

**Baruch**COLLEGE

SCHOOL OF PUBLIC AFFAIRS

CENTER FOR NONPROFIT STRATEGY AND MANAGEMENT

NEW YORK CITY NONPROFIT ADVOCACY CASE STUDIES

**CASE STUDY 2**

**CHILD WELFARE AND FOSTER CARE REFORM**

**GOING MAINSTREAM: ADVOCATES TAKE THE REINS**

**FULL VERSION**



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Full Version

This is one of three multimedia cases in the New York City Nonprofit Advocacy Case Studies series. The case narratives in the series are available in both a *Full Version* that includes an appendix with an analysis of the lesson learned, and a *Student Version* for use in the classroom that omits that appendix.

The *Full Version* is for general distribution to anyone interested in reading about the involvement of nonprofit organizations in advocacy. The *Student Version* is for classroom work. In addition, the background paper that accompanies the case studies, *Understanding Nonprofit Advocacy*, can be assigned to provide students with the theoretical context for analyzing the cases.

Students who are assigned the case study should work under an honor system and not consult the *Full Version* until after the classroom discussion.

*Teaching Notes* are available that provide instructors with additional information on how to use the cases, study questions for classroom discussions or assessment assignments and an analysis of the lessons learned for all three cases.

For copies of all three cases, the background paper *Understanding Nonprofit Advocacy* and information on how to obtain the *Teaching Notes*, visit the New York City Advocacy Case Studies website:

<http://www.baruch.cuny.edu/spa/researchcenters/nonprofitstrategy/CaseStudies.php>

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A video of the nonprofit advocates highlighted in this case study discussing their role in the advocacy campaign is available at: <http://usqproductions.com/media/baruch>

A background paper, *Understanding Nonprofit Advocacy*, explores the definitions of advocacy, the strategic choices organizations make when planning advocacy campaigns and the difficulties of evaluating the outcomes.

The cases consist of a written narrative and accompanying videos of nonprofit advocates discussing their work. Also available are *Teaching Notes* that provide instructors with additional information on how to use the cases, study questions for classroom discussions or assessment assignments and an analysis of the lessons learned for all three cases.

All documents and links to additional materials are available on the NEW YORK CITY NONPROFIT ADVOCACY CASE STUDIES website at:  
<http://www.baruch.cuny.edu/spa/researchcenters/nonprofitstrategy/CaseStudies.php>

## **ACKNOWLEDGEMENTS**

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## **CENTER FOR NONPROFIT STRATEGY AND MANAGEMENT**

The School of Public Affairs (SPA) at Baruch College launched the Center for Nonprofit Strategy and Management (CNSM) to address the needs of nonprofit organizations that are pivotal to the health and well-being of New York City. The CNSM community of professors and practitioners takes seriously the relationship between research and practice—practice informs the faculty’s development of theory as much as theory informs their approach to practice. Faculty members engage directly and vigorously with area nonprofits and the institutions that support them and command a wide range of expertise. The School has substantial strength in organization theory, budgeting and finance, public communication, advocacy and lobbying, technology diffusion, population studies, strategic planning, housing policy, human services management, and health care policy.

SPA and CNSM offer a wide range of academic and non-credit programs and services that address the complex issues facing the nonprofit sector, including strengthening leadership and building a pipeline of future leaders. These programs include a Master of Public Administration with a concentration in nonprofit management, monthly seminars for nonprofit professionals, conferences, the annual Consulting Day, the annual nonprofit executive outlook survey, the Emerging Leaders Program, and support for and collaboration with various “umbrella organizations.”

For more information about SPA and CNSM see:

<http://www.baruch.cuny.edu/spa/home.php>

<http://www.baruch.cuny.edu/spa/researchcenters/nonprofitstrategy/index.php>

## **ROBERT STERLING CLARK FOUNDATION**

The Robert Sterling Clark Foundation supports advocacy through its program on "Improving the Performance of Public Institutions." The underlying premise of the Foundation's interest in government performance is that government agencies and employees will deliver better services in a more cost-effective manner if their activities are scrutinized, evaluated, and held up to public view. While there are a number of public sector entities that monitor government spending, we believe that outside organizations play a critical role in examining existing policies and programs, identifying deficiencies, and promoting reforms that are responsive to changing societal needs. At times, this function has been carried out by the press, but for persistent attention to complex social problems and public bureaucracies, we have come to rely on non-profit organizations that make use of the following strategies to advance the public good:

- Conducting research to determine the efficacy of government programs;
- Communicating information about government performance and policy options to the media, policymakers, and the general public;
- Organizing citizens to bring collective pressure on public agencies to be responsive;
- Helping government officials develop and implement sound policies and programs; and
- Litigating when government agencies are not complying with applicable laws, and other actions fail to improve their performance.

The Foundation's focus on advocacy also reflects our desire to maximize the impact of our limited philanthropic dollars. By influencing government policies and programs, our grantees affect the expenditure of millions of dollars in public funds--an impact many times the size of our grants budget. As exemplified by the three case studies presented in this series, our Public Institutions program supports advocacy efforts across a wide range of issue areas.

A primary objective is to safeguard the wellbeing of low-income New Yorkers and other vulnerable individuals who are most dependent on government programs. We are particularly interested in ensuring that all children in the State receive adequate care and education from birth onward, and that young people and adults receive the education, training, and other supports necessary to become productive workers and community members.

Policy change rarely happens quickly or easily. As the case studies demonstrate, it often requires years of class action litigation and persistent monitoring of government agencies, advocacy, and public engagement activities. To mount these kinds of long-term campaigns, advocates need long-term funding. Thus, the Robert Sterling Clark Foundation has provided some \$2 million in grants from 1979 to the present to Children's Rights to support its litigation, research, and advocacy to reform New York City's child welfare system.

## INTRODUCTION TO THE NEW YORK CITY NONPROFIT ADVOCACY CASE STUDIES

The Center for Nonprofit Strategy and Management has developed three multi-media case studies on landmark attempts by nonprofit organizations to drive policy changes on key issues in New York City. The three issues are:

**Case 1: Solid Waste Management and Environmental Justice.** This case examines the continuing work of community-based organizations and public interest lawyers to promote equitable and environmentally sound solutions to waste handling in New York City.

**Case 2: Child Welfare and Foster Care.** This case study focuses on the campaign to eliminate racial and religious bias from the New York City foster care system, to protect children in foster care from abuse and neglect, and to improve child welfare services.

**Case 3: Education Finance Equity.** This case study examines the advocacy work in support of the *Campaign for Fiscal Equity v. State of New York (1993)* that brought together a coalition of education advocacy groups, parent organizations, and community school boards to push for more equitable funding of New York City schools.

Each written case narrative has an accompanying video of interviews with the advocates highlighted in the case, and an appendix with links to supplementary online documentation and examples of print and visual media coverage of the issues.

An additional background paper, *Understanding Nonprofit Advocacy*, explores definitions of advocacy and the challenges in evaluating the outcomes of advocacy campaigns. Also available are *Teaching Notes* that provide instructors with additional information on how to use the cases, with study questions for classroom discussions or assessment assignments for all three cases, and an analysis of the particular lessons learned in each case.

All materials are available on the case study series website.

## CASE STUDY 2

### CHILD WELFARE AND FOSTER CARE REFORM

#### GOING MAINSTREAM: ADVOCATES TAKE THE REINS

##### ABSTRACT

This case study focuses on the campaign to eliminate racial and religious bias from the New York City foster care system, to protect children in foster care from abuse and neglect, and to improve child welfare services.

The case provides an example of a campaign that initially relied on litigation as its primary strategy; but as advocates began to take on key roles in overseeing the implementation of court decisions and administering the child welfare system, a different style of advocacy was needed to ensure a successful resolution of outstanding concerns about the system's performance.

##### BACKGROUND TO CHILD WELFARE AND FOSTER CARE ISSUES

Dating back to the end of the 19<sup>th</sup> century, New York City contracted primarily with religiously affiliated private agencies to connect children in need of care with child welfare services. At the beginning, the majority of children in need of public services were White and they were assigned to facilities based on religion. Beginning early in the 20<sup>th</sup> century, and continuing through the period following the Second World War, the number of African-Americans in the city began to grow exponentially, as did the needs of children from that community who were coming into the foster care system. The publicly funded sectarian agencies were not willing to accommodate the new population, and facilities designated specifically for African-Americans and other children of color were insufficient and overcrowded. In the 1970s, the city's child welfare system was called to account for its treatment of these children as a slew of news stories, published reports, and lawsuits highlighted tales of rampant discrimination, neglect, and abuse.

Among the lawsuits brought against the city was *Wilder v. Bernstein* (originally *Wilder v. Sugarman*), filed in 1973 on behalf of 13-year-old Shirley Wilder and other African-American foster children. Wilder's father had filed a petition declaring his daughter in need of supervision and given her up for foster care. According to the suit, none of the agencies would accept her because she was an African-American Protestant. Initiated by the Children's Rights Project, then a project of the New York Civil Liberties Union, the suit was brought against the city, state, and private agencies, contending that children of color were placed in inferior facilities due to their race and that the city's contracting with religious organizations for foster care services was a violation of the separation of church and state.



*Wilder* also challenged Catholic agencies' refusal to provide access to family planning information and resources.

While the *Wilder* case focused on discrimination in placement based on race and religion, other stories continued to surface about the terrible conditions many foster children had to endure. Poor monitoring and supervision of children in foster care, who by the 1980s were majority African- American and Latino, led to many children suffering neglect, abuse, and in some cases death. The city received additional criticism about a series of cases where the deaths of children in foster care went uninvestigated. The continued inadequacy of the city's efforts led to further lawsuits, including one in which the Legal Aid Society claimed that children were not receiving the most basic of necessities while in the city's custody.

In 1995, the murder of six-year-old Elisa Izquierdo by her mother again brought attention to New York City's child welfare system. Mayor Rudolph Giuliani responded by creating the Administration for Children's Services (ACS), a stand-alone agency dedicated to services for children. He appointed Nicholas Scoppetta to be the agency's first commissioner with a mandate to reform child welfare practices. At around the same time, Children's Rights filed a lawsuit against the city and state on behalf of over 100,000 children who had been harmed by the failures of the city's child welfare system. The *Marisol v. Giuliani* lawsuit charged that the city did not adequately care for and protect children in its custody, and sought to reform all aspects of the system.

In 1999, a settlement was reached requiring the city to comply with the recommendations of an independent advisory panel of outside experts, which was given access to all aspects of the child welfare agency and empowered to issue progress reports and determine if the city was acting in good faith in implementing systemic reforms. In 2002, the Special Child Welfare Advisory Panel (commonly known as the Marisol Panel) issued its final report. It stated that significant reforms had taken place but that there was still much work to be done. A new advisory panel was put together at the behest of then ACS Commissioner William Bell to continue the efforts of the original court- mandated panel. In 2004, John Mattingly, formerly Director of Human Service Reforms at the Annie E. Casey Foundation and a member of both advisory panels, was named ACS Commissioner. Mattingly's appointment ushered in a new era of cooperation between organizations such as Children's Rights and ACS. Recent reform efforts have focused on areas in the child welfare system that still need to be improved, including reducing the amount of time children spend in foster care and improving the quality of services provided by private agencies under contract to the city.

The following table outlines key events in efforts to reform the city's child welfare and foster care systems (see Table 1).

**Table 1: Timeline of Key Events**

<b>Year</b>	<b>Event</b>
<b>1973</b>	Children's Rights Project is established at the New York Civil Liberties Union. It later becomes part of the American Civil Liberties Union (ACLU). Children's Rights Project files <i>Wilder v. Bernstein</i> .
<b>1977</b>	<i>Wilder</i> case is withdrawn and re-filed to overcome procedural delays.
<b>1979</b>	The New York State Child Welfare Reform Act is passed, directing attention and resources to preventive services, in an effort to reduce foster care caseloads.
<b>1983</b>	The <i>Wilder</i> case goes to trial.
<b>1987</b>	A settlement is reached in the <i>Wilder</i> case. The Wilder Decree stipulates first-come first served placement, access to family planning, no excessive religious symbols in agencies, and a computerized system showing vacancies.
<b>1995</b>	The Children's Rights Project of ACLU becomes an independent organization, Children's Rights. Children's Rights files <i>Marisol v. Giuliani</i>
<b>1996</b>	Mayor Rudolph Giuliani creates the Administration for Children's Services (ACS), removing child welfare and foster care from under the umbrella of the Human Resources Administration.
<b>1997</b>	The Wilder Decree expires.
<b>1998</b>	The settlement in the <i>Marisol</i> case creates the Special Child Welfare Advisory Panel (Marisol Panel), comprised of independent experts who will have unprecedented access to city files and records and authority to make recommendations for systemic change.
<b>2002</b>	The Special Child Welfare Advisory Panel issues its final report, highlighting significant improvements and areas where further progress needs to be made. ACS Commissioner creates the New York City Child Welfare Advisory Panel to continue reform oversight.
<b>2006-2008</b>	Children's Rights works with ACS to implement reforms in campaign titled, "Safeguarding our Children."
<b>2009</b>	Children's Rights releases report, <i>The Long Road Home: A Study of Children Stranded in New York City Foster Care</i> . ACS announces <i>One Year to Family</i> initiative aimed at strengthening the child welfare workforce and reducing the amount of time children spend in foster care.

## ADVOCACY ON FOSTER CARE ISSUES

When Children's Rights filed *Wilder v. Bernstein* in 1973, Executive Director Marcia Robinson Lowry believed it had a relatively simple premise. Under existing law, the constitutional doctrine of separation of church and state was interpreted to preclude the awarding of public funds to religious institutions. Yet this is exactly what was happening, and had been happening for years, in New York City's foster care system. For over a century, religious institutions had been the primary organizations with which the city contracted for foster care placement services. Hearing about the discrimination African-American children in particular faced, Lowry decided to challenge the constitutionality of a system that was clearly not serving many of those who needed it most. Shirley Wilder became the name behind the suit, but according to Lowry, the *Wilder* case was less about the treatment of children and more about the violation of basic constitutional principles. To Lowry's surprise, victory would not come quickly or easily.

Because of disputes over standing and constitutional issues, a decade passed before the case even went to trial. During years of legal hurdles, Children's Rights persisted in arguing the legitimacy of its case, even as the city attempted to respond to some of the issues advocates had raised. In the meantime, the New York State Child Welfare Reform Act was passed in 1979 with a focus on preventive services, in the hopes that fewer children would need foster care and that the reduction in foster care caseloads would mitigate deficiencies in the system. However, because of continuing high poverty rates and the epidemics of crack and AIDS, foster care caseloads continued to swell throughout the 1980s and into the late 1990s. Nonetheless, the Act was considered a positive sign that the reform of child welfare and foster care was becoming more of a priority.

### *The Wilder Decree*

In 1987, fourteen years after the initial suit was filed, a settlement was reached in the *Wilder* case. The settlement, commonly known as the Wilder Decree, stipulated that all children who enter the child welfare system are to receive a timely evaluation of their needs and be placed on a first-come, first-serve basis in the best available agency program, regardless of race and religion. The city was required to implement a computerized system showing vacancies, as a way of informing and monitoring agencies and placement practices, and ensuring that children were not being discriminated against. Child welfare organizations were also directed to eliminate excessive religious displays in their facilities and to stop denying family planning assistance and counseling to children in care, which many organizations did on religious grounds. The Decree also called for the implementation of a system to evaluate the quality of foster care programs.

The Wilder Decree was upheld after appeals from religious agencies, and a panel was convened to oversee reform efforts. By the time the settlement was reached, however, new problems were arising in the city's child welfare and foster care systems. While the number of children in need of foster care services continued to swell, White children were almost completely removed from the landscape. Discrimination was no longer the issue, and to some, the *Wilder* case seemed almost irrelevant in the new climate. According to Gail

Nayowith, former Executive Director of the Citizens Committee for Children of New York (CCC), "By the time litigation ended...all of the children in the system were [of color] and all of the nonprofits were serving them." For Lowry and other child welfare advocates, the attention shifted from discriminatory practices to the treatment and well-being of children in the system.

### *Marisol v. Giuliani*

In November 1995, New York City was rattled by a child's death that almost single-handedly altered the government bureaucracy that dealt with child welfare. Six-year-old Elisa Izquierdo was beaten to death by her mother after suffering years of abuse at the hands of her mother and step-father. The case again brought attention to the inadequacies of the city's child welfare system, which was criticized for missing opportunities to intervene and save the child from her drug-addicted and abusive mother. Elisa's death was symptomatic of continuing problems, and given the growing number of reported cases of negligence, abuse, and deaths of children, Children's Rights felt compelled to initiate a new lawsuit. In December 1995, Children's Rights filed *Marisol v. Giuliani*, named after a five-year-old foster child found locked in a closet. The lawsuit was brought on behalf of thousands of foster children negatively affected by the city's practices. According to the lawsuit, the shortage of workers and appropriate placements resulted in poor oversight and neglect, leading to mental and physical harm to children.

In January 1996, in response to the death of Izquierdo, New York City Mayor Rudolph Giuliani announced the creation of the ACS, removing child welfare services from under the umbrella of the Human Resources Administration (HRA), the city's primary social services agency. The creation of a separate agency to handle child welfare services signaled that the city was serious about dealing with issues within the child welfare and foster care systems. The agency's first Commissioner, Nicholas Scoppetta, came to the position with plans for reform and a willingness to work with outside advocates and advisors. While Scoppetta worked to shape the new agency, instituting much-needed changes in the child welfare system, the *Marisol* case moved along in the courts.

### *The Marisol Panel*

ACS Commissioner Scoppetta did not want to be bogged down in a lawsuit over child welfare issues. "The leadership at ACS wanted to avoid a long protracted struggle in the court as well because they had...a reform plan...and they saw the lawsuit as outsiders who didn't understand what was going on," says current ACS Commissioner John Mattingly. In 1998, a settlement was reached in the *Marisol v. Giuliani* case which stipulated the formation of a Special Child Welfare Advisory Panel to oversee the city's reform efforts. The panel was comprised of five national experts in the field of child welfare including panel Chair Doug Nelson, President of the Annie E. Casey Foundation, and the future Commissioner John Mattingly who at that time was a program officer at the Casey Foundation. The panel had unprecedented access to city information and influence over agency practices. The Casey Foundation continued to support the New York City child welfare system's reform process for a number of years.

The Special Child Welfare Advisory Panel closely reviewed ACS's reform efforts and issued several public reports on the agency's progress. The panel issued a concluding report in 2000, but was invited by Commissioner Scoppetta to continue its oversight work for two more years. In 2002, the panel issued a final report, noting that the agency had made significant improvements in the child welfare system but that there was still considerable work to be done. The same day the report was published, then ACS Commissioner William Bell announced the formation of a new panel to pick up where the court-mandated panel left off. Chaired by Gail Nayowith, the New York City Child Welfare Advisory Panel continued to review and advise ACS's reform efforts. According to Nayowith, "[Commissioner] Bell felt it was important, not just for public perception but for continuity of this new mission and continuity of reform, to have people continue to provide advice and guidance and sometimes oversight."

The invitation of experts to oversee ACS's reform efforts began a shift in the relationship between the city agency and outside advocates. Though the initial advisory panel was mandated by the court as part of the *Marisol* settlement, its tenure was extended at the request of Commissioner Scoppetta, and The New York City Child Welfare Advisory Panel was invited in by Commissioner Bell. "The idea was that credible people with independent standing, professional standing in the world would bring their credibility to bear on this system... and that all parties had to respect this group and take them seriously," says Nayowith. The panel worked primarily on the issue of family team conferencing, a practice that involves families in creating individualized plans that will best address the needs of children and their families. As significant as the work of the panel itself, was the fact that ACS had voluntarily opened the door to outside experts in an effort to improve its services.

### *The Long Road Home*

On November 10, 2009, Children's Rights released *The Long Road Home: A Study of Children Stranded in New York City Foster Care*, a report detailing the problem of children languishing in New York City's foster care system without being placed into stable, permanent homes. The report found that permanency outcomes for children in foster care in New York City are among the poorest in the country. It concluded that a lack of urgency, a lack of accountability, and a lack of adequate resources all combined to keep children in the system. There has been a reduction in the number of children in foster care in New York City, from more than 40,000 children at the peak of the surge in 1997 to just over 16,000 in 2009, but children were still staying in foster care for many years without returning home to their families, getting adopted, or attaining permanency through legal guardianship. There were more than 4,000 children in New York City who had remained in foster care for two years or more. For children with an adoption plan the median time from entry into foster care to adoption was almost five years. The report made 18 recommendations that focused on the major actions needed to shorten the pathways to permanency for children in foster care, to improve the quality and timeliness of case practice and court proceedings, to strengthen the standards used to measure the system's performance, and to ensure the adequacy of the resources deployed throughout the system.

On the day of the report's release, ACS announced a city-wide campaign to speed up the pace of permanency for all children in the foster care system, called *One Year to Family*. The

campaign, to be implemented by ACS and its contracted nonprofit foster care agencies, sought to ensure that as many children as possible would achieve permanency within one year.

The timing of the report's release and the city's announcement was no coincidence. There has been an unprecedented level of collaboration in recent years between Children's Rights and other advocates and ACS, thanks in large part to the appointment of John Mattingly as the agency's Commissioner. Mattingly's prior work as an advocate for disadvantaged children, and his role on the advisory panels that followed the *Marisol* lawsuit meant that children's advocates in New York City felt that they were now working with "one of their own." The "Long Road Home" page on the website of Children's Rights acknowledges that the report was developed in collaboration with ACS and a link for continuing advocacy efforts takes readers to a description of the ACS "One Year to Family" campaign.

After decades of lawsuits and court-mandated advisory panels, advocates have not only produced significant changes within the system, but in some respects they have taken over the system. Commissioner Mattingly realizes, however, that his former role as an advocate, and his willingness to work with child welfare organizations, won't make his agency immune to calls to continually improve the system. "A system is not going to change overnight, these are ten year operations ... so there will be a period where they'll be back demanding things the way advocates tend to do," says Mattingly. And as the economic downturn brings budget reductions for child welfare services, advocates are continuing to work to make sure that the voices of children are still being heard.

## **ADVOCACY STRATEGIES**

Advocates for reform of the child welfare and foster care systems in New York City have utilized a variety of strategies to bring about changes.

### *Legal and Legislative Strategies*

From the 1970s through the 1990s, litigation was the dominant strategy of child welfare advocates seeking to improve the foster care system in New York City. The *Wilder v. Bernstein* and *Marisol v. Giuliani* cases are typical of the numerous class-action lawsuits filed around the country in an effort to force reforms in child welfare systems. While most of the lawsuits eventually resulted in settlements that improved the foster care system, they also took many years to resolve and the resulting remedies were not always conducive to true reform. There is always the danger that court settlements end up micromanaging the system with compliance benchmarks that become ends in themselves and distractions from other possibly better outcomes. Children's Rights and other advocates recognized the need for other strategies in order to effect sound policy reforms and improve casework practices.

### *Consultative and Advisory Committees*

The Marisol Panel was seen as a significant shift in reform strategies. The 1998 settlement that created the panel ended the impasse of litigation and allowed Commissioner Scoppetta

to work toward reform advised by a well-respected group of external child welfare professionals, unfettered by the courts. The panel was seen as providing the benefits of a lawsuit without the drawbacks of drawn-out, expensive litigation and a climate of adversarial relations. The tenure of the original panel was extended and after it had issued a final report Commissioner Bell formed a new panel as he believed the reform efforts of ACS would benefit from the public accountability that it could provide. The work of these panels laid the groundwork for the current climate of dialogue and cooperation.

### *Research and Policy Analysis*

Children's Rights is still pursuing litigation it considers necessary in other parts of the country, but it has taken a step back from using the courts to improve New York City's child welfare system. "Law is very, very effective but we can make it more effective when we also use expertise. When we add the expertise of the people who know the policy work, we can make our reform efforts much more effective," says Lowry. In recent years, Lowry's organization has dedicated itself more to policy research and analysis, producing multiple reports highlighting shortcomings in the child welfare and foster care systems. Lowry credits a new environment for allowing her to move away from litigation and toward a more cooperative policy oriented approach. *The Long Road Home* was the latest in a series of reports that included the 2007 *At the Crossroads*, which demonstrated that despite a decade of reforms in the New York City foster care system, safety and permanency outcomes for many children and families have not significantly improved and, in some cases, have worsened.

CCC analyzes city government budget and operational data to evaluate the impact on children. Its *Keeping Track of New York City's Children* project, which originally appeared annually in print form and is now also available as an interactive online database, uses over 400 different indicators to map child well-being in New York City at the community district level.

### *Coalition Building and Capacity Development*

There are many organizations in New York City dedicated to children's well-being, and they often collaborate with each other around particular issues and/or advocacy strategies being used. Organizations such as Children's Rights, the Legal Aid Society, and Lawyers for Children have all utilized litigation to advance the rights of children in New York City, sometimes working together as was the case with Children's Rights and Lawyers for Children in *Marisol v. Giuliani*, and at other times pursuing separate lawsuits. Organizations such as CCC take a different approach, processing and gathering data, producing reports and advising officials on implementing policy and administrative changes. CCC often works with organizations representing direct service providers and parents of children in the foster care system. These groups usually make up a significant portion of the crowd at press conferences and other events designed to get the attention of elected leaders and appointed officials.

### *Community Support and Direct Action*

According to Jennifer March-Joly, Executive Director of CCC, the Internet has helped advocacy organizations tremendously in building community support for policy reforms and mobilizing grassroots advocacy. CCC used to conduct postcard campaigns, in which they would drop off postcards addressed to elected and appointed officials with direct service providers and urge them to get as many filled out and mailed as possible. Now, using "viral advocacy", CCC is able to mobilize thousands of New Yorkers to write elected officials about areas of concern within the child welfare system in a much more efficient and economical way than ever before. CCC utilizes software that sends custom letters to its membership, allows for those letters to be forwarded to friends, and then sent on to state and federal officials. They have also customized the program so that members can send personalized emails to their representatives. As part of its efforts to boost direct action, CCC also runs an annual community leadership program, a ten-week course in which New Yorkers from all walks of life learn about how children are faring in different communities in the city. Participants see direct service programs, meet with experts in the field, and learn about advocacy.

### **CONCLUSIONS**

New York City's child welfare and foster care systems have undergone significant changes since Children's Rights filed the *Wilder* case in 1973, including the creation of a separate government agency to handle children's issues and reforms created to protect children in the foster care system. Along with shifting demographics and increased political support, these changes have been spurred by the work of child welfare advocates who continue to speak on behalf of the city's most vulnerable children. As a direct result of the work of these advocates and their collaboration with ACS, the infrastructure of the child welfare system has been strengthened, allowing for substantial improvements in child protection outcomes and casework practice. Reports of abuse are investigated more promptly and planning for children in the child welfare system is now better managed through innovative procedures such as family conferencing.

In New York City, class-action lawsuits resulted in several key policy and administrative changes at a time when city government was not moving to address severe deficiencies in the child protection and foster care system. Now, however, child welfare advocacy in New York City relies more heavily on a spirit of cooperation than new litigation. This is in direct contrast to other jurisdictions where confrontation is still the main feature of the relationships between advocates and governments. "I think that a willing Commissioner changes everything," says Nayowith.

Nevertheless, having a responsive Commissioner does not mean that advocates can afford to rest on their laurels. With the recent economic downturn threatening budget cuts for city agencies, the attention of child welfare advocates has once again shifted. "If the child welfare system wants to continue to make significant forward progress then people need to be on the steps of City Hall and the offices of elected officials telling them that cuts to child welfare services are not acceptable," says Nayowith.



## APPENDIX I – LESSONS LEARNED

Note: The following sections focus on the most salient lessons of this particular case study. As the lessons learned in the other two case studies in this series may also be applicable here, readers are encouraged to look at those cases and at the background paper *Understanding Nonprofit Advocacy*.

### The Pros and Cons of Litigation

Litigation played a key role in advocates' efforts to reform the child welfare and foster care system in New York City, leading to the formation of advisory panels that were critical in bringing about necessary reforms. As an advocacy strategy, a reliance on courts has its strengths and weaknesses. In the early days of the *Wilder* lawsuit, Marcia Robinson Lowry was surprised to find that even the most basic constitutional principles would not be easily upheld. "Behind the legal issue were the religious institutions in New York City, powerful religious institutions and a way of doing things that was about a century old. So that was a real limitation of the law. Even though you are right on the law, sometimes you can't get the courts...to do anything because the consequences of addressing our legal position was so extreme" says Lowry. Lowry realized as the case progressed that while lawsuits could make a significant impact, she would need a broader set of tools at her disposal.

While lawsuits are not currently the advocates' first choice of strategy in New York City, ACS Commissioner John Mattingly recognizes their positive effects. "They tended to bring resources to the system and to hold on to the resources for the system during tough times. They also quite frequently shined a light on systems that had not had any publicity at all. They shined a light that was a negative light but that in itself was necessary in many of our systems." Mattingly also notes that the effectiveness of a lawsuit is often contingent on whether or not relevant agencies have the expertise to fix the problems addressed and whether or not there is enough political support for changes to be instituted over time.

### Advocates are Now Running the System

"The truth is that people in the child welfare system go back and forth all the time", says Gail Nayowith of the trend of advocates moving into government positions and senior management in nonprofit child welfare agencies. Nayowith herself led CCC for 15 years and in late 2010 was appointed Executive Director of SCO of Family Services, a \$190-million agency providing foster care and other family support programs in New York City and Long Island.

New York, however, is still in a fairly unique position of having former advocates in positions of power in government agencies, government-appointed oversight panels, and major nonprofit service providers. One example is Commissioner John Mattingly who has

utilized his experience as an outside advocate to inform his work within the system. According to Mattingly, "When you take over one of these large bureaucracies you will find deeply ingrained from top to bottom a fear and a dislike of outside advocates ... so it's very important to begin very quickly to cross that divide." Advocates who have moved into government may enter their positions with more trust from outside advocates than professional bureaucrats, but it nonetheless requires effort for that trust to be maintained. So far, Children's Rights and ACS have been able to work cooperatively to remedy problems with the child welfare system.

### There are Advocates on Different Sides of Competing Interests

In the field of child welfare, there are many interested parties, all of whom have advocates. While we have focused here on the advocates for the children, families at risk of having children removed are also increasingly being represented by parent advocates. Parent advocates, many of whom have first-hand experience with the child welfare system, have become an active voice on behalf of parents struggling to keep their families together. Child welfare agencies also must advocate on their own behalf to ensure that resources are available for them to provide services. The Council of Family and Child Caring Agencies is a statewide association that promotes policies to enable its member organizations to provide services to vulnerable children and families. While at times the interests of these constituencies coincide, often they do not. Parents, and those who advocate on their behalf, may criticize the system if they feel that children are being taken from their homes without sufficient cause, or that other means such as preventative services could remedy the problems. Child advocates are equally critical if they feel a child is being left in an unsafe situation. Thus ACS walks the fine line of attempting to keep families together when possible while also prioritizing the safety of the child.

### Responsiveness of City Officials Dictate Advocacy Strategies

It matters who is in power. One reason why advocates in New York City have stepped away from litigation as an advocacy strategy is the appointment of a veteran child welfare advocate, which has given organizations such as Children's Rights the assurance that their calls for improvement in the child welfare system are not falling on unresponsive ears. Lowry says of Mattingly's ACS, "I haven't seen a government bureaucracy respond as constructively and as concretely to the identification of a problem without a court order."

While having a former advocate at the helm of a government agency helps, it isn't the only scenario that allows advocates to work with government to effect change. Advocates and government agencies can have a cooperative relationship as long as agencies are willing to acknowledge the problems in their system and advocates are willing to acknowledge the constraints within which government agencies operate. While the original Marisol Panel was ordered by the court, its successor was invited in by then ACS Commissioner William Bell. But Gail Nayowith notes that there are instances in which a public official might form an advisory panel simply for show without an actual willingness to accept the judgments being made. A panel's success depends on how truly willing public agencies are to identify and solve problems. Says Nayowith, "You have to be prepared for the fact that these

national experts are going to find things that a) you didn't know existed or b) you knew existed but wish did not."

### Viral Advocacy Expands the Constituencies for Reform

Everyone with an e-mail address now receives numerous e-mails urging them to make donations, sign an e-petition, or take some other action on behalf of a cause. Viral advocacy is far less costly and time consuming than traditional protests or letter writing campaigns. Another advantage according to CCC Executive Director Jennifer March-Joly is that it allows individuals who are not directly affected by a given issue to easily voice their concern. "I think elected officials expect to hear from direct service providers and actual recipients of service. But what they don't expect is to hear from a broader constituency that might not be intimately involved in the child welfare system that also is interested in righting a wrong or making sure that children are well cared for," says March-Joly.

### Child Welfare is a "Wicked Problem"

Social scientists have classified persistent societal problems that have no complete solution as "wicked problems." Problems related to child welfare systems certainly fit this bill. Marcia Robinson Lowry says, "Certainly with regard to children's issues, there are always going to be imperfect systems and the most you can hope for is that they are generally pretty good but they are never going to get perfect and influences are going to affect that." As seen in the case of reform in New York City's child welfare system, the elimination of one dimension of a problem often illuminates new issues. As the *Wilder* case wound down, and checks were being put in place to enhance the fairness of the system to minority children, the issue lost its urgency as the system was by then serving almost exclusively minority children. Advocates and ACS have continued to work on other issues from effectively evaluating agencies to achieving permanency for foster children. As those issues are resolved, new problems will surely come to the fore.

Reform efforts have paved the way for improvements within the system, but even a reformed ACS will not be able to stop all cases of child abuse and neglect, and every few years a new tragic case sears itself into the public conscience and sets off a new cycle of reform. In testimony to the City Council in October 2010, Commissioner Mattingly acknowledged that the death a month earlier of a 4-year-old girl, Marchella Pierce, had revealed systemic problems in the agency that have persisted despite reforms instituted following the 2006 beating death of 7-year-old Nixzmary Brown. Marchella died of acute drug poisoning, blunt impact injuries, malnutrition and dehydration even though her family was being monitored by ACS.

### It Always Comes Back to Money

Advocates can secure court orders and cooperation from public officials, but it requires money to make the promises of reform a reality. During sound economic times, it is easier for advocates to focus on policy and programmatic reforms that can best address the needs of children and families. When city and state budgets are stressed, however, advocates must spend more of their energy trying to secure a large enough piece of a shrinking pie to

maintain existing services. Gail Nayowith says, "From an advocacy standpoint what's really important is whether the dollars are there to produce the results that you seek... I think the biggest challenge now is around resources and the budget. I think the city budget situation for ACS and by extension for the nonprofit agencies will have a direct effect on how well or poorly, if it all, the recommendations [for reform] are being implemented." Jennifer March-Joly echoes the concerns of many child welfare advocates when she says, "We're really troubled that the agency is facing budget reductions that really shouldn't be on the table ... given what it's charged to do... Our preference would be that it, at some point in time, would have the same status as a police department."

## APPENDIX II – SUPPORTING DOCUMENTATION AND MEDIA COVERAGE

### Books and Documents

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New York City Administration for Children's Services. *Protecting the Children of New York: A Plan of Action for the Administration for Children's Services*. 1996. [http://www.nyc.gov/html/acs/downloads/pdf/pub\\_reform\\_plan\\_1996.pdf](http://www.nyc.gov/html/acs/downloads/pdf/pub_reform_plan_1996.pdf) Updates were published in subsequent years: *A Renewed Plan of Action for the Administration for Children's Services*. 2001. Available at: [http://www.nyc.gov/html/acs/downloads/pdf/pub\\_reform\\_plan\\_2001.pdf](http://www.nyc.gov/html/acs/downloads/pdf/pub_reform_plan_2001.pdf) *Six Years of Reform in Children's Services 1996-2002 Reform Update*. 2003 Available at: [http://www.nyc.gov/html/acs/downloads/pdf/reform\\_update.pdf](http://www.nyc.gov/html/acs/downloads/pdf/reform_update.pdf)

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### **News Coverage - Print**

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Child Services Leader Defends Cost-Cutting Plan. *NY1 News*. March 24, 2009. Available at: <http://www.ny1.com/content/96130/child-services-leader-defends-cost-cutting-plan>

Mayor Bloomberg Appoints New Head of Children's Services. *NY1 News*. July 6, 2004.  
Available at: <http://www.ny1.com/content/41348/mayor-bloomberg-appoints-new-head-of-children-s-services>

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NY1 Reports: Who's Watching the Children? *NY1 News*. January 31, 2006. Available at: <http://www.ny1.com/?SecID=1000&ArID=56726>

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### **Additional Documentation on Foster Care Reform and Child Welfare Issues**

The Annie E. Casey Foundation page on foster care reform:  
<http://www.aecf.org/KnowledgeCenter/ChildWelfarePermanence/FosterCare.aspx>

Children's Rights has a Reforming Child Welfare page:  
<http://www.childrensrights.org/reform-campaigns/phases-of-reform/>

Citizen's Committee for Children publications page:  
<http://www.ccnnyork.org/publications.html>

The US Administration for Children and Families page on child welfare system reform:  
<http://www.childwelfare.gov/management/reform/index.cfm>

Class-action lawsuits continue to be a controversial strategy for reform. The following two articles question their effectiveness:

*Three more foster care lawsuits doomed to fail, three more bad child welfare systems likely to get worse*

<http://www.nccprblog.org/2010/04/three-more-lawsuits-doomed-to-fail.html>

*13 Lawsuits That Reformed (or Drained) Child Welfare*

<http://sparkaction.org/node/28658>



### **APPENDIX III –DESCRIPTION OF ADVOCACY ORGANIZATIONS AND COALITIONS HIGHLIGHTED IN THE CASE STUDY**

The following descriptions provide additional information about the two advocacy organizations highlighted in this case study.

#### **Children’s Rights**

<http://www.childrensrights.org/>

Children’s Rights is a national advocacy group working to reform failing child welfare systems throughout the country. The work of Children’s Rights began in 1973 as a project within the New York Civil Liberties Union that focused on the foster care system in New York and grew to become an ACLU national project in 1979. It became a separate organization in 1995 and continues to fight on behalf of hundreds of thousands children to establish laws that give every child the right to be protected from abuse and neglect and to grow up in a stable, safe, and permanent home.

Children’s Rights is a 501 (c) 3 organization with headquarters in New York City. They have a staff of 34 people and operating expenses of almost \$4.5 million in 2008.

#### **Citizens’ Committee for Children of New York (CCC)**

<http://www.cccnewyork.org/>

Established in 1944, The Citizens’ Committee for Children of New York utilizes a staff of professional experts and citizen volunteers to document facts, educate the community and advocate for change around issues affecting children in New York City. The organization addresses a wide range of issues affecting children, from income and food security for families to education and youth development to juvenile justice.

The Citizens’ Committee for Children of New York is a 501 (c) 3 organization located in New York City. They have a staff of 15 people and operating expenses of \$2.3 million in 2009. CCC relies exclusively on private funding, neither soliciting nor accepting government funding.

**In addition to the two organizations highlighted in the case study, there are numerous other child welfare advocacy and oversight organizations in New York City, including:**

**Child Welfare Organizing Project (CWOP)** is a parent-professional partnership dedicated to public child welfare reform in New York City through increased, meaningful parent involvement in service and policy planning. <http://www.cwop.org/>

**Child Welfare Watch**, a project of the Center for New York City Affairs at The New School, provides in-depth investigative reporting and analysis on children and family services in New York.

[http://www.newschool.edu/milano/nycaffairs/publications\\_cww.aspx](http://www.newschool.edu/milano/nycaffairs/publications_cww.aspx)

**Children's Defense Fund – New York** serves as a resource and partner for children, families and organizations throughout the tri-state area and is recognized as an authority in the endeavor to protect children and strengthen families. <http://www.cdfny.org/>

**Council of Family and Child Caring Agencies** is the principal representative for nonprofit organizations providing foster care, adoption, family preservation, and special education services in New York City and State. <http://www.cofcca.org/>

**Youth Advocacy Center** helps young adults in or at-risk of foster care take control of their lives. <http://www.youthadvocacycenter.org/>

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