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Feature

Working to reunite families torn apart by mental illness  
A program helps parents with psychiatric disabilities regain custody of their children  
by Charlyne Brumskine Peay



Parents with psychiatric disabilities face many challenges, especially if their children are placed in foster care—the cards are stacked against them regaining custody. To help reunite families, the Urban Justice Center's Mental Health Project (MHP) created a program to help parents with psychiatric disabilities involved in New York State's family court system. To illustrate the obstacles these parents face in regaining custody, I begin with a short story of a particularly tragic case.

## Lucy's story

I walked into the MHP reception area where clients wait for their attorneys. Lucy Jones had arrived a few minutes early for our appointment (All names in this article have been changed to preserve our clients' privacy).

"Ms. Jones?" I asked as I reached out to shake her hand. "I am Charlyne Peay. I am the attorney who spoke to you on the phone."

"Oh, yes," she replied, and followed me into my office, where she began telling me why she was here. Lucy started slowly. She had a 10-year-old son named Terry she loved very much, but he had been separated from her by the state of New York.

Lucy explained that during most of her adult life, she had lived on and off the streets of New York City, struggling to keep steady employment and maintain relationships. Not until she was diagnosed with schizophrenia as an adult did she begin to understand the patterns of her life. Following her diagnosis, she was placed in a homeless shelter that served psychiatrically disabled adults, where she met her son's father. A couple months into their relationship, she was pregnant. Consequently, she made every effort to treat her schizophrenia, hoping to become a caring and capable parent for her son. After Terry was born she moved into her own apartment, engaged in psychiatric treatment, and complied with her prescribed medication regimen.

Terry was diagnosed with Klinefelter's syndrome, a chromosomal disorder that can affect various stages of physical, language, and social development. As Terry aged, his behavior became uncontrollable. He had tantrums and became violent when he didn't have his way. Lucy described episodes where he tossed the family's monthly supply of groceries out the window. She dealt with all of this while trying to keep her own illness in remission. Before long, it all became too much for her mental health and she feared for her and Terry's well-being.

Lucy contacted New York City's Administration for Children's Services (ACS), a government agency mandated to protect the welfare of New York City's children and make diligent efforts to ensure that families at risk of state intervention receive necessary services. She requested services, including therapy, for her son, yet Lucy said the services were never provided. Within a couple of weeks of her call to ACS, Terry was hospitalized. When Lucy refused to take him home from the hospital without services from ACS, a family court petition, alleging child neglect on the basis of mental illness, was filed against her. Terry immediately was placed in foster care.

After his removal and foster care placement, Lucy began decompensating. The loss of custody was almost unbearable. She was alone and ill. She stopped receiving medication and psychotherapy. She was assigned a family court attorney who saw her not as a disabled mother who needed services for her child, but as one of New York's many neglectful and abusive parents who somehow had not been doled out the "nurturing parental gene." Following two years of unabatedly struggling with her mental illness and battling a child welfare system riddled with biases against parents with psychiatric disabilities, Lucy lost her parental rights to Terry.

Three years after Lucy's parental rights were terminated, Terry languished in a residential treatment center: unadopted and seemingly unadoptable. Terry was a black adolescent with a developmental disorder, and although these factors exponentially decreased his chances of being adopted, foster parents did try to adopt him twice. He had no contact with family members. His mother, the only person who has ever loved him, now was inaccessible. In concluding her story, she told me, "I want the Urban Justice Center to help me visit Terry."

## Helping parents

Until 2008, the MHP attorneys would have ended this meeting frustrated and desperate to find a skilled attorney who could help Lucy. Although MHP annually provides legal representation to more than 1,000 psychiatrically disabled low-income New York City residents with Social Security benefit claims, criminal justice issues, housing court matters, and government entitlement problems, it had to reject clients with family court cases because the project lacked the resources and funding to serve clients with family law matters.

Fortunately, in July 2008 MHP launched its Parents with Psychiatric Disabilities Legal Advocacy Project (PPDLAP) and opened its doors to clients like Lucy, having won a New York State government contract to provide legal services to parents with psychiatric disabilities. The contract guaranteed PPDLAP state funding for one year and required MHP to provide culturally competent legal and nonlegal advocacy, education, and technical assistance to parents with psychiatric disabilities (Continued funding remains uncertain in this economic climate).

PPDLAP could not have launched at a better time. MHP had been encountering a substantial number of clients who were losing or had lost custody of their children because of their mental disability. With a steady influx of clients who had children in foster care and a tested commitment to serving disabled residents of New York, MHP decided to investigate the state of disabled parents in New York family court. What MHP uncovered was alarming: Disabled parents who are litigants in family court lose custody of their children at a rate of 70 to 80%. Of the 27,187 children in New York State foster care, 16% have at least one parent with a psychiatric disability. In New York State, 21% of families receiving family-preservation services have at least one parent with a mental illness.

## Facing stigma

MHP also learned that most of the court-appointed attorneys who represented disabled parents in family court, as well as child protective specialist and foster care caseworkers assigned to these cases, did not receive any specialized training in the Americans with Disabilities Act or on mental illness. Perhaps the most disturbing discovery was that many psychiatrically disabled parents were afraid to inform the court *or even their attorneys* about their illness for fear that the stigma attached to mental illness, which had haunted them for years, would rear its head in family court, placing an insurmountable obstacle in their paths to regain custody of their children. Surprisingly, many attorneys held similar reservations about disclosing information about their clients' illness. In fact, MHP had a client who risked losing her public housing apartment if MHP didn't argue that her mental illness had prevented her from challenging an eviction within the statute of limitations. Her family court attorney, however, forbade her from disclosing her mental health history in family court, warning that if anyone found out about her mental illness, she certainly would lose custody of her children, regardless of her fitness to be a parent.

Although a disability alone, without additional considerations, should never be the sole reason for losing custody of one's child, the reproach associated with mental illness in family courts is so strong that many attorneys encourage their clients to hide their illness, instead of rightfully fighting the prejudice they face because of their disease. The outgrowth of this unstated policy has been devastating for many families: Parents with psychiatric disabilities conceal their illness and avoid diagnosis and treatment.

## Legal barriers

MHP uncovered two additional expressways to the psychiatrically disabled parent's destination of custody loss and termination of parental rights: the federal Adoption and Safe Families Act (ASFA) and New York State Social Services Law § 384-b 4(c).

In 1997, President Clinton signed ASFA, whose purpose is to secure permanency for abused and neglected children while providing some safeguards for the biological parents. The law permits an authorized party, usually a foster care agency, to file a petition in family court to terminate the rights of a parent whose child has been in foster care for *15 out of 22 months*.

ASFA's timeline places many psychiatrically disabled parents at an immediate disadvantage. As a minimum requirement to regain custody of their children, many psychiatrically disabled parents are ordered by family court judges to receive a mental health evaluation, engage in treatment, and participate in a parenting skills class. Most family court litigants, however, are indigent and receive Medicaid. With only a handful of mental health providers accepting Medicaid, parents are placed on long waiting lists at local hospitals or clinics to receive evaluations. The foster care agency caseworkers, responsible for providing the referrals, often find themselves at a want for mental health providers who will conduct an expedited evaluation. It sometimes takes up to a month for a caseworker to make a referral to a mental healthcare provider, then another month for the provider to conduct an intake assessment. It can take up to five weeks to schedule an appointment for the actual evaluation. All of these factors are stacked against the disabled parent while the ASFA clock ticks away.

To further bias the disabled parent's case in family court and the likelihood of regaining custody of their children, New York State has an equally discriminatory law, SSL § 384-b, which allows termination of parental rights based solely on a mental illness diagnosis.

New York State judges may terminate custody based on four grounds. Three are nondiscriminatory and rightfully relate to the parent's behavior: abandonment, permanent neglect, and severe and repeated abuse. The fourth ground-based on mental illness-allows a judge to terminate parental rights if the parent is "presently and *for the foreseeable future* unable, by reason of mental illness or mental retardation, to provide proper and adequate care for a child" (emphasis added). This ground is based exclusively on a parent's disability and, therefore, is discriminatory.

The statute's vague and subjective language leaves "foreseeable future" up to forensic experts' interpretation, many of whom are unable to determine definitively the future of a person's mental health condition. With advances in pharmacologic and psychotherapeutic treatments, disabled parents often find their illness in remission. They then are able to function and lead promising and productive lives. However, what happens far too often is that the disabled parent receives appropriate treatment and recovers only to find that it is too late because his/her rights were prematurely severed. The effects are damaging to parents and children alike. Simply put, the law is bad public policy.

## Final thoughts

PPDLAP seeks to fight against the discriminatory laws and practices of family court. We continue to champion the rights of psychiatrically disabled parents, and we empower them through trainings, technical assistance, and self-advocacy tools. We have partnered with a number of grassroots organizations to educate the community about mental illness. We seek to disabuse judges, lawyers, and

laypersons of the misconception that people with mental illness are incapable of parenting. We intend to shed light on the disparate treatment that disabled parents face in family court and fight against the laws that sanction such treatment. We support the repeal of SSL § 384-b and replacing it with disability-neutral language. We will continue to assert that a person's ability to parent should be judged on his/her behavior and not on a diagnosis. Tragedies that daily befall parents like Lucy make this project necessary.

Lucy and Terry have yet to be reunited. PPD LAP is in the process of retaining pro bono private counsel to advance Lucy's visitation case. We will work closely with counsel to help Lucy get her day in court and ensure that this time the merits of her case will be determined by her behavior and not her disability.

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