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A Hybrid Model for Family Defense: Combining a Public Interest Law Firm, a Legal Services Program and a Powerful Pro Bono Network to Forge Cutting-Edge Legal Advocacy for Families in the Child Welfare System

Diane L. Redleaf
Family Defense Center

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Acknowledgements

The opportunity to write about the Family Defense Center model in Footnote Forum has provided the Family Defense Center a first-ever opportunity to build upon our mission by helping other family defenders strengthen their programs and become more effective. If the Center can assist advocates who want to adapt programs based on the Family Defense Center experience, we welcome that opportunity. Thank you to CUNY Law Review for allowing us to share our unique hybrid model for family defense.

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A HYBRID MODEL FOR FAMILY DEFENSE: COMBINING A PUBLIC INTEREST LAW FIRM, A LEGAL SERVICES PROGRAM AND A POWERFUL PRO BONO NETWORK TO FORGE CUTTING-EDGE LEGAL ADVOCACY FOR FAMILIES IN THE CHILD WELFARE SYSTEM

*Diane L. Redleaf*¹

A. Introduction to the Family Defense Center's Model for Family Defense

This article discusses the key ingredients to the success of an unusual family defense organization, the Chicago-based Family Defense Center (the “Center”), which I founded in 2005 after a long career at both a legal services office and a public interest law firm. The Center uses a hybrid public interest law firm/legal services/pro bono network model, along with a sliding scale fee-for-service program, to fulfill its mission of advocating for justice for families in the child welfare system. The Center is devoted to addressing the needs of families, especially families who are targets of child protection investigations. By design, the Center works in a unique and highly specialized niche. But because child protection investigations arise from a wide range of allegations against family members, from domestic violence, to medically complex cases involving fractures and head injuries, to claims of sexual abuse, the practical and substantive expertise of the Center is very broad.

¹ Founder and Executive Director, Family Defense Center, Chicago, Illinois. The opportunity to write about the Family Defense Center model in *Footnote Forum* has provided the Family Defense Center a first-ever opportunity to build upon our mission by helping other family defenders strengthen their programs and become more effective. If the Center can assist advocates who want to adapt programs based on the Family Defense Center experience, we welcome that opportunity. Thank you to *CUNY Law Review* for allowing us to share our unique hybrid model for family defense.

In addition to representing family members in 400 to 600 individual direct service cases each year, the Center has been counsel in over a dozen federal civil rights cases and has won many precedential appellate cases.² Center-created precedents have tightened vague definitions of child neglect, set limits on the removal of children based on constitutional grounds, limited presumptions of abuse in medically complex cases, created strong due process rights limiting child abuse and neglect findings against parents and family members, and protected people who work with children from the blacklisting that follows from a wrongful child abuse or neglect finding.³ Thousands of families have benefited from the Center's systemic reform work, including the direct exoneration of over 26,000 people from the Illinois Child Abuse Registry through a 2013 Illinois Supreme Court decision and a class action suit that followed it.⁴ The Center's overall individual hearing win rate is approximately 80%.⁵

The Center concentrates on representing families who do not have appointed counsel. Indeed, because the Center concentrates on helping families at the very beginning of a child protection investigation, most of the families the Center represents never do become parties to formal juvenile court dependency cases⁶ in which the child welfare agency is

² See, e.g., *Hernandez v. Foster*, 657 F.3d 463 (7th Cir. 2011); *Julie Q. v. Dep't of Children & Family Servs.*, 2013 IL 113783, 995 N.E.2d 977 (Ill. 2013); *L.W. v. Ill. Dep't of Children & Family Servs.*, No. 13-CV-8463, 2014 U.S. Dist. LEXIS 5822624 (N.D. Ill. Nov. 10, 2014), *vacated in part*, No. 13-CV-8463, 2015 U.S. Dist. LEXIS 70243 (N.D. Ill. June 1, 2015); see also *Dupuy v. McDonald*, 141 F. Supp. 2d 1090 (N.D. Ill. 2001) (regarding class action advocacy for persons who work with children).

³ See, e.g., *Julie Q.*, 2013 IL 113783, 995 N.E.2d 977; *Slater v. Dep't of Children & Family Servs.*, 2011 IL App (1st) 102914, 953 N.E.2d 44 (Ill. App. Ct. 2011).

⁴ *Julie Q.*, 995 N.E.2d at 986 (holding that the "environment injurious" rule is legally void); *Ashley M. v. Ill. Dep't of Children & Family Servs.*, No. 13 CH 20278 (Ill. Cir. Ct. 2013) (class action filed two months after mass expungement in *Julie Q.*, seeking to compel child welfare agency to adopt lawful rule). The *Julie Q.* decision resulted in 19,000 persons securing expungement shortly thereafter. *Julie Q. Rule Changes: The Long Road to Ending the Overcharging "Environment Injurious" Neglect Claims*, FAM. DEF. CTR. (Aug. 30, 2014), <http://www.familydefensecenter.net/julie-q-rule-changes-the-long-road-to-ending-the-overcharging-environment-injurious-neglect-claims/> [https://perma.cc/96MN-SPT9]. The *Ashley M.* decision resulted in over 7,000 additional expungements. Email from Beth Solomon, Special Litig. Counsel for DCFS, to Diane Redleaf, Exec. Dir. of the Family Def. Ctr. (Apr. 22, 2015, 4:29 PM) (on file with author); see also Sara E. Gilloon et al., *Advocacy for Domestic Violence Victims in the Child Welfare System: A Ten-Year Retrospective*, FAM. DEFENDER, Summer 2015, at 4, 5, <http://www.familydefensecenter.net/wp-content/uploads/2015/09/FDCISSUE19-FINAL.pdf> [https://perma.cc/56A2-9YUQ].

⁵ Grant Application from the Family Def. Ctr. to Law. Tr. Fund of Ill. 12 (2016) (on file with author).

⁶ This article refers to the formal court cases involving placement of children into foster care as "dependency court" cases.

petitioning to place their children into substitute care. The Center's typical individual cases involve representing parents and caregivers in child welfare agency administrative hearings that challenge a decision to label them guilty of abuse or neglect and list them in the State's child abuse register.⁷ The Center's representation also includes direct representation of clients during child protection investigations and in affirmative suits that arise from violations of families' rights during investigations.⁸ With this emphasis on cases that never come to the attention of dependency courts, the Center is unusual, unlike any other law office representing families in child welfare proceedings.

The Center's hybrid public interest law firm/legal services/pro bono network model also allows the Center the flexibility to do important policy reform advocacy, provide community legal education (including training and materials for client self-representation), build a state-wide advocacy network for parent attorneys, support parent-led empowerment programs, and join advocacy coalitions.⁹ The Center's own special model has made it a "scrappy, brilliant" legal advocacy organization.¹⁰

The Center's model works. The next sections of this article discuss the Center's history, the key ingredients of success, and challenges it has faced.

B. A Brief History and the Early Challenges to Success of the Center's Model

The Center was incorporated in June 2005 and began providing its cutting-edge legal services on January 1, 2007.¹¹ The Center started as my own dream—and what seemed to be a possibly harebrained dream at that. More than once, friends, relatives, and colleagues disdainfully asked me, "Who in the world would want to represent parents accused of abuse or neglect?" Moreover, if a freestanding public interest organization for families in the child welfare system was such a good idea, wouldn't such a Center already exist? Given that the only other model for a non-profit

⁷ See, e.g., FAMILY DEF. CTR., TRI-ANNUAL REPORT 2013-15 18 (2016); *Center Brings Thirteen Federal Civil Rights Cases and Two State Court Class Actions in Its Decade of Justice for Families*, FAM. DEFENDER, Summer 2015, at 7, 7 [hereinafter *Decade of Justice*], <http://www.familydefensecenter.net/wp-content/uploads/2015/09/FDCISSUE19-FINAL.pdf> [<https://perma.cc/56A2-9YUQ>].

⁸ FAMILY DEF. CTR., *supra* note 6, at 4-12.

⁹ See generally FAMILY DEF. CTR., *supra* note 6.

¹⁰ Lenore Skenazy, *Verdict Reversed: Mom Not Guilty of Neglect for Letting Kids Play in Park*, REASON.COM: HIT & RUN BLOG (Dec. 17, 2015, 1:20 PM), <http://reason.com/blog/2015/12/17/verdict-reversed-mom-not-guilty-of-negle> [<https://perma.cc/DJ9G-ZJHV>].

¹¹ FAMILY DEF. CTR., *supra* note 6, at 1.

family defense center that I had discovered, the Center for Family Representation in New York City, had been founded with substantial community and foundation support, what made me think I could start an independent center on my own, with no public foundation backing?

Despite these questions and doubts, I persevered. In 2005, when I started the Family Defense Center, I thought I still had some good ideas about child welfare reform that just needed a home in which to flourish. At that point, I already had spent 25 years in legal services and public interest law practice, mostly as a child welfare system reform litigator and family support policy advocate. That experience included twelve years as the director and supervisor of the Children's Project of the Legal Assistance Foundation of Chicago ("LAF"), where I led numerous federal and state court class action cases and appellate cases in addition to representing many parents in dependency court. I also had nine years of experience in a private public interest law firm practice that I started (together with LAF's former litigation director), following federal restrictions prohibiting federally-funded legal services programs from class action litigation in 1996.¹² Since starting a new public interest law agency like the Family Defense Center requires some depth and breadth of legal experience and some supervisory experience, I was fortunate to have had many years of directly applicable legal experience and some agency management experience when I decided that my next legal position would be as director of a new not-for-profit agency that had yet to be born.

My past experience gave me valuable guideposts that led me to try to avoid the limitations of both legal services programs and private law firm practice. I envisioned ways in which a hybrid model could overcome these

¹² See, e.g., Don Van Natta Jr., *Legal Services Wins on Suit For the Poor*, N.Y. TIMES (Dec. 27, 1996), <http://www.nytimes.com/1996/12/27/nyregion/legal-services-wins-on-suit-for-the-poor.html> [<https://perma.cc/T4F4-HZZT>] ("Legal Services lawyers had agreed to give up the class-action suits as part of a compromise with Republicans in Congress, who had threatened to cut off all or most of the organization's Federal financing."). At the Legal Assistance Foundation of Chicago, where I worked, this Congressional compromise led to several special projects leaving LAF with foundation funding, leading to the creation of the Shriver Center on Poverty Law that initially was housed at the Clearinghouse Review. See *About the Clearinghouse Community*, SARGENT SHRIVER NAT'L CTR. ON POVERTY L., <http://www.povertylaw.org/clearinghouse/about> [<https://perma.cc/PP32-4NKW>] (last visited Nov. 17, 2016). In my own case, without foundation funding, I joined with litigation director Robert Lehrer in several class action suits that had the prospect of federal civil rights fee awards. See John Flynn Rooney, *She Fights for Kids, Families*, CHI. DAILY L. BULL. (Nov. 4, 2013), http://www.familydefensecenter.net/wp-content/uploads/2015/02/Chicago_Law_Bulletin_-_Nov_4_2013_DLR_Article.pdf [<https://perma.cc/3X6X-DV2N>]; see also SUSAN GLUCK MEZEY, PITIFUL PLAINTIFFS: CHILD WELFARE LITIGATION AND THE FEDERAL COURTS 55 (2000) (describing Lehrer and Redleaf as major players in plaintiffs' litigation in the child welfare system in Illinois).

limitations. This vision also sought clients in need of skilled legal representation that a not-for-profit agency dedicated to representing families could provide.¹³ Indeed, I believed that agencies that can cut across classes and unite poor, middle-class, and even upper-class people in a shared struggle for justice have the best chances of success. Given that there are 3.2 million children who are the subject of child protection investigations or referrals for services by child protection agencies each year in America,¹⁴ and there are literally millions of parents and professionals listed (very often wrongly) in child abuse registers,¹⁵ there is a huge potential clientele in America with legal advocacy needs who are facing child abuse and neglect investigations each year.¹⁶ Only a fraction of these families become parties

¹³ See, e.g., Melissa Staas, In re Yohan K.: *Parents of Infant with Rare Medical Conditions Known to Mimic Signs of Abuse Exonerated by the Appellate Court of Illinois After Two-Year-Long Battle*, FAM. DEFENDER, Summer 2013, at 1, 12, <http://www.familydefensecenter.net/wp-content/uploads/2014/12/FamilyDefenderIssue15.pdf> [https://perma.cc/4JBA-3SLY] (discussing cases involving clients who are middle or upper middle class and who were successfully represented by Family Defense Center attorneys under the Center's sliding scale fee schedule).

¹⁴ CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT 2014 x (2015), <http://www.acf.hhs.gov/sites/default/files/cb/cm2014.pdf> [https://perma.cc/S6QT-DKQK].

¹⁵ See, e.g., *id.* at 20 (showing 19.2% of calls for investigation or referral resulted in a substantiated or "indicated" finding of abuse or neglect, whereas 80.9% of such calls uncovered no substantiated grounds for state intervention in the family). The number of wrongfully registered persons has been established as creating a "staggering" expungement rate (overturning of registered findings following an administrative appeal to a neutral magistrate) of 74.6%. *Dupuy v. McDonald*, 141 F. Supp. 2d 1090, 1136 (N.D. Ill. 2001); see also *Valmonte v. Bane*, 18 F.3d 992, 1004 (2d Cir. 1994) (noting that there are 2 million persons listed in the child abuse register for New York State with a similar 75% (or 3:1) rate of reversal when individuals appealed the findings against them).

¹⁶ See ILL. DEP'T OF CHILDREN & FAMILY SERVS., CHILD ABUSE AND NEGLECT STATISTICS FISCAL YEAR 2015 21 (2016), https://www.illinois.gov/dcf/aboutus/newsandreports/Documents/DCFS_Annual_Statistical_Report_FY2015.pdf [https://perma.cc/E4YD-CMAZ] (showing recent figures that approximately 21,000 persons were indicated perpetrators of abuse or neglect in FY 2015). The estimate of 150,000 persons with registered indicated findings (as the *Dupuy* class was defined) therefore remains a reasonable estimate of current class membership (though the case has been closed and inactive since 2011). *Dupuy v. Samuels*, FAM. DEF. CTR., <http://www.familydefensecenter.net/fdc-cases/dupuy-v-samuels/> [https://perma.cc/G35Y-UU8U] (last visited Dec. 10, 2016). Given that only 1/5 of the children subject to these reports are removed from their parents, ILL. DEP'T OF CHILDREN & FAMILY SERVS., *supra*, at 30, and the criminal court burden of proof is much higher (beyond a reasonable doubt) than the burden of proof in dependency court (preponderance of the evidence), the vast majority of indicated reports are not subject to either dependency court or criminal court adjudication. See CHILDREN'S BUREAU, *supra* note 13, at 87 (reporting data on number of child victims in 2014 who had foster care placements).

to dependency cases, but many are harmed by wrongful allegations and blacklisting in child abuse registers when the allegations against them that are never tested in a court of law.¹⁷ Surely, I thought and I still believe, even well-to-do families sometimes need legal help to navigate child protection intervention into their families; they remain underrepresented by experienced and qualified counsel;¹⁸ and they are effectively unrepresented by institutional providers of legal representation for families in the child welfare system; counsel are not appointed in the usual course unless a juvenile court/dependency case is filed against the family.¹⁹ While higher income family members remain but a small fraction of the potential clientele of a legal advocacy organization, families with financial resources sometimes make excellent spokespeople for the importance of legal representation for families and they also become important donors to help build the agency's financial base.

Facing huge unmet legal need and having the vision to create a model to address that need, I was therefore undaunted by the naysayers. I was not, however, entirely confident the Center would succeed. The Center, thus, came into being as a part-time project of mine with a tiny board composed of some close colleagues and sister family advocates. After starting to provide direct legal services in January 2007, by the end of 2007, thanks to a few small grants, two major individual donors, and the sheer luck of suddenly receiving a sizeable cy pres award, we were able to hire two staff attorneys. By early 2008, we were ready to launch our pro bono program with major law firms.

1. The Whys and the Hows of a Pro Bono Legal Services Program for Families in the Child Welfare System.

In order to gain broader acceptance in the legal community and to expand the resources available to our clients, we wanted to create an effective pro bono program with major law firm participation. Initially, however, this effort was met with either great skepticism or outright

¹⁷ See, e.g., *Dupuy*, 141 F. Supp. 2d at 1130 (describing many of the harms to wrongly accused persons who work with children, including loss of livelihood and self-esteem).

¹⁸ See, e.g., FAMILY DEF. CTR., *supra* note 6, at 17 (showing 6% of Center cases involve persons at the top of the fee schedule, whose incomes exceed 550% of the poverty line).

¹⁹ See, e.g., 705 ILL. COMP. STAT. 405/1-5 (2014) (stating that right to counsel for indigent parents attaches at the time of the filing of a petition in the juvenile court). Some states do not have a universal right of counsel for parents even in termination of parental rights cases. See *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 34 (1981) (noting that only 33 states and the District of Columbia provided counsel in termination of parental rights cases by statute at the time the case was decided).

disapproval from segments of the legal community and public foundations. All but two foundations repeatedly turned us down for support, and one of our two earliest foundation supporters warned that they could not continue to support us if we did not manage to expand the number of foundations that also supported us. When we held an initial formative meeting with pro bono coordinators, most were reticent about joining our program. Indeed, the prospect of representing any parent accused of abuse or neglect was utterly unappealing to them, and our means of selling the program, by necessity, relied on convincing law firms that their associates would gain valuable legal skills by taking on administrative hearing representation. In making this case, it helped that the administrative hearings we were offering were real mini-trials with tight time limits (90 days), and thus promised valuable experience without an open-ended and unlimited time commitment.

Law firm and community squeamishness soon abated, however. We also met the challenge of adding three new foundations to our list of supporters. Three law firms dipped their toes into the program and they liked the experience. It helped that the experience they got included bringing appellate cases of first impression and that the hearings actually fulfilled our promise of providing excellent experience for young trial-starved associates. It also helped that the parents the law firms represented, were usually excellent parents who had truly gotten a bum rap at the hands of the child welfare agency. It did not hurt that my earlier work in my private practice had established the “staggering” reversal rate that the law firms were able to understand first hand by taking on cases that seemed to perpetuate bureaucratic errors.²⁰ Moreover, improvements in the hearing process we had secured through my federal class action work while I was in private practice had made the administrative hearing system easier to navigate for private practitioners.²¹

²⁰ *Dupuy*, 141 F. Supp. 2d at 1136.

²¹ *See, e.g., id.* The *Dupuy* court ultimately ordered timely hearings, admonitions that clarified the duties of the administrative law judges, and amended notices of rights in the proceedings. *Dupuy v. McDonald*, No. 97 C 4199, 2003 WL 21557911 (N.D. Ill. July 10, 2003), *aff'd in part*, *Dupuy v. Samuels*, 397 F.3d 493 (7th Cir. 2005); *Dupuy v. Samuels*, No. 97 C 4199, 2005 WL1498468 (N.D. Ill. June 10, 2005) (orders on remand). While most of the *Dupuy* litigation occurred before I founded the Family Defense Center, I appeared in the *Dupuy* case on behalf of the Family Defense Center in January 2007 and Center staff attorney Melissa Staas appeared as co-counsel in the active compliance litigation that continued until 2011. For an example of the effect of the *Dupuy* litigation, see *Lyon v. Dep't of Children & Family Servs.*, 807 N.E.2d 423, 432 (Ill. 2004) (citing *Dupuy* and requiring 90-day hearings on pain of expungement if DCFS exceeds its 90-day deadline for adjudicating register appeals).

For all of these reasons, by 2010, the Center had started to turn pro bono firm doubts about our program into solid and sustained support for the importance of advocacy for families in the child welfare system. Perhaps not surprisingly, in 2010, the Center was also starting to get recognized in the larger non-profit world, receiving the first “Excellent Emerging Organization” Award from the Axelson Center for Nonprofit Management in Chicago.²² With increased acceptance of the value of family defense and the effective services the Center was providing, law firm and individual participant lawyers’ support continue to grow and have become an increasingly important part of the funding base for the Center’s programs. This support in the legal community in turn helped the Center to garner new foundation support and other individual donations to sustain our programs.

The Family Defense Center is now in its eleventh year of operations. It now boasts of a network of 115 pro bono attorneys, donated legal services valued at over \$2 million. Many of these lawyers have taken on cases that have set important precedents and helped the Center to exonerate tens of thousands of people from the state’s child abuse register.²³

2. Major Litigation and Direct Representation and the Interplay with Policy Advocacy

The Center now operates with freedom and flexibility to decide which cases it should take, and it has amassed an impressive docket of important cases and projects.²⁴ We readily decline many cases that do not fit into a carefully developed case assessment process, which considers not just the needs and wishes of the client, but also the potential impact of the case for the larger client community. Unlike legal services and public defender programs, we can take on substantial affirmative or systemic policy cases without restriction, based on an assessment of whether a case has the potential to advance the legal rights of families in the child welfare system. Additionally, we are not restricted from undertaking legislative and regulatory advocacy. The Center’s ability to navigate these different advocacy forums is both unique and essential; for example, the Center is able to prevent a victory in an appellate court case from easily being undone

²² *Past Award Winners*, NORTH PARK U.: AXELSON CTR. FOR NONPROFIT MANAGEMENT, <https://www.northpark.edu/centers/axelson-center-nonprofit-management/programs/nonprofit-management-awards/past-award-winners/> [https://perma.cc/QV8U-6HVA] (last visited Dec. 13, 2016).

²³ See *Julie Q. v. Dep’t of Children & Family Servs.*, 2013 IL 113783, 995 N.E.2d 977 (Ill. 2013). This litigation collectively led to the expungement of 26,000 persons’ names from the Illinois State Central Register. See also discussion and cases cited *supra* note 3.

²⁴ FAMILY DEF. CTR., *supra* note 6; *Decade of Justice*, *supra* note 6.

by the state legislature.²⁵ Indeed, the Center has seen several attempts by the state to overturn its precedential decisions through legislation that the child welfare agency or State's Attorney has tried to pass,²⁶ but the Center has been able to use our legal victories in the courts along with our own legislative and advocacy group connections to thwart these efforts.²⁷

The Center's successful litigation has led to a climate in which policy changes are often proactively discussed with the Center and state agency policy makers before litigation is filed.²⁸ The Center's growth in its staff, caseload, pro bono participation, and budget have been steady, and the prospects for the Center's future are promising.

²⁵ For example, following the Center's victory in *In re Yohan K.*, which held that the State could not rely on a "constellation of injuries" to show abuse without proving abuse as to any of the injuries, the State's Attorney of Cook County attempted to overturn the appellate victory by introducing legislation to allow courts to adjudicate abuse based on a "constellation of injuries." See *In re Yohan K.*, 2013 IL App (1st) 123472, 993 N.E.2d 877, 901 (Ill. App. Ct. 2013); see also S.B. 2798, 98th Gen. Assemb., Reg. Sess. (Ill. 2014). By quickly mounting a campaign against this legislative effort, which included mobilizing affected clients and notifying our allies in the shaken baby innocence network headed by Kate Judson (now headquartered at the Wisconsin Innocence Project), we were able to convince the sponsor to withdraw the proposed legislation. See FAMILY DEF. CTR., *supra* note 6, at 10.

²⁶ In addition to the effort mounted by the State's Attorney's office, DCFS itself tried to reinstate broad statutory language that would have authorized the "environment injurious" rule that the Appellate Court had declared void in *Julie Q. v. Dep't of Children & Family Servs.* See *Julie Q.*, 2013 IL 113783, 995 N.E.2d 977; see also S.B. 2849, 97th Gen. Assemb., Reg. Sess. (Ill. 2012). The Center's extensive representation of clients against whom this ground had been used unfairly helped persuade the sponsor to amend the overbroad language of the DCFS bill to reinstate the language, and produced a much tighter definition of neglect that the Center has used to further its advocacy. 325 ILL. COMP. STAT. 5/3 (2016).

²⁷ See FAMILY DEF. CTR., *supra* note 6, at 5 (describing multifaceted litigation, legislative, and rulemaking advocacy in the wake of the successful expungement appeal in *Julie Q. v. Dep't of Children & Family Servs.*).

²⁸ Following the *Dupuy* settlement in 2007, regular quarterly or twice yearly meetings with DCFS General Counsel staff ensued, which led to discussions of legislative measures implemented by agreement. See, e.g., 325 ILL. COMP. STAT. 5/7.16 (2014) (extending the deadline for filing an administrative appeals from indicated findings in cases in which there are simultaneous criminal or juvenile court cases pending). In addition, more recently following the settlement of three federal civil rights cases, sweeping changes to DCFS safety plan policies and intervention against domestic violence victims and persons with mental health issues are being collaboratively discussed. See FAMILY DEF. CTR., CALENDAR OF SETTLEMENT PROVISIONS AND DELIVERABLES (2016), <http://www.familydefensecenter.org/wp-content/uploads/2016/08/Calendar-of-Settlement-Provisions-and-Deliverables.pdf> [<https://perma.cc/KS43-BP82>] (setting out a timetable for policy implementation in settlements).

C. Addressing the Challenges to Success of the Public Interest Law Firm/Pro Bono Network Model for Representation of Families in the Child Welfare System

The success of the Center has not been easy to achieve. The challenges of representing families who are perceived as perpetrators rather than victims of systemic abuse endure and must be addressed head-on if a program providing family defense without any government funding can endure.²⁹ The first and often most significant question we are asked is: “How do you decide who you will represent?” Lurking beneath the surface of this question is usually a significant doubt: “How do you know your clients are not heinous child abusers who are duping you into taking their cases when they are truly guilty?” This perennial question requires a very good answer. Unlike government-funded defenders, a not-for-profit family defense agency that relies on public support, including precious foundation support and donor dollars, has to have an answer to this question that is better than “everyone deserves a defense.” While the bare due process argument may hold some sway when raised as a reason for governments to fund indigent defense and enable the courts to keep running, it does not make a strong case as to why any individual donor should chose to give their own limited donation dollars to the cause of family defense.

To implement my firmly-held view that successful legal advocacy for systemic change requires a multi-strategy approach: direct individual and systemic reform representation, policy advocacy, education of the legal and client communities, and coalition building. It also requires a secure funding base and a sound organizational structure.³⁰ As I saw it and as I still believe, a not-for-profit legal advocacy organization, unlike a private law firm, offered the opportunity to build a diverse funding base and community support, including from both public foundations and individual donors. It also allowed the opportunity to build support for child welfare reform work

²⁹ FAMILY DEF. CTR., *supra* note 6, at 43-45 (detailing financial reports of Center for 2013-2015, showing sources of funding for Family Defense Center, including reliance on individual donors).

³⁰ Numerous non-profits, including legal advocacy organizations, have merged or closed since the 2008 crash. Two recent mergers or consolidations of services in Chicago involved Health and Disabilities Advocates (HDA) and Chicago Legal Aid for Incarcerated Mothers (CLAIM). The legal staff of HDA joined then-Aids Legal Council (now Legal Council for Health Justice) and CLAIM staff joined Cabrini Green Legal Aid (CGLA). A loss in funding and inability to sustain the budget of these organizations provided the impetus for these mergers. See *Cabrini Green Legal Aid (CGLA) to Acquire Chicago Legal Advocacy for Incarcerated Mothers (CLAIM)*, CABRINI GREEN LEGAL AID (July 1, 2014), <http://www.cgla.net/cgla-acquires-claim> [<https://perma.cc/8QPH-E95T>] (discussing the announcement of merger of CLAIM with CGLA).

from a variety of communities (parents, advocates, law firms and other business leaders, as well as concerned citizens who simply care about the fair treatment of families). Unlike federally-restricted legal services programs, such an agency could also represent fee-paying clients on a sliding scale and avoid restrictions on the types of legal work it could undertake in fulfillment of its charitable mission.³¹ Moreover, I firmly believed, and now can attest, that poor people were not the sole limited donation dollars to the cause of family defense.

The Center's experience suggests that, to answer the question of who we represent, it is important to focus on *wrongful* state intervention into families. First and foremost, the merits assessment of cases has to be careful, compelling, and defensible. Being able to show that the child welfare system's intervention really *is* "wrongful" is important.³² Convincing donors to support legal representation for true child abusers and serious child neglectors would be an impossible task—one that will doom any idealistic soul who attempted to gain support for the work. An organization that tries to represent all accused parents dooms the innocent to being lumped in with the guilty.³³ It is a far better strategy to try to convince the public that good parents are suffering unless they can access quality representation than that bad parents are not getting due process.

For these reasons, it would be a serious mistake for a not-for-profit public interest agency program to take on direct representation of parents who are likely to be found guilty of child sexual abuse or who are already

³¹ An early article by Ed Sparer on birthing centers, and hearing him speak at a conference on maternal and child health, influenced my thinking that legal services programs had made a mistake in only representing poor people, encouraging me to believe that organizations would have stronger support and great impact if they represented people across income levels and found projects that cut across class lines. Ed Sparer convinced me that, contrary to the strict poverty guidelines under which I worked at the Legal Assistance Foundation, legal representation across income levels and projects that cut across class lines were more often successful and secured broader support than programs targeted to the poor alone. For a brief description of Ed Sparer's influence more broadly, see Sylvia A. Law, *Edward V. Sparer*, 132 U. PA. L. REV. 425 (1984).

³² *Dupuy v. McDonald*, 141 F. Supp. 2d 1090, 1136 (N.D. Ill. 2001). In this author's professional experience, the evidence of the "staggering" rate of error found by the federal court in *Dupuy*, has been enormously persuasive to members of the public as well as to lawyers who prefer to support a cause on the side of victims of injustice.

³³ Foundations at site visits for the Center repeatedly ask for evidence that our clients have not committed the abuse they have been accused of. The Center's track record, including success in over 80% of its administrative appeals, *see supra* note 4, and having over 26,000 persons removed from the State Central Register, *see supra* note 3, persuaded these funders to continue their support (and enables the program officers at these foundations to convince their boards that the innocence should not be denied help simply because some parents are guilty of abuse of their children). *See generally* FAMILY DEF. CTR., *supra* note 6.

facing termination of parental rights proceedings because of already-adjudicated unfitness due to abuse or neglect. While these kinds of cases are ones that family defenders are routinely appointed to handle, a free-standing not-for-profit agency that is not appointed to provide representation to these clients cannot afford to extend its limited resources to parents who are likely to have caused harm to their children in some manner, even if the harm is remediable.³⁴ Indeed, the less extensive the legal proceedings that have already occurred when the agency gets involved with the family's case, the easier it is to persuade a skeptical audience that the resources of the non-profit agency are well-spent (and the less resource-intensive the cases themselves will turn out to be).

Focusing on what happens to families during investigations—before the child welfare agency itself has decided whether to file petitions in the juvenile court — helps promote the agency's work as essential to the fairness of the legal system itself and as having a prevention focus. This focus enables the non-profit agency to accurately present its clients as victims of the misguided child welfare system who just need some legal help to navigate the system and avoid an unjust conclusion.³⁵ Given that the state itself determines most child welfare agency investigations are “unfounded,”³⁶ helping family members navigate such an investigation with legal counsel is readily understood as beneficial: this work actually helps the system to function better by ensuring that children are not wrongfully taken from their parents.³⁷

To operationalize these principles (and provide a convincing answer to the question of how we prevent ourselves from being duped into representing terrible parents that no donor would want to see keep custody of their children), the Center has found it essential to: (1) operate under a

³⁴ See *Legal Services*, FAM. DEF. CTR., <http://www.familydefensecenter.net/fdc-programs/legal-services/> [<https://perma.cc/5VUQ-NRWZ>] (last visited Nov. 24, 2016) (describing cases the Center will consider and those it will not and setting up the process for potential clients to secure Center assistance).

³⁵ See FAMILY DEF. CTR., UNDERSTANDING AND RESPONDING TO DEPARTMENT OF CHILDREN AND FAMILY SERVICES' ABUSE AND NEGLECT INVESTIGATIONS IN ILLINOIS: A BASIC GUIDE FOR ILLINOIS PARENTS AND OTHER CAREGIVERS i-iii (2016), <http://www.familydefensecenter.net/wp-content/uploads/2016/04/Responding-to-Investigations-Manual-FINAL.pdf> [<https://perma.cc/NX3Q-WHM8>].

³⁶ ILL. DEP'T OF CHILDREN & FAMILY SERVS., *supra* note 15, at 5-6 (showing 110,000 children reported as abused or neglected, but fewer than 1/3 of these children are found to actually be abused or neglected).

³⁷ See *2016 Safety Plan Settlements*, FAM. DEF. CTR., <http://www.familydefensecenter.net/fdc-cases/2016-safety-plan-settlements> [<https://perma.cc/4RLK-3P78>] (last visited Nov. 24, 2016). These settlements establish that DCFS recognizes it needs to amend its broad use of safety plans to separate children and parents during investigations.

carefully crafted intake protocol and case acceptance system and (2) clearly explain that system to potential supporters when asked. We can readily defend our decision-making processes because our cases truly are taken only after a detailed merits assessment that involves careful case screening, file review, and a full staff case acceptance meeting, where the merits of each case are critically debated. The agency's resources to provide representation and the ability to secure pro bono counsel for resource-intensive cases are also part of the assessment process.

The corollary of a careful focus on representing wrongly accused parents is that precious agency resources do not get sucked into endlessly prolonged dependency cases, which can last until the child involved turns 18 or 21 (depending on the age at which wardship ends).³⁸ If the Center had tried to represent many parents in dependency court, as most parent representation projects do, it almost certainly would have quickly failed.³⁹ Law firms would have fled the program before it got off the ground. Managing a pro bono program that represents parents in 'dependency court' cases presents a vastly bigger challenge than managing more discrete and time-limited administrative hearings. (Indeed, using pro bono lawyers in dependency court representation is a challenge the Center has not yet mastered, but it has made a few preliminary efforts in the past year, with mixed results). Pro bono lawyers tend to like to represent clients in purely *legal* matters, not cases that require either a detailed knowledge of social services for families or dogged haranguing of overworked caseworkers.⁴⁰ Administrative hearings, appeals, and civil rights cases are much more familiar territory for law firm lawyers, though a careful introduction of the

³⁸ See Ctr. for Family Representation, *Achieving the Client's Objectives to Shorten Foster Care Stays and Reunify the Family: Advocating for Supportive Placements, Appropriate Services, Parenting and Visiting Time, and Leveraging Opportunities for Advocacy at Conferences and Meetings Outside the Court Process*, in REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS 65 (Martin Guggenheim & Vivek S. Sankaran eds., 2015).

³⁹ *People v. Crockett (In re Dar. C.)*, 2011 IL 111083, 957 N.E.2d 898 (Ill. 2011) (reversing unanimously termination of parental rights by publication notice due to amicus effort); see also *People v. Emily L. (In re Aidden S.)*, 2014 IL App (2d) 140085, 23 N.E.3d 1199 (Table) (Ill. 2014); *People v. Isay R. (In re Galini R.)*, No. 117940, 2014 Ill. LEXIS 853 (Ill. July 28, 2014) (petitions for leave to appeal all denied following briefing by Family Defense Center); *People v. Torie (In re K.I.)*, 2016 IL App (3d) 160010, 55 N.E.3d 1193 (Ill. App. Ct. 2016) (petition for leave to appeal pending); *People v. Bernadine L. (In re Rico L.)*, 2012 IL App (1st) 113028-B, 977 N.E.2d 1100 (Ill. App. Ct. 2012); *People v. Hopper (In re I.D.)*, 2012 IL App (4th) 111140-U.

⁴⁰ See Kara Finck, *Negotiating for Services for the Family in Court: Admissions to the Petition*, in REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS, *supra* note 37, at 133 (discussing the importance of social services to family reunification efforts).

background of each administrative hearing, training in the specifics of the rules governing these proceedings, and ongoing support for each pro bono attorney are essential to providing high-quality representation for our clients (much as extensive staff resources are required to maintain a high-quality pro bono program).⁴¹ Once these basics of managing any effective pro bono program are addressed, however, recruitment of pro bono lawyers gets easier with time, and the experience the lawyers gain sells the program. Lawyers who have had one good pro bono experience are often willing to take on another. This success would be hard to accomplish in a dependency court setting. Yet, most family defenders remain dependency court lawyers first and foremost. The Family Defense Center model is an outlier in the family defense world.⁴²

In addition to the challenge of maintaining a focus on wrongful intervention, defending the merits of case acceptance decisions, and the specific demands that arise in the course of running an effective pro bono program, clear and consistent messaging about the family defense mission remains a perennial challenge. To meet this challenge, it is essential to tell success stories and to constantly promote the importance of the work the Center does. It is also important to describe the cases the Center handles in appealing ways. It can be a challenge in its own right to develop a program to engage clients in the project of speaking out, writing about their experiences, and joining with the legal and administrative staff of the Center to help make the Center's case for support.⁴³ Engaging clients as advocacy partners and organizational spokespersons requires a different set of leadership skills and a different relationship than representing clients in legal process, and ensuring that staff have the wherewithal to identify clients able to speak out and to work with clients in this way has presented its own set of challenges. In this effort, the Center recognizes the importance of working with groups like *Rise Magazine*⁴⁴ and a new group

⁴¹ See Diane L. Redleaf & Melissa L. Staas, *Civil Rights, Individual Rights, and Administrative Law with a "Family Law" Twist: Using DCFS Hearings to Exonerate Wrongly-Accused Parents and Caregivers*, CHI. B. ASS'N RECORD, Oct. 2011, at 32; see also Diane L. Redleaf, *Attorneys Help Parents Keep Families Intact Amid Misplaced Child Protection Allegations*, LITIG., Winter 2013, at 1.

⁴² See Finck, *supra* note 39; see also Diane L. Redleaf, *The Impact of Abuse and Neglect Findings Beyond the Juvenile Courthouse: Understanding the Child Abuse Register System and Ways to Challenge Administrative Child Abuse Register Determinations*, in REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS, *supra* note 37, at 389.

⁴³ FAMILY DEF. CTR., *supra* note 6, at 19.

⁴⁴ See *About Rise*, RISE MAG., www.risemagazine.org/about/ [https://perma.cc/2PYF-PF87] (last visited Dec. 13, 2016).

called Families Organizing for Child Welfare Justice founded by our former board member, Suzanne Sellers.

In addition to attention to messaging and programs, family defense organizations that are independent not-for-profit agencies must also address myriad organizational challenges that few legal services and public interest lawyers have much training or experience in handling.⁴⁵ Unless an organization focuses on its management functions, including board development, strategic planning, human resource development, marketing, public relations, and fundraising – all while juggling client needs that are constantly pressing – it will not survive for long.

For the Family Defense Center, organizational growth and strength has gone hand in hand with the Center's success in its legal and advocacy work. Winning important cases attracted attention and gave the Center allies among bar association leaders in Chicago, including highly respected partners in major law firms who had either joined the board or had worked on civil rights cases and amicus briefs with the Center's attorneys (or both). The Center also issued many newsletters and bulletins that documented this important work, telling powerful stories about parents who were wrongly accused of abuse or neglect and who prevailed with its help.

Ultimately, though, the success of a family defense model depends on the intelligence, skill, and commitment of the staff and board of the organization that provides legal representation to families. Of course, there is no formula for building an outstanding staff or a committed and competent board of directors. There is also no exact formula for a successful model of family defense, but passion and perseverance in creating access to justice for families in the child welfare system does make an excellent and effective agency like the Center possible. Investing in training and support for pro bono attorneys pays many dividends, especially if the pro bono attorneys can become experts in specific kinds of cases (for example, administrative appeals or civil rights cases) and can teach others and join as partners in expanding the network after being sold on the importance of family defense work. If we believe our families deserve justice, we should also invest in making members of the larger legal community our partners. Creating a hybrid model organization like the Family Defense Center does exactly that.

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⁴⁵ When the Family Defense Center received the first Excellent Emerging Organization Award of the Axelson Center for Nonprofit Management it was the sole legal non-profit organization to have received an Axelson Award. *See Past Award Winners*, NORTH PARK U.: AXELSON CTR. FOR NONPROFIT MANAGEMENT, <http://www.northpark.edu/centers/axelson-center-for-nonprofit-management/awards/past-award-winners> [https://perma.cc/QV8U-6HVA] (last visited Nov. 17, 2016).