The Hiscock Legal Aid Society Article 10 Team consists of three attorneys and a social worker who work collaboratively to get families who have been separated reunited. The attorneys, Michael Younis, Thomas Babilon, and Heather Prado work tirelessly to represent parents through all steps of the child welfare process. They’ve worked with the court, county attorneys and the Department of Children and Family Services (DCFS) to establish a system where they are notified of potential clients immediately, sometimes even before a child welfare petition has been filed, so that they can get in contact with the parent and be in court with them during the critical Emergency Shelter Hearing. The Article 10 Team recognizes the importance in representing parent clients from the very beginning of the child welfare case to increase the likelihood of reunification. Justine, the Article 10 social worker, assists parents in getting the services and referrals they need. The team’s collaborative approach helps them come up with creative solutions and “out-of-the box ideas to allow for reuifnciation.” The team’s supervising attorney, Amanda McHenry, shares that the team is incredibly “knowledgeable” and “hardworking”, and they offer assistance to any Legal Aid colleague “whenever needed.” The Article 10 Team continues to zealously advocate for their clients amidst the Covid-19 pandemic, making calls, participating in Skype meetings, and showing up for every video-scheduled hearing or conference.

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How long has the Article 10 Team been in existence and how did you all become involved in the child welfare system?

**Michael:** I started working for the Family Court Program when Legal Aid became the primary attorneys of assignment in family court in 2004. I had a two-year hiatus from Legal Aid as a private attorney. Later, I returned to Legal Aid and had a brief stint with the civil program. Finally, I went to family court and was doing almost exclusively Article 10 cases. I have now spent approximately 14 years working on Article 10 matters. I was in the US military, a member of the Army. After I got out, went to get my bachelor’s degree and from there got my J.D. in 2000. Most of my time as an attorney, other than that 2-year stint in private practice, has been with Legal Aid.

I come from large family of 12, so family means a lot to me. I originally left Legal Aid because I really felt like I could do something for families in private practice. But after working on several Article 10 cases, I realized that my help was really needed in the child welfare arena.

*Fun fact about Michael:* he has a passion for animals and absolutely loves Syracuse University sports!

**Tom:** I have been a member of the Article 10 Team since August 2018, when I joined Legal Aid. I began practicing law in 2003. From 2003 – 2008, I was in private practice primarily doing criminal defense work. I also did a lot of family law work during this time. From 2008 – 2018, I worked as an Assistant Corporation Counsel for the City of Syracuse. I worked in different areas of municipal law during this time and did not find it to be as satisfying as my previous work. During this time, I was sometimes asked to do things that I did not feel were in the best interests of the people in the community and this, at times, made me feel uncomfortable in my work.

I was very happy when I got the opportunity to join Hiscock Legal Aid. I was happy to get back to helping people who really needed my assistance. As a Legal Aid attorney, you get a chance to help people who really need your help. They cannot afford private counsel to help them, so they are really relying on you. Our county has a lot of assigned counsel attorneys and it is sometimes a gamble on who an indigent client is going to get to represent them. We have some great attorneys on the assigned counsel panel and some who just don’t do the best job. With Legal Aid, I was immediately impressed with all the work that all of the attorneys do here. Everyone is really dedicated to helping all the clients, it’s a really great experience.

*Fun fact about Tom:* he ran for City on Syracuse Common counsel in 2019 on the Libertarian line. Here is the link to the article in www.Syracuse.com with lots of other facts about Tom - https://www.syracuse.com/politics/cny/2019/10/election-2019-meet-the-6-syracuse-candidates-running-for-2-at-large-council-seats.html
Heather: I joined Hiscock Legal Aid in 2016, I had been in private practice for ten years prior to that. I have been on the Article 10 Team since its inception. I do primarily defense work and abuse and neglect matters. I love what I do and can’t imagine doing anything else. There is lots of heart break and disappointment but if you can make a small difference or get one family back together, that makes everything all worth it.

*Fun fact about Heather: She is a beekeeper with three sons!

What are Article 10 cases and how does your Article 10 Team work?
The name, Article 10 cases, refers to the Family Court Act (FCA) Article 10 which establishes procedures and practices for handling child welfare cases in New York. The Article 10 Team evolved as it became apparent that Legal Aid had a lot of Article 10 matters in front of judges. We realized we needed to focus attorneys specifically on Article 10 cases because that’s where we can do the most good. Article 10 cases and the child welfare system does a lot of harm to families and kids. We work with judges who are presiding over almost exclusively Article 10 matters. In our county, there are three family court judges who handle all of the Article 10 cases, along with other family court matters. Our team works together in researching the law and passing it around. We’re all sounding boards for each other. We also have other people in our office who can be resources, like the Appeals Unit. The three of us take the abuse and neglect cases, but we’ll take other cases as well, like custody cases. If we represent a client in a neglect case, and the client has a pending custody matter, we will stay with the client for consistency. Our primary focus is Article 10, but we take on other matters that are practical and beneficial to our client. There is nothing more frustrating than a client who has multiple attorneys.

Justine is the permanent social worker on our team. She, along with our Syracuse University School of Social Work graduate and undergrad student interns, help our individual clients. Justine and the students guide, help, encourage, and direct our clients. They make connections so our clients can get critical services. But for their efforts, I don’t know if many of our clients would be able to successfully reunify. Having a social worker in-house is invaluable. In child welfare cases if someone is going to get short-shifted, it’s going to be our clients. All parental defense attorneys should have a social worker on their team helping the client.

Describe some efforts you have made to improve the child welfare practice in your area.
In New York State, under Article 10 of the Family Court Act there are two types of hearings that consider removal or return of the child(ren) under Section 1027 and Section 1028. 1027 hearings are those initial Emergency Removal Hearings. Legislatively, it makes sense to have those hearings as quick as possible, within 24-hours, they shouldn’t be unnecessarily delayed. The Emergency Removal Hearings in Onondaga County have historically occurred without parental representation, these hearings happen within 24 hours and parents might not have anyone in court advocating for them. We have built up a relationship with the court and all stakeholders in family court, explaining to them the importance of getting these cases early. Now, we do get calls from the court or the court attorney as soon as CPS gets involved. We become aware of a potential case even if a petition has not yet been filed. We’ll run these June is National Reunification Month
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potential clients for conflict checks, we ask the court to send us any information they have so we can read it over, and we receive all contact information. But even if an attorney is assigned in time for these Emergency Removal Hearings, we really only have moments with our client before we get in front of the judge.

Michael explains: I remember a removal I had on Tuesday, it’s an example of just this sort of thing. We got a call around 10:30 am about this case. I must have called the client 5-6 times. We were originally scheduled for a hearing from 1:30 – 2:30 pm via Skype. Five minutes before we were to appear, I get the client on the phone. I told her, “I’m going to hang up on you so I can ask the judge for more time.” We ended up appearing before the judge after 3:00 pm. The judge read the allegations and asked for my response. I explained that I only had moments to speak with my client. And that’s really hurtful because at this point, the judge’s inclination is to have removal.

The point is that even if an attorney is assigned before the Emergency Removal Hearing, we only have moments with our client. By the time the paperwork makes its rounds, we don’t get all the information until 1:30 pm for a 2:00 pm hearing. We try to get to court early to figure everything out. We want to get any information as fast as we can and have the time to sit down with our client. Normally, this can take hours and often we only have minutes.

**What is one thing your team does when working with parents to increase the likelihood of reunification?**

One thing we do that makes a huge difference is providing early representation for these parents. If we can get over to the court and just get a few minutes with the parent before going into the Emergency Removal Hearing, this makes the world of difference. If we can talk to parents first, they better understand what’s going on and what they need to do. We caution them about making any admissions on the record and explain what they should say or what they should not say. It’s important to be right there from the very beginning to assist and guide them. Instead of them having to wait for an attorney to be assigned down the road and figure out everything much later. If an attorney is at the emergency hearing, you can come up with better solutions, solutions that might not have been thought of if you (the attorney) weren’t there. Solutions like placement with a relative or keeping the child in the family home under a safety plan, like having another adult living in the home with the family. Without an attorney, the parent might not be able to get that information together because they’re just so overwhelmed by this entire process and traumatic experience.

When we get something from the court, and it doesn’t matter what part of court or which judge is presiding over the hearing, whoever’s available will just go and make sure that the parent has an attorney. Onondaga County is still doing removals via Skype and we’re still there for our clients. We’re still getting those calls from the court and reaching out and talking to clients and figuring it all out.
Michael explains: A lot of what happens in that first appearance before a judge can really affect a case. I had a case where the mother delivered my client’s baby while incarcerated, the child was born in the justice center. The father (my client) was subjected to an Emergency Removal Hearing against him because, according to the department, the attorney for the child, and the judge (who were all present), he refused to consent to working with DCFS and allow DCFS to visit his home. This father was not charged with neglect but because he refused to agree to work with DCFS and allow them home visits, the court had the authority to consider whether his child should be removed.

This father immediately came over to our office, he was so confused. He explained that he didn’t refuse to cooperate or work with DCFS, he was just asking why he needed to cooperate. He just didn’t know what to say or what to ask, everything happens so quickly in these cases. During the next court appearance, about 1 ½ weeks later, I appeared as his attorney. I was told by the county attorney and child’s counsel that my client refused to comply with the court’s order and refused to cooperate with the department. My client was adamant that this was untrue, he told me, “I never said that.”

After that appearance I requested a copy of the recording of the previous proceedings and listened to the entire 40-55-minute proceeding. I get to the part where they discuss cooperating with DCFS and allowing home visits by DCFS caseworkers, and all my client asked the court and the department is why he needs to agree, as he was not being charged with anything. I listened to the entire proceeding and he never said “no” to the request to cooperate with DCFS, he just kept asking the judge “why?” At one point he asks, “can I have an attorney?” and the court told him no because he was not eligible. I went to court and I told the judge, “I sat down and listened to this whole proceeding, and I am telling you right now, my client never once said he would not cooperate with DCFS and allow home visits.” It took six weeks of fighting before getting this child into his father’s care. This child was taken immediately from his dad, my client had to fight the whole way just to parent his own child. This child went to a pre-adoptive family even though my client was never ever charged with anything. Had I been there as his attorney from the beginning, I could have explained the situation to him and there would not have been any miscommunications.

Unfortunately, now you can’t just ask for court recordings so easily. You need to formally order a transcript; this takes longer and is much more expensive. This is another barrier and is another reason why parents need representation at the get go.

**What are some of the weaknesses of the child welfare system in your area?**
There are not enough services in our county. A lot of clients need to go to parenting or domestic violence classes, and there are long waiting lists. We are experiencing a heroin and opioid crisis, and there are nowhere near enough treatment facilities – neither inpatient nor outpatient. I have a client who is ready to enter into an inpatient program today, but a bed won’t be ready for two weeks. Clients have to do X, Y, and Z, but they can’t even start X, Y, and Z because of the huge waiting lists.
There aren’t enough supervised parenting facilities in our county. If our parents are ordered supervised visitation, we ask for as much visitation time as possible. But there are long waiting lists for these visitations because there are only two facilities that supervise in our county. Otherwise, the parents have their visits in CPS facilities, which are very sterile environments.

What are some practices or programs that you believe are ineffective in helping parents reunify and need to be changed?
One of the selling points for people to become foster parents is that they think it’s a fast-track to adoption. A lot of foster families are looking to adopt children. They come into the foster program as pre-adoptive parents, which means that they’re already approved to adopt. There is an inherent conflict of interest to have caseworkers working towards reunification with parents while also working with foster families who want to adopt a child. Even if the caseworkers don’t realize it, there is this unconscious bias that creates a conflict. When caseworkers are helping foster parents get adoption services, that’s when we know DCFS is not truly working toward reunification of the family.

Michael explains: I had a case where five children were involved. Two of the children were in pre-adoptive foster homes and three of the children returned home. The department didn’t want to return the last two children because the foster parents wanted to adopt these kids. The problem that I see with our system locally is that it’s very caseworker dependent and there is no consistency coming from the department. Many times, the entire case hangs on which caseworker you have. Some caseworkers are very centered on reunification and others are more interested in keeping children in foster care. The caseworker has too much discretion. Which caseworker is assigned to the parent can determine whether the child will be returned to his family, these cases should never operate that way. Whether the client can have his or her child returned should have nothing to do with a caseworker’s personal opinions and preferences. There is no set departmental policy about when reunification should occur and there needs to be. Caseworkers need more structure; they need a policy.

Ideally, we’d love to be involved before a neglect case is filed. Oftentimes, a neglect allegation comes in and the department starts investigating. It is during these initial steps when a lot can go wrong and the case can be set up for failure. Conversations between parents and caseworkers are misconstrued and misremembered. A lot of my clients will explain to me, “I didn’t say it that way” or “I didn’t mean it that way.” And then it’s the word of my client against the case worker who remembers it differently. We don’t know a client exists before the removal file, but the department has been involved prior to the filing for removal. The department may be asking the client to do things and the client just doesn’t understand what’s being asked or what they need to do.
What is one thing you recommend in working with parents to increase the likelihood of reunification?
I encourage clients to engage. My first goal is to return the child to Mom or Dad. My second goal is to deal with the neglect charge. I can still get the kids back to their parents even if the court issues a finding of neglect. I try to get the family reunified before having to go to trial, because then we can get DCFS to negotiate an adjournment or contemplation of dismissal. If there is no strong case at trial, I tell my clients that you need to engage in services, and you need to work with the caseworker. I remind my clients that they must work with the caseworker and deal with them. If something is wrong or my clients don’t agree with the caseworker’s actions or attitude, I tell them to give that to me. I’ll be the bad guy, you don’t need to be. Maintain your relationship with the department and the caseworker. If there is a problem, you deal with it as politely and nicely as you can. Let me be the “bad guy.”

What is the biggest challenge that parents face when trying to reunify with their kids?
The parents need more support from the courts. The county needs to understand that if we are really trying to achieve the child’s best interest, the goal has to be to reunification. There needs to be genuine efforts to return the child and those efforts need to be monitored and tracked consistently, not just in the permanency hearing with a reasonable efforts update. It feels like we’re sitting there checking boxes towards Termination of Parental Rights. The judge needs to step up and say to the parent, “we want you to get your kids back and this is what you need to be doing to make sure that happens.” The court needs to hold the department accountable throughout the entire process. Sometimes, the department will do what’s required of them, but they just won’t do their job well. And the court needs to step in and intervene when that is happening.

The department and court also need to recognize that these kids are bonded with their parents, their self-esteem is rolled up in them. We need to fix problems in the household so that kids can stay with their parents. If a family bond is preserved, the children will do better. The department and courts need to put more effort into fixing the problems that bring families into the child welfare system, and they must have a sincere desire to achieve that.

Michael explains: I had a case that started in July 2019, the client had seven children removed because of an accidental injury to two of the children. The parents delayed in getting the children to the hospital and the department removed all seven children. Three of the kids were returned in February and the rest remained in various placements. Covid-19 happens and the remaining kids were still separated from their parents. I wrote a letter to the court and DCFS, asking that the remaining children be returned to their parents. The department rejected my request. But the judge put this case on the court’s calendar herself. I was able to get two of the kids returned at the end of March and two weeks later, the other two returned home. All seven kids are now reunified with their parents. Things are going well for the family now; they have the support they need.

What’s interesting about this case is that the judge did not initially order the children’s removal. The department showed up at the family’s home, despite the judge’s order. The father got irate and the
department used the father’s angry outburst to have these kids removed. The department said the father had “anger issues”, they blew the whole thing out of proportion. The initial caseworker was seriously discussing a Termination of Parental Rights, but then the caseworker changed and so did the perspective of the case. Judges often order whatever DCFS asks for, but once you start chipping away at the notion that “these guys [the department] are doing everything right”, that’s when you can really help these families.

How has working with parents impacted the way you think about reunification?

Michael explains: There’s not a single case that motivates me, hundreds of them do. The clients who are dedicated, who will do everything to get their children back, those clients really motivate me. These parents made a mistake or a few mistakes and really want to fix their lives to get their kids back. Those cases make it all worth it. When you have a successful reunification, that’s what drives you to keep doing this work.

There is one amazing case that I think about a lot. Dad had been charged with abuse of his son when the child was four or five, prior to my representation of him. So, the child was placed in Mom’s custody. Dad went to all the services, he did everything he needed to do and completed all the programs but was still not allowed to see his child. The child was later removed from Mom’s custody due to neglect. So, the child went back into the child welfare system. The child struggled and ended up in a residential facility because his behavior was such that he couldn’t stay with his foster family.

This facility had an open-door policy, as long as you were appropriate, you could come visit any time. Dad was up there all the time. His son had big outbursts throughout the beginning of his stay. During these outbursts, the staff would have to pin the child down. Because Dad visited so much, he was often there during these outbursts and he would lay on the floor next to his son and just talk to him, trying to calm him down. He never gave up on him.

Now the child’s behavior has started improving and Dad was able to reunify with his son. There was almost a decade between the initial abuse charge against Dad and the moment when he could reunify. Dad did do some serious harm and that’s why the child was initially removed from his care. But now the child is improving because the father made a commitment to do right. Dad recognized his own transgression and never blamed anyone else, he recognized, “I have an obligation and I have a duty.” People like this dad, they make mistakes, and might do stupid things and regret it later on, but that doesn’t mean they’re a bad person and should never have their child in their care. With the right help and guidance people can be healed and the whole system needs to understand this. This dad did a terrible thing, but he learned from it and went on to be his son’s biggest support. This case is an example of how the child welfare system can help people and how it is able to benefit these parents. Parents can be rehabilitated, but some caseworkers don’t believe that.

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What practices are most effective in helping parents reunify?
The way court rooms are set up, there are waiting areas outside of the courtrooms where all attorneys, clients, and caseworkers wait before their hearings. I use this waiting time and space to talk to and about my client. I highlight the positives, in front of the case worker or with the caseworker. I focus on talking to the caseworkers about the issues my clients are having, to educate caseworkers to look at the case differently. We are trying to change minds. I take advantage of any opportunity to try to persuade people in any way I can.

I make sure my clients know I’m fighting for them all the time, even outside of court. I don’t stop in the courtroom. Out of the courtroom I am still advocating, still pitching new ideas or practices, still challenging the department. I am always representing them. If I hear people badmouthing my client, I point this out. Sometimes there is nothing I can say, but I still try to remind them that this is a person they’re talking about.

Is there any advice that you would like to give judges, agency directors, legislators, governors about how to improve the system?
We would like to see legislation that brings parental defense attorneys on the case as soon as the case is hotlined. This does not happen. As soon as the three of us get an assignment, we’re calling the client, calling the county attorney, figuring out who the caseworker is. My office is trying to call the parent just to let them know that someone else is on their side, that they’re not alone. This is really important because many of the clients think that we’re just one of the people who removed their child, that we’re part of the problem. I sometimes have to start with, “No, I am not the one who removed your child.”

The department also overwhelms these families with services. And there is a huge lack of availability of these services. The department often points out that my clients don’t complete their services, and I argue, of course they didn’t complete their services, they’re just getting into the programs. These service providers are overwhelmed and there’s such a backlog. The time when my client was waiting to get into a treatment program or receive services should not be considered “reasonable efforts” made by the department. Since there are not sufficient services in the county, I would love to see the state increase the number of service providers and make these services more accessible and available.

Further, the department will often ask for my client to complete more services than are required and necessary. As the case progresses, the department will ask for my client to complete additional services that the department didn’t originally request. For example, the department will ask for my client to complete a domestic violence (DV) program when domestic violence never occurred in the current child welfare matter. My client had successfully completed a DV program two years ago, why would he need to do so again when there are no DV charges against him? The department should focus on only requiring services that are truly necessary and helpful to the clients. Inundating these clients with services will just overburden these parents and make it harder for them to be successful in the programs or services that are actually imperative to their health, well-being, and ability to reunify.

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Are there any programs or practices that you’d like to see implemented that would improve the child welfare system?
We would like to see more certified social workers at DCFS in the client’s homes, working directly with the clients. When services are available, clients are given a number to call. We have clients with cognitive limitations, substance use issues, those who have a difficult time just living day to day, and then the caseworkers just hand them a sheet and say, “go call this number.” There are some case workers who will step up and really help the parents, but those are few and far between.

Having a certified social worker in the office with us, on our team, is critical. The social worker helps direct and lead our clients. Sometimes we can talk to our client’s caseworker, but sometimes the caseworker doesn’t want to talk to us because we’re the other counsel. There isn’t only a need for more services, but there’s a need for more people to be there for the families and to walk them through what’s going on. Don’t just hand these families a phone number for them to call. Sit down with them, call the service providers together, schedule appointments with them, look at bus schedules together – all those types of things. You can’t just give these parents bus passes and a phone number.

What preventative actions are most effective in avoiding conditions that lead to foster care?
We need better access to housing, to health care, to food, all those types of things. What tends to happen in these situations is that there is a break down in the household. Mom or Dad cannot get critical resources. Or Mom and Dad are working long hours to get these resources and the tween or teenage kids might choose not to go to school because Mom and Dad are not there to shuffle them off to school.

I’d like to see things like more accessibility to daycare, affordable housing, and more opportunities for employment. We need better mental health services and health care for these communities. Lots of these parents are just dealing with mental health issues or PTSD because they themselves were abused and experienced suffering.

Is there any advice that you would like to give to professionals who work in childcare and/or to individuals considering working in childcare?
As far as advice to other attorneys, you have to take the client as they are. You have to be compassionate. You have to understand that even despite their faults, they are a person. If they believe you are there for them, if you treat them with respect and compassion, these parents will have the opportunity to get better. I am always troubled by representing a person accused of sexually abusing a child, but I also know that they deserve good representation. I struggle with not being judgmental. I will point out what they did, and the need for these parents to accept that they’re responsible. But as their attorney, you need to always have compassion and respect.

The caseworkers need to believe that the families should be reunified. They need to realize that the children who are removed from parents harbor a lot of guilt and self-doubt. If you’ve ever talk to someone who’s been adopted, they want to know why their parents gave up on them. I’ve even had clients who are offered good terms to surrender parental rights with regular contact with their kids, and

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they turn that down. These parents explain that even though it’s unlikely that they will be reunified with their children, they don’t want to their kids to think they gave up on them.

Do you think there are any public misconceptions about the child welfare system? If so, what are they?
When I first explain to people what kind of work I do, their first reaction is always that I’m representing sex offenders or people who abuse their kids. There is always this misconception that when people get into this system, they’re 100% a bad parent or shouldn’t have their kids in the first place. The public doesn’t understand that it’s very easy to get brought into the system. Even parents who do everything right become involved with child welfare. I have had parents brought in on educational neglect cases because the school district has lost records that the parents submitted. I have worked with parents who are being investigated for neglect for malnourishment and other medical issues, and we later discover that the parents didn’t do anything wrong, that a child was just in a low height/weight category because of genetics or pre-existing health conditions. I have had cases where parents are pulled into the child welfare system for doing something very minor. But the public wants to believe all parents are in the system for good reasons.