereotypes might lead to harsher evaluations of women or color, making it less likely they will be seen as mothers who have something to offer their children and more likely that they will be seen as risks from which children must be protected. In addition, these views tend to define these mothers are undeserving of help. These stereotypes underlie recent policy changes which have limited the availability of

services in the child welfare system overall (see Chapter 3) and might play a role in caseworkers' decisions about how to allocate these scarce resources.

Finally, caseworkers and other decision-makers weigh parents' compliance heavily and use it as shorthand to evaluate whether a parent is serious about making changes that would benefit and protect their children. If parents comply and share the caseworker's, judge's, or law guardian's analysis of their problems, they are perceived as "taking responsibility" and working to change the situation, thus alleviating the risk to their children. However, the ability of parents to comply is also structured by race, class, and gender, and this is rarely taken into account. Too often the barriers to compliance many parents faced that stem from poverty, inflexible jobs, lack of transportation, or lack of health insurance, for example, are ignored. In addition, parents who are uncomfortable or unfamiliar with therapy or distrustful of state systems due to past experiences, as many women of color I met were, also had difficulty performing compliance. Parents that can defer to caseworkers, not show anger, make it on-time to all appointments, and show that they have accepted others' definitions of their problems and how they should be solved, have a good chance of retaining or regaining custody of their children. Those who chose not to or cannot do so are likely to lose custody.

The decisions made in child welfare are not solely due individual biases that are, in turn, shaped by larger societal discourses surrounding poor parents of color. They are also, and perhaps primarily, closely related to the nature of the child welfare system itself. Caseworkers' job is to assess risk that parents present to their children and there is little they can do to actually alter the systemic reasons why parents deal with many of the problems that place children at risk. Underperforming schools, domestic violence, jobs that provide low-wages and no security, and dangerous neighborhoods in which drugs are widely available, cannot be dealt with by

caseworkers and the services they have at their disposal. These are larger societal issues that stem from economic restructuring and decades of disinvestment in poor communities of color and the systems that service them. The child welfare system itself is under-funded and most of the funding goes to support children in foster care, not to support family reunification or programs that attempt to avoid foster care placement. In this context, foster care is often the most available solution to family problems that stem from, or are closely related to, poverty and racial and gender inequalities.

The Recreation of Stratified Reproduction

This study provides evidence of some of the ways in which child welfare not only builds on a situation of stratified reproduction but also helps to recreate it. In terms of building on relations of stratified reproduction, it was often clear that the caretaking work of parents involved with child welfare was not valued and supported. I found that the positive things women had done for their children were often not taken into account in decision-making. Instead, mothers felt they had to prove they loved their children and that officials assumed they did not have their children's welfare and best interests at heart. It often seemed as if their value as mothers was denied or ignored, and they were viewed instead as a sum of various personal problems that put their children "at risk," making the decision to supervise them or remove their children, rather than to provide services, seem the most appropriate.

Parents' efforts to raise children despite their drug problems or their challenges in providing for them, for example, were generally not recognized. Mothers were frequently seen as irresponsible and it was assumed they fit stereotypes of women who selfishly put their own needs before their children, did not wish to change their lives, or were unable to learn from their mistakes (see Chapters 6 and 7). It was assumed that fathers fit stereotypes of absent or

"deadbeat dads" who would not be involved caretakers or of violent and criminal men who should be kept away from children. These views held by caseworkers and other decision-makers helped create a situation in which increased surveillance, mandated services, requirements about whom they could have relationships with, and even the removal of children seemed reasonable solutions to family problems rather than concrete help for drug addiction, housing problems, domestic violence, etc… Simply being reported to child welfare officials, even if investigations concluded maltreatment was not occurring, raised suspicions that parents (especially mothers) were placing their children at risk. If reports were made in the future, even these unfounded reports would be taken as evidence of a problem (see Chapter 6). These solutions and practices clearly devalue the contributions parents, especially mothers, make to their children and define them as risks to their children to be managed. This "parent as problem model" (McConnell & Llewellyn 2005) is a prime example of how state practices build on relations of stratified reproduction in which the caretaking of poor women and women of color is devalued. By continuing to define them by what they lack, by not providing the services that might enable them to better care for their children, and by creating a situation in which they actually had fewer resources to care for children than they did before becoming involved in child welfare, the idea that they are unfit mothers is then reinforced and recreated.

The family court system also plays a role in the creation and recreation of stratified reproduction. As demonstrated in Chapters 7 and 8, the stated purpose of family court procedures is to provide a forum in which the rights of parents are balanced with the safety of children. However, day-to-day practices in family court are most often titled towards a concern with safety first and foremost. Judges, law guardians, and officials from ACS are under enormous pressure to avoid making a decision that ends in tragedy (see Chapter 5) and so are apt to make cautious

decisions. There is little incentive to challenge the decision to remove a child or to authorize state supervision of the parent, and, in the context of high caseloads, little scrutiny or questioning of these decisions occurred. Family court often became a rubber-stamp to ACS decision-making and quickly moved on to the business of dealing with the supervision of families and children's placement in foster care. The formal rights that parents have to challenge these interventions are not often available, practically speaking, as, for example, parents' attorneys realize that 1028 hearings are likely to be lost and are reluctant to ask for them.

Daily practices in family court thus create a situation in which the vast majority parents *will* be found to have neglected their children. Again, this re-inscribes a view of these parents, who are overwhelmingly poor people of color, as "unfit" and risks to children rather than as loving parents who need help. The legal finding of neglect removes problems from the realm of structural inequalities of race, class, and gender, and into that of individual culpability. It will stay with parents until their youngest child is 28 years old and make it more difficult for them to retain custody in the future. It will also bar them from many low-wage jobs, especially those available to mothers such as child care provider. This label will thus place almost permanent suspicion on their ability to be an adequate caretaker and might exacerbate poverty, especially for mothers, by limiting job opportunities.

Perhaps the most troubling finding of this study, however, was that child welfare often played a role in actually deepening the poverty some parents experienced or in making a more stable economic situation worse. Again, African-American parents are more likely than other parents to be involved with children welfare and thus to experience this particular form of state-created economic insecurity. When children were removed, many women lost access to the public benefits on which they relied. Others became homeless or lost jobs while their cases were

on-going and their child welfare involvement itself played a role. The process of attempting to regain custody was time-consuming and became, often literally, their full-time job, and both mothers and fathers found it very difficult to work and still do everything required of them and visit their children. Caseworkers also sometimes told mothers that they needed to "work on themselves first" and focus on their problems and on counseling before they worried about housing or income. If parents' were unable to comply with case plans or missed appointments due to work or other commitments, they were told they needed to prioritize their child welfare case. If they did not, they were vulnerable to losing custody permanently. When it came time for children to be returned home, however, this was often delayed when the parent could not prove they could house and support their children. So, child welfare plays a role in recreating the material conditions of poverty which are then blamed on parents and used to define them as neglectful and undeserving of custody. This particular cause of increasing poverty disproportionately affects people of color since they are more likely to be involved with the child welfare system. This is a concrete way in which both the class and racial inequalities that make it difficult for parents to provide for their children and that underlie stratified reproduction are continually reproduced, in part, by state practices.

Neoliberal State Change

Since the 1970s, neoliberal ideology, which holds that private enterprise and the market are the best way to organize society and that most state power is bad and to be avoided, has been dominant (Harvey 2005; Goode & Maskovsky 2001a). It has driven policy changes towards privatizing various state functions, ending entitlements to welfare, and deregulating corporations and markets (Kingfisher 2002; Larner 2000b; a; Clarke 2004). These changes have not been simply matter of "shrinking" the state, however, as it still plays an important role in protecting

private property, policing and incarceration, and enforcing various "workfare" schemes (Clarke 2004; Goode & Maskovsky 2001a; Harvey 2005; Monahan 2006a; b). It has been argued that these shifts have particular gendered implications as caretaking work has been defined as "private" and something that individuals rather than the state should be responsible for, which burdens women more than men. In addition, citizenship has been redefined in terms of an individual's relationship to the market such that those who are not engaged in work are failed citizens who need to be forced to work. Being a mother entitled to support to raise children is no longer acceptable (Goode 2002; Goode & Maskovsky 2001a; Kingfisher 2002; Morgen & Maskovsky 2003; Stephens 1995a), and dependency on the state is defined as deviant and to be eradicated (Fraser & Gordon 1994). Neoliberal policies, such as welfare reform have also impacted people of color more severely and have intensified racial inequalities (Davis 2004; Wacquant 2001; Goode & Maskovsky 2001b).

Much of the scholarship about neoliberalism has examined state changes with regard to social welfare and poverty policies. In this realm, it is clear that women have been redefined as "de-gendered workers" (Kingfisher 2002) and that state support for social reproduction has been privatized and/or drastically reduced. However, when examining child welfare, contradictions in state policy and change as well as continuities between past and present are more readily visible. First, child welfare is one area in which state responsibility for the care and upbringing of children is still evident. In some ways, children remain the "deserving poor" who are entitled to help and government support. Even as funds for family services and reunification have been cut, the state is still willing to fund foster care for children who have been removed from their homes.

Child welfare is also an area of state practice in which women are still defined and judged as mothers while their relationship to the market and to paid work is secondary. This is in direct

contrast to how women are defined in welfare policy. Women are expected in child welfare, for example, to put their children first and to focus their time and energy on them. Women who leave children home alone while they go to work, for example, are blamed for failing to care for their children and are not praised for their attachment to paid employment. Women are also routinely expected by child welfare decision-makers to postpone work and other efforts to materially provide for children while they "work on themselves" and deal with personal problems such as drug addiction. It is thought that this, in turn, will enable them to later focus on their children. Only when they have accomplished personal transformation will their ability to provide financially for children become important in their efforts to regain custody. Here, women are defined as mothers first.

It is also clear that the child welfare system shows important continuities with past practices that aimed to regulate family life. As discussed in Chapter 3, the state has long defined caretaking as a "private" matter and held individual parents responsible for the problems their children face and for conditions of poverty viewed as dangerous or problematic for children. For most of the history of child welfare, families and individual parents have been blamed and have been dealt with harshly, more often with child removals than with supportive services. Only during a few decades did state policies to support poor mothers so that they could raise children at home take precedence.

Throughout this history, when families have failed at their basic duties they have been subject to investigation, efforts to change their behavior, and/or child removal, and the state authorized philanthropic and other private organizations to deal with families thought to not be raising children properly. During most times since the early 19th century, especially in New York City, the work of defining maltreatment and investigating families has been carried out by

formally private, non-governmental agencies (although the state authorized their activities through law and the courts). Only since the 1970s, in most places, did government agencies take over child protective work, and these agencies have not been privatized. Thus, rather than being an example of the recent privatization of a long-time state function, child welfare has, for most of its history, been an area in which the tactics used to govern poor families and populations were carried out by private organizations backed by coercive state power. State control of child protection has a very recent history and it has not been defined as outside the state's purview under neoliberalism.

Although these continuities with past practices are evident, child welfare in recent decades has also been shaped by trends under neoliberalism. Child welfare reforms in 1997 did re-privatize child welfare in one sense by hastening the process of adopting children cared for at state expense in the foster care system. As a result of pressure to limit support for social reproduction more generally, supportive services that aimed to prevent foster care and reunify families were also subject to cuts and time limits similar to those in welfare policy. These changes were also fueled by the increasing demonization of the poor, who were perceived as mainly black and thus as especially unworthy. Finally, child welfare is part of increasingly harsh and punitive, rather than supportive, state efforts to deal with poor families and families of color. At the same time that child welfare shifted to dealing mainly with the problems of families of color (see Chapter 3), the helping functions of the system became increasingly overshadowed by surveillance and a reliance on child removal. A close examination of recent changes in child welfare policy and practice thus reveals patterns of both continuity and change. This helps to complicate our picture of state change that has occurred since the rise of neoliberal ideology and policy.

Creating Responsible Parents/Citizens

This study builds on the governmentality literature which argues that certain kinds of citizens are produced through power and through state tactics and practices. According to these theorists, governments since the 19th Century have depended on self-regulating citizens and have seen families as the key site in which the values and behaviors necessary for citizenship should be taught. Under neoliberalism, independent, active citizens who do not rely on the state but rather manage their own lives and risks are required (Dean 1995; Kingfisher 2002; O'Malley 1996; Rose 1993; Larner 2000a). The child welfare system is one realm of state practice in which services that aim to create this kind of responsible parent/citizen are mandated for those defined as failing in their duties. As seen in Chapter 9, services attempt to make wholesale changes in parents and focus on various forms of counseling and education. The assumption is that parents require treatment to deal with their personal problems and need to be taught very basic elements of responsible parenting and living such as abstaining from drugs and creating "stable" lives.

Various ways of assessing whether or not parents are able to take care of themselves and get their own lives "together" so that they can, in turn, be responsible parents, are key in whether or not parents will regain custody. For example, parents must show they are able to show up for all appointments on time and must demonstrate evidence of change acceptable to counselors and caseworkers. Because parents have failed in being responsible and using good judgment in the past, and because problems like drug addiction are seen as making them unable to control themselves and possibly unwilling to change, deference and compliance with caseworker mandates is key. Parents must show that they accept the definitions of their problems held by

decision-makers and that they are willing to submit to the requirements of various service providers who can teach them to be better parents and more responsible citizens.

Parents are also expected to show "commitment" to their children and a willingness to do whatever is asked of them in order to regain custody. If they blame failures on circumstances or unhelpful caseworkers, they are seen as unwilling to change and to be "pro-active." They are also expected to overcome a lack of resources, adhere to rigorous schedules, and gain access to services often without the benefit of referrals, transportation, health insurance, or the time necessary to fix their problems. If caseworkers do not have the time or resources to help them, parents are still expected to "engage in" services and make substantial changes in their lives. This situation is framed not as a failure of the child welfare system, but as proof that parents are responsible, active citizens, able to take care of themselves and their problems without waiting for government assistance.

As one part of what Polsky has termed the "therapeutic state," family court is a key way that these requirements are enforced. Rather than primarily being a forum for deciding whether or not intervention is warranted, practices there focus on supervising these reunification efforts. Much of what occurs in family court involves the monitoring of various attempts to create wholesale changes in parents and to bring their behaviors and lives more in line with dominant ideas about proper parenthood and family life. This involves a kind of "micro-managing." For example, parents were often required to submit to random drug tests (even in cases in which it was not clear that drugs was an issue), to invasive home visits, and to having a caseworker carefully watch their interactions with their children. They were sometimes told who they could have relationships with and who they could not (even outside of cases in which domestic violence was the issue); who they could have in their homes; and how they should speak to their

children and about what. In other words, many parents were under intense surveillance about what would normally be considered "private" matters, but they had little opportunity to challenge this interference into their lives.

Some Hopeful Developments

There are some signs that child welfare in New York City has been changing in ways that might be beneficial to the poor families of color caught up in it. The current ACS commissioner was a national leader in advocating for and working towards reform in child welfare before he came to ACS, and he has continued this work here. In 2005, the agency announced a plan entitled "Protecting Children and Strengthening Families: A Plan to Realign New York City's Child Welfare System." Among other goals, it aims to focus on services for families rather than foster care by changing funding priorities:

> As a system, child welfare gets what it pays for – foster care drives the funding and the services. As a result, close to two-thirds of families never receive in-home support services, aftercare is not funded at all, and 75 percent of the time neighborhood-based services are not in a family's plan. Reinvesting means taking advantage of the savings produced by the declining foster care population to recycle money back into the very support services – preventive, quality foster care and aftercare – that help reduce admissions and lengths of stay in the first place (NYC Administration for Children's Services 2005).

In others words, this plan aims to reduce spending on foster care and use the money saved to fund support services for families.

Although many activists working for change in child welfare and greater protections for parents' rights felt that this plan was derailed for a time by the Nixzmary Brown case, it seems that the commissioner remains committed to this overall vision. I think it was telling that the commissioner kept his job in the wake of the case; the mayor continued, it seems, to have confidence in him. During my fieldwork I attended several public forums and events held by

ACS that focused on efforts to provide services in communities and heard the commissioner state publicly that he still wanted to change the way foster care funding worked. He discussed plans to end the practice of paying agencies per day each child was in foster care in order to move financial incentives away from keeping children in foster care longer and towards foster care prevention and family reunification efforts.

Changes towards giving parents more input into their cases and providing them with better legal representation have also occurred. New institutional providers have taken over some of the representation of parents in family court, and they are working to advocate more strongly for parents there. These attorneys hope to change the culture of family court by more strongly challenging ACS. As one of their social workers stated, they planned to "really litigate these cases" and pressure ACS "to be a lot more thoughtful on these petitions. And truthful." In other words, they were attempting to change prevailing practices that often authorize ACS plans for families with little scrutiny and leave parents without strong advocates for their rights who are willing to present evidence on their behalf. They are also able to provide parent advocates and social workers to help parents access needed services and understand the family court and reunification processes. The parents I met who were represented by these lawyers reported that they had a better experience in family court and with child welfare more generally.

In addition, and perhaps most importantly, the activists and parent advocates at the Child Welfare Organizing Project (CWOP) have been doing vital work in assisting and supporting parents who are involved with ACS. Their weekly support groups, now held in the Bronx, Manhattan, and Brooklyn, are an important source of information and advice, as well as emotional support for parents. The parent advocates trained at CWOP have been able to secure employment helping parents navigate the system, and many of the parents I met were helped by

parent advocates at foster care agencies and in the ACS Office of Advocacy. Advocates are often parents who had children in foster care and were able to regain custody, so, due to their understanding of the process and their experience going through it, they can provide both advice and emotional support. Advocates also attend conferences and intervene with caseworkers when parents' needs are not being met or their cases are not moving forward. They provide an invaluable service and are a testament to the fact that the parents who are involved with the child welfare system are loving parents and citizens who can make valuable contributions to their communities and are committed to social justice. Seeing their work made my fieldwork, which was often emotionally difficult, more bearable and gives me hope for the future.

These incremental changes in the courts and the increasing role of parent advocates are important and will help to ameliorate some of the persistent problems faced by families who come in contact with child welfare. A shift at ACS from a focus on foster care to family services and reunification is also important so that unnecessary removals and unnecessarily long foster care stays might be avoided. However, these changes will not solve what is at the root of why some families are likely to be affected by child welfare while others are not. Nor will it deal with the larger societal conditions that put both children and parents "at risk." Larger social inequalities of race, class, and gender are fundamental to why some families are involved with child welfare and underlie many of the conditions that are harmful to children. Living in poverty presents profound risks to children as do underperforming schools, inadequate housing and healthcare, dangerous neighborhoods, drug use, and domestic violence. Many of these problems disproportionately affect children of color who are also made less secure by being subject to removal from their families. Unless all families have access to adequate resources to raise children, some children will be "at risk" for maltreatment and will not have the opportunity to

thrive. As long as stereotypes of irreparably “broken” black families and of black women who are irresponsible and unfit mothers persist, it is likely that more black children will be involved with child welfare, especially given the ways that race and class intertwine to create conditions that make it difficult for poor women of color to raise children. These persistent inequalities are most in need of change if we truly want all children to have the opportunity to grow up to be healthy, educated, and productive citizens.

Appendix 1: Caseworkers
(In alphabetical order by pseudonym)

1. **Aaliyah** is an African-American woman in her 30's and has worked at ACS for 5 years. She has a degree in Forensic Psychology, and her unit covers Bushwick, Williamsburg, and Greenpoint in Brooklyn.

2. **Alicia** is an African-American woman in her early 30's. She has worked as a CPS at ACS for 9 years. She came to the agency out of college and has worked in both a "Hospital" and a "Protective Diagnostic" (PD) unit. Her current unit covers Bushwick, Brooklyn.

3. **Amy** is a white woman in her 40's. She worked as a CPS for 5 and a half years. During that time she went back to school to earn her MSW. After she finished her degree she worked for the agency for a while (in various administrative jobs and as a CPS) and then took a job as a social worker at Lawyers for Children (a non-profit firm that represents children in family court). Her unit worked in Manhattan below about 116th street but would sometimes get cases in Harlem if those units were overwhelmed.

4. **Angela** is from a Trinidadian family that has roots in India. She is in her late 30's and has worked at ACS as a CPS for 7 years. She worked most of this time in a PD Unit in Queens, but when I met her she had recently moved to one of the units that investigates reports of abuse/neglect in foster families. While in Queens, she worked in one of the units that covered the largest area of Queens including Jamaica, Corona, Astoria, Ridgewood, and Ozone Park. A few months after I interviewed her, she left ACS to pursue a MA degree in Criminal Justice at John Jay.

5. **Barbara** is an African-American woman in her 40's. She worked as a Child Protective Specialist (CPS) for over 10 years in Harlem, Manhattan. During this time she went to school to

earn her M.S.W. When she completed this degree she moved from being a CPS to working in a "Community Affairs" office within ACS.

6. **Carl** is an African-American man in his late 20's. He came to work as a CPS at ACS after earning a degree in Psychology, and has been with the agency for 5 and a half years. He has worked in PD units in Brooklyn but has covered different areas: Crown Heights, Fort Greene, Red Hook, East New York, Brownsville and Prospect Heights. He is also a union delegate.

7. **Dan** is a white man is in his 50's, and has been with the agency for 6 and a half years. He has a bachelor's degree in human services, and began work at ACS after he went back to school to earn an MSW as an adult. He has worked as a CPS and is now a Sup II. His unit covers East New York, Brooklyn.

8. **Ella** is an African-American woman in her late 40's. She has been at ACS for 13 years. Prior to that, she worked in another city agency. She was hired at ACS to be a Sup II, and that has been her job ever since. She has never worked as a CPS. Her unit covers parts of Queens including Ozone Park, Howard Beach, and Springfield Gardens.

9. **Marilyn** is a Latina woman in her 30's. She has been a CPS for 6 and a half years and has a bachelor's degree in Forensic Psychology. Her unit covers Central Harlem.

10. **Meredith** is an African-American woman in her mid 20's. She has a bachelor's degree in Forensic Psychology from John Jay and started at ACS as a CPS out of college 17 months before I interviewed her. Her current unit works in Washington Heights but she previously worked in a unit that covered Washington Heights and East Harlem.

11. **Pamela** is an African American woman in her early 40's. She has been at ACS for 11 years. She had an undergraduate degree in Psychology and a Master's Degree in Criminal

justice. She has worked her way up from CPS, to Sup I, to Sup II, to CPM. Her unit covers Central Harlem.

12. **Pete** is a white male in his 30's who has worked as a CPS at ACS for 5 years. He has a bachelor's degree in sociology, and has worked in PD and Educational Neglect units in Queens.

13. **Zadie** is an African-American woman in her 20's who has worked as a CPS in Brooklyn for 2 years. Her unit covers Sheepshead Bay, Brighton Beach, and Coney Island.

Appendix 2: Summaries of Parents and their Cases (In Alphabetical Order by Pseudonyms)

1. **Amanda** is a Latina in her 50's and mother to two grown sons and two daughters, aged 15 and 11. She lives in a rent controlled apartment and survives on a combination of welfare (which pays part of the rent), food stamps, and disability payments. She has an ACS history and her children were in foster care previously due to Amanda's alcohol and drug use. She has neither used drugs nor drank since. When I met her, her daughters had been removed when the older daughter claimed, to someone at her school, that her mother hit her. The child later admitted this wasn't true, but only after being sexually abused in foster care and hospitalized for a suicide attempt. The girls came home shortly thereafter, after about 5 months in care. Her daughter eventually told Amanda that she made the allegation because she wanted more freedom. Amanda admits that she is very strict with the girls and doesn't let them go out much due to the dangerous neighborhood and her desire to keep them away from bad influences and sex. When the children were in foster care, Amanda got very behind on her rent when her welfare was reduced, but her landlord was willing to wait for payment. She also received help from a godson during that time.

2. **Claudia** is an African American woman in her late 30's with two children, ages 12 and 10. She is college educated and got a job as a parent advocate during my field work. She was previously married to the father of her children but left him due to his physical abuse. She then took full custody or her children and raised them with no help from their father. The oldest is an extremely angry child (he was eventually diagnosed as having "Oppositional Defiant Disorder" which is a common diagnosis for teens), and so she approached ACS for help after a particularly severe fight. She told me that she figured they were "Children's Services" and so was the place

to go. She met with a caseworker who put her in touch with a foster care prevention agency and told her she would have to "open a case" which Claudia did not realize meant an investigation. The case was marked unfounded, but she was given preventive services.

The preventive agency provided some family counseling, but they were unsuccessful in finding a place for him in a treatment facility so that he could be evaluated and she could have a break. In the meantime, an incident occurred (she was vague about the details) in which she truly believed he was going to hit her (something she could not take given her domestic violence history). It seems she pulled out some kind of weapon and maybe hit him. She eventually told him to leave until he could calm down. He either sought out a police officer or one found him, and the officer brought him home, arrested her, and called ACS to place the children in foster care. Through CWOP, she was able to get excellent lawyers from the Center for Family Representation and the younger child was returned after 10 days or so. The older child was in care for a year and a half; during this time he got almost no help, and she had to constantly fight to even get the foster mother to take him to appointments. He also, for the first time, began to cut school and fail classes and was arrested for a crime. ACS quickly returned him to her after the year and a half and he was even harder to control. After only a few days, he ran away to live with his father. Proceedings to decide custody were ongoing when we talked.

3. **Destiny** comes from a working-class background and her partner, **Spencer**, is from a poorer family. They are both Latino and in their early 20's. They became homeless after she quit a job as a checker at a grocery store after the store was robbed (she feared for her safety as she worked late and was often in the store with only one or two other workers). They were in a couple's shelter when we met while they waited for a housing subsidy (which has been delayed because their children are in foster care). Destiny could not work as she was pregnant with twins,

and Spencer was having a hard time finding work due to his criminal history. He planned to get training so that he could get a job at the MTA or maybe in a construction trade with a union.

Destiny and Spencer raise 3 young children together, but the oldest is not biologically Spencer's child. However, that child's father has never been in his life and Spencer has taken care of him and been with Destiny the child's entire life. Many people around their neighborhood assume all the children are "really" Spencer's. All of their children were removed after Destiny's mother called the SCR to report that her grandson had been beaten and burned by Spencer. The caseworker did see a mark on the child's buttocks, but Spencer and Destiny both maintain the child fell. Spencer was criminally prosecuted, but ended up with a charge of endangering the welfare of a child for not taking the child to get treatment for the injury. He has not been allowed to have visits with the child since the removal.

4. **Edward** is in his 40's and, as he likes to tell people, is both Puerto Rican and "African." He does not work and survives with government help. He has had drug and/or alcohol addiction in his past (he goes to AA and NA almost daily to stay clean). He has one son who has lived with Robert's mother after he was removed from Robert and his wife's home several years ago. This occurred after his wife, and African immigrant, decided to return home and planned to take their son with her. They got into a dispute and Robert called the police to ask them to ensure she did not keep his son's passport and leave with him. The police found that there were rats in their apartment and called ACS who removed the children. Robert would like to have custody of his son, but is not fighting for this currently.

5. **Elizabeth** is a young (early 20's) African American woman from a working-class background. She has a high school diploma and abandoned plans to go to a trade school when she first became involved with a much older man, her son's father, who introduced her to crack.

She left him and moved in with another older man who took care of her son while she worked part time at a low-wage service job to make ends meet. They had a domestic partnership certificate, a Section 8 apartment, and received food stamps. He also received disability. Her child welfare case began when they both were arrested outside of their apartment. Her story is that she went downstairs to let him in the building and they both were arrested in what she called a "police sweep." He had apparently robbed a cab driver and was found with marijuana, but she maintains she was not involved at all. Nevertheless, she was arrested and told the police her son was upstairs sleeping and asked to be allowed to get him. She was not allowed to, and when she called her mother for help, her mother hung up on her. ACS was then called to get her son. Elizabeth was released the next day and he has said she was not involved in his crimes. Her criminal court attorney wants her to plea bargain but she is refusing because she maintains she did nothing.

Her son has remained in foster care and the caseworkers want her to get drug and mental health treatment—she admitted to them that she is very depressed and sometimes smokes pot so she will feel like eating, she says. She wanted her sister to become her son's foster parent, but she has an ACS history (a former boyfriend beat one of her children severely and she died). Elizabeth also described having to fight with caseworkers, with help from a parent advocate, to get them to move her son out of his foster home after she found he had been left in wet diapers for extended periods and had severe diaper rash. She also found the foster mother had a bottle for him that smelled rancid. Elizabeth has broken off ties with her former partner and now sleeps on the couch in her sister's apartment. She is not able to work.

6. **Emma** and her partner James are a white couple in their 40's. James lost parental rights to his two children from a previous relationship. He was a heroin addict and still takes

methadone. He has a trust fund of some sort, but has never lived a middle-class lifestyle. Instead he has always lived a kind of bohemian lifestyle: he has squatted in abandoned buildings and is a graffiti artist. Emma has worked as an art therapist and an actress and has a master's degree. They planned to give birth with a midwife upstate, but that didn't work out, and they had the baby in a public hospital. Emma got very nervous and upset during labor and acted very erratically. She explained that she doesn't like hospitals and was scarred and upset about having to have a c-section. Hospital staff claimed that Emma was acting psychotically and that they were having sex during her labor. So, they called ACS and referred Emma to the psychiatric department. Emma and James maintain he was in bed with her trying to comfort her, and they absolutely were not having sex. It was also alleged that James was found in the hallway masturbating. He denies this emphatically too. Emma was convinced to sign herself into the psychiatry ward, and staff there eventually diagnosed her as having a temporary psychosis that resolved itself after the baby was born. While Emma was in the psychiatry ward, ACS would not send the baby with James due to his prior case. It also seems the hospital was worried that Emma had no records of prenatal care, even though the baby was fine and she didn't test positive for any drugs. The caseworker also claimed the address they gave was an abandoned building, but Emma and James say this was a mix-up.

At the time I spoke with them, they had an apartment and everything for their child; their daughter remains in foster care (it was 2 years and 8 months as of February of 2009). It seems the agency will file to terminate their rights and the foster mother wants to adopt. There have been ongoing problems with their services and the agency views them as non-compliant. According to Emma and James they have done what they were asked, but in their own way, with providers not recognized by the agency. During the time I spent with them, I learned many

details about their activities and am sure they have completed the services asked of them. It was also clear to me that they absolutely do not get along with their caseworker, and she claimed, in court, that they had done nothing when they had. For example, an ongoing issue has been psychological evaluations. They got two on their own that gave them no diagnosis, but these were not accepted and they were eventually forced to get another one from the family court.

About a year and a half after their daughter was placed, the agency began to tell Emma she could get custody on her own, and they gave her unsupervised visits without James. However, there was an allegation that they had done something sexually in front of the child during one of these visits (apparently their daughter started exhibiting some kind of sexual behavior and the foster mother thought this must be the reason). Although Emma maintains James was never with her and their daughter and that they would never do something like that, her unsupervised visits were stopped.

7. When I met **Eric** he received disability payments for an injured shoulder that left him unable to work and was staying with friends since he could not afford an apartment. He was applying for Section 8 and wanted to go back to work, but he was having trouble getting needed physical therapy and his job prospects were limited due to his criminal history. He strongly felt that the foster care agency his children were placed with (they were removed from their mother) were refusing to work with him to gain custody and were set on returning his children to their mother. Since the children were not removed from him, he was technically not a client of the agency, so his feeling is probably correct. He was not able to gain custody due to his criminal history and a failed drug test (but no neglect petition was filed against him). Although he claimed the positive test was only for Vicodin that he was prescribed after shoulder surgery, he didn't bring full documentation of the prescriptions. He brought some months but not others, he said. A

few months after our interview, he told me that he continued to have positive tests, and although he continued to deny using, he went to a drug program. The children were eventually returned to their mother and step-father. He visits both children regularly and clearly loves them a great deal—he movingly describing their close relationship and his sadness at not getting to care for them.

8. **Eva, a** Latina in her 40's who has four children, first became involved with child welfare due to a drug addiction relapse. Her older 3 children were living with their father and almost grown at the time. Everything started when she left her abusive husband and took him to court to get child support for her youngest daughter. He was not actually her father, but they were married shortly after she became pregnant and she initially told him the baby was his, so he was a legal father. Eva told me that she met her former husband in an in-patient drug rehabilitation program—he worked in the program—and claimed that he helped her actually continue to use and liked having control over her by being her supplier. According to her, when she decided to get sober and then left him, he became very angry and told her that he would "take her [their daughter] from me." He made reports to ACS, and a caseworker caught her in a relapse. He was given custody after that.

Eva completed all requirements that ACS had (she went to treatment and remained drug free) and visited her daughter regularly. She even scraped together money to pay for someone to supervise her visits so that she could have more time with her on weekends. Her ex-husband, however, told the judge repeatedly he didn't believe she wasn't using and so wasn't comfortable letting her have unsupervised time. He also convinced the judge to order a hair follicle test to see if she had been using but was had not been caught through urine screens. She did this willingly and was shocked to find the test was positive. She and her lawyer pleaded with the judge,

because she was sure it was a mistake, to let her take another test. That test was negative and it seems there actually was a lab mix-up. Despite all of this, her ex-husband retained physical custody of her daughter, in part because a psychological evaluator told the court he believed he was the more stable parent. Eva was not able to work consistently due to her case, but she was in training to be a home health aide (she will be unlikely to find a job given the neglect finding against her). Her mother supports her.

9. **Henry** (see Salina below)

10. **Irene** is a Latina mother of 5 children and is in her late 40's. She has been with her partner for more than 9 years, and he is the father of her two youngest children (aged 9 and 6; the other children are 21, 15, and 14). All of the children were living with them and were all removed several years before I met Irene due to domestic violence and bruises which were found on one child's knees by an emergency room doctor (they took her to the ER because she had had a seizure). She and her husband worked out their relationship and stayed together. She says the experience made them a stronger couple, and he has not been violent with her since. The children were returned to their care after 18 months. She described how the children, who were all in regular classes, doing well in school, and well-behaved, were returned to her with "special needs." One was diagnosed with ADHD, another as hyperactive and bipolar, one was drinking and cutting school, another was in special education, and the youngest had a speech impairment. She also had to fight to move the children to a different foster home after she found they were being beaten severely with a belt and her oldest daughter was being sexually harassed. Irene's 15 year-old was in foster care when I met her because Irene slapped her when she was refusing to follow directions. She also was generally out of control (she already had STD's and was cutting school) and talking back. As Irene put it, she "just lost it" and slapped her. Her daughter called

the police and Irene was arrested. Her daughter was also violent towards her, but she didn't say this to the police because she didn't want her to get any kind of criminal record.

11. **Isabella** and her partner Edgar make ends meet with a combination of government help and help from relatives. They are both Puerto Rican, in their 40's, and deaf. Isabella can read lips and speak a bit, but Edgar can do neither. They have had service-sector jobs in the past but were not working due to their child welfare involvement. They have 5 children together and she has 4 children from a previous relationship. Their children were removed several years before I met them due to domestic violence allegations. They eventually regained custody and were allowed to keep a daughter who was born during the case with them. The children were returned only to Edgar, however, because of an evaluation that said Isabella had a mental illness and would not be capable of caring for the children. A homemaker was supposed to be sent to the home to help him adjust to caring for the children and do the housekeeping as Isabella had always done all of this. The parents stayed together anyway, and no one from ACS checked up on the home nor arranged for the homemaker.

A few months after the children were returned, an anonymous caller made allegations that they were beating their children. It seems the caller was the former foster parent of the three oldest children Isabella and Edgar share (her children from a previous relationship went to their father, one was born to them during the time the kids were in foster care and another shortly after they returned home). When ACS investigated, the caseworker realized that no one was ensuring court orders from the first case (i.e. that Isabella move out and that homemaker come to help Edgar) were followed. At this time, a homemaker was sent to the home but ACS officials did not attempt to force Isabella to leave. It seems this was because things seemed to be fine in the home.

The homemaker, however, made allegations that the parents were punishing the youngest of the three who had been in foster care too harshly: spanking him and leaving bruises, isolating him, and not allowing him to eat. It is not clear how she knew this—she was not in the home more than a few hours a day. It does seem clear that the child had a very hard time adjusting to being with his parents. He was an infant when removed, and he was not given sign language training during the years he was in foster care. He went from hearing/speaking foster parents to a father he couldn't communicate with and a mother he could, but in a very different way. ACS sent another caseworker to investigate these allegations. She made attempts to visit the home, but it seems she didn't know the system for getting in touch with them (they obviously can talk on a regular phone and cannot hear knocks; a light alerts them if someone rings the bell, but you have to be very patient in case they don't immediately see it) and was never able to see them or the children. The decision was made to remove all 4 children (Isabella had not yet given birth to the 5th but was nearing the end of her pregnancy), and caseworkers left a note telling them to come to court and bring the children. Parent advocates advised them not to bring the kids, and they followed this advice.

At court, a hearing could not be held because no sign language interpreter was available (apparently there are only 2 in the whole city certified to work in family court!) but it was agreed that only the "target child" would be removed and placed with his grandmother until they could legalize the arrangement. After 2 more failed attempts to have a hearing (again no interpreter was available), the judge decided to have the hearing anyway (without an interpreter). ACS recommended moving the child from his grandmother's to the former foster parents (he had been with his grandmother almost 2 weeks at this point), but agreed to let the others stay home. After a few months ACS was going to dismiss the petition with regard to the other four while their

brother stayed in the care of his foster parent. While he was in foster care, no efforts were made to teach him to communicate with his parents. In addition, the foster parent's daughter (she is in her early 20's) would stay in the room for his visits with his parents and generally seemed to be trying to sabotage the reunification (this is according to another caseworker at the agency). Parent advocates and a caseworker told me they were worried that the foster family would eventually adopt the child.

12. **Jasmine** is a Latina in her early 20's who lived most of her life in foster care, but a few years with her mother. Her mother was a drug user, and Jasmine described seeing her being severely beaten, stabbed, and pushed down stairs by a boyfriend. During her and her siblings' first stay in foster care, her mother did get clean, and so they were returned. When back home she witnessed the severe abuse of her younger sister (her mother was pregnant with her when she was stabbed by the father and Jasmine believes she has never been able to really bond with her). Although her mother never physically abused the other children, she did go back to drugs and the children were removed again after one of Jasmine's brothers told a school counselor he was being hit so that she would call ACS. Although her siblings came home eventually, she remained in foster care.

She says that school was always her refuge, and she managed to graduate from high school, despite having her son at age 17, and was in college part-time when we met. When she lived in a mother-child group home she was investigated by ACS because a counselor there claimed she had thrown a baby gate during an argument with another teen (Jasmine says they did argue but that nothing was thrown; the counselor said her son could have been hurt). The case was unfounded. At 18, the mother/child program attempted to kick her out claiming her room was too dirty, a violation of their rules. The judge ordered the agency to continue to support her

because she was still in school and taking good care of her son. When we met she lived in a building of small apartments for children ageing out of the foster care system that charges rent on a sliding scale. She gets public assistance, financial aid, works part time in a low-wage service job, and gets a stipend for being in a parent advocate training class.

13. **Joan** is an African-American mother in her early 40's. She has a long history of drug addiction, which she ties to her history of sexual and physical abuse and the death of her mother at a young age. Her four older children were in foster care with their aunt due to her ongoing use (some of them tested positive for cocaine at birth) and she eventually adopted them. This was because, when they had been in care over the ASFA time limit, she did not have an adequate place to live. She and her aunt agreed it would be better for the children to stay with their aunt. Since this occurred, she had stopped using, was working as a nurse's assistant, and had a child with a new partner. The father cared for the child most of the time as he only worked part time, off the books, as an exterminator. After the death of her best friend she had a relapse and became depressed, attempted suicide, and was hospitalized. She was tested for drugs, and when it came up positive ACS was called. A preventive agency was put in place, but, since she lost her job and her health insurance, there was a delay in getting drug treatment. After she failed a drug test and the ACS caseworker learned she had been arrested after getting in a fight with her partner, her daughter was removed. This was only a few days before Christmas and a few days before she was to start a drug treatment program full-time. When we talked, their daughter was still in foster care and they were making ends meet with his limited income and help from his family.

14. **Leslie** is an African-American woman in her 40's. Several years before I met her, she left the father of her two children, who was physically abusive towards her, and was raising her children alone. She supported her family by working in a medical office. Her son began having

problems in school and they refused to keep him. She had to then find a new school for both her children, but was very unhappy with the one available in her new neighborhood. She mentioned to a teacher that she was depressed and didn't know what to do. The teacher called ACS to report both her depression and that her children had missed several days of school. Her children stayed in foster care with Leslie's sister for about 3 years, and Leslie was no longer able to work. For the first time in her life, she began to get government assistance, housing help, and welfare. Her caseworker also told her she needed to "work on herself" rather than finding a new job.

Since her children have been back in her care, she has been investigated two more times. Both times this had to do with her teen son who was not going to school. Largely because she was able to bring a parent advocate with her to an elevated risk conference, she has been able to keep custody of her children. When we met, her last case was still ongoing and she was supporting her family with a combination of welfare, housing subsidies, and a small stipend for enrolling in parent advocate training.

15. **Lilly** is a Latina in her 30's who previously stayed home with her children and was supported by her partner. I am not sure what his occupation was. Their children were removed due to allegations of excessive corporal punishment and were in foster care for over a year. They were then returned to Lilly's care with an order that her partner stay away from their home and from the children except for supervised visits. The parents were seen together in violation of the order, and the children were removed again. He was incarcerated because this was a parole violation (he had been a drug dealer in the past and was convicted of manslaughter). While the children were in foster care, she supported herself with a combination of work as a clerk in a retail store and help from her family. Lilly was advised by her attorney and

caseworkers that, if she was willing to end their relationship entirely, she could regain custody. She was unwilling to do this the last time we spoke.

16. **Maria** is a Latina in her early thirties who has 4 children ages 14, 12, 9, and 7. She has always stayed home with them but was in training to be a parent advocate when we met. She makes ends meet with her stipend and public assistance (welfare). She left an abusive ex-boyfriend several years ago, and he makes reports about her to ACS regularly. She also deals with the threat of reports from her son's school. He is 9 years old son, hyperactive, and has behavioral problems at school. When he was in public school, his teacher refused to deal with him and would call Maria every time he acted up (which was practically daily) to tell her to come get him or she would call ACS. The school did little to attempt to deal with him and help him learn. Through her connections at CWOP, however, she was able to meet officials from the board of education and was given help in requesting money so she could send him to a private school. She eventually succeeded and he is doing much better. All of her child welfare cases have been unfounded.

17. **Mary** is a white mother in her early 40's and has raised her daughter, who was 9 when she was placed in foster care, alone. She comes from a middle-class background, has a master's degree, and has worked at various jobs in the arts. When her daughter was removed, she had been out of work for several months and was on the verge of eviction. She placed her daughter temporarily in a "crisis nursery" because she thought it would better for her given the eviction and the strain that it was placing on their relationship. When she took her daughter out of the crisis nursery, she was given a "discharge plan." She complied with some of the items on the list—those she thought would be helpful—and ignored others as she thought it was voluntary. When the caseworker from the crisis nursery called to check on her progress, she

refused to answer all of her questions and said she would call back when she had more time. Before she called back, the caseworker called in a report to ACS. In her report, she said she was worried about Mary's housing conditions, about Mary's daughter's small size and weight, and said that Mary had admitted she had used drugs in the past and had a history of mental illness. According to Mary, she experimented with cocaine once and had smoked marijuana, all long before her daughter was born, and her mental health was fine, although she had been diagnosed with depression and OCD in the past.

When the caseworkers from ACS arrived after the report, Mary refused to let them into her apartment but did answer their questions, with the same information she had given the crisis nursery, and allowed them to take her child to an emergency room to be examined. They decided to remove her child and stated, in the court petition, that the reasons for this were her mental illness (part of the evidence for this were Mary's statements or her previous issues and included that she apparently told them she stayed up at night washing clothes by hand), and that she "misuses drugs" and was not providing medical care for her daughter. Regarding the medical neglect issue, the petition stated that her daughter was "medically underweight" and that Mary had put her on a "restrictive diet." It also discussed statements made by the child that her mother went to school to ensure she ate and that she doesn't like the food her mother gives her. As Mary's case went on, her mental health became the central concern and a court evaluator gave her a diagnosis of, basically, Munchausen's Syndrome by Proxy (i.e. that she takes her daughter to lots of doctors in order to get attention for herself). During the course of the case she became homeless.

18. **Monica** is a white woman in her early 30's who has worked as a teacher in the past. When her daughter (her first child) was about 6 months old she had a breakdown and was

psychiatrically hospitalized. She has been hospitalized in the past for similar breakdowns. While in the hospital, she refused medication, and so ACS was called. Her husband at the time (they are now divorced) told caseworkers he was worried she would not be a good caretaker. He was given custody, and she had to move out of their apartment and in with her mother who began to support her financially. For a while Monica was given almost unlimited visitation as long as her mother was present, but this was stopped when the parents got into a fight. The father eventually got full custody of their daughter. Monica felt that her husband turned on her and thought this was because he was worried about his immigration status (she is American-born and he is an immigrant from Europe).

19. **Nathan** is an African-American man in his 50's and a single father. He worked for the New York City Housing Authority for years, but is now retired and living on his pension. His child welfare case occurred in 2000. At the time, he was raising his 5 children, aged 10 and under, due to their mother's drug addiction. She was reported to ACS and lost custody. Since their mother had a case, he was under ACS supervision while the court case was ongoing; it took over 2 years. As part of this, he was tested for drugs periodically. Due to, as he described it, stress from work and from the case, he went out one night and, while drinking, took some cocaine offered to him by a friend. He was called in for a drug test the next day and it came out negative. As a result of the test, the children were removed from his care. It took over a year to get them back from foster care. A large part of the delay was that, as a result of the case, he was forced to retire early. Although he got a pension, he lost the apartment he was living in and had trouble affording a place that he would be willing to bring his children. While they were in foster care he trained as a parent advocate and now uses his free time to help other fathers get through the system.

20. **Nicole** is an African American woman (she grew up "down south") in her 30's who has two children, ages 12 and 5. She is supported by social security disability and lives in a public housing project. She supplements this with what she calls her "hustles" such as doing hair and working off the books at local shops. She has been diagnosed as having "sub-normal intelligence," and her attempts to get a GED have been unsuccessful. Her child welfare case began a few years ago when her daughter (the elder child) stole $20 out of her purse, and, depending on whose story you believe, Nicole either told her daughter to leave or she left to go to her father's. Police apparently found her on the grounds of the public housing project in which they live and brought her home, along with ACS caseworkers. While the ACS investigation was ongoing her children stayed in her custody, but at one point caseworkers told Nicole that her daughter claimed she was beaten. Although they apparently didn't see marks, a few days later the child was heard screaming while Nicole was on the phone with a caseworker. ACS then alleged that she burned her daughter and beat her with an extension cord. Nicole adamantly denies this. Her children were removed, and she was arrested (it wasn't clear if this was for the abuse or because she became hysterical when the police and caseworkers came to remove her children). She pled guilty to avoid staying in jail.

When I met her, she had recently received notice of proceedings to terminate her parental rights. The petition gave the following as grounds for termination: her mental retardation, failure to plan for her children's return, and lack of housing. The last was especially strange as I met her at her apartment and she even showed me her lease. She blames everything on the caseworkers and denies that anything happened as they say which is part of the reason the agency is attempting to terminate her rights. The termination was also recommended by a psychiatrist who evaluated her at the request of the court.

21. **Olivia**, an African-American mother of 7 (ranging in age from 8 to 16) in her early 40's, but who looks older than her age, who was living in a single room in a very dilapidated building when I interviewed her, survives on food stamps and welfare. She was pregnant again when we met and had thought about having an abortion, but found out she was pregnant shortly after her mother, who she was very close to, died and that her due date was on her mother's birthday. She took the pregnancy as her mother being present in some way and then couldn't go through with it, she said. She had a Section 8 voucher in the past, but lost it and was evicted when a boyfriend who lived with her was arrested for drugs and weapons possession. She also received social security for two of her children who have special needs, but this money now goes to their foster parents. Her children were removed after she refused to move with two of them into a homeless shelter; the other children were living with relatives at the time. The caseworker decided the single room they were living in was not adequate, so she removed them and placed all her children in foster care. The children who had been living with relatives had been in Pennsylvania and were moved back to New York to be supervised by the foster care agency; some were placed with their father and others in a foster home.

22. **Ramel** has worked on and off in various service-sector jobs but has also been incarcerated for selling drugs and has lived on the streets during times when he was using. When I met him he was living with relatives, but he had been in a homeless shelter with his girlfriend until their newborn was removed from their care. They had both been using drugs, and she did not get pre-natal care. He was not working due to his criminal history and his feeling that he wouldn't get a job that would provide the flexibility he needed to visit his son and get drug treatment. He was also having trouble getting drug treatment due to a lack of health insurance and outstanding criminal matters in California (it seems he violated his parole by leaving the

state). His girlfriend, however, was in an in-patient drug treatment program and they planned to stay together. He has 3 other children with other women and doesn't get to see all of them regularly.

23. **Robert** is an African-American man in his 40's and father to two children (who are around 8 and 12 years old). He currently raises them alone and supports his family with various odd jobs for which he is paid reasonably well—working on television and movie sets, repair work, contracting work. The children's mother had a crack cocaine addiction which he didn't know about for a long time because he was rarely home. He eventually noticed money missing and tried to get her to get treatment. The family stayed together until a violent incident occurred. He had saved money to take his children on a special outing, but found it was missing. When he accused her of taking it, she got extremely angry. He took the children out anyway, but she followed them, with a knife, and slashed their bike tires. ACS became involved after the police were called, and she was kept out of the home. The caseworker involved in the case monitored him and the home while he worked to get full custody.

As he describes it, he knew nothing about taking care of a house and little about caring for children. Luckily, the caseworker who came to investigate him for the custody petition did not report all of this but taught him how to do laundry, clean, etc… Since he was granted custody, his former wife has made a series of reports about him, most often claiming he was also a drug user. He got to know one caseworker well and she didn't investigate much, seeing that the reports seemed false. However, he has had caseworkers who have been less understanding and has even enrolled in an out-patient drug treatment program in order to show a month-long string of random, negative drug tests.

24. **Rose** is a Latina in her 40's who was never able to graduate from high school and has unsuccessfully taken the GED a couple of times. She has never really worked due to her mental health and disabilities (I'm not sure of her diagnoses but she is below normal intelligence), and she gets disability payments and rent assistance which enables her to support herself. She has two children; the older one is grown and lives on his own—she rarely speaks to him. She lost parental rights to her younger son during my fieldwork after he was in foster care for several years. The main reason for this was her mental health which the agency said she never received help for. She fought with caseworkers and was always very suspicious of them. It seems that she never really got counseling as she was told she had to. She also made allegations that her son was being beaten in his foster home and called in numerous reports. I have no way to know if he was being harmed, but she maintains he was. The agency, on the other hand, maintains that he absolutely was not—they never saw the bruises she claimed existed—and she is paranoid. Rose was given a psychiatric evaluation and diagnosed with schizophrenia, paranoid type, and she did seem paranoid. She had several stories in which she reacted in very angry and hostile way to people she felt had lied to her and had a list of people (attorneys, judges, doctors, caseworkers) who were "out to get her." For example, she told me that she was worried that her evaluation would not be sent to the court in time and so she called the office to ask to speak to the psychiatrist. She was told he was not available and that he would call back. She felt he was ignoring her on purpose and that the receptionist lied to her, so she apparently screamed and cursed at the receptionist.

25. **Salina** is a Latina in her late 20's with 5 children ranging in age from 12 to 1 year old. At the time of my fieldwork, she was living with **Henry**, her boyfriend and father of two of these children. He is African-American and is about Salina's age. Salina, who spent a large part

of her life in foster care and "aged out" of the system, was supporting the family with a combination of welfare and housing subsidies. It was unclear whether Henry was contributing financially or not—all he would tell me was that he was a music promoter. He did tell me that he came from a stable, working-class family in which he felt he always got what he wanted and needed. Their child welfare case started when an anonymous caller—they assumed it was a neighbor who did not get along with Henry—reported them to ACS, claiming that Henry was beating the children, the children were not cared for, and both of them were using drugs. As Salina described it, the caseworkers came to the home, found that things were okay, and left, leaving her to think that things were fine. She did admit to them that she sometimes used cocaine, but only on the weekend when she went out with friends and Henry was caring for the children. Later, a caseworker came back to remove the children and told her this was because she did not contact the caseworker in order to get involved in drug treatment.

At first, the case was only against Salina, but Henry came to court and spoke to the foster care agency caseworkers so he was later added due to his admission he had smoked marijuana. Salina quickly went to drug treatment and stopped using. As she put it, "it was easy for me to just kick it. Once it come down to the kids and all, it was just a weekend thing…I[t] ain't nothing I can't kick to the side." However, because Henry was still occasionally smoking, she was thinking of kicking him out of the home. The last time I talked with Salina, the caseworker was ready to send the children back home but could not due to her housing conditions: her Section 8 apartment was deemed unsafe due to electrical problems (there had been 2 fires in the recent past).

26. **Simone** is an African-American woman in her early 40's and the mother of two children, ages 4 and 1 ½. Although she is from a middle-class background, has a college degree,

and a history of working at professional jobs, she was not working when we met and was living on a combination of welfare and housing help. She has a long history of on and off again drug abuse and has lost custody of her children twice for this reason. She also has a history of mental illness and, as she described it, gets herself in trouble with her attitude and tendency to get angry with caseworkers (and people in general). She was in drug treatment when we met and also fighting with the family court to keep a former partner from being allowed to see her daughter. Simone believes he has sexually abused her daughter, but has not been able to get her suspicions taken seriously.

27. **Spencer** (see Destiny above)

28. **Stephanie** is an African-American woman in her early 40's with two children, ages 8 and 2 and a half. She has been a functioning addict for years (she began using after her father died when she was in her first few years of college). The father of her second child abused her and she eventually left him. She earned an MSW and held down a job as a social worker despite her addiction; however, she tested positive for drugs at the births of both of her children. The second time, they were removed. She was able to regain custody in only 9 months because, as she told me, she got clean, showed everyone she was trustworthy, knew something about the system, and was able to hire a good lawyer.

29. **Trisha** is an African-American woman in her early 30's. She had her first child in high school and dropped out. She is still with the father of her children and they have 4 children, ranging in age from 3 to 16. She has battled a crack cocaine addiction and has had her children (except for the oldest who has been raised by her parents from the time he was a couple of years old) in foster care three times. The first time, her second child tested positive for crack cocaine and was in foster care about a year. The second time, after her third child tested positive, she

went to an in-patient treatment program for 2 years and was able to finally regain custody after about 3 years. When the children returned home, she was required to allow a preventive agency to work with her and the children and monitor her home. Shortly before her period of supervision was over, she relapsed. She told the caseworker who did not report this to ACS but encouraged her to continue out-patient treatment. Her ACS caseworker asked her to take a test, which she failed. The preventive agency caseworker was fired and the children were removed. There was discussion of letting the father care for the children but they did not want to separate, in part because they did not know where she would live. She has no family in the city to take her in, and she has no income apart from what her partner earned at his unionized metal-working job.

Appendix 3: Complete List of Cases in Family Court Classified as "Other"

1. A mother under ACS supervision due to a prior finding of educational neglect was arrested for shoplifting. The child was remanded even though she was released from jail before the child was removed.

2. Parents were told they must voluntarily place one of their children who had a mental health issue and was threatening his siblings, or all the children would be removed. The child who was "acting out" was remanded and the others were paroled.

3. A mother refused to press statutory rape charges against her daughter's boyfriend. The child was paroled.

4. Parents reported being scared to have their teen daughter in their home and had her psychiatrically hospitalized. The hospital decided she was fine, but they disagreed and would not pick her up. The child who had been hospitalized was remanded and the other children were paroled.

5. A 15-year-old had been found drunk by their landlord while in the care of his 23 year old brother following the death of their mother. The 15-year-old was AWOL from foster care and a warrant was issued.

6. A mother was accused of not protecting her younger children from sexual abuse by their older sibling. The eldest child was placed with an uncle and the younger children were paroled to the mother.

7. A mother left the homeless shelter and could not be found by the caseworker. It was alleged that she was not adequately housing and feeding the children. The whereabouts of mother and children were unknown. The judge refused to issue a warrant

8. A mother was considered to have not done enough about her teen daughter's depression and marijuana use. The child was placed in a residential treatment center, and the mother was charged with neglect.

9. A mother had taken a job upstate, and her son refused to move. She had left him with a relative, but he fought with her constantly and went to live upstairs with a neighbor. ACS requested a remand (with the neighbor to be the foster parent), but the judge would only parole the child to the mother or the relative.

10. A mother had left her child with a relative who had died. The child was then sent to a cousin who needed money to care for her. The mother apparently refused to care for the child and might have kicked the child out of her house (the caseworker was not certain this last part ever happened). The child was remanded and the mother charged with neglect.

11. A mother had left her children in the care of their grandmother who was not adequately caring for them. She as quite old and had health problems. The children were removed from the grandmother, but she was not named as a respondent and the plan was to return the children to her after she receives help. The mother was named a respondent for not supporting the children, and there was a further allegation that she was engaged in prostitution. The children were remanded and the mother charged with neglect.

12. A mother was living in a shelter and was a foster child herself because she was sexually abused. She mother had a panoply of problems—she has left the child with "inappropriate caretakers," hadn't taken the child to the doctor, was missing the shelter curfew, had to be coached on caring for the child, likely had mental health issues, and had a baby die previously under circumstances that were still unclear. The children were removed on an emergency basis.

13. A mother let her daughter's boyfriend live in the home after pressing charges against him for statutory rape and hadn't done enough about her daughter's mental health issue. All her children were remanded but later returned after a 1028 hearing.

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