

INTRODUCTION

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“Parents’ fundamental liberty interest in the companionship, care, custody, and control of their children ‘does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. . . . [P]arents retain a vital interest in preventing the irretrievable destruction of their family life.’”

Santosky v. Kramer, 455 U.S. 745, 753 (1982).

Parents’ fundamental liberty interest in the care and custody of their children is protected by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.¹ Despite the United States Supreme Court’s ruling that states are not required, in every case, to provide a publicly funded lawyer for a parent whose rights to family integrity and autonomy are threatened by coercive government intervention,² most states do provide a right to appointed counsel for parents who cannot afford

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¹ Troxel v. Granville, 530 U.S. 57, 66 (2000); see also Santosky v. Kramer, 455 U.S. 745, 753 (1982) (“[There is a] fundamental liberty interest of natural parents in the care, custody, and management of their child . . .”).

² Lassiter v. Dep’t of Soc. Services, 452 U.S. 18 (1981).

to hire their own lawyer.³ Yet even with widespread recognition of the need for counsel for child-welfare involved indigent parents, serious obstacles to competent, high quality parental representation persist.

On April 8, 2016, the City University of New York (CUNY) Law Review hosted a Symposium entitled *The Other Public Defenders: Reimagining Family Defense*. The event highlighted the need for robust advocacy for parents at risk of losing their children to state custody through allegations of child abuse or neglect. In their call for papers, Symposium organizers noted that despite expanded access to legal representation for parents in New York City⁴—home to the CUNY School of Law—“the punitive underpinnings of the child welfare system remain fundamentally unchanged for the vast majority of poor families and families of color.”⁵ In the face of deep-seated structural and practice issues that undermine parents’

³ See John Pollock, *The Case Against Case-by-Case: Courts Identifying Categorical Rights to Counsel in Basic Human Needs Civil Cases*, 61 DRAKE L. REV. 763, 781, 781-82 n.76 (2013) (identifying forty-four states providing a right to counsel in State-initiated termination of parental rights cases); see also *In re T.M.*, 319 P.3d 338, 355 (Haw. 2014) (making Hawaii the forty-fifth state to provide this right).

⁴ Beginning in 2007, the New York City Mayor’s Office of Criminal Justice has continuously entered into multi-year contracts with several organizations to provide representation to the majority of parents who are respondents in child protective proceedings in New York City Family Courts. Heather Appel, *New Influx of Lawyers Coming to Family Court*, CITY LIMITS (Apr. 16, 2007), <http://citylimits.org/2007/04/16/new-influx-of-lawyers-coming-to-family-court> [<https://perma.cc/7448-7HVT>] (discussing New York City’s shift from using appointed counsel to represent parents in abuse and neglect cases to using institutional providers); *Oversight—Child Welfare and Increased Demands on New York City Family Courts: Hearing Before Comm. on Gen. Welfare*, 2007 Sess. 12-14 (N.Y.C. Council Jan. 11, 2007) (statement of John Feinblatt, N.Y.C. Criminal Justice Coordinator), <http://legistar.council.nyc.gov/View.aspx?M=M/ID=75074&GUID=E3FCAB40-A5B7-4FDC-8749-E9F0AED90670> [<https://perma.cc/HS88-L695>] (noting New York City’s issuance of an RFP and its awards to legal services providers of contracts requiring both legal and social services for parents). Through these contracts, New York City has established a parental defense system that requires the use of “a multidisciplinary service model, including social workers, paralegals, investigators, experts and parent advocates.” City of New York Criminal Justice Coordinator’s Office, Request for Proposals for Indigent Family Court Legal Services for Respondents in Article 10 Cases (Nov. 1, 2013) (on file with CUNY Law Review). Currently, the Center for Family Representation, Inc., Brooklyn Defender Services, the Bronx Defenders, and the Neighborhood Defender Service of Harlem are the primary providers for the majority of state intervention cases in New York City. See N.Y.C. COUNCIL, REPORT ON THE FISCAL YEAR 2015 EXECUTIVE BUDGET FOR THE MAYOR’S OFFICE OF CRIMINAL JUSTICE (2014), <http://council.nyc.gov/downloads/pdf/budget/2015/15/eb/cjc.pdf> [<https://perma.cc/39GP-5KMQ>]. Conflict providers of parental representation in New York City are the Bronx Defenders, New York County Defender Services, Brooklyn Defender Services, and Queens Law Associates. *Id.*

⁵ Call for Papers, CUNY Law Review, *The Other Public Defenders: Reimagining Family Defense* (Nov. 15, 2015) (on file with CUNY Law Review).

ability to prevent the “irretrievable destruction” of their families, the organizers stressed the urgent need for a “multidisciplinary strategy aimed at ensuring family unity and well-being . . . for indigent families forced to interact with child welfare agencies and family court systems throughout the country.” Eminent advocates from around the country heeded the call, and convened at the CUNY School of Law in Long Island City, New York to share innovative strategies and approaches for reforming child protective and family court practices.⁶ The articles in this Symposium issue are packed with transformative insights and practical guidance for advocates working to achieve justice for parents and families involved with the child welfare system.

It has been 35 years since the United States Supreme Court’s 5-4 decision that, as a matter of federal constitutional law, indigent parents are not categorically entitled to free legal representation when facing termination of their parental rights⁷—called by some the “civil death penalty.”⁸ At the time of that much-maligned decision, over 30 states and the District of Columbia provided a

⁶ The plenary panel was moderated by Professor Marty Guggenheim, Founder and Co-Director of the Family Defense Clinic at New York University School of Law, and featured contributions from Professor Kara Finck, University of Pennsylvania Law School; Diane Redleaf, Esq., Founder and Executive Director of the Chicago-based Family Defense Center; and Lauren Shapiro, Director of the Brooklyn Family Defense Project. The event included breakout discussions on (1) *Structural Racism and Family Defense* with discussants Amy Mulzer, Professor, New York University School of Law; Tara Urs of the King County Department of Public Defense (Seattle, Washington); Keston Jones, Center for Health Equity, NYC Department of Health and Mental Hygiene; and Erin Cloud, Attorney, The Bronx Defenders Family Defense Practice; moderated by Professor K. Babe Howell, CUNY School of Law; (2) *Interdisciplinary Approaches to Family Defense* with discussants Robyn Powell, Esq., Heller School of Social Policy & Management at Brandeis University; Emma Ketteringham, Managing Director, The Bronx Defenders Family Defense Practice; and Sarah Cremer, Social Worker, The Bronx Defenders Family Defense Practice; moderated by Professor Julie Goldscheid, CUNY School of Law; and (3) *Problem-Solving Courts and Family Defense* with discussants Jane Spinak, Clinical Professor of Law, Columbia Law School; Stacy Charland, Managing Attorney, Neighborhood Defender Services Family Defense Practice; and Marcelle Brandes, Arbitrator, Mediator, and retired New York City Family Court Judge; moderated by Professor Ann Cammett, CUNY School of Law. The University of the District of Columbia’s David A. Clarke School of Law Professor Mathew Fraidin’s keynote address concluded the event.

⁷ *Lassiter*, 452 U.S. at 33-34.

⁸ See *C.S. v. Dep’t of Children and Families*, 124 So.3d 978, 981 (Fla. Dist. Ct. App. 2013) (Warner, J., dissenting); *In re Adoption of C.M.B.R.*, 332 S.W.3d 793, 824 (Mo. 2011) (Stith, J., concurring in part and dissenting in part); *Drury v. Lang*, 776 P.2d 843, 845 (Nev. 1989); *In re Smith*, 601 N.E.2d 45, 55 (Ohio Ct. App. 1991) (“A termination of parental rights is the family law equivalent of the death penalty in a criminal case.”); *In re FM*, 163 P.3d 844, 851 (Wyo. 2007) (“Termination of parental rights is the family law equivalent of the death penalty in a criminal case.”).

right to counsel for indigent parents at some stage of a child welfare case;⁹ today that number has risen to over 40 states.¹⁰ With the increased recognition of the benefits associated with high quality parental representation,¹¹ a vibrant community of advocates dedicated to protecting the integrity and autonomy of child-welfare involved families—almost all of whom are poor and a disproportionate number of whom are Black and Native American—is also growing in visibility and influence. These “family defenders”—lawyers and other advocates working together with parents threatened with the temporary or permanent loss of a child to state custody—are at the forefront of a new national movement to improve the quality of representation for parents so as to effectively guard against the misuse and abuse of the government’s coercive powers of state intervention into family life.¹²

Despite its constitutional and societal significance, as poignantly illuminated at the Symposium by a group of parent leaders from *Rise Magazine*, when it comes to poor families and families of color, the right to family integrity is often disrespected and devalued when child protective services (CPS) comes knocking. “Drawing on interviews with dozens of parents with open child welfare cases and stories published in *Rise’s* parent-written magazine over the past 10 years, Piazadora Footman, Robbyne Wiley, Bevanjae Kelley, and Nancy Fortunato described common themes in parents’ experiences” in the child welfare and court systems and “gave recommendations for reform.”¹³ Central to their

⁹ *Lassiter*, 452 U.S. at 33.

¹⁰ See Pollock, *supra* note 3.

¹¹ See, e.g., Elizabeth Thornton & Betsy Gwin, *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*, 46 FAM. L.Q. 139, 140 (2012) (“Although a large-scale and reliable national study on the impact of parent representation has yet to be completed, data from regional programs show the potential benefits, both financial and human, that quality parent representation can provide.”).

¹² REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS XIX (Martin Guggenheim & Vivek S. Sankaran eds., 2015) [hereinafter REPRESENTING PARENTS]. Publication of this comprehensive guide represents a significant milestone in the evolution of family defense, which, according to its editors, “is still in its infancy in establishing itself as an important legal field.” *Id.* at xxiii. The book includes chapters written by lawyers (some of whom also have articles in this Symposium issue) who “practice daily in court fighting to ensure that the law is faithfully followed.” *Id.* at xvii. The book is “the field’s coming out statement: we exist and we do important work. . . . This book is devoted to persuading the best lawyer in town to become a family defense lawyer and we hope the book will help lawyers become excellent in their practice.” *Id.* at xxiii.

¹³ *Rise Parent Leaders Present Reform Recommendations at CUNY Law Symposium on*

presentation was *powerlessness*. The presentation began:

The main thing we want you to hear today is that parents come into court feeling powerless. Our life experiences have often made us feel powerless. Our experiences with courts and other authorities—schools, police—have *also* made us feel powerless. Just being people of color in this society makes us feel powerless. When our children are removed, we feel the ultimate in powerlessness. To regain our children, we need to find the power inside of us. We need to have the feeling that we are powerful enough to fight these charges, or change our lives. . . . No one does well in their job or their life if they feel powerless. Too often, courts are places where parents feel small and unheard. We hope our stories and recommendations today show you how you can be part of changing that.¹⁴

The testimony of these courageous women underscores the Symposium organizers' exhortation to *Reimagine Family Defense*. The parent leaders' stories of voicelessness, powerlessness, redemption, strength, and overcoming made a powerful impression upon all in attendance, and reinforced the need for family defenders to vigorously challenge the destructive, disempowering, and unjust practices of the child welfare system.¹⁵ They urged vigilance against complacency and complicity in the face of injustice. And that is just what the articles in this Symposium issue do: they challenge the "punitive underpinnings" of the child welfare system; explain what is necessary for zealous, effective legal representation for parents; encourage empathetic connection with clients, creative and innovative problem-solving, and balancing of problem-solving approaches with fierce advocacy.

The authors in this Symposium issue—experienced, highly respected family defenders from across the country—address some of the most challenging issues faced by parents and advocates as they seek to protect and preserve what the Supreme Court of the United States has called "perhaps the oldest of the fundamental liberty interests"—a parent's right to raise his or her child without

Family Court, RISE MAGAZINE (Apr. 8, 2016), <http://www.risemagazine.org/2016/04/cuny-court-presentation/> [<https://perma.cc/KG6V-QAWC>].

¹⁴ Nora McCarthy, Dir., Rise Magazine, Opening Remarks at the City University of New York Law Review's Symposium: Reimagining Family Defense (Apr. 8, 2016).

¹⁵ See Vivek Sankaran & Itzhak Lander, *Procedural Injustice: How the Practices and Procedures of the Child Welfare System Disempower Parents and Why It Matters*, MICH. CHILD WELFARE L.J., Fall 2007, at 11, 13-15. This article discusses "the ways in which the procedures used by the child protective system disconnect and alienate parents from the decision making process involving their children." *Editor's Note—Summer 2007*, MICH. CHILD WELFARE L.J., Fall 2007, at i.

unwarranted state interference.¹⁶ To frame their insights, this Introduction provides a brief overview of the history and achievements in family defense. The Introduction starts with a short summary of the Supreme Court's decision in *Lassiter v. Department of Social Services*¹⁷—the ground-zero of the right to counsel for child welfare-involved indigent parents. Part II discusses some of the major obstacles that hinder parents' access to meaningful and effective assistance of counsel. Part III highlights some of the significant advances in the ongoing struggle to improve the quality of parental representation in child welfare proceedings.

I. FAMILY DEFENSE IN CONTEXT: THE EVOLUTION OF THE RIGHT TO COUNSEL FOR POOR PARENTS IN CHILD WELFARE PROCEEDINGS

The Supreme Court of the United States has variously characterized a parent's interest in the companionship, care, custody, and management of his or her child as "fundamental,"¹⁸ "essential,"¹⁹ and "far more precious than property rights."²⁰ Nevertheless, as Professor Peggy Cooper Davis, a former New York City family court judge has observed, "[i]n the real world, where parents have limited means and state officials have imperfect judgment, realization of [this] . . . right[] is not automatic. . . . Without diligence, advocacy, and a thoughtfully structured procedural context, parents can easily be overwhelmed and rendered voiceless" in child welfare proceedings.²¹ The much-maligned 1981 United States Supreme Court case of *Lassiter v. Department of Social Services*²² brings into sharp relief this critical need for access to counsel for poor parents in child welfare proceedings.²³

¹⁶ *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (citing *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Parham v. J.R.*, 442 U.S. 584, 602 (1979); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)).

¹⁷ 452 U.S. 18 (1981).

¹⁸ *Id.* at 39-40.

¹⁹ *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

²⁰ *May v. Anderson*, 345 U.S. 528, 533 (1953).

²¹ PEGGY COOPER DAVIS, *NEGLECTED STORIES: THE CONSTITUTION AND FAMILY VALUES* 140 (1997).

²² 452 U.S. 18 (1981).

²³ For examples of scholarly writings critiquing various aspects of the case, see Robert Hornstein, *The Right to Counsel in Civil Cases Revisited: The Proper Influence of Poverty and the Case for Reversing Lassiter v. Department of Social Services*, 59 CATH. U. L. REV. 1057, 1060, 1060 n.18 (2010) ("In the intervening years since *Lassiter*, there

A mother of four at the time her case began in Durham County, North Carolina, Abby Gail Lassiter “was fourteen years old when she had her first child. She was uneducated, poor, and black. Her only support was her mother, Lucille, and the community in which she lived.”²⁴ Notations in court records insinuated that Ms. Lassiter had “rather low intelligence and might well [have been] mentally retarded.”²⁵ In June of 1976 Ms. Lassiter’s youngest child, eight-month-old William, was adjudicated to be a neglected child in need of protection, remanded to the custody of the Durham County Department of Social Services, and placed into foster care.²⁶ Ms. Lassiter was not present at that hearing, nor was she represented by counsel in her absence.²⁷ When her parental rights to William were terminated two years later, she was present at the hearing, but not represented by counsel.²⁸ After terminating Ms. Lassiter’s parental rights, the trial judge informed her of her right to appeal his decision, but only at the urging of the attorney representing the child welfare agency.²⁹

The issue at the Court of Appeals of North Carolina was whether the trial judge committed reversible error in failing to appoint counsel for Ms. Lassiter.³⁰ While acknowledging that “[t]here is no question but that there is a fundamental right to family integrity protected by the U.S. Constitution[,]” the appellate court concluded that due process did not require the state to appoint and pay for lawyers to represent indigent persons in state-initiated proceedings to sever the family bonds of poor parents and their children.³¹ Despite clear evidence that Ms. Lassiter was unable to effectively defend herself in the absence of a trained, competent legal advocate,³² the court held that the failure of the trial court to

has been a steadily increasing crescendo of criticism of the Court’s decision by legal scholars and poverty lawyers, along with an increasing number of organized efforts around the nation directed at establishing a civil right to counsel either through state judicial decision or by legislative action.”)

²⁴ Brooke D. Coleman, *Lassiter v. Department of Social Services: Why Is It Such a Lousy Case?*, 12 NEV. L.J. 591, 592 (2012) (footnotes omitted).

²⁵ Lowell F. Schechter, *The Pitfalls of Timidity: The Ramifications of Lassiter v. Department of Social Services*, 8 N. KY. L. REV. 435, 446, 446 n.35 (1981) (citing Petitioner’s Brief for Rehearing at 9-10, *Lassiter v. Dep’t of Soc. Services*, 452 U.S. 18 (1981) (No. 79-6423)).

²⁶ See *id.* at 437-38, 447, 449-50, 449 n.44 (1981).

²⁷ *Id.* at 438.

²⁸ *Id.* at 447; *Lassiter v. Dep’t of Soc. Services*, 452 U.S. 18, 21-22 (1981).

²⁹ Schechter, *supra* note 25, at 453.

³⁰ *In re Lassiter*, 259 S.E.2d 336, 337 (N.C. Ct. App. 1979).

³¹ *Id.*

³² See Brief for National Center on Women & Family Law, Inc. et al. as Amici Curiae Supporting Petitioner at 31-43, *Lassiter v. Dep’t of Soc. Services*, 452 U.S. 18

appoint counsel for her was not error because she “had ample notice of the hearing, was actually present when it was held, and was allowed to testify and cross-examine” the county’s witnesses.³³ The North Carolina court apparently did not appreciate the irony in its further reasoning that Ms. Lassiter wasn’t entitled to a lawyer because “the evidence brought forward by the Department of Social Services demonstrated a pattern of neglect” of William by Ms. Lassiter, and “no evidence of any rehabilitation of respondent or amelioration of her attitude towards her child was adduced.”³⁴ The court concluded that “[w]hile this State action does invade a protected area of individual privacy, the invasion is not so serious or unreasonable as to compel us to hold that appointment of counsel for indigent parents is constitutionally mandated.”³⁵

In a sharply divided 5-4 vote, the United States Supreme Court declined to apply the rights-based, categorical approach to court-appointed counsel for poor persons accused of crimes that it had adopted in the landmark 1963 case of *Gideon v. Wainwright*.³⁶ Instead, after creating a presumption against counsel in cases where “physical liberty” is not at stake,³⁷ the Court adopted what Justice Blackmun in dissent called the “thoroughly discredited” ad hoc approach,³⁸ allowing courts to determine, on a case-by-case basis, whether appointment of counsel would be constitutionally required for a particular indigent parent when the government seeks to permanently terminate his or her parental rights.³⁹ Despite acknowledging that application of the *Mathews v. Eldridge*⁴⁰ analysis used to assess the constitutionality of a procedure affecting due process⁴¹ would *generally* favor appointment of counsel in parental

(1981) (No. 79-6423), 1980 WL 340037 (discussing how counsel for Ms. Lassiter could have developed and presented defenses, ensured the state’s burden of proof was met and supported by reliable evidence, and protected Ms. Lassiter against bias and impropriety); *Lassiter*, 452 U.S. at 54 (Blackmun, J., dissenting) (“[S]he apparently did not understand that cross-examination required questioning rather than declarative statements.”).

³³ *Lassiter*, 259 S.E.2d at 337.

³⁴ *Id.*

³⁵ *Id.*

³⁶ 372 U.S. 335 (1963).

³⁷ *Lassiter*, 452 U.S. at 26-27.

³⁸ *Id.* at 35 (Blackmun, J., dissenting).

³⁹ *Id.* at 31-32 (majority opinion) (“[N]either can we say that the Constitution requires the appointment of counsel in every parental termination proceeding. We therefore . . . leave the decision whether due process calls for the appointment of counsel for indigent parents in termination proceedings to be answered in the first instance by the trial court . . .”).

⁴⁰ 424 U.S. 319 (1976).

⁴¹ *See id.* at 335 (1976) (“[I]dentification of the specific dictates of due process

termination cases,⁴² the majority reasoned that the case-by-case approach was appropriate in termination cases because the *Eldridge* factors would not be met in *every* termination case, and because due process does not always require that “the significant interests [of the government] in informality, flexibility and economy must always be sacrificed[.]”⁴³ While holding that the United States Constitution does not mandate an absolute right to court-appointed counsel in termination cases, the Court nevertheless noted that the policy—supported by numerous national organizations—of providing counsel to poor persons in *all* child welfare proceedings was “enlightened and wise,” and urged, but did not mandate state courts to follow that policy.⁴⁴

Two dissents were filed, one by Justice Stevens writing for himself, and the other by Justice Blackmun, joined by Justices Brennan and Marshall. Justice Stevens rejected the majority’s reliance on the *Eldridge* analysis, arguing that while it was appropriate for analyzing “what process is due in *property* cases. . . . [T]he reasons supporting the conclusion that the Due Process Clause of the Fourteenth Amendment entitles the defendant in a criminal case to representation by counsel apply with equal force to a case of this kind.”⁴⁵ He pointedly observed that although incarceration and termination of parental rights are both serious deprivations of liberty, “often the deprivation of parental rights will be the more grievous of the two.”⁴⁶ Parents should be entitled to a categorical right to counsel in termination proceedings, said Justice Stevens, even if the costs to the State were “just as great as the costs of providing prosecutors, judges, and defense counsel to ensure the fairness of criminal proceedings,” because “the value of protecting our liberty from deprivation by the State without due process of law is

generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.”).

⁴² *Lassiter*, 452 U.S. at 31 (“[T]he parent’s interest is an extremely important one . . . the State shares with the parent an interest in a correct decision, has a relatively weak pecuniary interest . . . and the complexity of the proceeding and the incapacity of the uncounseled parent could be . . . great enough to make the risk of an erroneous deprivation of the parent’s rights insupportably high.”).

⁴³ *Id.* (quoting *Gagnon v. Scarpelli*, 411 U.S. 778, 788 (1973)).

⁴⁴ *Id.* at 33-34.

⁴⁵ *Id.* at 59-60 (Stevens, J., dissenting) (emphasis added).

⁴⁶ *Id.* at 59.

priceless.”⁴⁷

Although he used the *Mathews v. Eldridge* analysis, Justice Blackmun rejected outright what he called the majority’s “insensitive presumption that incarceration is the only loss of liberty sufficiently onerous to justify a right to appointed counsel[.]”⁴⁸ He stressed that “‘the interest of a parent in the companionship, care, custody, and management of his or her children.’ . . . occupies a unique place in our legal culture, given the centrality of family life as the focus for personal meaning and responsibility[.]”⁴⁹ and, as such, “there can be few losses more grievous than the abrogation of parental rights.”⁵⁰ Analyzing the *Eldridge* factors, Blackmun observed that termination proceedings, like criminal prosecutions, are “distinctly formal and adversarial,” with “an obvious accusatory and punitive focus.”⁵¹ Moreover, there is an added layer of complexity in termination proceedings given the reliance on the imprecise “best interests of the child” standard, with its open invitation to judges to rely on their own subjective, personal values,⁵² and the inability of an indigent parent, untrained in the law, to handle tasks associated with formal litigation.⁵³ Justice Blackmun declared:

Faced with a formal accusatory adjudication, with an adversary—the State—that commands great investigative and prosecutorial resources, with standards that involve ill-defined notions of fault and adequate parenting, and with the inevitable tendency of a

⁴⁷ *Id.* at 60.

⁴⁸ *Lassiter*, 452 U.S. at 42 (Blackmun, J., dissenting).

⁴⁹ *Id.* at 38 (quoting *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)).

⁵⁰ *Id.* at 40.

⁵¹ *Id.* at 42-43 (“The State initiates the proceeding by filing a petition in district court, . . . and serving a summons on the parent A state judge presides over the adjudicatory hearing that follows, and the hearing is conducted pursuant to the formal rules of evidence and procedure. . . . In general, hearsay is inadmissible and records must be authenticated.” (citations omitted)).

⁵² *Id.* at 45, 45 n.13 (“This Court more than once has adverted to the fact that the ‘best interests of the child’ standard offers little guidance to judges, and may effectively encourage them to rely on their own personal values.” (citing *Bellotti v. Baird*, 443 U.S. 622, 655 (1979) (Stevens, J., concurring in judgment); *Smith v. Org. of Foster Families*, 431 U.S. 816, 835 n.36 (1977))).

⁵³ *Lassiter*, 452 U.S. at 45-46 (Blackmun, J., dissenting) (“The parent cannot possibly succeed without being able to identify material issues, develop defenses, gather and present sufficient supporting nonhearsay evidence, and conduct cross-examination of adverse witnesses.”). Addressing the majority’s assertion that counsel would not have made a difference in Ms. Lassiter’s termination proceeding, Justice Blackmun found “virtually incredible” the majority’s conclusion that Ms. Lassiter’s “termination proceeding was fundamentally fair. To reach that conclusion, the Court simply ignores the defendant’s obvious inability to speak effectively for herself, a factor the Court has found to be highly significant in past cases.” *Id.* at 57.

court to apply subjective values or to defer to the State's "expertise," the defendant parent plainly is outstripped if he or she is without the assistance of the "guiding hand of counsel." . . . When the parent is indigent, lacking in education, and easily intimidated by figures of authority, the imbalance may well become insuperable.⁵⁴

In conclusion, Justice Blackmun asserted that

where, as here, the threatened loss of liberty is severe and absolute, the State's role is so clearly adversarial and punitive, and the cost involved is relatively slight, there is no sound basis for refusing to recognize the right to counsel as a requisite of due process in a proceeding initiated by the State to terminate parental rights.⁵⁵

Notably, *Lassiter* was decided during a period in which the federal government had increased its influence in state child welfare systems and practices through legislation that made funding to the states contingent on their adherence to specific regulations and policies. The most influential federal legislation affecting child welfare was the Child Abuse Prevention and Treatment Act of 1974 (CAPTA).⁵⁶ CAPTA's major focus was on child safety. Notably, CAPTA required states to appoint a representative (not necessarily, but possibly, a lawyer) to protect the interests of the child in child welfare proceedings;⁵⁷ it did not and still does not contain a similar provision requiring representation of parents. The *Lassiter* case was thus decided in the context of a sustained period in which the national focus had been on removing children from what were considered unsafe homes and "bad parents" with what many critics regarded as little to no appreciation for the devastation that separation from their parents and families would have on the child.⁵⁸

Despite the Supreme Court's reluctance to recognize a right to court-appointed counsel for child-welfare-involved indigent parents, over half the states and the District of Columbia had already recognized such a right, either as a matter of statute or of constitu-

⁵⁴ *Id.* at 46 (1981) (footnote omitted) (citations omitted).

⁵⁵ *Id.* at 48.

⁵⁶ Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101-5119 (2012)). For a description of the law, its legislative history, and subsequent amendments, see CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., ABOUT CAPTA: A LEGISLATIVE HISTORY (2011), <https://www.childwelfare.gov/pubPDFs/about.pdf> [<https://perma.cc/K694-N7XG>].

⁵⁷ 42 U.S.C. § 5106(a)(B)(ii) (2010).

⁵⁸ See, e.g., John E.B. Myers, *A Short History of Child Protection in America*, 42 FAM. L.Q. 449, 454-62 (2008).

tional law.⁵⁹ New York's Court of Appeals was the first state high court to recognize the right to counsel for indigent parents in a state-initiated removal proceeding when it decided the case of *In re Ella R.B.* in 1972.⁶⁰ Three years later in 1975 the New York State legislature codified the right to counsel for parents in all child-welfare-related proceedings, as well as in various other family court proceedings.⁶¹ Notably, three years before the *Lassiter* decision Congress had passed the Indian Child Welfare Act of 1978,⁶² requiring the appointment of counsel for indigent Indian parents or custodians "in any removal, placement, or termination proceeding."⁶³ Failure to provide counsel is deemed a *per se* violation of the Act, with the possibility of invalidation of a removal, foster care placement, or termination of parental rights.⁶⁴

Although most states now provide free counsel for parents in state-initiated termination of parental rights cases,⁶⁵ it is questionable how often, and at what stage of the proceedings litigants actually receive counsel.⁶⁶ As discussed in the next section, the ongoing legacy of *Lassiter's* limitation on access to counsel for indigent parents is further exacerbated by the widespread lack of conditions and resources necessary for high quality parental representation.⁶⁷

II. IMPEDIMENTS TO HIGH QUALITY FAMILY DEFENSE

In addition to the lack of an absolute constitutional right to counsel for parents, access to justice for child-welfare involved parents and families is severely hampered by inadequate legal representation. Prominent entities such as the federal Administration for Children and Families, the American Bar Association, the National Association for Children's Counsel, and the National Council of Juvenile and Family Court Judges have recognized the necessity of competent parental representation.⁶⁸ Despite the rec-

⁵⁹ *Lassiter*, 452 U.S. at 34.

⁶⁰ *In re Ella R.B.*, 30 N.Y.2d 352 (1972).

⁶¹ See N.Y. FAM. CT. ACT §§ 261, 262 (McKinney 1975).

⁶² Indian Child Welfare Act of 1978, Pub. L. No. 95-608, 92 Stat. 3069 (codified at 25 U.S.C. §§ 1901-1963).

⁶³ 25 U.S.C. § 1912(b) (1978).

⁶⁴ *Id.* § 1914.

⁶⁵ See *supra* note 3.

⁶⁶ Clare Pastore, *Life After Lassiter: An Overview of State-Court Right-to-Counsel Decisions*, CLEARINGHOUSE REV., July-Aug. 2006, at 186, 186 ("Without a detailed analysis of trial court minute orders, records, and perhaps even transcripts, how often *pro se* litigants request counsel, much less how courts handle such requests in the vast bulk of unappealed cases, is impossible to tell.").

⁶⁷ See generally Pollock, *supra* note 3.

⁶⁸ See, e.g., PEW COMM'N ON CHILDREN IN FOSTER CARE, FOSTERING THE FUTURE:

ognition that parents' attorneys contribute to appropriate child welfare outcomes—by protecting due process and statutory rights, presenting balanced information to judges, and promoting the preservation of family relationships—and mounting evidence that strongly correlates improved parental representation with better outcomes for children,⁶⁹ parents' attorneys are “typically underpaid, under-resourced, carry high caseloads, and are sometimes disrespected as being on ‘the wrong side’ in a system designed to protect and serve children.”⁷⁰ Numerous studies have exposed wide variation in the quality of parental representation across the country.⁷¹ For example, the Permanent Judicial Commission for

SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE 18 (2004) http://www.pewtrusts.org/~media/legacy/uploadedfiles/phg/content_level_pages/reports/0012pdf.pdf (“To safeguard children’s best interests in dependency court proceedings, children *and their parents* must have a direct voice in court, effective representation, and the timely input of those who care about them.”) (emphasis added); DONALD N. DUQUETTE & MARK HARDIN, CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., GUIDELINES FOR PUBLIC POLICY AND STATE LEGISLATION GOVERNING PERMANENCE FOR CHILDREN VII-1 (1999) (recommending that all States guarantee legal representation of parents or legal guardians at all court hearings, including at the preliminary protective proceeding, at government expense when the parent or guardian is indigent); NAT’L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, CHILD ABUSE AND NEGLECT CASES: REPRESENTATION AS A CRITICAL COMPONENT OF EFFECTIVE PRACTICE (1998); NAT’L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES (1995). Although unsuccessful, a bill was twice introduced in Congress (in 2011 and 2013) proposing that federal funding be provided to the states to improve parental representation. Enhancing the Quality of Parental Legal Representation Act of 2013, H.R. 1096, 113th Cong. (2013); Enhancing the Quality of Parental Legal Representation Act of 2011, H.R. 3873, 112th Cong. (2012). The bill cited analyses of data from New York, Michigan, and Washington showing reduced rates of foster care placement and increased rates of reunification when parents receive high quality legal representation.

⁶⁹ See generally Thornton & Gwin, *supra* note 11.

⁷⁰ NAT’L CTR. FOR STATE COURTS ET AL., COLORADO COURT IMPROVEMENT PROGRAM RESPONDENT PARENTS’ COUNSEL TASK FORCE STATEWIDE NEEDS ASSESSMENT: FINAL REPORT (2007), https://www.courts.state.co.us/userfiles/File/Court_Probation/Supreme_Court/Committees/Court_Improvement/CORPCFinalNeedAsstReptApp.pdf [<https://perma.cc/X8S9-SJD6>].

⁷¹ See, e.g., CTR. ON CHILDREN & THE LAW, AM. BAR ASS’N, LEGAL REPRESENTATION FOR PARENTS IN CHILD WELFARE PROCEEDINGS: A PERFORMANCE-BASED ANALYSIS OF NORTH CAROLINA PRACTICE (2013) [hereinafter NORTH CAROLINA STUDY] http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/NorthCarolinaReport_full.pdf [<https://perma.cc/XR7M-TMW2>]; CTR. ON CHILDREN & THE LAW, AM. BAR ASS’N, LEGAL REPRESENTATION FOR PARENTS IN CHILD WELFARE PROCEEDINGS: AN ANALYSIS OF WYOMING PRACTICE (2011) http://www.americanbar.org/content/dam/aba/administrative/child_law/wyolegalrep.authcheckdam.pdf [<https://perma.cc/M64U-7HT9>]; PERMANENT JUDICIAL COMM’N FOR CHILDREN, YOUTH & FAMILIES, SUPREME COURT OF TEX., LEGAL REPRESENTATION STUDY: ASSESSMENT OF APPOINTED REPRESENTATION IN TEXAS CHILD-PROTECTION PROCEEDINGS (2011), <http://texaschildrenscommission.gov/media/1356/lrs.pdf> [<https://perma.cc/NA8W->

Children, Youth and Families of the Supreme Court of Texas found representation provided under that state's parental right to counsel statute to be "perfunctory and so deficient as not to amount to representation at all."⁷² Rigorous studies of parental representation systems in various jurisdictions across the country have identified numerous impediments to high quality parental representation, including excessive caseloads; inadequate compensation; lack of supportive services and resources, such as expert witnesses, social workers, parent partners, investigators, psychologists, and evaluators; lack of practical and role-specific training, education, and standards; and insufficient or nonexistent monitoring and supervision.⁷³ Also contributing to inadequate legal representation are "poor customs and low expectations of representation The old reputation of juvenile and family courts as a lesser 'kiddie court' persists in some places, despite the increased sophistication and complexity of both the law and the underlying interdisciplinary perspective required to handle these cases effectively."⁷⁴

As recently noted by the American Bar Association assessment team for the North Carolina parental representation system, [b]etter representation for parents can decrease unnecessary re-

7Z4Z]; MELINDA MOORE & ALLISON MCWILLIAMS, GOVERNMENTAL SERVS. & RESEARCH DIV., UNIV. OF GA., A STATEWIDE ASSESSMENT OF GEORGIA PARENT REPRESENTATION IN CHILD WELFARE PROCEEDINGS (2010), <http://cj4c.georgiacourts.gov/sites/default/files/cj4c/publications/Final%20PA%20Merged%20Report.pdf> [<https://perma.cc/X328-8YH8>]; CTR. ON CHILDREN & THE LAW, AM. BAR ASS'N, LEGAL REPRESENTATION FOR PARENTS IN CHILD WELFARE PROCEEDINGS: A PERFORMANCE-BASED ANALYSIS OF MICHIGAN PRACTICE (2009), http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/parentrepresentation/michigan_parent_representation_report.authcheckdam.pdf [<https://perma.cc/74VY-MB55>]; MINN. JUDICIAL BRANCH, REPORT OF CHILDREN'S JUSTICE INITIATIVE PARENT LEGAL REPRESENTATION WORKGROUP TO MINNESOTA JUDICIAL COUNCIL (2008), <https://www.leg.state.mn.us/docs/2009/other/090151.pdf> [<https://perma.cc/ZT24-WZ5G>]; WILLIAM BOWEN ET AL., THE JEROME N. FRANK LEGAL SERVS. ORG. & CONN. VOICES FOR CHILDREN, GIVING FAMILIES A CHANCE: NECESSARY REFORMS FOR THE ADEQUATE REPRESENTATION OF CONNECTICUT'S CHILDREN AND FAMILIES IN CHILD ABUSE AND NEGLECT CASES (2007), <http://www.ctvoices.org/sites/default/files/welf07reformsforrep.pdf> [<https://perma.cc/LU7Q-5EWK>]; NAT'L CTR. FOR STATE COURTS ET AL., *supra* note 70.

⁷² PERMANENT JUDICIAL COMM'N FOR CHILDREN, YOUTH & FAMILIES, *supra* note 71, at 59.

⁷³ See, e.g., NAT'L CTR. FOR STATE COURTS ET AL., *supra* note 70, at 1; NORTH CAROLINA STUDY, *supra* note 71, at 48-57.

⁷⁴ DUQUETTE & HARDIN, *supra* note 68, at VII-1; see also STEERING COMM. ON THE UNMET LEGAL NEEDS OF CHILDREN, AM. BAR ASS'N, AMERICA'S CHILDREN STILL AT RISK 199-210 (2001); see also NAT'L CTR. FOR STATE COURTS ET AL., *supra* note 70 at 5 ("[There is a] misguided view that attorneys working on these cases are relieved of the traditional rigors of the practice of law.").

movals of children from their families, ensure parents receive necessary and quality services, increase the frequency and quality of visitation between children and their parents, foster the use of kinship placements, decrease the amount of time until a child is safely returned to her parent, and generate cost savings at the local, state and federal levels.⁷⁵

Fortunately, the message is spreading, and more and more efforts to improve the quality of parental representation are taking root locally and nationally.

III. REIMAGING FAMILY DEFENSE: ENHANCING PARENTAL REPRESENTATION

Despite the obstacles hindering quality representation of parents, over the past decade or so there have been significant developments aimed at improving the quality of parental representation. Two major developments are standards of practice for parents' attorneys and the creation of innovative parent representation models. An overview of those efforts follows.

A. *Standards of Practice for Parents' Attorneys*

The lack of standards of practice to guide attorneys for parents in child welfare proceedings has been cited as a main contributor to poor quality representation. In 1999 the federal Administration for Children and Families urged states to adopt standards to guide attorneys in this complex field.⁷⁶ Eight years after adopting standards for attorneys who represent children in child welfare proceedings (in 1996),⁷⁷ and two years after adopting standards for attorneys representing child welfare agencies (in 2004),⁷⁸ in 2006 the American Bar Association (the "ABA") adopted standards for parents' attorneys.⁷⁹ Today, numerous states and localities have adopted formal practice standards for lawyers representing parents in these cases, and the list is growing.⁸⁰

⁷⁵ NORTH CAROLINA STUDY, *supra* note 71, at 13.

⁷⁶ DUQUETTE & HARDIN, *supra* note 68, at VII-1.

⁷⁷ STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (AM. BAR ASS'N 1996).

⁷⁸ STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILD WELFARE AGENCIES (AM. BAR. ASS'N 2004).

⁷⁹ STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES (AM. BAR ASS'N 2006).

⁸⁰ *See, e.g.*, QUALIFICATIONS AND STANDARDS FOR ATTORNEYS APPOINTED TO REPRESENT CHILDREN AND PARENTS (ARK. SUPREME COURT 2016); STANDARDS FOR PARENTAL REPRESENTATION IN STATE INTERVENTION MATTERS (N. Y. STATE OFFICE OF INDIGENT LEGAL SERVS. 2015), <https://www.ils.ny.gov/files/Parental%20Representa>

Substantively, standards adopted by many jurisdictions generally track the ABA's *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*.⁸¹ Key themes include required education and training, caseload and workload caps, the attorney-client relationship, and vigorous preparation and advocacy at all stages of the case.⁸² The standards also address the obligations of attorneys to work cooperatively and collaboratively with other professionals on the case, to advocate for the client's continued exercise of parental rights and obligations while a child is in foster care, and to advocate for and assist the client in accessing appropriate treatment, therapy, services and/or benefits.⁸³ Key provisions of the ABA Standards emphasize timely appointment of counsel, multidisciplinary representation, out-of-court client communication and advocacy, and awareness of and sensitivity to cultural and socioeconomic issues.⁸⁴

In addition to its practice standards, the ABA has undertaken a number of influential projects to improve the quality of parental representation. In 2007, it established the National Project to Improve Representation for Parents Involved in the Child Welfare System. The Project has been a singular force in driving national and state efforts to improve the quality of parental representation. In 2013 and in 2015, the ABA published the Parent Attorney National Compensation Survey. The survey reported on parent attor-

tion%20Standards%20Final%20110615.pdf [https://perma.cc/Z4QA-N83Y]; PRACTICE GUIDELINES FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE, NEGLECT, AND TERMINATION OF PARENTAL RIGHTS CASES (WYO. SUPREME COURT 2015), https://www.courts.state.wy.us/Documents/CJP/Publications/Practice_Guidelines_for_Attorneys_Representing_Parents_in_Abuse_Neglect_and_TPRs.pdf [https://perma.cc/9FDY-7LT6]; IOWA STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN JUVENILE COURT (IOWA SUPREME COURT 2013); PARENTS REPRESENTATION PROGRAM STANDARDS FOR ATTORNEYS (WASH. STATE OFFICE OF PUB. DEF. 2012), http://www.opd.wa.gov/documents/0061-2012_PR_P_Atorney_Standards.pdf [https://perma.cc/UC2V-BTDB]; PERFORMANCE GUIDELINES FOR ATTORNEYS REPRESENTING INDIGENT PARENT RESPONDENTS IN ABUSE, NEGLECT, DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS AT THE TRIAL LEVEL (N.C. COMM'N ON INDIGENT DEF. SERVS. 2007), http://www.ncids.org/Rules%20&%20Procedures/Performance%20Guidelines/Parent_Atty_guides_1-08.pdf [https://perma.cc/UXN2-DDJE]; STATE OF ME., REPRESENTING PARENTS IN CHILD PROTECTION CASES: A BASIC HANDBOOK FOR LAWYERS (1999), http://www.courts.maine.gov/maine_courts/family/rep_parents.pdf [https://perma.cc/U45W-96FM]; *see also* SOCIAL WORKER PRACTICE STANDARDS (WASH. STATE OFFICE OF PUB. DEF. 2008), http://www.opd.wa.gov/documents/0062-2008_PR_P_SW_Standards.pdf [https://perma.cc/Q88N-WZC8].

⁸¹ STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES (AM. BAR ASS'N 2006).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

ney pay structures, rates and supports, and noted obstacles to fair compensation such as inadequate compensation for out-of-court time, a lack of coverage for travel, even to see clients in some jurisdictions; lack of multi-disciplinary support (parent mentors, social workers, investigators); lack of caseload caps; and restrictive funding caps.⁸⁵ The ABA found that “these obstacles result in parents not always receiving the high quality representation they need to ensure the best outcomes for their children and families.”⁸⁶ Also in 2015 the ABA issued two significant publications: *Indicators of Success for Parental Representation*, providing first-ever guidance for states to measure and improve the quality of parental representation,⁸⁷ and the first-ever practice manual aimed exclusively at family defenders, *Representing Parents in Child Welfare Cases: Advice and Guidance for Family Defenders*.⁸⁸

B. Examples of Parent Representation Models

Around the country, a wide variety of parental representation models exist.⁸⁹ Most states have placed on their counties the responsibility for providing legal representation to impoverished child-welfare-involved parents, with little to no centralized or state-level oversight or funding.⁹⁰

However, there is a growing trend toward implementation of programs with some level of structure and accountability to ensure better organized and resourced parental representation. The American Bar Association’s Center on Children and the Law’s *Summary of Parent Representation Models* describes different representation models:

- *institutional parent representation organizations*—offices with a

⁸⁵ MIMI LAVER, ET AL., CTR. ON CHILDREN & THE LAW, AM. BAR ASS’N, PARENT ATTORNEY NATIONAL COMPENSATION SURVEY – 2015 (2015), https://www.oregon.gov/gov/policy/Documents/LRCD/Meeting1_102815/National/Parent_representation/2015_Parent_Attorney_Compensation_Survey.pdf [<https://perma.cc/QDS5-BU9F>].

⁸⁶ *Id.*

⁸⁷ CTR. ON CHILDREN & THE LAW, AM. BAR ASS’N, INDICATORS OF SUCCESS FOR PARENT REPRESENTATION (2015), http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/Indicators-of-Success.authcheckdam.pdf [<https://perma.cc/KAY5-H4NY>].

⁸⁸ REPRESENTING PARENTS, *supra* note 12.

⁸⁹ See CTR. ON CHILDREN & THE LAW, AM. BAR ASS’N, SUMMARY OF PARENT REPRESENTATION MODELS (2009), http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/parentrepresentation/summary_parentrep_model.authcheckdam.pdf [<https://perma.cc/W75G-VQQC>].

⁹⁰ See *supra* note 3 for sources collecting state statutory provisions that govern appointment of parents’ attorneys.

full time staff of attorneys, social workers, peer parent advocates, and investigators;

- *contract or panel systems of representation*—a panel of contract attorneys who have education requirements, mandated practice standards, resources for social workers, investigators and experts, and compensation for out-of-court work; and
- *hybrid state or county parent representation offices and contract/panel systems*—a panel or list of contract attorneys who handle the majority of the parent representation and a state or county office with a full time staff who may handle some direct parent representation, oversee admission onto the panel, provide and oversee attorney education, and administer attorney review process.⁹¹

These models have shown promise toward ensuring that parents involved with the child welfare system have quality legal representation. The number of state funded and administered parental representation systems is growing. In addition to Arkansas,⁹² Massachusetts,⁹³ North Carolina,⁹⁴ New Jersey,⁹⁵ Utah,⁹⁶ and the State of Washington,⁹⁷ Colorado recently established the state Office of Respondent Parent's Counsel upon recommendations by a gubernatorial task force.⁹⁸

Washington State's Public Defender's Office is one example of a state-wide enhanced parent advocacy model that has achieved dramatic improvements in outcomes for children and families. Key elements of Washington's Parent Representation Program include

⁹¹ CTR. ON CHILDREN & THE LAW, *supra* note 87, at 2.

⁹² *Parent Counsel*, ARK. JUV. DIVISION CTS., <http://www.arjdc.org/parent-counsel.html> [<https://perma.cc/K6PJ-8XKH>] (last visited Nov. 27, 2016).

⁹³ *Children and Family Law Division*, COMMITTEE FOR PUB. COUNSEL SERVICES, <https://www.publiccounsel.net/cafl> [<https://perma.cc/N3GC-8Q3M>] (last visited Nov. 27, 2016).

⁹⁴ *Office of Parent Representation*, N.C. INDIGENT DEF. SERVICES, <http://www.ncids.org/ParentRepresentation/index.html> [<https://perma.cc/6LFN-B2HZ>] (last visited Nov. 27, 2016).

⁹⁵ *Office of Parental Representation*, N. J. OFF. PUB. DEFENDER, <http://www.state.nj.us/defender/structure/opr> [<https://perma.cc/6YM3-WBRU>] (last visited Nov. 27, 2016).

⁹⁶ See UTAH CODE ANN. §§ 63a-11-101 to -204 (LexisNexis 2011) (describing the Child Welfare Parental Defense Program).

⁹⁷ *Parents Representation*, WASH. ST. OFF. PUB. DEF., <http://www.opd.wa.gov/index.php/program/parents-representation> [<https://perma.cc/E5EN-RW6D>] (last visited Nov. 27, 2016).

⁹⁸ *About the Office of Respondent Parents' Counsel*, COLO. OFF. RESPONDENT PARENTS' COUNSEL, <https://www.coloradoorpc.org/about-us> [<https://perma.cc/YK86-FNUC>] (last visited Nov. 27, 2016); see also RESPONDENT PARENTS' COUNSEL WORK GROUP, FINAL REPORT TO THE STATE COURT ADMINISTRATOR (2014) https://www.coloradoorpc.org/wp-content/uploads/2016/11/RPC_Work_Group_Final_Report-1.pdf [<https://perma.cc/M89G-AY56>].

caseload limits for attorneys allowing a maximum of eighty open cases per attorney; attorney standards of practice; attorney training and support; Office of Public Defense oversight of attorneys; and attorney access to social workers and expert services.⁹⁹ Studies of the program document major financial savings to the state in foster care and court costs: children whose parents were represented by attorneys participating in the parent representation program had an 11 percent higher reunification rate, a 104 percent higher adoption rate, and an 83 percent higher guardianship rate.¹⁰⁰

In 2007, New York City adopted an institutional, multidisciplinary team model of representation when it contracted with several non-profit organizations to provide legal services to parents with open child protective cases. This approach, based on the Center for Family Representation, Inc. (“CFR”), is viewed nationally as an exemplary parental representation model.¹⁰¹ CFR and the other primary providers that contract with New York City (Brooklyn Defender Services, the Bronx Defenders, and the Neighborhood Defender Service of Harlem) all use a multidisciplinary team approach to serving child-welfare-involved parents. Parents served by these organizations are represented by an advocacy team of a social worker, attorney, and a parent advocate. The attorneys have access to in-house investigators and regularly use expert services to assist in the defense of their clients.

CFR’s record of success is impressive. In 2014, about 50% of their clients’ children never went into foster care. For children who did enter foster care, the median length of stay was less than 5 months, in comparison to the New York City median of 11.5 months before CFR began operations. Three times as many cases were dismissed as compared to prior to CFR’s involvement. Also, in 2014 CFR’s foster care reentry rate within one year was 7% compared to a statewide reentry of 15% percent. CFR’s services cost an average of \$6,500 per family, regardless of the number of children, while the minimum cost to keep one child in foster care for a year in New York City is \$30,000. CFR estimates that its services have generated taxpayer savings of more than \$42.5 million since 2007.¹⁰²

Other notable local programs include the California Depen-

⁹⁹ CTR. ON CHILDREN & THE LAW, *supra* note 87, at 15-16.

¹⁰⁰ Mark E. Courtney & Jennifer L. Hook, *Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care*, 34 CHILD. & YOUTH SERVICES REV. 1337, 1340-42 (2012).

¹⁰¹ See Thornton & Gwin, *supra* note 11, at 142-44.

¹⁰² *Id.* at 144. CTR. FOR FAMILY REPRESENTATION, 2014 REPORT TO THE COMMUNITY 1

dency Representation, Administration, Funding and Training Program (“DRAFT”);¹⁰³ the Family Advocacy Unit of Community Legal Services, Inc. of Philadelphia;¹⁰⁴ the Detroit Center for Family Advocacy;¹⁰⁵ and the Vermont Parent Representation Center,¹⁰⁶ to name just a few. Additionally, a number of law schools have well-established programs that include parental representation in child welfare cases, including the New York University Family Defense Clinic,¹⁰⁷ the Mitchell Hamline School of Law Child Protection Clinic,¹⁰⁸ the CUNY School of Law Family Law Practice Clinic,¹⁰⁹ the University of Michigan Child Welfare Appellate Clinic,¹¹⁰ and the University of the District of Columbia David A. Clarke School of Law General Practice Clinic.¹¹¹

CONCLUSION

The need for robust, diligent, and creative defense of families is urgent. Reimagining family defense lawyering means working to ensure that every parent affected by the child welfare system has the kind of representation and advocacy exemplified in the following articles—client-centered, innovative, fierce. Professor Martin

(2014), <https://www.cfrny.org/wp-content/uploads/2012/12/Annual-Report-2014-FINAL.pdf> [<https://perma.cc/GN94-R9KT>].

¹⁰³ *Dependency, Representation, Administration, Funding and Training Program*, CAL. CTS., <http://www.courts.ca.gov/15577.htm> [<https://perma.cc/JN9W-YTQL>] (last visited Nov. 27, 2016).

¹⁰⁴ *About CLS*, COMMUNITY LEGAL SERVICES OF PHILA., <https://clsphila.org/about-cls> [<https://perma.cc/5D85-75XR>] (last visited Nov. 27, 2016).

¹⁰⁵ *The Detroit Center for Family Advocacy*, U. MICH. DETROIT, <http://detroit.umich.edu/centers-initiatives/highlights/promoting-safe-and-stable-families-detroit-center-for-family-advocacy> [<https://perma.cc/F3FP-5XQ3>] (last visited Nov. 27, 2016).

¹⁰⁶ VT. PARENT REPRESENTATION CTR., <http://vtprc.org> [<https://perma.cc/7TSE-4C58>] (last visited Nov. 27, 2016).

¹⁰⁷ *Family Defense Clinic with NY Defenders*, N.Y.U. SCH. L., <http://www.law.nyu.edu/academics/clinics/familydefense> [<https://perma.cc/F935-LWJL>] (last visited Nov. 27, 2016).

¹⁰⁸ *Child Protection Clinic*, MITCHELL HAMLINE SCH. L., <http://mitchellhamline.edu/child-protection-program/courses-and-curriculum/child-protection-clinic> [<https://perma.cc/G98L-M9BB>] (last visited Nov. 27, 2016); see also Mimi Laver, *Rethinking Parent Representation in Minnesota: Law Clinic Steps Up*, 32 A.B.A. CHILD L. PRAC. 33 (2013); Wendy Haight et al., *The Child Protection Clinic: A Mixed Method Evaluation of Parent Legal Representation*, 56 CHILD. & YOUTH SERVICES REV. 7 (2015).

¹⁰⁹ *Family Law Practice Clinic*, CUNY SCH. L., <http://www.law.cuny.edu/academics/clinics/family.html> [<https://perma.cc/DC7G-UF3Z>] (last visited Dec. 17, 2016).

¹¹⁰ *Child Advocacy Law Clinic*, U. MICH. L. SCH., <https://www.law.umich.edu/clinical/calc/Pages/default.aspx> [<https://perma.cc/U578-KFNL>] (last visited Nov. 27, 2016).

¹¹¹ *General Practice Clinic*, UDC/DCSL, <http://www.law.udc.edu/?page=genPracticeClinic> [<https://perma.cc/AXW5-3PUS>] (last visited Nov. 27, 2016).

Guggenheim has noted that as a field of practice, family defense “is an outlier field, barely known to most lawyers and law school professors, let alone among Americans more broadly.”¹¹² The good news, however, is that around the country the visibility and recognition of the importance of this neglected area of civil rights practice is growing.

The articles in this Symposium issue help to advance the work of family defenders who zealously guard against the benevolent intentions of those who, in their eagerness to help, instead trample upon the personal rights and human dignity of impoverished parents and children.¹¹³ The authors illuminate some of the historical underpinnings of contemporary child welfare practices that weaken and destroy vulnerable and marginalized families and communities. Firmly grounded in their intimate engagement with the parents, families and communities they serve, the authors critique prevailing narratives about the child welfare system, thereby elevating and reframing our understanding of the uses and abuses of state power to intervene into families in the name of child protection. And their concrete suggestions for recognizing, naming, confronting and combatting destructive child welfare practices and policies contribute tremendously to on-going efforts to improve the quality of parental representation and to advance the cause of justice for families.

¹¹² REPRESENTING PARENTS, *supra* note 12, at xix.

¹¹³ See, e.g., THE D.C. CITIZEN REVIEW PANEL, AN EXAMINATION OF THE CHILD AND FAMILY SERVICES AGENCY’S PERFORMANCE WHEN IT REMOVES CHILDREN FROM AND QUICKLY RETURNS THEM TO THEIR FAMILIES: FINDINGS AND RECOMMENDATIONS FROM THE CITIZENS REVIEW PANEL 2 (2011), http://www.dc-crp.org/Citizen_Review_Panel_CFSA_Quick_Exits_Study.pdf [<https://perma.cc/V9CG-764U>] (examining District of Columbia Child & Family Services Agency cases and finding that it had “been at times removing children from their homes and putting them in foster care unnecessarily”).