

We noticed years ago that almost all of our clients seem to lack an incredibly important aspect of any “integrated” life: a nuclear family. Our research into the problem showed that there is a long and sordid history in the United States of denying people with psychiatric disabilities the fundamental right to raise their own children. In its amicus brief submitted in *University of Alabama v. Garrett*, 121 S.Ct. 955 (2001), the Bazelon Center for Mental Health Law summarized:

By the early 1930s, more than thirty states had enacted sterilization laws permitting the involuntary sterilization of persons in state institutions, including "the feeble-minded," "epileptics," "idiots," "morons," "mental defectives," "socially inadequate," "the diseased," "alcoholics," "manic depressives," "schizophrenics," and "mentally enfeebled paralytics." Between 1907 and 1963, those laws were used by states to sterilize at least 60,000 persons. In its infamous decision of *Buck v. Bell*, 274 U.S. 200, 205-207 (1927) the Court explicitly endorsed the involuntary sterilization of a seventeen-year old girl.¹

Though forced sterilization was curtailed, the "vast majority" of states maintained laws against people with psychiatric disabilities marrying until recently, and in family courts "a pervasive presumption that parents with disabilities are automatically unfit" persists.²

According to one expert in the field, the prejudice against parents with psychiatric disabilities often trumps even the strong presumption in favor of the primary caregiver in custody proceeding. For example, in one of her cases, the court granted custody to a father who was physically abusive and using cocaine instead of a mother with a psychiatric disability. In another case, Leslie, who suffers from Bipolar Disorder, was a stay-at-home mother for her nine year-old Joanne for the duration of her 14-year marriage. Her husband Bob often traveled for business, and never once hesitated to leave Joanne in her care. When Leslie got divorced, however, Bob won custody of Joanne due to Leslie's psychiatric diagnosis, despite years of stable, positive parenting and pleas from Joanne's teachers, friends' parents, and Leslie's psychiatrist. Leslie is now allowed only 6 hours per week of supervised visitation, which is usually reserved for parents with a history of child abuse or violence.

Not long ago we had a client who would lose her public housing apartment if we didn't argue that her mental illness had prevented her from challenging an eviction within the statute of limitations. Her Family Court-appointed lawyer, however, told her that if anyone found out about her mental illness, she would automatically lose custody of her children regardless of her fitness to be a parent.

Statistics support our anecdotal evidence of the tremendous need for expanding to serve parents with psychiatric disabilities. Most adults with psychiatric disabilities are

¹ <http://www.bazelon.org/issues/disabilityrights/legal/briefs/garrett/scholarsbrief.html#III> (footnotes omitted)

² *Id.*, describing state court abuses of the "best interests of the child" standard.

parents (68% of women and 57% of men).³ Roughly 70 percent, however, lose custody of their children.⁴ In New York State, 16% of families involved in the foster care system and 21% of those receiving preservation services include one parent with a psychiatric disability.⁵

In addition to breaking up nuclear families unnecessarily, this prejudice has led to a bizarre and unintended result that serves neither parents nor children: **to keep custody of their children, parents with psychiatric disabilities avoid diagnosis and treatment.** While there are undoubtedly unfit parents with psychiatric disabilities (just as there are unfit parents without psychiatric disabilities), they should be judged on their ability to parent, not on whether they have a psychiatric diagnosis.

There are many wonderful organizations helping low-income people in Family Court, however, none are focused on parents with psychiatric disabilities. Our Parents with Psychiatric Disabilities Legal Advocacy Project will level the playing field by providing mentally ill parents with the representation, support, information, and advice they need to keep custody and to succeed as parents.

³ Judith Samuels and the Center for the Study of Issues in Public Mental Health, Lessons Learned at the Motherhood & Mental Illness Conference: How Systems Create Barriers to Parenting, April 2003

⁴ Joanne Nicholson, K. Biebel, B. Hinden, A. Henry, L. Stier, Critical Issues for Parents with Mental Illness and their Families, Center for Mental Health Research, UMass, (2001)

⁵ Strengthening Families Fact Sheet: When a parent has mental illness: child custody issues National Mental Health Association