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Joanne Nicholson

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## Responding to the Legal Needs of Parents with Psychiatric Disabilities: Insights from Parent Interviews

Robyn M. Powell, MA, JD  
Susan L. Parish, PhD, MSW  
Monika Mitra, PhD  
Joanne Nicholson, PhD†

### Abstract

A growing body of scholarship demonstrates that parents with psychiatric disabilities and their families experience a range of inequalities that families with nondisabled parents do not suffer. Parents with psychiatric disabilities contend with pervasive discrimination within the child welfare and family law systems, often resulting in the removal of their children and loss of custody. Moreover, some children of parents with psychiatric disabilities experience worse outcomes than their peers, while others do not. Yet, despite extensive legal and social science scholarship focused on parents with psychiatric disabilities and their families, no studies have empirically examined the legal needs of parents with psychiatric disabilities as perceived by parents themselves.

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†. Robyn M. Powell, MA, JD is a Lecturer at Boston University School of Law and Research Associate at the Lurie Institute for Disability Policy, Heller School for Social Policy and Management, Brandeis University.

\* Susan L. Parish, PhD, MSW is the Dean of the College of Health Professionals, Virginia Commonwealth University.

\* Monika Mitra, PhD is the Director of the Lurie Institute for Disability Policy, Heller School for Social Policy and Management, Brandeis University.

\* Joanne Nicholson, PhD is a Professor at the Institute for Behavioral Health, Heller School for Social Policy and Management, Brandeis University.

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This Article responds to the scholarly void and offers new and much-needed data on the real-world experiences of these parents. This Study draws qualitative data from in-depth interviews with twelve former clients of a legal services program in Massachusetts that provides representation to parents with psychiatric disabilities. First, this Study shows that the legal profession lacks understanding of mental health, which some parents believe negatively affects representation and case outcomes. Second, attorneys may need to provide parents with psychiatric disabilities assistance beyond litigation, including taking more time to explain the legal process, assisting with administrative tasks, and coordinating with other supports and services. Third, our data suggest that parents with psychiatric disabilities may have ongoing legal needs that require access to additional legal services beyond those related to the child welfare and family law systems. This Article concludes by identifying critical areas for further research and discussing the policy implications of the findings.

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## Introduction

I didn't actually do anything to warrant losing my kids. You know what I mean? I didn't neglect them. I didn't abuse them. I didn't do anything like that. Like I said, I've had mental health problems—but minor ones—and not anything that deserves to have them taken away.<sup>1</sup>

A substantial and growing body of scholarship has explored the needs and experiences of parents with psychiatric disabilities<sup>2</sup>

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1. Quote from a participant in this study of parents with psychiatric disabilities. Much of this Article is based upon research conducted by the authors, with approval by the Institutional Review Boards of both Brandeis University and the Massachusetts Department of Mental Health. Due to the sensitive nature of the interviews and out of respect to anonymity of the participants the transcripts of these interviews remain with the authors.

2. This Article will use the term “psychiatric disability” to describe individuals living with impairments conveyed by severe and persistent mental illness, such as severe depression, anxiety disorders, bipolar disorder, post-traumatic stress disorder, and other related mental health conditions, rising to the level of disabilities, unless this Article directly quotes others who use other terminology. The authors have chosen to use “psychiatric disability” because it is the term generally preferred by people living with mental illness. See *PRA Language Guidelines*, PSYCHIATRIC REHAB. ASS'N (May 3, 2003), <https://www.psychrehabassociation.org/pralanguage-guidelines> [<https://perma.cc/KW5F-HVSY>]. Nonetheless, the authors fully recognize that some people with psychiatric disabilities prefer other

and their families. These examinations have primarily focused on two areas: (1) loss of custody and (2) the health and behavioral outcomes of children of parents with psychiatric disabilities. It is well-established that parents with psychiatric disabilities experience significant and pervasive discrimination within both the child welfare and family law systems, often resulting in loss of custody or termination of their parental rights.<sup>3</sup> A concurrent body of research has found that some children whose parents have psychiatric disabilities experience deleterious outcomes, while others do not.<sup>4</sup> Yet, despite considerable academic attention to parents with psychiatric disabilities and their families, no study has empirically elucidated the legal needs of parents with psychiatric disabilities as perceived by parents themselves.<sup>5</sup> Not including the perceptions of parents with psychiatric disabilities is a significant omission from an otherwise considerable body of research demonstrating these parents and their children often have adverse experiences, including separation by courts and child welfare agencies. This Article begins to fill that gap.

Through in-depth qualitative interviews with twelve former clients of a legal services program that provides representation to parents with psychiatric disabilities, this Study offers new and

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terminology.

3. See Colby Brunt & Leigh Goodmark, *Parenting in the Face of Prejudice: The Need for Representation for Parents with Mental Illness*, 36 CLEARINGHOUSE REV. 295, 295 (2002) (“State agencies and courts frequently intervene on behalf of the children of mentally ill parents not because the parent has harmed the child but because they believe that mentally ill individuals cannot be adequate parents. . . . Mentally ill parents face similar problems in family court when custody evaluators, guardians *ad litem*, and judges refuse to believe that granting custody or visitation to a parent with mental illness can be in a child’s best interest.”); KATHERINE S. NEMENS & DANIEL FOSTER, *Helping Parents with Mental Illness: The Value of Professional Partnerships Fighting De Facto Bias in the American Courts*, in PARENTAL PSYCHIATRIC DISORDER: DISTRESSED PARENTS AND THEIR FAMILIES 326 (Andrea Reupert et al., eds., 3d ed. 2015) (“The American legal system creates a challenging dynamic for parents diagnosed with a psychiatric illness, particularly in custody and parenting time cases. Based on increasingly antiquated procedural and due-process protections, the current system cannot always best serve a family struggling with the effects of a parent’s mental health issues.”).

4. Krista A. Gallagher, *Parents in Distress: A State’s Duty to Provide Reunification Services to Mentally Ill Parents*, 38 FAM. & CONCILIATION CTS. REV. 234, 239 (2000) (reviewing extant studies and observing that researchers have found although some children of parents with psychiatric disabilities experience adverse outcomes compared to children of parents without psychiatric disabilities, many do not).

5. See generally *id.* at 239–40. Studies have analyzed the behavior and traits of children with mentally ill parents and the relationship between different types of mental illness and child abuse, the types of abuse and neglect that children of mentally ill parents may be exposed to and how that arises in the context of parental rights proceedings.

much-needed data on the real-world experiences and perspectives of these parents. This Study focuses on the parents' legal needs by examining their prior interactions with the legal profession. It explores the interactions parents perceived as useful as well as their reported unmet legal needs. Additionally, the Article discusses what the findings suggest for future research as well as policy considerations. Accordingly, this Study has two overarching research questions. First, what do parents with psychiatric disabilities identify as their met and unmet legal needs? Second, how should the legal profession ensure these needs are satisfied, so parents with psychiatric disabilities believe their representation is effective?

This Study is consistent with the rapidly growing body of empirical legal scholarship that explores the experiences of people from marginalized communities who are involved with the civil justice system.<sup>6</sup> For example, extant research has evaluated the effectiveness of legal services as well as the need for representation of people with low incomes.<sup>7</sup> Although past scholarship sheds light on the importance of legal representation for vulnerable populations, the existing literature has failed to explain why representation matters.<sup>8</sup> Hence, elucidating the “why” is critical for policymaking. Indeed, “[u]nderstanding these mechanisms is important because policy makers need to know *why* outcomes differ to formulate effective policies.”<sup>9</sup>

Moreover, “[i]f we truly wish to address a crisis in access to justice, we need a broader understanding of both what access to

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6. See generally Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101 (2013) (proposing a comprehensive agenda for access to justice research and calling for scholars to make a range of theoretical and empirical contributions to better understand the civil justice system, including how people experience law and the justice system).

7. Compare, Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about When Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37 (2010) (examining meta-analyses on the relevant impact of self-representation on achieving favorable outcomes in a variety of legal proceedings), with D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118 (2011) (finding that randomized utilization of legal clinic representation in administrative proceedings did not statistically significantly result in more favorable outcomes, but did result in delays) and D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901 (2013) (comparing outcomes for bundled versus unbundled legal assistance).

8. Albiston & Sandefur, *supra* note 6, at 106 (explaining that randomized controlled trials provide very little information on why representation mattered).

9. *Id.* at 107 (emphasis in original).

justice means and what the current lack of access entails.”<sup>10</sup> In the context of the highly vulnerable population of parents with psychiatric disabilities, it is essential to systematically understand their perspectives about and interactions with the civil justice system and legal representation. This evidence can inform strategies to improve outcomes for these parents and their families by ensuring they are afforded their rights and given opportunities to remain together.

Notably, this Study also recognizes the disability community’s ethos: “Nothing About Us Without Us.”<sup>11</sup> By explicitly including the voices of people with disabilities in the scholarship, the Article acknowledges the essential role people with disabilities must have in the development and implementation of interventions that effectively support them.<sup>12</sup> As this Study demonstrates, parents with psychiatric disabilities experience a multitude of unmet legal needs, and the legal profession may not be adequately meeting these needs.

The Article proceeds in four parts. Part I provides an overview of the experiences of parents with psychiatric disabilities and their families, including data on their prevalence, the impact of parenting with a psychiatric disability on families, encounters with the family law and child welfare systems, and the current understanding of representing these parents. Part II explains the Study’s methodology and data, including a description of a legal services program targeted to meet their needs. Part III presents and discusses the findings, which are organized into three overarching categories: (1) the need for the legal profession to understand mental health better; (2) the approaches to supporting parents with psychiatric disabilities beyond the courtroom; and (3) the importance of providing ongoing support to these families. Finally, drawing on the data, Part IV concludes by exploring the implications of this Study for future research and policymaking.

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10. *Id.* at 105.

11. JAMES I. CHARLTON, NOTHING ABOUT US WITHOUT US: DISABILITY OPPRESSION AND EMPOWERMENT 3–4 (1998).

12. See Peter Beresford, *Service Users, Social Policy and the Future of Welfare*, 21 CRITICAL SOC. POL’Y 494, 508 (2001) (“Service users are demanding that social policy goes beyond seeing them as a data source. Service users and their organisations can and want to offer their own analyses, interpretations and plans for action. They want to develop their own practice, services and organisations instead of just being subject to other people’s. One of the ironies of social policy is that while the discipline has been slow to include service users, movements like the disabled people’s movement can now probably exert more political influence than the discipline can.”) (citations omitted).

In this Article, we present and analyze empirical data about a group of parents with psychiatric disabilities who have previously received legal services. Based on that data, we also raise questions warranting further research and offer suggestions for improving legal representation by understanding this population's needs better. The Study has notable limitations, namely the general nature of its findings in light of the sample's size and homogeneity. Nonetheless, as the first investigation of the perceived legal needs of parents with psychiatric disabilities, this Study offers a novel contribution to our understanding of this population and raises important questions for future scholarship. Secondarily, we intend to emphasize the importance of including the voices of people with disabilities, in both legal scholarship and the development and implementation of programs that serve them.<sup>13</sup>

### I. Parenting with a Psychiatric Disability: Needs and Experiences

This Study exists in the context of an expanding body of literature on parents with psychiatric disabilities and their families. To date, scholars writing about these families have focused on their experiences within the child welfare and family law systems as well as how these families fare compared to families that are not headed by a parent with psychiatric disabilities.<sup>14</sup> Parents with psychiatric disabilities contend with pervasive discrimination, and some of their children experience deleterious outcomes.<sup>15</sup> As

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13. See Amber Baylor & Daria Fisher Page, *Emerging Coalitions: Challenging the Structures of Inequality: Developing a Pedagogy of Beneficiary Accountability in the Representation of Social Justice Non-Profit Organizations*, 45 SW. L. REV. 825, 826 (2016) (“If we believe that lawyers can make a difference in communities—and that social justice non-profit organizations are a vehicle for doing so—we need to fully understand our obligations and relationship to the beneficiary community explicitly targeted by an organization’s mission statement. When an advocacy organization works to advance the rights of marginalized individuals, how do the lawyers ensure that the ‘advancements’ sought are what those individuals want and that the process reflects their world view? When a legal services organization providing representation for indigent families decides to expand their services, how do the lawyers determine what would really be helpful to their clients and their children?”).

14. See, e.g., JOANNE NICHOLSON ET AL., CTR. FOR MENTAL HEALTH SERVS. RES., CRITICAL ISSUES FOR PARENTS WITH MENTAL ILLNESS AND THEIR FAMILIES 8–9 (2001) [hereinafter NICHOLSON ET AL., CRITICAL ISSUES], [http://escholarship.umassmed.edu/cgi/viewcontent.cgi?article=1142&context=psych\\_pp](http://escholarship.umassmed.edu/cgi/viewcontent.cgi?article=1142&context=psych_pp) [<https://perma.cc/6KCR-KBCU>] (detailing a growing number of studies in the United States that have focused on the circumstances and service needs of adults with mental illness who are parents); Gallagher, *supra* note 4, at 234–59.

15. See Gallagher, *supra* note 4, at 238–39 (describing the media’s perception of individuals with “serious mental illnesses” and harms children of mentally ill

such, the value of this Study lies in beginning to understand what parents with psychiatric disabilities perceive as their legal needs and how the legal profession can best meet these identified needs. Only then can we ensure that such families receive the best opportunity to remain together and supported.

Before exploring these questions, however, it is essential to understand the overall needs and experiences of parents with psychiatric disabilities and their families. To that end, this Part begins with a brief discussion of the prevalence of parents with psychiatric disabilities as well as the impact of parental psychiatric disability on families. Next, it examines the experiences of parents with psychiatric disabilities and their families within the child welfare and family law systems, demonstrating a pattern of bias and discrimination that results in the frequent separation of these families. Finally, it concludes with an examination of the importance of legal representation for parents with psychiatric disabilities and how the legal profession has responded thus far.

A. *The Prevalence and Outcomes of Parents with  
Psychiatric Disabilities and their Families*

In the United States, nearly one in five adults live with a mental illness.<sup>16</sup> Notably, the number of people with serious mental illness, or psychiatric disability, is substantially smaller: 11.2 million (4.5%) of adults in the United States.<sup>17</sup> The term *serious mental illness* refers to diagnoses that are persistent, chronic, and debilitating, including bipolar disorder, schizophrenia, psychosis, and major depression.<sup>18</sup>

While people with psychiatric disabilities are as likely to be parents as those without psychiatric disabilities,<sup>19</sup> prevalence estimates are limited. Indeed, data concerning the parenting status of people with disabilities, generally, is not routinely collected, resulting in a paucity of national prevalence data.<sup>20</sup> A recent study

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parents face).

16. *Mental Illness*, NAT'L INST. OF MENTAL HEALTH (2017), <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml> [https://perma.cc/VX6N-3FA4] (estimating that 44.7 million adults in the United States had a mental illness in 2016).

17. *Id.*

18. Diane T. Marsh, *Parental Mental Illness: Issues in Custody Determinations*, 23 AM. J. FAM. L. 28, 28 (2009).

19. Joanne Nicholson & Kathleen Biebel, *Commentary on "Community Mental Health Care for Women with Severe Mental Illness Who Are Parents"—The Tragedy of Missed Opportunities: What Providers Can Do*, 38 COMMUNITY MENTAL HEALTH J. 167, 168 (2002).

20. NAT'L COUNCIL ON DISABILITY, ROCKING THE CRADLE: ENSURING THE RIGHTS

found that 2.7 million parents (3.8%) have a serious mental illness and 12.8 million parents (18.2%) have some type of mental illness.<sup>21</sup> Most scholars agree that the majority of adults with psychiatric disabilities are parents.<sup>22</sup> While estimates vary, it is clear that there are significant numbers of parents with psychiatric disabilities living in the United States.

Yet, although parents with psychiatric disabilities exist in substantial numbers, there remains limited research about them or their families.<sup>23</sup> Instead, most of what the public knows about parents with psychiatric disabilities come from media accounts of heartbreaking events in which children are harmed or murdered.<sup>24</sup> These media reports perpetuate the pervasive misconception that all parents with psychiatric disabilities are a danger to themselves and their children.<sup>25</sup> While these tragedies are rare, the stigma persists.<sup>26</sup>

Of course, some children of parents with psychiatric disabilities do experience deleterious outcomes compared with their peers whose parents do not have psychiatric disabilities.<sup>27</sup> Nonetheless, research has found that many of the harmful outcomes these children exhibit are often influenced by a variety of

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OF PARENTS WITH DISABILITIES AND THEIR CHILDREN 43 (2012) [hereinafter ROCKING THE CRADLE] (“A significant obstacle to ascertaining the number of parents with disabilities as well as their demographic characteristics is the absence of data.”); see also Marsh, *supra* note 18, at 28, 29 (“[N]ational data are not available regarding the prevalence of adults with mental illness who are parents and raising children.”); DARRYL MAYBERY ET AL., *Parental Mental Illness: Estimating Prevalence to Inform Policy and Practice*, in PARENTAL PSYCHIATRIC DISORDER: DISTRESSED PARENTS AND THEIR FAMILIES 20 (Andrea Reupert et al. eds, 3d ed. 2015).

21. Leyla F. Stambaugh et al., *Prevalence of Serious Mental Illness Among Parents in the United States: Results from the National Survey of Drug Use and Health, 2008–2014*, 27 ANNALS OF EPIDEMIOLOGY 222, 223 (2017).

22. Diane T. Marsh, *Parental Mental Illness: Issues in Custody Determinations*, 23 AM. J. FAM. L. 28, 29 (2009) (citing studies that examine different aspects of mental illness and parenthood).

23. NICHOLSON ET AL., CRITICAL ISSUES, *supra* note 14, at 8 (describing typical high-profile individual incidents popularized by the media).

24. *Id.* (“Unfortunately, little of what is widely understood about parents with mental illness is based on research. Most of what the public knows about parents with mental illness appears in newspaper accounts of tragic events in which children are severely injured or killed.”).

25. *Id.*

26. *Id.*

27. *Id.* at 18 (“Two decades of research have unequivocally indicated that children who have a parent with mental illness are at a significantly greater risk for multiple psychosocial problems.”) (citations omitted); see also Ian Brockington et al., *WPA Guidance on the Protection and Promotion of Mental Health in Children of Persons with Severe Mental Disorders*, 10 WORLD PSYCHIATRY 93 (2011) (providing guidance for “preventing, minimizing, and remedying” the effects of parental psychiatric disability on children).

factors, including heredity, biology, poverty, and the context in which these families live.<sup>28</sup> Hence, there are several opportunities for interventions to support the whole family and possibly improve the well-being of these families.<sup>29</sup> Besides, although some children have worse outcomes than their peers, many do not.<sup>30</sup>

To be sure, parenting with a psychiatric disability does come with its unique challenges. For example, managing day-to-day parenting responsibilities and stresses can be difficult for some parents because of their psychiatric disabilities.<sup>31</sup> Managing their psychiatric symptoms and treatment can also pose difficulties for some parents.<sup>32</sup> Living in a society that stigmatizes people with psychiatric disabilities as well as issues related to child custody and visitation have also been found to be challenging for some parents.<sup>33</sup>

Despite the aforementioned difficulties, however, the existing literature makes clear that parents with psychiatric disabilities should not be categorically presumed unfit to safely and appropriately care for their children.<sup>34</sup> Indeed, research has found that the vast majority of parents with psychiatric disabilities are not more likely to abuse or neglect their children than other parents.<sup>35</sup> Further, “[a]lthough mental illness can render some individuals unfit to parent, the vast majority of mentally ill parents simply need access to services and support that can help them parent effectively.”<sup>36</sup> Nevertheless, “[psychiatric] disability tends to be seen as the principle determinant of inability to care for children, but where poverty, housing [issues,] and the like are also present, these are seen as further confirmation of parental inadequacy.”<sup>37</sup>

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28. Nicholson & Biebel, *supra* note 19, at 167, 169.

29. *Id.*

30. *Id.*

31. Joanne Nicholson et al., *Mothers with Mental Illness: I. The Competing Demands of Parenting and Living with Mental Illness*, 49 PSYCHIATRIC SERVICES 635, 638–39 (1998).

32. *Id.* at 639 (explaining that mothers may put their children’s needs first and end up compromising their own mental health).

33. *Id.* at 638–40.

34. Teresa Jacobsen & Laura J. Miller, *Mentally Ill Mothers Who Have Killed: Three Cases Addressing the Issue of Future Parenting Capability*, 49 PSYCHIATRIC SERVICES 650, 651 (1998).

35. Gallager, *supra* note 4, at 239–44.

36. Brunt & Goodmark, *supra* note 3, at 295.

37. Phillip A. Swain & Nadine Cameron, ‘Good Enough Parenting’: Parental Disability and Child Protection, 18 DISABILITY & SOC’Y 165, 167 (2003).

B. *Experiences with the Child Welfare and Family Law Systems*

The existing literature unequivocally shows that parents with psychiatric disabilities are quite vulnerable to losing custody of their children, with custody loss rates in some studies as high as 79%.<sup>38</sup> One study found that only 21% of hospitalized mothers with psychiatric disabilities had full custody of their children, and only 12% had primary childrearing responsibility.<sup>39</sup> In another study, only 29% of twenty mothers with psychiatric disabilities had full custody of their children, and another 9% had partial custody.<sup>40</sup> A recent national survey revealed that parents with psychiatric disabilities were eight times more likely to have contact with the child welfare system, compared to parents without psychiatric disabilities.<sup>41</sup>

Notably, rates of custody loss may vary by diagnosis or demographic characteristics. For example, one study found that women with affective disorder diagnoses (i.e., bipolar and depressive disorders) are more likely to be primary caregivers than women with psychotic disorder diagnoses (i.e., schizophrenic, paranoid, and schizophreniform disorders).<sup>42</sup> Supporting this finding, other studies suggest that children of women with schizophrenia are more likely to be raised by someone else.<sup>43</sup> Furthermore, a study of forty-five parents with psychiatric disabilities found that those who also had substance use disorders were less likely to have contact with their children.<sup>44</sup> Finally, a

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38. Jill G. Joseph et al., *Characteristics and Perceived Needs of Mothers with Serious Mental Illness*, 50 PSYCHIATRIC SERVICES 1357, 1358 (1999) (finding twenty-one percent of the twenty-four mothers for whom data on child custody was available had retained full custody); Carol T. Mowbray et al., *Motherhood for Women with Serious Mental Illness: Pregnancy, Childbirth, and the Postpartum Period*, 65 AM. J. ORTHOPSYCHIATRY 21, 33 (1995) (reviewing several different data sources and their findings on custody loss).

39. Joseph et al., *supra* note 38, at 1358.

40. Roberta G. Sands et al., *Maternal Custody Status and Living Arrangements of Children of Women with Severe Mental Illness*, 29 HEALTH & SOC. WORK 317, 320 (2004).

41. Katy Kaplan et al., *Child Protective Service Disparities and Serious Mental Illnesses: Results from a National Survey*, 70 PSYCHIATRIC SERVICES 202, 203–04 (2019).

42. Carla L. White et al., *Mothers with Severe Mental Illness Caring for Children*, 183 J. NERVOUS & MENTAL DISEASE 398, 401 (1995).

43. Laura J. Miller, *Sexuality, Reproduction, and Family Planning in Women with Schizophrenia*, 23 SCHIZOPHRENIA BULL. 623, 629 (1997); Laura J. Miller & Molly Finnerty, *Sexuality, Pregnancy, and Childrearing Among Women with Schizophrenia-Spectrum Disorders*, 47 PSYCHIATRIC SERVICES 502, 504 (1996).

44. Danson Jones et al., *When Parents with Severe Mental Illness Lose Contact with Their Children: Are Psychiatric Symptoms or Substance Use to Blame?*, 13 J.

study of 322 women with psychiatric disabilities found that women who lost custody were over two times more likely to be single and never married, have a longer diagnosis of mental illness and more hospitalizations, have incomes below the federal poverty level, have a larger number of children, and have less social support.<sup>45</sup>

The child welfare system is particularly challenging for parents with psychiatric disabilities, who often contend with substantial and pervasive discrimination.<sup>46</sup> Notably, researchers in Philadelphia merged Medicaid data with data from the state's child welfare system and found that mothers with psychiatric disabilities were nearly three times more likely than other mothers to have had involvement with the child welfare system or to have children who were removed from their homes.<sup>47</sup> Indeed, "[s]tate agencies and courts frequently intervene on behalf of the children of mentally ill parents not because the parent has harmed the child but because they believe that mentally ill individuals cannot be adequate parents."<sup>48</sup> Termination of parental rights for parents with psychiatric disabilities is a "prevalent problem,"<sup>49</sup> which is likely due in part to the fact that nearly two-thirds of state statutes include psychiatric disability as grounds for termination of parental rights.<sup>50</sup> Further, states differ in their provision of reunification services to parents with psychiatric disabilities and their families. Some legislatures and courts have recognized that many parents with psychiatric disabilities are capable of caring for their children, while others have presumed that parents with psychiatric disabilities are inherently unable to provide a safe home.<sup>51</sup>

Notably, the Adoption and Safe Families Act (ASFA),<sup>52</sup> which is the primary federal law governing the child welfare system, includes several provisions that adversely affect parents with

LOSS AND TRAUMA 261, 280 (2008).

45. Leslie Doty Hollingsworth, *Child Custody Loss Among Women with Persistent Severe Mental Illness*, 28 SOC. WORK RES. 199, 204–07 (2004).

46. See generally Dale Margolin, *No Chance to Prove Themselves: The Rights of Mentally Disabled Parents Under the Americans with Disabilities Act and State Law*, 15 VA. J. SOC. POL'Y & L. 112 (2007) (discussing the application of the American Disabilities Act in termination of parental rights cases); Jude T. Pannell, *Unaccommodated: Parents with Mental Disabilities in Iowa's Child Welfare System and the Americans with Disabilities Act*, 59 DRAKE L. REV. 1165 (2011).

47. Jung Min Park et al., *Involvement in the Child Welfare System Among Mothers with Serious Mental Illness*, 57 PSYCHIATRIC SERVICES 493, 494–96 (2006).

48. Brunt & Goodmark, *supra* note 3, at 295.

49. Gallager, *supra* note 4, at 244.

50. Elizabeth Lightfoot et al., *The Inclusion of Disability as a Condition for Termination of Parental Rights*, 34 CHILD ABUSE & NEGLECT 927, 930 (2010).

51. Gallager, *supra* note 4, at 234.

52. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115.

psychiatric disabilities and their families.<sup>53</sup> For example, parents with psychiatric disabilities often have difficulty complying with the strict timelines set forth by ASFA because effective treatment often takes longer than the mandated timelines.<sup>54</sup> Additionally, although child welfare agencies are required to make reasonable efforts to reunify families,<sup>55</sup> ASFA allows states to bypass the provision of services and instead terminate parental rights in limited circumstances.<sup>56</sup> In addition to egregious acts such as manslaughter or murder, some states include a parent's disability as a reason to bypass providing reasonable efforts and "fast track" termination of parental rights.<sup>57</sup>

Parents with psychiatric disabilities "face similar problems in family court when custody evaluators, guardians ad litem, and judges refuse to believe that granting custody or visitation to a parent with mental illness can be in a child's best interest."<sup>58</sup> The challenges these parents experience are particularly troubling because families in which one or more parents has a psychiatric disability are more likely to experience divorce than those without a parental psychiatric disability.<sup>59</sup> Consequently, many parents with psychiatric disabilities will find themselves involved with the family law system. Although there are many reasons parents with psychiatric disabilities are less likely to be granted custody or visitation of their children, the latitude family court judges enjoy presumably plays a substantial role.<sup>60</sup> The majority of states require judges to consider the mental and physical health of all parties in family law cases.<sup>61</sup> Thus, "[t]he simple act of seeking custody of the child places the parent's mental health and parental

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53. Nicholson, *CRITICAL ISSUES*, *supra* note 14, at 26; Christina Risley-Curtiss et al., *Identifying and Reducing Barriers to Reunification for Seriously Mentally Ill Parents Involved in Child Welfare Cases*, 85 *FAM. SOC'Y* 107, 112 (2004).

54. Brunt & Goodmark, *supra* note 3, at 299; Risley-Curtiss et al., *supra* note 53, at 112.

55. 42 U.S.C. § 671(a)(15)(B)(ii) (2018).

56. 42 U.S.C. § 671(a)(15)(D)(i) (2018).

57. *ROCKING THE CRADLE*, *supra* note 20, at 90–92; Risley-Curtiss et al., *supra* note 53, at 112.

58. Brunt & Goodmark, *supra* note 3, at 295.

59. Edmund M. Dane & Jamie A. Rosen, *View from the Bench: Parental Mental Health and Child Custody*, 54 *FAM. CT. REV.* 10, 10 (2016).

60. Anat S. Geva, *Judicial Determination of Child Custody When a Parent Is Mentally Ill: A Little Bit of Law, a Little Bit of Pop Psychology, and a Little Bit of Common Sense*, 16 *U.C. DAVIS J. JUV. L. & POL'Y* 1, 8 (2012) (contending that the latitude family court judges have leads to greater subjectivity when parents with psychiatric disabilities are involved).

61. Dane & Rosen, *supra* note 59, at 11.

fitness at issue.”<sup>62</sup> This is especially alarming because judges often “do not have sufficient understanding regarding the nature of mental illness, the state of mental health research, or scientifically valid ways to assess the effect of mental illness on parenting.”<sup>63</sup> Hence, many parents with psychiatric disabilities contend with substantial barriers to proving their parental fitness and are denied custody, even if it is in the child’s best interest, only because of their psychiatric disability.<sup>64</sup>

Separating parents and children is tragic for all families, and for some parents with psychiatric disabilities, it can wreak havoc on their wellbeing.<sup>65</sup> Losing custody of their children often results in parents experiencing significant pain of separation and loss, and some parents with psychiatric disabilities may have increased difficulty coping with these adverse experiences.<sup>66</sup> Indeed, involvement with the child welfare system may worsen parental mental health, which, in turn, decreases the likelihood of reunification.<sup>67</sup> Additionally, the stigma associated with parenting with a psychiatric disability and the fear of custody loss can result in parents who resist acknowledging their difficulties or requesting necessary assistance.<sup>68</sup> Agonizing about losing custody or visitation with children can also increase parental stress, which can exacerbate the mental health symptoms of some parents.<sup>69</sup>

### C. *Representing Parents with Psychiatric Disabilities*

In light of the persistent discrimination in the child welfare and family law systems with which parents with psychiatric disabilities contend, it is apparent that access to meaningful legal representation is imperative. In fact, “[m]any parents with mental illness lose access to their children without the benefit of counsel or

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62. *Id.*

63. Geva, *supra* note 60, at 8.

64. *Id.*; *See also* Marsh, *supra* note 18, at 29.

65. Jennifer Mathis, *Keeping Families Together: Preserving the Rights of Parents with Psychiatric Disabilities*, 46 CLEARINGHOUSE REV. J. POVERTY L. & POLY 517, 517 (2013) (“Keeping families together is a critical part of enabling many parents with psychiatric disabilities to achieve recovery and live fulfilling lives. For any family, separating children from parents is a painful and traumatic event with ongoing ramifications for both parents and children. For parents with psychiatric disabilities, losing their children can be particularly devastating.”).

66. NICHOLSON ET AL., CRITICAL ISSUES, *supra* note 14, at 12.

67. Brunt & Goodmark, *supra* note 3, at 295.

68. Jenny Hearle et al., *A Survey of Contact with Offspring and Assistance with Child Care Among Parents with Psychotic Disorders*, 50 PSYCHIATRIC SERVICES 1354, 1356 (1999); Nicholson & Biebel, *supra* note 19, at 168.

69. Nicholson et al., *supra* note 31, at 638–40.

judicial process.”<sup>70</sup> Equally troubling, trusted parties often convince parents with psychiatric disabilities to relinquish custody of their children without adequate comprehension of the legal implications of such a decision.<sup>71</sup> Tellingly, in a study of forty-five parents with psychiatric disabilities who were separated from their children, only those who received legal representation and mental health services regained custody or visitation.<sup>72</sup>

Notwithstanding its importance, parents with psychiatric disabilities face significant barriers to accessing available and affordable legal representation.<sup>73</sup> Attorneys are often reluctant to represent parents with psychiatric disabilities because of the complexity of these cases and their dearth of understanding of parental psychiatric disability.<sup>74</sup> Cost is also a substantial barrier to obtaining meaningful representation for parents with psychiatric disabilities. Parents with psychiatric disabilities, particularly mothers, often experience material hardships and are unable to meet the costs associated with custody and visitation disputes (e.g., attorneys’ fees, parenting assessments, evaluations for children, and supervised visitation). Such hardships put them at a significant disadvantage.<sup>75</sup> Meanwhile, legal services organizations have limited resources and are often unable to represent parents who have psychiatric disabilities.<sup>76</sup>

Certainly, access to meaningful legal representation for all parents facing the loss of custody or visitation with their children

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70. *Clubhouse Family Legal Support Project History*, MENTAL HEALTH LEGAL ADVISORS COMM. (Aug. 20, 2018) [hereinafter CLUBHOUSE HISTORY], [http://www.mhlac.org/Clubhouse\\_History.htm](http://www.mhlac.org/Clubhouse_History.htm) [[http://web.archive.org/web/20190311013050/http://www.mhlac.org/Clubhouse\\_History.htm](http://web.archive.org/web/20190311013050/http://www.mhlac.org/Clubhouse_History.htm)].

71. Brunt & Goodmark, *supra* note 3, at 296 (“Too often, mentally ill parents are convinced—by social workers, child protection agency workers, other professionals working with the family, and even friends and family members—to relinquish custody of their children without understanding the implications of that decision and without the benefit of impartial legal advice.”).

72. Jones et al., *supra* note 44, at 280.

73. Kate Nemens & Joanne Nicholson, *The Clubhouse Family Legal Support Project for Parents with Mental Illness*, 57 PSYCHIATRIC SERVICES 720, 720 (2006); see also Brunt & Goodmark, *supra* note 3, at 295 (noting that legal assistance is an important and overlooked service for parents with psychiatric disabilities).

74. NICHOLSON ET AL., CRITICAL ISSUES, *supra* note 14, at 43; see also Brunt & Goodmark, *supra* note 3, at 312 (“Given the obstacles they face and the complexity and confusing nature of the child welfare and family court systems, parents with mental illness must have skilled and knowledgeable representation when the issues of child protection, termination of parental rights, custody, visitation, and the patient-psychotherapist privilege arise.”).

75. NICHOLSON ET AL., CRITICAL ISSUES, *supra* note 14, at 43.

76. Nemens & Nicholson, *supra* note 73, at 720.

or the termination of their parental rights is crucial. Yet, for parents with psychiatric disabilities, not having access to adequate legal services could have deleterious consequences. As Attorney Colby Brunt and Professor Leigh Goodmark aptly stated, “[w]hen the stakes are as high as losing a child to another party or the state and the decision makers already may be biased against them, parents with mental illness deserve the best representation available.”<sup>77</sup> Accordingly, the legal profession should dedicate more resources to ensuring that parents with psychiatric disabilities receive affordable and appropriate services so that they are equipped to preserve or reunify their families. Equally important, scholars must further elucidate how these families can be supported best. This Study seeks to advance these aims by examining the perceived legal needs of parents with psychiatric disabilities so that the legal profession can better serve these families. After all, those who need such supports are typically best positioned to understand their needs, including those needs currently unmet.<sup>78</sup>

## II. Methodology and Data

This Study is part of a larger, multi-year research and advocacy project about parents with disabilities.<sup>79</sup> The Institutional Review Board (hereinafter “IRB”) at Brandeis University approved the entire project, including the methodology and data collection for this Study.<sup>80</sup> This Article builds on the work of the existing literature by analyzing empirical data to investigate the legal needs of parents with psychiatric disabilities as perceived by the parents

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77. Brunt & Goodmark, *supra* note 3, at 312.

78. Kathleen Biebel et al., *Shifting the Intervention Paradigm from Individuals to Families Living with Parental Mental Illness*, in PARENTAL PSYCHIATRIC DISORDER: DISTRESSED PARENTS AND THEIR FAMILIES 345 (Andrea Reupert et al. eds., 3d ed. 2015) (“Parents may be the best reporters both on what supports are currently available and on identifying the gaps and lack of services, and can contribute actively to discussions regarding what supports would be most effective and helpful.”).

79. The National Research Center for Parents with Disabilities is funded by the National Institute for Disability, Independent Living, and Rehabilitation Research (NIDILRR), U.S. Department of Health and Human Services (HHS), grant #90DP6E0001-01-00. This is a five-year collaborative research and advocacy project that aims to support parents with disabilities. See *National Research Center for Parents with Disabilities*, BRANDEIS UNIV., THE HELLER SCH. FOR SOC. POLICY AND MGMT., <http://heller.brandeis.edu/parents-with-disabilities/> [<https://perma.cc/9RBN-MQXM>].

80. IRB Protocol # 17036. Because the Family Law Project receives funding from the Massachusetts Department of Mental Health (DMH), the study also needed approval from the DMH IRB Committee, which it was granted: IRB Protocol #2017-02.

themselves. This Part describes the present study's methodology and data. First, it describes the qualitative research methodology and how it has been employed to answer important legal and policy questions. Next, it explains the study's sample. Thereafter, this Part provides information on how data was collected for the study. Finally, it details how the data for this study were analyzed.

#### A. Qualitative Methodology

This Study uses qualitative, in-depth interviews, an approach legal scholars are increasingly employing to understand the experiences of people in the context in which they live and to include subjective experiences.<sup>81</sup> Likewise, qualitative research is recognized as necessary for social policy research because it proffers policymakers the perspectives of those directly impacted by decisions.<sup>82</sup> Qualitative data, which are usually detailed and rich, allow investigators to address "how" and "why" questions.<sup>83</sup>

In-depth interviews are an essential tool for gathering data. Thus, in-depth interviews are common in qualitative research and allow broad questions and topics to be explored, but also enable the interviewer and interviewee to explore additional topics related to the study's interests that emerge in the course of the interview.<sup>84</sup>

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81. MICHELE LAMONT & PATRICIA WHITE, WORKSHOP ON INTERDISCIPLINARY STANDARDS FOR SYSTEMATIC QUALITATIVE RESEARCH 10 (2008), [https://www.nsf.gov/sbe/ses/soc/ISSQR\\_workshop\\_rpt.pdf](https://www.nsf.gov/sbe/ses/soc/ISSQR_workshop_rpt.pdf) [<https://perma.cc/5CHK-NM2K>]. There are numerous examples of qualitative research within legal scholarship. See, e.g., Angela Littwin, *Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers*, 86 TEX. L. REV. 451, 454 (2008) (interviewing fifty low-income women regarding their experiences and preferences for usury regulations and based on the findings and suggestions of the study's participants advocating for modifications to credit cards that could serve the needs of low-income individuals as well as creditors); Sara Sternberg Greene, *Race, Class, and Access to Justice*, 101 IOWA L. REV. 1263, 1266 (2016) (interviewing ninety-seven residents of public housing communities to understand why low-income individuals and members of minority groups often do not seek legal assistance when experiencing civil legal problems and then using the findings to identify further research and policy considerations).

82. Marisol Smith et al., *Bridging the Empirical Gap: New Insights into the Experience of Multiple Legal Problems and Advice Seeking*, 10 J. EMPIRICAL LEGAL STUD. 146, 148–49 (2013); see also JANE RITCHIE & LIZ SPENCER, *Qualitative Data Analysis for Applied Policy Research*, in THE QUALITATIVE RESEARCHER'S COMPANION 305 (A. Michael Huberman & Matthew B. Miles eds., 2002); Aashish Srivastava & S. Bruce Thomson, *Framework Analysis: A Qualitative Methodology for Applied Research*, 4 J. OF ADMIN. & GOVERNANCE 72, 74 (2009); HARRY TORRANCE, *Evidence, Criteria, and Politics: The Debate About Quality and Utility in Educational and Social Research*, in THE SAGE HANDBOOK OF QUALITATIVE RESEARCH 766 (Norman K. Denzin & Yvonna S. Lincoln eds., 2017).

83. Smith et al., *supra* note 82, at 149.

84. Daniel W. Turner, *Qualitative Interview Design: A Practical Guide for Novice*

Moreover, in-depth interviews permit the interviewer to build trust and understanding with the interviewee. These interviews increase the likelihood of gathering personal information.<sup>85</sup> Certainly, “[s]uch information can be key in helping to explain behavior, which in turn can aid in improved policy design.”<sup>86</sup>

The present study sought to understand the perceived legal needs of parents with psychiatric disabilities. Many of the study’s participants have faced significant adversity and disclosing these personal details can be challenging. Additionally, issues related to parental adequacy, custody, and familial relations are inherently complex. Hence, in-depth interviews are the ideal methodology for gathering the data needed to answer the study’s research questions. Indeed, the information this study sought would be challenging for participants to provide through a survey of multiple-choice questions or even explain in one to two sentence responses. Instead, in-depth interviews allow for open-ended questions and enable the interviewer to ask probing follow-up questions to understand the nuances of participants’ responses better.

### B. Sample

The data in this Article consists of transcripts from in-depth qualitative telephone interviews with twelve former clients of the Family Law Project (formerly, the Family Legal Support Project or FLSP). This Subpart will describe the sample, beginning with an overview of the Family Law Project. Next, it will explain the recruitment strategies that were used to find participants for this study. Thereafter, inclusion criteria for this study will be reported. Finally, descriptive information about the sample will be presented.

#### 1. The Family Law Project

This study’s participants are former clients of the Family Law Project, a program of the Mental Health Legal Advisors Committee, which is located in Massachusetts. The Family Law Project was established in 1999 as a two-year project funded by the Massachusetts Bar Foundation and Equal Justice Works (formerly

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*Investigators*, 15 QUALITATIVE REP. 754, 754 (2010) (“One of the more popular areas of interest in qualitative research design is that of the interview protocol. Interviews provide in-depth information pertaining to participants’ experiences and viewpoints of a particular topic.”).

85. See Littwin, *supra* note 81, at 503–05 (discussing the author’s approach to building rapport with interviewees in order to collect sensitive information regarding finances).

86. Greene, *supra* note 81, at 1282.

the National Association of Public Interest Law).<sup>87</sup> The Family Law Project was developed in conjunction with a private nonprofit organization, Employment Options, Inc., in response to the organization's strategic planning committee of stakeholders who identified the need for legal consultation, representation, education, and advocacy for parents with psychiatric disabilities who attended their program.<sup>88</sup> Employment Options, Inc., is one of roughly thirty community-based rehabilitation and support programs in Massachusetts that provides a variety of services to people with psychiatric disabilities, including assisting with employment, education, housing, and family support.<sup>89</sup> An essential component of Employment Options, Inc. is its Family Initiatives program for custodial and non-custodial parents that provides support to both parents and their children.<sup>90</sup>

Nearly two decades since its inception, the Family Law Project has grown into a robust program that provides legal advice, representation, education, and outreach for parents with psychiatric disabilities who are involved in divorce, custody, and visitation cases, as well as occasional cases involving the child welfare system.<sup>91</sup> The Family Law Project staff also offers consultations and training for other attorneys, judges, and other professionals who work with parents with psychiatric disabilities.<sup>92</sup> Specifically, the Family Law Project aims to support low-income parents with psychiatric disabilities who are at risk of loss of custody or contact with their children.<sup>93</sup> Parents are referred to the Family Law Project from a variety of sources, including the Massachusetts Department of Mental Health, the Massachusetts Department of Children and Families, local and state bar associations, legal services organizations, private attorneys, judges, courts, and clubhouses.<sup>94</sup> In addition, parents may refer themselves

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87. CLUBHOUSE HISTORY, *supra* note 70.

88. Stephanie Hartwell & Laura Watts, *The Clubhouse Family Legal Support Project: A Framework for Replication and Development*, 15 INT'L J. OF PSYCHOSOCIAL REHABILITATION 19 (2010).

89. *Id.* at 19.

90. *Id.*

91. Nemens & Nicholson, *supra* note 73 at 720; *About Clubhouse Project*, MENTAL HEALTH LEGAL ADVISORS COMM. (Aug. 20, 2018) [hereinafter *About Clubhouse Project*], [http://www.mhlac.org/Clubhouse\\_Project.htm](http://www.mhlac.org/Clubhouse_Project.htm) [http://web.archive.org/web/20190321110539/http://www.mhlac.org/Clubhouse\_Project.htm].

92. *About Clubhouse Project*, *supra* note 91.

93. Hartwell & Watts, *supra* note 88.

94. *Id.* Nemens & Nicholson, *supra* note 73, at 720.

to the Family Law Project.<sup>95</sup> Today, the Family Law Project is sustained by funding from the Massachusetts Department of Mental Health and the Massachusetts Bar Foundation.<sup>96</sup> The Family Law Project has gained national attention for its innovative program as well as its core guiding principles: interventions can improve parenting skills for parents with psychiatric disabilities, and integrated legal services positively affect family preservation and parenting roles.<sup>97</sup>

## 2. Recruitment

This Study utilized convenience sampling to recruit participants. Convenience sampling is a non-probability sampling technique where participants are selected because of their accessibility to the researcher.<sup>98</sup> Researchers frequently employ convenience sampling as it is relatively inexpensive and effective, particularly compared to other, more systematic or networked sampling approaches.<sup>99</sup> Convenience sampling is often used in studies with traditionally hidden populations or populations that are otherwise difficult to locate, including people with disabilities.<sup>100</sup> The present study sample only included former Family Law Project clients. This inclusion criterion was chosen because of our interest in learning about parents' prior experiences with targeted legal services, and the organization's willingness to assist with recruitment.

Recruitment occurred between April and September 2017. To recruit participants, we developed a one-page flyer, which included information about the study as well as contact information for the research team. To maintain the confidentiality of the Family Law Project clients, the Family Law Project staff led the recruitment efforts by distributing an informational solicitation flyer about the study to former clients. This approach ensured that the research team did not have names or contact information for former clients unless the clients elected to participate in the study. In April 2017, a hard copy of the flyer was mailed to approximately fifty former

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95. Hartwell & Watts, *supra* note 88, at 19.

96. *About Clubhouse Project*, *supra* note 91.

97. Nemens & Nicholson, *supra* note 73, at 720.

98. Laura S. Abrams, *Sampling 'Hard to Reach' Populations in Qualitative Research: The Case of Incarcerated Youth*, 9 QUALITATIVE SOC. WORK 536, 542 (2010).

99. Kristie Saumure & Lisa M. Given, *Convenience Sample*, in THE SAGE ENCYCLOPEDIA OF QUALITATIVE RESEARCH METHODS 124–25 (Lisa M. Given ed., 2008).

100. Abrams, *supra* note 98, at 542.

clients who had been served between 2014 and 2016.<sup>101</sup> In this first wave of recruiting, three individuals expressed interest in participating in the study; many flyers were returned to the Family Law Project as undeliverable. In a second recruiting wave, in May 2017, the Family Law Project mailed the flyer, again, to approximately forty additional former clients who had been served between 2011 and 2016.<sup>102</sup> Again, many of the flyers were returned as undeliverable, and only three additional individuals responded as interested in participating in the study. In the third and fourth recruiting waves, the Family Law Project emailed the flyer in June 2017 and again in September 2017, respectively. Ultimately, twenty individuals expressed interest in the study. Of these twenty, one was ineligible because he did not speak fluent English<sup>103</sup> and seven others did not attend the interviews they scheduled. This process yielded a final analytic sample of twelve participants.

As evident in the preceding description of the sampling procedure, there were substantial recruitment challenges.<sup>104</sup> One of the primary barriers was the considerable number of flyers that were returned undeliverable. These challenges are not surprising in light of the unusually high prevalence of homelessness among people with psychiatric disabilities,<sup>105</sup> and the likelihood of precarious housing. Therefore, it is likely that many of the Family Law Project's former clients relocated since receiving services from the Family Law Project. Notably, consistent with the increased response rate when the flyer was disseminated via email, research suggests that technology, including email, is an effective way to reach people with psychiatric disabilities.<sup>106</sup>

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101. The authors began with restricting recruitment to the prior two years so as to limit the potential for recall bias.

102. The authors expanded the recruitment beyond the two prior years because of the paucity of responses.

103. See *infra* Subsection II.B.0 for explanation of the study's inclusion criteria.

104. Recruitment and retention of people with psychiatric disabilities is an ongoing challenge for researchers studying this population. See generally Stephanie W. Kanuch et al., *Recruiting and Retaining Individuals with Serious Mental Illness and Diabetes in Clinical Research: Lessons Learned from a Randomized, Controlled Trial*, 9 J. HEALTH DISPARITIES RES. & PRAC. 115 (2016) (discussing barriers to recruiting and retaining people with psychiatric disabilities).

105. Verna Strehlau, *Recruitment and Retention of Homeless Individuals with Mental Illness in a Housing First Intervention Study*, 7 CONTEMP. CLINICAL TRIALS COMM. 48 (2017) (citing studies demonstrating high rates of homelessness among people with psychiatric disabilities).

106. *Id.* at 54–55.

### 3. Inclusion Criteria

To join the study, participants had to satisfy inclusion criteria. Specifically, eligibility was restricted to parents with psychiatric disabilities who were aged eighteen or older, who received full legal representation from the Family Law Project between 2011 and 2016, and whose income was below 200% of the federal poverty level. Psychiatric disability and low-income status were assumed based on eligibility for the Family Law Project services, as the Family Law Project screens all participants to ensure they meet the Family Law Project income and disability criteria. The sample was further limited to individuals whose English language proficiency was sufficient to provide informed verbal consent and meaningfully participate in an in-depth interview. Individuals who did not satisfy the inclusion criteria in its entirety were excluded from participating in the study.

### 4. Sample Description

*Table 1. Demographic Characteristics of Sample (N = 12)* presents descriptive information about the sample ( $N=12$ ). More than half (59%) of the participants were White and more than three-quarters (83%) identified as women. All but one participant identified as heterosexual. Half of the participants had only one child, and only three of the participants (25%) reported living with their children at the time of the interview. The majority of the participants' youngest children (84%) were age seven years or older.

All of the study's participants were low-income, with more than half (58%) reporting income below \$10,000. Two participants (17%) had incomes between \$10,000 and \$20,000, two participants (17%) had incomes between \$20,000 and \$30,000, and one (8%) had an income between \$30,000 and \$45,000. Three-quarters of the participants received Supplemental Security Income (hereinafter "SSI") or Social Security Disability Insurance (hereinafter "SSDI"), three-quarters of the sample received Medicaid. Four of the participants (34%) received Supplemental Nutritional Assistance Program (hereinafter "SNAP") benefits (formerly known as food stamps), and only one participant (8%) reported receiving Temporary Assistance for Needy Families (hereinafter "TANF") benefits (formerly known as welfare). Eleven participants (92%) received at least one public benefit.

**Table 1.** *Demographic Characteristics of Sample (N = 12)*

Characteristic	<i>n</i> (%)
Race/ethnicity	
White	7 (59)
Black or African American	1 (8)
Asian	1 (8)
Multi-racial	3 (25)
Gender	
Female	10 (83)
Male	2 (17)
Sexual orientation	
Heterosexual	11 (92)
LGBTQ	1 (8)
Number of children	
1	6 (50)
2	4 (34)
3	1 (8)
4	1 (8)
Lives with children	
Yes	3 (25)
No	9 (75)
Age of youngest child	
1-3	1 (8)
4-6	1 (8)
7-11	6 (50)
12-19	4 (34)
Income	
Under \$10,000	7 (58)
\$10,000 - \$20,000	2 (17)
\$20,000 - \$30,000	2 (17)
\$30,000 - \$45,000	1 (8)
Receives public benefits	
SSI or SSDI	9 (75)
TANF/welfare	1 (8)
SNAP/food stamps	4 (34)
Medicaid	9 (75)

*C. Data Collection*

Individuals who were interested in participating in, or learning more about, the study contacted the research team by telephone or email. During the initial communication, the study was explained, and the individual was screened for eligibility. Questions about the study were also answered at this time. If the individual satisfied the eligibility criteria and was interested in participating in the study, an interview was scheduled.

The interviews were conducted by telephone in English, and each lasted approximately one hour. One of two research assistants, who were both trained in qualitative interviewing,<sup>107</sup> conducted the interviews. Before beginning an interview, the research assistant read the verbal consent form to each participant, as approved by the IRB. The research assistant summarized the study and fully described potential risks and benefits, described the confidentiality measures taken to protect the participant's privacy and identity, and requested permission to audio-record the interview. The research assistant answered the participants' questions and obtained verbal consent, which was documented. No interview was conducted without explicit verbal consent. Following the interview, each participant was mailed a copy of their verbal consent form. Each participant received a \$50 gift card to thank them for their time and contribution to the study.

The interviews were semi-structured. To ensure consistency across interviews, the research team developed an interview protocol that included broad questions and topics to be explored. This approach also allowed the interviewer and interviewee to explore additional topics related to the study's interests that emerged in the course of the interview.

The interview protocol began with a 'warm-up' section that allowed the participant to discuss themselves and their family. This section also included questions about the participant's support system, both formal and informal, as well as any current challenges or problems related to their family.

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107. Training of each research assistant was extensive. Research assistants underwent multiple practice interviews with the research team. Each practice session was recorded and debriefed, and this process was iteratively repeated until the research team leaders were confident the research assistant had the skills to conduct interviews correctly. Moreover, each research assistant observed a senior member of the research team conduct at least one interview. Further, both research assistants successfully completed Human Subjects in Research training prior to the study commencing. All research assistants and interviewers had prior experience conducting in-depth qualitative interviews on prior research studies; all successfully completed several qualitative research courses as part of their training.

Next, the interview protocol explored prior interactions with the legal system as well as with the Family Law Project. This section began by asking about experiences with attorneys prior to receiving legal representation from the Family Law Project, including how other attorneys understood and responded to their psychiatric disabilities. Thereafter, this section included questions about the participant's experiences with the Family Law Project, including their reason for seeking representation, examples of tasks that the Family Law Project did to assist the individual, overall positive and negative experiences, resources and referrals that were provided, and the outcome of their case.

The next section of the interview protocol included questions about the participant's psychiatric disability as well as how the Family Law Project understood and responded to it. Specifically, this section of the interview protocol included questions about their diagnosis, interactions with the Family Law Project, and changes in mental health status throughout their involvement with the Family Law Project.

Background information about the participant was then collected. Specifically, the research assistant asked where and with whom the participant lived, their family size and structure, and if the participant received any public benefits. Questions about race and ethnicity, gender identity, sexual orientation, and family income were also included.

The interview protocol concluded by eliciting the participant's overall views on legal representation for parents with psychiatric disabilities and the Family Law Project. The participant's recommendations for improving legal services for parents with psychiatric disabilities were also discussed.

In line with the requirements of the IRB, and to protect the identity of the participants, several measures were in place. Interview participants were randomly assigned identification numbers on all documents except their verbal consent forms. Study documents, including verbal consent forms, mailing addresses, a master list of identification numbers, and notes taken during the interviews, were stored in separate locked filing cabinets, in a locked research office that was only accessible to the research team members. Once a copy of the verbal consent form and gift card were mailed to the participants, their mailing addresses were shredded. All transcripts, audio-recordings, and other digital documents were saved in a password-protected folder. Further, after reviewing each transcript for accuracy, and redacting any personally-identifiable

information, the audio-recordings were permanently deleted from the computer.

Prior to commencing data collection, the first author conducted cognitive interviews<sup>108</sup> with two former clients of the Family Law Project to test the validity of the interview guide and ensure that the interview questions were clear and understandable. Cognitive interviews are used to develop and test survey questions to understand participants' cognitive processes used to answer questions.<sup>109</sup> In other words, the purpose of cognitive interviewing is to evaluate and improve the entire process of how participants hear, understand, interpret, and answer questions during research interviews.<sup>110</sup> The focus of cognitive interviewing is comprehension, recall, decisions, judgment, and response processes. Cognitive interviews were conducted in-person at a location convenient to participants. Throughout the cognitive interviews, concurrent verbal probes were used to ensure that the participant fully understood each question.<sup>111</sup> At the end of each cognitive interview, retrospective verbal probing was used to elicit the participant's overall impressions of the interview protocol.<sup>112</sup> Each cognitive interview was audio-recorded and analyzed. Because the participants comprehended all of the questions and responded appropriately, no changes to the interview protocol were made. Consistent with cognitive interviewing methodology, the data from the cognitive interviews were not used for this study.

#### D. Data Analysis

Transcripts of the interviews were professionally transcribed verbatim. Based on traditional content analysis methodology, analysis of the transcripts was both iterative and inductive.<sup>113</sup> First, the first author carefully reviewed five randomly selected transcripts. As she went through this line-by-line, in-depth analysis, she developed a preliminary set of codes. As the codes evolved, a codebook was developed and revised as new codes

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108. See generally GORDON B. WILLIS, *COGNITIVE INTERVIEWING: A TOOL FOR IMPROVING QUESTIONNAIRE DESIGN* (1st ed. 2004).

109. *Id.*

110. EDITH DE LEEUW ET AL., *Pretesting Questionnaires for Children and Adolescents*, in *METHODS FOR TESTING AND EVALUATING SURVEY QUESTIONNAIRES* 409, 423 (Stanley Presser et al. eds., 2004).

111. See WILLIS, *supra* note 108, at 42–64.

112. See *id.*

113. See generally Hsiu-Fang Hsieh & Sarah E. Shannon, *Three Approaches to Qualitative Content Analysis*, 15 *QUALITATIVE HEALTH RES.* 1277 (2015) (discussing three distinct approaches to content analysis: conventional, directed, or summative).

emerged from the data. The first author grouped similar codes to develop themes based on the research questions. The research team then reviewed and modified the codebook until consensus was reached on the preliminary codebook.

The interview transcripts were uploaded into Dedoose, an online qualitative data analysis software program. As the first author continued line-by-line, in-depth analysis of the interview transcripts, she was in regular contact with the research team to discuss and refine codes. The final codebook consisted of themes and codes as well as definitions and was approved by the entire research team.

### III. Discussion and Findings

Analysis revealed three overarching themes related to the perceived legal needs of parents with psychiatric disabilities: (1) the need for the legal profession to understand mental health better; (2) the approaches to supporting parents with psychiatric disabilities beyond the courtroom; and (3) the importance of providing ongoing legal representation to these families.<sup>114</sup> Here, we briefly summarize the study's findings and then discuss them in greater detail, using case examples and verbatim quotes from participants.<sup>115</sup>

First, the understanding of mental health and psychiatric disability by the legal profession is critically important. Because several participants felt most attorneys lacked any real understanding of their diagnosis, they sought representation from the Family Law Project. This absence of understanding also resulted in bias and speculation about how their psychiatric disabilities impacted their parenting abilities. Many of the participants reported that the paucity of understanding about mental health was also a problem for the opposing counsel, resulting in discriminatory actions based on their disability by the other parent's attorney. Finally, several participants explained that the judges they encountered also lacked training about mental health, which participants believe contributed to negative experiences within the courtroom and, at times, adverse custody or visitation decisions.

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114. Given the breadth and richness of the data collected in the interviews, this Article focuses on this particular set of themes present in the data; future articles will explore other themes.

115. *Supra* note 1. The following section is based upon the confidential interviews with this sensitive population.

Second, it is clear from the interviews that parents with psychiatric disabilities may require assistance from their attorneys beyond the courtroom. Taking extra time to explain the process thoroughly and understandably was essential for many of the participants. Several participants reported benefiting from assistance with administrative tasks related to their cases, such as completing paperwork. Other parents explained the need for their attorney to coordinate with others on their behalf, including opposing counsel or the other parent, family members, and their formal and informal support system, as well as provide referrals to other supports and services.

Third, having access to ongoing legal representation for these parents and their families is vital. Several participants expressed frustration because they could not access assistance from the Family Law Project once their case was closed, even if new issues arose related to the initial case. In addition to having custody-related legal needs, a few parents required assistance with non-custody legal needs (e.g., housing issues). Although some issues were not directly related to custody or visitation, parents reported that ongoing legal problems did adversely affect their family's wellbeing.

#### *A. Understanding Mental Health*

An important goal of this research is to ascertain how parents with psychiatric disabilities perceive the legal profession's understanding of mental health. In particular, this Study sought to explore the extent to which parents felt understood by their attorneys, as well as opposing counsel and judges. To gather this data, questions such as the following were asked: "Did your previous attorney understand your mental health? How so? Was it ever called into question or did it ever become an issue in any of these other legal situations?" "Do you think the Family Law Project attorney understood your mental health issues? How could you tell? (e.g., Did they talk specifically about them? Did the attorney give advice about how to present yourself in court?) Why or why not?" Additionally, questions about interactions with the court were asked and recommendations for improving legal services for parents with psychiatric disabilities were obtained.

Consistent with the existing scholarship, findings from this Study underscore both the importance of the legal profession understanding mental health as well as the dire need for more training for legal practitioners and judges. This Section explores how parents perceive the legal profession's awareness of their

disabilities and how that knowledge—or lack thereof—affected their experiences. First, this Section describes the participant's experiences with attorneys, including private attorneys, attorneys at the Family Law Project, and opposing counsels. Second, this Section explains how the participants feel judges understand mental health and how, if at all, that level of knowledge impacted their cases.

### 1. Considerations for Attorneys

Nearly all participants expressed feeling that it is essential for attorneys to understand mental health comprehensively. Reflecting on her experience with an attorney at the Family Law Project, one participant stated, “she had a complete understanding of mental health, especially bipolar disorder.” That participant went on to explain that it was helpful that her attorney thoroughly comprehended how her disability affected her day-to-day activities and how interactions with her ex-husband sometimes triggered her symptoms. Another participant remarked, “we talked about my case, about my mental health . . . [S]he wanted to know exactly about my mental health, bluntly, no hiding things so she can help me.” That participant explained she was impressed that although her Family Law Project attorney had reviewed her case, the attorney wanted to hear directly from her. She also appreciated that her Family Law Project attorney was able to discuss her disability openly and comfortably.

Many of the participants described how their attorneys' understanding of mental health was demonstrated through the participant's interactions with the attorney. When asked if her Family Law Project attorney understood her disability, one participant responded, “[s]he's very understanding. She understands when I'm on the phone and I'm rushing, talking over like adrenaline, every situation that's causing severe anxiety. She's very good at advising me when I'm having a panic attack regarding a paper that my ex-husband sent.” Another participant explained that because her Family Law Project attorney was aware of her disability, the attorney was able to keep her calm during stressful situations, such as when the participant was in court. That participant also found her attorney's knowledge was demonstrated by the attorney checking in with her before going to court and asking, “How are you feeling? Are you feeling good? Did you take your meds this morning?” Likewise, a participant felt his Family Law Project attorney responded well to his anxiety: “She basically explained . . . situations to put my anxieties at ease.” Other

participants similarly felt their attorneys' keen understanding of mental health made the attorney able to interact better with them during stressful experiences.

Conversely, some of the participants reported difficulties stemming from their non-Family Law Project attorneys' lack of understanding of their disabilities. For example, one participant described feeling that her attorney thought she was "crazy and paranoid" and often disregarded her perspectives. Likewise, one participant explained, "I don't think they understood me . . . I definitely feel that I was not heard." Another participant felt her non-Family Law Project attorney did not defend her and was overly willing to share her mental health records with the court. Moreover, one participant explained he was newly diagnosed with a psychiatric disability when he was initially represented by a private attorney. When asked if he felt his attorney understood mental health, he responded: "We talked about it but no . . . I really don't think [the attorney] did. And you know what, I didn't at that point."

Some of the participants felt their non-Family Law Project attorneys' lack of understanding "exacerbated" their mental health symptoms. Conversely, one participant felt her Family Law Project attorney did not understand that the nature of her case, coupled with her ongoing anxiety, caused her to be emotional at times. She explained, "[w]hen I would get emotional she would argue with me and not be understanding at all."

For some of the participants, it was important that their attorney understood their treatments and medications. One participant explained that she knew her Family Law Project attorney was knowledgeable about mental health because the attorney encouraged her to see her therapist weekly. Another participant told us that she felt her attorney understood her medication and its side effects.

An attorney's understanding of mental health is also crucial for how they interact with judges and opposing counsel. One participant explained that her Family Law Project attorney did not "sugarcoat" things about her disability, but instead would describe the participant's disability to the judge and opposing counsel and then say, "[y]es, she's bipolar but she's in treatment. Now, can we exclude everyone that has bipolar and is in treatment?" For this parent, having her attorney understand both her disability and treatment fully and be able to explain it to others in a non-derogatory manner was essential.

Some of the participants believed that the other parent's attorney lacked sensitivity or understanding of mental health. A

few of the participants explained that they thought the opposing counsel used their disability against them in court. One participant remarked, “[t]he most horrible thing is I was portrayed as an abusive mom of my own child that I would die for.” Reflecting on her experience with opposing counsel during her trial, another participant explained, “[h]is lawyer ended up reading all my private stuff . . . from my psychiatrist, my counselor, my hospital stays . . . . So, he read all that stuff and he would like throw it back in my face.”

During one interview, a participant commented about the need for training on mental health for the legal profession:

Lawyers need some education on mental health and how to treat people like they’re people, really . . . . Especially at a time when someone is so desperate, in need of help and has nowhere else to turn. And then they get a lawyer who makes them feel worse. But you need that lawyer. . . . I don’t know if the other lawyers are the same but yeah, they really need some empathy courses.

## 2. Considerations for Judges

Some of the participants expressed frustration with judges’ lack of understanding about mental health and felt that this dearth of knowledge might have impacted their cases. For example, one participant reported that the judge in her case made “very little to no effort of having any understanding or knowledge of mental health or different kinds of situations.” That participant felt the judge needed to understand psychology rather than “make a decision that if you have a mental disability, you’re at risk.”

Another participant described feeling like the judge saw her as incompetent just because of her psychiatric disability. She explained that the judge would often speak to her attorney rather than directly to her and sometimes even “complained” about her to her attorney. Similarly, one participant explained that she felt mistreated by the judge, particularly because of his failure to explain things in a manner she understood. This participant described her experience with the judge as a “very biased situation.”

Other participants reported feeling significant anxiety about going to court because of past negative experiences with judges. These participants believed that their prior adverse encounters intensified their mental health symptoms and made more recent interactions with judges worse.

*B. Assisting Beyond the Courtroom*

Another aim of this Study is to elucidate how the legal profession helps or should help parents with psychiatric disabilities. To that end, participants were asked several questions about specific ways their attorneys assisted them throughout their representation and whether these activities were useful. Participants were also asked questions about any unmet legal needs they had, including the needs they wish their attorney had assisted them in resolving. Although these questions were intended to focus on tasks directly related to litigation, our analysis revealed that many of the tasks identified by the participants as especially important were often things that went above and beyond what is typically expected of attorneys.

Study findings reinforce the importance of attorneys providing their clients with assistance beyond the courtroom. Many of the participants found the help their attorneys provided outside of pure litigation was equally crucial. This Section explores three specific ways that attorneys assisted the participants beyond the courtroom by: (1) taking time to explain the process; (2) helping with administrative tasks; and (3) coordination with, and referrals to, community-based services and supports. Notably, the study findings suggest that attorneys of parents with psychiatric disabilities may need to go above and beyond by performing tasks outside of their normal duties in order to provide effective representation to their clients with psychiatric disabilities.

1. Explaining the Process

Several of the participants benefited from the extra time their attorneys took to explain the process of their cases as well as legal terminology. One participant explained that her Family Law Project attorney would regularly email her and explain details in “simple words.” Another participant stated her Family Law Project attorney attached “sticky notes” with definitions of the legal terms in the documents so the participant could fully understand everything. Reflecting on his Family Law Project attorney, another participant appreciated that his attorney “was able to simplify things for [him] to understand.” Another participant said that having his Family Law Project attorney explain things fully as his case proceeded was “an essential service.”

Many of the participants described how having everything clearly explained reduced their anxiety. One participant explained that understanding her case and the process helped her “stay stable.” Another participant said that her attorney was able to put

her “anxieties at ease” by simply describing everything. Likewise, having someone with them in the courtroom to explain things as they happened helped reduce anxiety for some of the participants. For instance, one of the participants, a mother, noted that she appreciated having her Family Law Project attorney’s intern available in the courtroom to explain what was happening.

Frequent communication was important for many of the participants and reportedly helped them to be cognizant of everything happening in their cases. One participant explained that sometimes emails from her Family Law Project attorney were challenging to understand. In those instances, the participant would ask the attorney to call her. “But she explains it in a very simple way for me to have an understanding of the consequences of things and so on, in a way that I can feel more calm or not confused.” Another participant said that her Family Law Project attorney would call her and “walk her through all the legal processes.”

Taking additional time to explain particulars was crucial for many of the participants. A participant discussed how essential it was that his Family Law Project attorney “took time to explain all the legal documents.” Speaking about his Family Law Project attorney, one participant explained: “She is very knowledgeable and she knows exactly how to explain things to me the way that I would understand . . . . She explained everything, and then, what I didn’t understand she just helped me to understand.”

Furthermore, candor while explaining things was reportedly important for some of the study participants. One participant explained that she appreciated that the Family Law Project attorney was upfront with her in a simple manner about what to expect, saying “they were clear about what I should expect from them, what they can do, [and] what they cannot do.”

## 2. Administrative Tasks

Receiving assistance from their attorney with administrative tasks, such as completing paperwork, gathering documents, and collecting information, was identified as essential by several of the participants. For example, some of the participants found the paperwork associated with their cases stressful and appreciated receiving assistance from their attorney to review and complete it. One participant explained that her Family Law Project attorney helped her complete paperwork, remarking, “I don’t know what I would have done on my own.”

Getting help with gathering documentation was also useful for some of the participants. One participant explained that, early in

his representation, his Family Law Project attorney helped him compile a list of documents needed, including letters from his health care providers and information about his SSDI. When this became difficult for him to manage on his own, his attorney and her intern helped him gather everything needed for his case. During his interview, he remarked, "I couldn't do this on my own." Another participant expressed that she was appreciative that her Family Law Project attorney both helped her "get together" all of the documents she needed for court and then shared that information with her out-of-state attorney. Likewise, another participant explained that his Family Law Project attorney communicated with his child's school and gathered necessary documents from them.

Complying with the demands of their cases without attorney assistance was challenging for many of the participants. One participant talked about how the strict timelines made it difficult for him to collect necessary documentation and complete paperwork, so it was beneficial that his Family Law Project attorney assisted him with this task. Another participant, reflecting on his Family Law Project attorney, said, "[s]he took over and she basically did everything that needed to be done; she did all of the paperwork." For this participant, the assistance provided by his attorney was invaluable.

### 3. Coordination and Referrals

Finally, numerous participants appreciated that their attorney coordinated with others, including opposing counsel or the other parent, family members, and their formal and informal support system, as well as provided referrals to additional supports and services. Although some coordination and referrals were not directly related to litigation, such coordination was highly useful in ensuring the parent and their family were best supported. Additionally, some parents reported not receiving necessary coordination and referrals, which they felt hindered their cases.

For example, one participant had her Family Law Project attorney communicate with her sister, who, in turn, helped the participant understand what was happening in her case. This participant explained that sometimes she, her attorney, and her sister would have "three-way" telephone conversations where they would discuss her case and next steps. She said that this type of coordination "helped a lot" because her sister was an important support person for her who knew how to explain things in a manner the participant understood. This participant's sister also assisted with paperwork completion and gathering documents. Similarly,

another participant discussed the usefulness of having her Family Law Project attorney communicate regularly with her aunt, who provided the participant with ongoing assistance. For a few of the participants, having their attorney interact with the other parent or their attorney regarding parenting-related issues was useful. One participant, for example, was a domestic violence survivor who explained that her mental health worsened when she interacted with her ex-husband. This participant appreciated that her attorney facilitated visitations with her child.

Some of the participants found coordination with other service providers absolutely necessary. For example, a few of the participants had their attorney communicate with their case managers from mental health services agencies to learn more about the participant's mental health diagnosis as well as current support systems. This two-way communication allowed for the sharing of information to ensure that the parent was best supported. Likewise, another participant had her Family Law Project attorney communicate directly with her therapist in order to better understand her mental health needs as well as gather needed documents. Further, one participant had her Family Law Project attorney interact with her son's therapist to collect information for her case.

Many of the participants also discussed needing referrals to additional community-based supports and services. One participant, for example, appreciated that her Family Law Project attorney helped her obtain an out-of-state attorney for part of her case. The participant credits the success of the case to this referral. Another participant explained that her Family Law Project attorney provided her with referrals for a therapist, financial benefits, and health insurance. Similarly, a participant explained that her Family Law Project attorney referred her to another attorney to help her appeal a disability benefits denial. This participant said that although her Family Law Project attorney could not represent her in this matter, "[the Family Law Project attorney was] helpful all the way through [the appeal process]." Additionally, one participant remarked about the importance of receiving referrals from her attorney: "She was very helpful in getting things, like transportation has been an issue. So, she gave me information about The Ride<sup>116</sup> and things like that."

Of course, the need for referrals to community-based supports and services varied, with some of the participants not needing any

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116. The Ride is the paratransit program in Massachusetts.

and others wishing they had received more referrals than were provided. For example, one participant was referred to a clubhouse by her Family Law Project attorney, but it was not something she was “interested in” at that time. Other participants wanted referrals to visitation centers, child care, and additional legal services, but were not provided any. Some of the participants stated they did not ask their attorney for referrals because they did not need them. One participant explained that she was previously in a domestic violence shelter and had an advocate there who helped her get “support and resources” before she was a client of the Family Law Project. As such, there were no referrals she “needed.” Hence, if a client is well-connected to services, coordination and referrals may not be necessary. However, attorneys should determine their client’s needs and respond accordingly.

### *C. Ongoing Representation*

A final study goal is to elucidate the ongoing or unmet legal needs of parents with psychiatric disabilities. To that end, participants were asked about any legal issues they had faced since being represented by the Family Law Project. Participants were also queried about specific legal needs they had that were unmet by the Family Law Project and recommendations for improving legal supports for parents with psychiatric disabilities.

A prominent theme that emerged was the need for ongoing legal supports. This Section examines what parents perceive as their ongoing legal needs. First, we will describe legal needs that are related to custody or visitation. These are matters that are a continuation of or related to the participants’ representation by the Family Law Project. Second, we will explain the non-custody or non-visitiation legal needs that were identified by the participants of this study. Overall, these findings indicate parents with psychiatric disabilities may have more than one need for legal supports.

#### 1. Custody-Related Legal Needs

Some of the participants explained that matters related to their cases continued after their legal representation ceased. Several of the participants expressed frustration because they were unable to obtain additional legal representation from the Family Law Project or other legal services organizations. For example, one participant reported being upset that she had not seen her son in more than a year. She explained the importance of having representation from an attorney familiar with parents with psychiatric disabilities:

I'm not . . . a normal average person, I have a mental condition. It's not like I can just get off the phone, get in my car and go to the courthouse and you wait and you get a lawyer . . . file all these and file all that. I have no idea—I know the system but I'm just not capable. I need help.

Another participant wanted to go back to court to request visitation with her daughter but was unable to find an attorney that she could afford who understood her psychiatric disability. This participant explained, "I wish I could get the help legally that I need because I need to understand how to go about seeing my daughter again. And I need somebody . . . on my side."

Several of the participants noted that matters related to custody and visitation often continue, even after the case ends. One participant remarked, "[p]eople will need to reopen cases if it doesn't go smoothly, you know." Another participant who was struggling to find an attorney to assist with a matter related to custody explained, "[n]ormally, you can call your lawyer if you have money." One participant stated, "I wish the help was continuous." She was having difficulty getting the other parent to comply with a visitation agreement. Likewise, another participant who is facing custody issues said,

I felt like I was back on my own again and I do feel that way now . . . I wish there was a little bit of follow-up . . . I understand they have limited resources and that they're not going to always be here for everybody.

Finally, another participant explained that she was having difficulties with the other parent related to health care for their child. She believes the parent was violating their agreement. However, she was unable to find an attorney who could assist her.

## 2. Non-Custody Legal Needs

A few of the participants also described being unable to obtain legal representation for issues not directly related to their original case. Specifically, these participants reported contacting legal services organizations, including the Family Law Project, as well as private attorneys, but not being able to secure assistance. For example, some of the participants expressed needing legal representation related to public benefits, such as SSI or SSDI. Another participant stated that she needed an attorney to help with

a housing matter. Further, one participant said she needed legal representation for a criminal matter.

Although not directly related to her custody case, one participant said that she was struggling to find an attorney for her family: "I really need . . . consistent legal advocacy for me and my son." This need related to coping with her son's psychiatric disabilities. "I wish there would be somebody who could help me and walk with me [as issues arise]."

For some of the participants with ongoing legal needs not related to their original cases, the ability to secure legal representation felt insurmountable. These participants reported frustration about the dearth of legal services available to people with psychiatric disabilities. In particular, many felt that legal services programs for parents with psychiatric disabilities must include assisting with issues beyond custody and visitation matters.

#### IV. Implications for Research and Policy

This Article reports on a qualitative study to investigate the perceived legal needs of parents with psychiatric disabilities. These data are drawn from semi-structured telephone interviews with twelve participants who were previously served by a legal services program specifically for people with psychiatric disabilities. The present study adds to the extant literature on parents with psychiatric disabilities who are involved with custody or visitation disputes. To date, this work has been mostly theoretical or based on professionals' perspectives rather than the parents themselves.<sup>117</sup> Indeed, there has been a dearth of empirical research that directly examines the perceived legal needs of parents with psychiatric disabilities implicitly. Qualitative research is uniquely able to provide a comprehensive picture of the needs and experiences of traditionally marginalized individuals, such as parents with psychiatric disabilities. Hence, this study complements existing research by offering a new perspective on the met and unmet legal needs of parents with psychiatric disabilities, providing lessons for those responsible for designing and delivering legal services for these families.

One study alone cannot satisfy the many unanswered questions about how to respond to the legal needs of parents with psychiatric disabilities to ensure that they receive adequate legal representation. However, this research offers much-needed insight into the experiences of parents with psychiatric disabilities and

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117. See NICHOLSON ET AL., CRITICAL ISSUES, *supra* note 14.

what they perceive as necessary to support them. We learned that parents believe there is a need for the legal profession, both attorneys and judges, to understand mental health better. We discovered that supporting parents with psychiatric disabilities who are involved in custody or visitation disputes requires far more than litigation—it may require comprehensively and clearly explaining the process, helping with administrative tasks, coordinating with others on behalf of the parent, and providing referrals to additional supports. We found that parents with psychiatric disabilities often need ongoing legal representation, even after their initial legal issues appear to be resolved.

Based on this Study alone, we do not presume to explain the needs of all parents with psychiatric disabilities, nor can we make broad generalizations based on the Study's findings. Instead, we first offer insights provided by a group of parents who were previously served by a legal services program for parents with psychiatric disabilities. Second, we attempt to understand how their needs and experiences can inform the legal profession. Finally, we suggest implications for future research and policymaking. In this next Part, we consider areas warranting further attention by legal scholars and those responsible for developing policies concerning best practices in legal representation for parents with psychiatric disabilities and their families.

#### *A. Future Research*

Study findings provide essential grounding for future research about legal representation for parents with psychiatric disabilities. Research related to the legal needs and experiences of parents with psychiatric disabilities is emerging.<sup>118</sup> Nonetheless, the need for additional research is immense and there is huge potential for important follow up studies. The legal profession cannot adequately respond to the legal needs of this population without understanding mental health better. This Section highlights areas necessitating future research.

First, more knowledge is needed about the legal profession's understanding of mental health. For example, what, if any, mental health training do attorneys and judges receive as part of their law school education or continuing legal education? Study findings

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118. See Dayna Bowen Matthew, *Medical-Legal Partnerships and Mental Health: Qualitative Evidence That Integrating Legal Services and Health Care Improves Family Well-Being*, 17 HOUS. J. HEALTH L. & POLY 343 (2017) (presenting qualitative evidence that medical-legal partnerships can improve patient mental health and family well-being).

corroborate prior scholarship that suggests the legal profession, largely, lacks knowledge about mental health. What are the consequences of this paucity of training and awareness? Are cases that involve parents with psychiatric disabilities negatively affected by the legal profession's dearth of knowledge? How do attorneys and judges perceive their understanding of mental health? Empirical research is needed to begin to dissect the little knowledge and training about mental health by the legal profession as well as its impact on outcomes. Scholarship should also explore opportunities to improve the legal profession's understanding of mental health, including collaborations with mental health professionals such as social workers and psychologists.

Additionally, more research is necessary to better elucidate how the legal profession can more effectively represent parents with psychiatric disabilities. Unquestionably, much of the work attorneys perform—especially those who represent low-income individuals—goes far beyond the courtroom.<sup>119</sup> Attorneys often provide services similar to those of social workers, such as providing referrals to services and counseling.<sup>120</sup> Furthermore, as advisors, attorneys often offer legal and non-legal advice to their clients.<sup>121</sup> Even when the client's capacity is diminished, attorneys are expected to communicate and advise their client regularly.<sup>122</sup> Lastly, attorneys can empower their clients by helping them to understand their legal rights.<sup>123</sup>

Similarly, more discussion is needed on how attorneys communicate with parents with psychiatric disabilities. The participants in this study emphasized the importance of receiving

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119. See Jane Aiken & Stephen Wizner, *Law as Social Work*, 11 WASH. U. J.L. & POL'Y 63 (2003) (asserting that attorneys, especially those who work in legal services settings, often act as social workers).

120. *Id.* See also Stephanie K. Boys et al., *Lawyers are Counselors, Too: Social Workers can Train Lawyers to More Effectively Counsel Clients*, 12 ADVANCES IN SOC. WORK 241, 243 (2011).

121. MODEL RULES OF PROF'L CONDUCT r. 2.1, (AM. BAR ASS'N 2015) ("In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.").

122. MODEL RULES OF PROF'L CONDUCT r. 1.14 cmt. 2, (AM. BAR ASS'N 2015) ("The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.").

123. See generally David M. Engel & Frank W. Munger, *Rights, Remembrance, and the Reconciliation of Difference*, 30 LAW & SOC'Y REV. 7 (1996) (exploring how the Americans with Disabilities Act shaped the self-conceptions of people with disabilities).

assistance beyond what is considered “lawyerly.” They wanted their attorney to take time to explain the process in a manner they could understand, help with administrative tasks, and coordinate with additional supports and services. Are these tasks that attorneys should perform? Rather, would partnering with other professionals, such as social workers trained in this work, be most appropriate and the best use of resources? Further, how does the provision of these additional tasks affect outcomes for parents and families? This study included participants who were previously represented by a legal services program for parents with psychiatric disabilities. Although this program is presumably equipped to provide these additional supports, do other types of legal services also proffer them to parents with psychiatric disabilities? If not, should they? These questions—and many others—warrant future research about the role of attorneys who represent parents with psychiatric disabilities as well as ways to improve support for these parents and their families.

Other critical areas for inquiry are the types of legal problems parents with psychiatric disabilities experience, both custody-related and not, as well as the availability of existing services to assist these families. It is nearly impossible to know how to allocate resources to support parents and their families when data about their legal needs is scarce. Do parents with psychiatric disabilities experience legal problems unique to their demographic and if yes, what are they? Do the needs of parents with psychiatric disabilities vary depending on diagnosis? Are such parents able to access legal services to address these legal issues? If not, what are the barriers to having these needs met? Longitudinal and survey research is needed to better understand the legal issues these families face and how best to address them in light of limited resources.

These are just a few of many critical areas for future examination. As research regarding parents with psychiatric disabilities and their families increases, we expect these questions and many others will begin to be addressed. Additionally, it is essential that future scholarship include the perspectives of members of marginalized communities, including people with disabilities. As these study findings demonstrate, insights from parents with psychiatric disabilities should inform research about their needs and experiences if the legal profession is genuinely interested in effectively supporting them.

### B. Policy Considerations

As the scholarship on parents with psychiatric disabilities continues to expand, areas of potential policy intervention will become more practicable. This Article attempts to provide a better understanding of the legal needs of parents with psychiatric disabilities as well as their experiences with the legal profession. In turn, findings from this Study can inform the development and implementation of policies that might begin to address some of the unmet needs of similar parents and their families. Although a complete agenda is beyond the scope of this Article, this Part offers two policy areas worthy of consideration and study: (1) training for the legal profession; and (2) increased legal services.

#### 1. Training for the Legal Profession

Consistent with the existing literature, findings from our Study suggest that the legal profession lacks an understanding of mental health and how psychiatric disabilities impact parenting abilities.<sup>124</sup> Yet, being a zealous advocate<sup>125</sup> for parents with psychiatric disabilities necessitates an understanding of the parent's "specific disabilities, needs, and parenting capacities."<sup>126</sup> To adequately represent parents, attorneys also need to understand disability-specific symptoms, triggers, challenges, medications and how their side effects may affect parenting, as well as available services and the parents' support systems.<sup>127</sup> Building a trusting relationship, taking extra measures, as needed, to provide support, maximizing a client's engagement in the decision-making process, and providing reasonable accommodations are all important

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124. Lynda E. Frost & Connie J. A. Beck, *Meeting the Increasing Demands on Family Attorneys Representing Clients with Mental Health Challenges*, 54 FAM. CT. REV. 39, 45 (2016) ("Most attorneys are not trained as mental health professionals and diagnosis is beyond their expertise.").

125. MODEL RULES OF PROF'L CONDUCT r. 1.3 cmt. 1, (AM. BAR ASS'N 2015) ("A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.").

126. Claire Chiamulera, *Representing Parents with Disabilities: Best Practices*, 34 CHILD L. PRAC. 17, 24 (2015).

127. *Id.* See also Jan C. Costello, *Representation of Children: Representing Children in Mental Disability Proceedings*, 1 J. CTR. CHILD. & CTS. 101, 118 (1999) ("[A] well-qualified lawyer should be familiar with the language and concepts of mental health law. He or she should understand the possible effects of mental disability on the client, the significance of diagnoses, and the risks and benefits associated with common treatment methods, including psychotropic medications. This base of knowledge enables the lawyer to accurately assess the merits of the client's case and communicate effectively with mental health professionals. It does not qualify the lawyer to be a therapist, however.").

aspects of supporting parents with psychiatric disabilities.<sup>128</sup> Finally, attorneys must have a comprehensive understanding of issues related to competency.<sup>129</sup>

Hence, there is an urgent need for the legal profession to receive training about mental health. Law schools, for example, should introduce future attorneys and judges to information about mental health. Notably, scholars have suggested that the law school curriculum should include transdisciplinary education, explicitly recommending that law students would benefit from social work knowledge.<sup>130</sup> Certainly, this type of paradigm shift in legal education would allow law students to learn about mental health, as well as other types of disabilities and chronic health conditions.

Alternatively, continuing legal education training may be a more appropriate mechanism for providing attorneys and judges with information about mental health. Legal professionals in nearly all states are required to complete continuing legal education training each year to maintain their licenses to practice law.<sup>131</sup> Thus, training about mental health could be widely available to all legal professionals. At a minimum, however, individuals who work directly with parents with psychiatric disabilities, such as legal services' attorneys and family court judges, should be required to become educated about mental health and the needs of individuals with psychiatric disabilities.

Training about mental health for the legal profession will require the allocation of funding. Universities could encourage or require law school students to enroll in courses across disciplines. For continuing legal education training, this education could be funded similarly to peer courses, which are generally from law license fees and course tuitions. Policymakers should also consider requiring this type of training for legal professionals.

## 2. Increased Legal Services

Study findings indicate there is a dire need for increased and ongoing access to legal services for parents with psychiatric disabilities. This finding is consistent with existing research that

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128. Frost & Beck, *supra* note 124, at 46–47.

129. *Id.*

130. *See, e.g.*, Boys et al., *supra* note 120 at 252–53 (discussing ways to incorporate social work education into law school to better prepare law students).

131. *See* A.B.A., *MCLE Information by Jurisdiction*, [https://www.americanbar.org/cle/mandatory\\_cle/mcle\\_states.html](https://www.americanbar.org/cle/mandatory_cle/mcle_states.html) [<https://perma.cc/6LMW-Z2V3>] (documenting that continuing legal education training is not currently required of legal professionals in Maryland, Massachusetts, Michigan, South Dakota, and the District of Columbia).

demonstrates the importance of continuous legal services for parents who are low-income. Indeed, “individuals experiencing one civil legal problem are more likely to experience a new problem than those without any problems.”<sup>132</sup> Further, people from marginalized communities, including people with disabilities, are more likely to have ongoing legal needs.<sup>133</sup> “In short, multiple sources of disadvantage interact to increase vulnerability to civil-law problems while problem experience can in turn contribute to or reinforce characteristics of vulnerability.”<sup>134</sup> Not surprisingly, then, the ongoing availability of legal supports to address an array of needs is crucial for parents with psychiatric disabilities.<sup>135</sup>

The majority of the participants explained the importance of being represented by an attorney who has a robust understanding of mental health, including diagnosis, symptoms, and medication. Likewise, participants reported often needing additional services beyond what most attorneys provide, such as explaining things in a way they understood, assisting with paperwork, and coordinating with support providers. Unfortunately, however, several of the participants explained the difficulty they had in obtaining effective and affordable legal representation that met their needs, especially for matters not related to custody or visitation. Accordingly, policymakers should explore opportunities to expand legal services for parents with psychiatric disabilities. And as noted in the previous section, it is crucial that attorneys providing those expanded legal services be adequately trained to support parents with psychiatric disabilities.

Expanding access to legal services, vis-à-vis the allocation of additional funding, must also be a priority for people who are responsible for developing and implementing policies. There is a paucity of available legal services for people who are low-income, which only adds to the challenges facing parents with psychiatric disabilities. Indeed, “more than half of those who seek help [from federally funded civil legal aid programs] are turned away.”<sup>136</sup>

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132. Smith et al., *supra* note 82, at 146.

133. *Id.* at 147.

134. *Id.* at 147 (citing PASCOE PLEASENCE, *CAUSES OF ACTION: CIVIL LAW AND SOCIAL JUSTICE* (2d ed. 2006)).

135. Judith A. Cook & Pamela Steigman, *Experiences of Parents with Mental Illnesses and Their Service Needs*, 11 J. CAL. ALL. FOR MENTALLY ILL 21, 21 (2000).

136. *Access to Justice: About the Office*, U.S. DEPT JUSTICE, <https://www.justice.gov/atj/about-office> [<https://perma.cc/3QG6-5SUT>] (stating the purpose of the Office for Access to Justice is to work with “system stakeholders to increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers.”).

Allocating additional funding for legal services would alleviate some of the unmet legal needs experienced by parents with psychiatric disabilities. In fact, research suggests that providing legal services to people who are low-income is cost-effective for the government.<sup>137</sup>

In addition to allocating additional funding for legal services for parents with psychiatric disabilities, policymakers should consider developing more holistic, multidisciplinary programs<sup>138</sup> to support these families. One such approach would be a medical-legal partnership which brings together the medical and legal professions to address the needs of at-risk people and communities.<sup>139</sup> By providing comprehensive services, medical-legal partnerships can holistically meet almost all of the needs of families. They can assist with a variety of tasks that would benefit parents with psychiatric disabilities and their families, such as applying for benefits, obtaining health insurance, and finding appropriate housing.<sup>140</sup> Of particular note, because medical professionals are a crucial aspect of these programs, legal professionals will have access to those with training in mental health. Furthermore, research indicates that medical-legal partnerships can improve mental health and family well-being.<sup>141</sup> Medical-legal partnerships are expanding, and consideration should be given to how they might support parents with psychiatric disabilities.

Whether developing legal services programs specifically for parents with psychiatric disabilities, increasing funding for legal services, or addressing the needs of parents with psychiatric

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137. See Greene, *supra* note 81, at 1317–18 (noting “past research has shown that by not seeking legal help, at least in some instances, people can end up experiencing a cascade of problems stimulated by the initial legal problem.”).

138. Stacy L. Brustin, *Legal Services Provision Through Multidisciplinary Practice—Encouraging Holistic Advocacy While Protecting Ethical Interests*, 73 U. COLO. L. REV. 787, 792 (2002) (“A multidisciplinary model can respond to the myriad needs of those who are poor or marginalized by their social, medical, or psychological circumstances.”).

139. See Milken Inst. Sch. of Pub. Health, *The Medical-Legal Partnership Toolkit Phase I: Laying the Groundwork*, NAT’L CTR. FOR MED. LEGAL P’SHIP 9 (2015), <https://medical-legalpartnership.org/wp-content/uploads/2017/11/MLP-Toolkit-Phases-I-and-II.pdf> [<https://perma.cc/Y5WD-GYKJ>]; but cf. Viviana Bonilla López, *Beyond Medical Legal Partnerships: Addressing Recovery-Harming Social Conditions Through Clubhouse-Legal Partnerships*, 43 N.Y.U. REV. L. & SOC. CHANGE 429, 474 (2019) (“While the [medical-legal partnership] model, through the development of [behavioral health-legal partnerships], has shown promising results, it has serious drawbacks as well. Clubhouse-Legal Partnerships offer a new way to support people with mental illnesses and their communities through direct legal representation, community education, and systemic action that respect their autonomy and build power for their communities.”).

140. See Matthew, *supra* note 118.

141. *Id.* at 345.

disabilities through medical-legal partnerships, it is essential that policymakers make increasing access to legal services for these families a priority. Parents with psychiatric disabilities experience a number of disparities within the legal system and ensuring that they receive effective and affordable legal representation is important to protect their rights.

### **Conclusion**

Parents with psychiatric disabilities and their families experience substantial adversities and have many unmet needs. Indeed, a growing body of scholarship has found that parents with psychiatric disabilities contend with significant and pervasive discrimination within both the child welfare and family law systems, often resulting in the loss of custody or termination of their parental rights. Moreover, existing research indicates some children whose parents have psychiatric disabilities experience deleterious outcomes. Less understood, however, is the role the legal profession should play in working with parents with psychiatric disabilities and their families to address these needs and outcomes. This Study makes a novel contribution to legal scholarship by using empirical analysis to examine the perceived legal needs of these parents.

Deprivation of the right to parent for people with psychiatric disabilities is, in part, the result of bias and lack of understanding of how to support parents with psychiatric disabilities and their families. To counter pervasive negative stereotypes and ensure that all parents are treated justly, the legal profession must provide adequate representation. As this Article demonstrates, many challenges remain. First, there is a dire need for the legal profession to understand mental health better. Second, to support parents with psychiatric disabilities, attorneys may need to perform tasks that are outside their usual work or make referrals to other professionals who can fulfill such needs (e.g., social workers). Third, parents with psychiatric disabilities may need access to ongoing legal services for both custody and non-custody related matters.

Undoubtedly, many issues persist for scholars, the legal profession, and policymakers to resolve. Further research and consideration must address issues related to better understanding the needs and experiences of parents with psychiatric disabilities and their families as well as the advancement of evidence-based strategies for attorneys representing them. Future attention must also focus on the development and implementation of legal interventions and policies to support these families.