

# **Cycle of Failure**

HOW MICHIGAN KEEPS “THROWING THE FIGHT” FOR CHILDREN –  
AND HOW TO MAKE THE STATE A CONTENDER AGAIN

**National Coalition for  
Child Protection Reform  
53 Skyhill Road (Suite 202)  
Alexandria VA 22314  
(703) 212-2006  
info@nccpr.org  
www.nccpr.org**

# Cycle of Failure

HOW MICHIGAN KEEPS “THROWING THE FIGHT” FOR CHILDREN –  
AND HOW TO MAKE THE STATE A CONTENDER AGAIN

*By Richard Wexler, NCCPR Executive Director  
February 18, 2009*

## CONTENTS:

OVERVIEW	5
<i>Michigan’s war against grandparents</i>	8
<i>An X-ray of DHS’ soul</i>	13
WRONGFUL REMOVAL DRIVES EVERYTHING ELSE	17
<i>The coming TANF train wreck</i>	19
Beyond lemonade: case histories	22
<i>You’re only damned if you don’t</i>	23
The data behind the cases	27
<i>Comparison shopping in Grand Rapids</i>	28
Who is harmed?	34
<i>Michigan ignores the “evidence base”</i>	36
How taking fewer children can make children safer	37
Addicted to <i>per-diems</i>	39
<i>When the issue is drugs</i>	40
MICHIGAN’S CHILD WELFARE HISTORY	41
The Binsfeld betrayal	43
<i>Reality check: How the system really works</i>	45
<i>Michigan’s “express lane” to indefinite foster care</i>	52
Adoption-at-all-costs	54
<i>1995 / 2005</i>	55
HANGOVER FROM THE BINSFELD BINGE	58
The Udow era	58
The campaign against Family to Family	59
<i>The Michigan child welfare brain drain</i>	60
Squandering \$100 million a year the Michigan way	64
And now, the war against grandparents	65
RECOMMENDATIONS	66
Help for families	66
Due process	69
<i>Leveling the playing field in Washington State</i>	70
Additional recommendations	74
Endnotes	76

*This report is dedicated to the memory of the children of Michigan who were taken from their parents in the name of “child safety” only to die in the duly-licensed homes or institutions of strangers, including:*

*Timothy Boss  
Joshua Causey  
Johnny Dragomir  
Ricky Holland  
Isaac Lethbridge  
Allison Newman*

### **ABOUT NCCPR**

The National Coalition for Child Protection Reform is a non-profit organization whose members have encountered the child protection system in their professional capacities and work to make it better serve America's most vulnerable children. **Board of Directors: President:** *Martin Guggenheim*, former Director of Clinical and Advocacy Programs, New York University School of Law. **Vice President:** *Carolyn Kubitschek*, attorney specializing in child welfare law, former Co-coordinator of Family Law, Legal Services for New York City. **Directors:** *Elizabeth Vorenberg*, (Founding President) former Assistant Commissioner of Public Welfare, State of Massachusetts; former Deputy Director, Massachusetts Advocacy Center; former member, National Board of Directors, American Civil Liberties Union; *Annette Ruth Appell*, Associate Dean for Clinical Affairs, Washington University Law School, St. Louis, former Associate Dean for Clinical Programs, William S. Boyd School of Law, University of Nevada, Las Vegas; *Marty Beyer, Ph.D.*, clinical psychologist and consultant to numerous child welfare reform efforts; *Ira Burnim*, Legal Director, Judge Bazelon Center for Mental Health Law, Washington, DC; former Legal Director, Children's Defense Fund; former Staff Attorney, Southern Poverty Law Center; *Prof. Paul Chill*, Associate Dean, University of Connecticut School of Law; *Prof. Dorothy Roberts*, Northwestern University School of Law, author *Shattered Bonds: The Color of Child Welfare* (Basic Civitas Books: 2002); *Witold "Vic" Walczak*, Legal Director, Greater Pittsburgh Chapter, American Civil Liberties Union Foundation of Pennsylvania; *Ruth White*, Executive director, National Center for Housing and Child Welfare, former Director of Housing and Homelessness, Child Welfare League of America. **Staff:** *Richard Wexler*, Executive Director. Author, *Wounded Innocents: The Real Victims of the War Against Child Abuse*. (Prometheus Books: 1990, 1995).

**Funding for this publication, and NCCPR's other advocacy activities in Michigan is provided by The Skillman Foundation.**

**Created in 1960, The Skillman Foundation is a private philanthropy whose chief aim is to help develop good schools and good neighborhoods for children. Though grants are made throughout Metropolitan Detroit, most grants are directed at six Detroit neighborhoods – Southwest Detroit (Vernor and Chadsey/Condon), Brightmoor, Osborn, Central and Cody/Rouge – and toward innovative and successful schools throughout the city of Detroit. With assets of nearly \$600 million, the Foundation gives away approximately \$27 million a year.**

**Other NCCPR activities are funded by The Atlantic Philanthropies, the Open Society Institute and the Annie E. Casey Foundation.**

***We thank the Foundations for their support, but acknowledge that the views expressed in this publication are those of NCCPR alone and do not necessarily reflect the opinions of our funders.***



# Cycle of Failure

HOW MICHIGAN KEEPS “THROWING THE FIGHT” FOR CHILDREN –  
AND HOW TO MAKE THE STATE A CONTENDER AGAIN

## Overview

*At a gathering of grassroots family advocacy organizations last September, Susan Kelly, senior director for strategic consulting and systems improvement for Casey Family Programs, and a leader of child welfare reform efforts in Michigan for decades, recalled a different kind of meeting a few weeks earlier.*

*Kelly was meeting with 14 boys at the Wayne County Juvenile Detention Center. The boys all had to wear prison uniforms, though for most, their “crime” had been running away from a foster care placement.*

*In Michigan, the bureaucratic term for these children is “dual jacket.” Each had a child welfare case – they’d all been taken from their parents – and, now that they’d run from wherever the state put them, they had a juvenile justice case as well.*

*“When we went around the group and asked, ‘who is there for you right now?’ You know what the answers were? ‘My father, my mother, my granny, my auntie,’” Kelly said. But these children didn’t know that the State of Michigan had made it much harder for their mothers, fathers, grandparents and other relatives to be there for them. All of these children had had their rights to their families terminated – but no one had bothered to tell them.*

*“We left that room thinking, ‘What have we done to these children?’” Kelly said.*

What Michigan had done to these children was betray them. Some were betrayed by being taken from those mothers, fathers, grandparents and other relatives when it wasn’t necessary. All had been betrayed by being severed from them forever, without their knowledge, and without the state offering them anything in return.

They and thousands like them were betrayed by decades of child welfare failure in Michigan. They were betrayed by political expedience. They were betrayed by a powerful network of private providers – a “foster care-industrial complex” - that rationalizes harm as help and hate as love. And they were betrayed by a take-the-child-and-run mentality that not only harms the children it is supposedly intended to help but also overloads the system, starving it of resources, choking off innovation, and actually making it harder to find children in real

danger.

---

---

Michigan’s tragic history is one in which innovators reach out to bring to the state the best ideas from around the nation, only to have each one sabotaged and marginalized by a child welfare establishment desperate to preserve its perks, its prerogatives and, most of all, its *per diems*.

---

---

In some respects Michigan is sadly typical. Many states have child welfare systems that never rise above mediocrity, some never even reach it. But Michigan is a state with many good people who keep trying to make that system better, only to be beaten down by that foster care-industrial complex.

---

**“Sadly, there is a certain element within the child welfare industry that tends to look upon kids in the way that, say, Colonel Sanders looks upon chickens...”**

*--Prof. Ronald Davidson, Director,  
Mental Health Policy Program,  
University of Illinois at Chicago*

---

Many of the people standing in the way of reform actually mean well. Rationalization is powerful. If you’ve built an empire on collecting endless *per diem* payments for tearing children away from everyone they know and love, and warehousing them far from their homes in bucolic “treatment centers,” what do you do when a mountain of research says it doesn’t work? Do you do what’s hard and face up to it, scrap the program and start over? Or do what’s easy: ignore the research, live “in denial” and point to the cottages and pretty grounds and good intentions in the hope that will divert everyone’s attention – including your own – from the failure of the actual program.

What do you do when you’re a lawmaker and you’ve been suckered into believing every parent who loses a child to the system is brutally abusive or hopelessly addicted? What do you do if you were told a veritable army of childless yuppies was waiting to adopt the children and would do

so just as soon as you changed the laws to stop giving those supposedly rotten parents “too many chances” - but that army never shows up? Do you do what’s hard and rebuild the system to emphasize what really works: safe, proven programs to keep families together? Or do what’s easy: tinker with the laws a little and say, “There. Now we’ve fixed it.”

Human nature tends to lead us to the easy way out. And that’s another betrayal of children.

And, of course, not everyone means well. As Prof. Ronald Davidson, Director of the Mental Health Policy Program at the University of Illinois at Chicago Department of Psychiatry, and a key figure in reforming the child welfare system in Illinois, has written: “Sadly, there is a certain element within the child welfare industry that tends to look upon kids in the way that, say, Colonel Sanders looks upon chickens...”<sup>1</sup>

---

It may be hard to believe now, but there was a time, in the first half of the 1990s, when you could ask almost any child welfare leader which states were on the cutting edge of doing right by vulnerable children, which states were closest to getting child welfare right, and, over and over, you’d get the same answer: Alabama – and Michigan.

Today, Alabama really is a national leader. Nobody looks to Michigan anymore.

Instead, people point to Illinois. Twelve years ago, that state had more than 50,000 children in foster care on any given day.<sup>2</sup> Today, the number is under 16,000.<sup>3</sup> Independent court-appointed monitors say that, as foster care plummeted, child safety improved.

Ask leaders in Illinois how they did it and they’ll cite importing some of the ideas that made Alabama work, and coming up with innovations of their own. But the former head of the Illinois child welfare

agency says something else: They took some of the very ideas Michigan cast aside.<sup>4</sup>

Michigan's tragic history is one in which innovators reach out to bring to the state the best ideas from around the nation, only to have each one sabotaged and marginalized by a child welfare establishment desperate to preserve its perks, its prerogatives and, most of all, its *per diems*.

As a result:

- Although the rate at which children are taken from their parents has very slowly declined in recent years, probably due largely to reforms in Wayne County, Michigan still takes away children at a rate far above the rate in systems widely regarded as, relatively speaking, models. Thousands of children are needlessly traumatized by being taken from everyone they know and love; some are abused in foster care, where the rate of abuse is far higher than generally recognized.

- It's not just children needlessly taken from their parents who are harmed.

We all know the horror stories about children left in dangerous homes in cases that turn out to have more "red flags" than a Soviet May Day parade. That problem is not the opposite of the problem of wrongful removal – it is *directly related* to the problem of wrongful removal.

All the time, money and effort wasted investigating false allegations and trivial reports that should have been screened out by county child abuse hotlines, and all the time, money and effort squandered on needless foster care, overwhelm the system, making it harder for workers to find children in real danger. So all children wind up less safe.

The problem of high caseloads is serious and real. But it's due more to a surfeit of cases than a shortage of caseworkers.

- Michigan places nearly twice as many children as Illinois in the worst, and most expensive, form of "care" – group homes and institutions.

- Michigan's Intensive Family Preservation Services program, Families First, nationally recognized as among the nation's best, with an outstanding track record for keeping children safely in their own homes, has been marginalized within the state Department of Human Services,\* its budget repeatedly cut.

---

**We all know the horror stories about children left in dangerous homes in cases that turn out to have more "red flags" than a Soviet May Day parade. That problem is not the opposite of the problem of wrongful removal – it is *directly related* to the problem of wrongful removal.**

---

- Michigan has virtually abandoned almost all serious efforts at prevention and family preservation – funding what little is done almost exclusively with relatively small amounts of federal money left over after slashing the welfare rolls. And, of course, with welfare growing again, that funding now is in danger as well.

- In some cases, big, powerful private agencies are being paid by Michigan taxpayers to provide help to troubled families, and then simply refusing to do it because they don't want to venture from their

---

\* During the time period discussed in this report, the agency responsible for child welfare in Michigan has been called the Department of Social Services, the Family Independence Agency and the Department of Human Services. For the sake of simplicity, this report always will use the most recent name.

## NO LICENSE, NO GRANDCHILD

# Michigan's war against grandparents

President Obama speaks often of how important his grandmother was in his life. The President was raised for eight years by Madelyn Payne Dunham who, sadly, died just before the election. Today, we would call it "informal kinship care" or "private kinship care."<sup>5</sup>

Children who have the potential to become the next Barack Obama, but happen to live in Michigan, may not be so fortunate. That's because the group whose hubris leads it to call itself "Children's Rights" (CR) is waging a war against grandparents like Madelyn Payne Dunham, and the Michigan Department of Human Services has surrendered.

As a result, in a pattern seen over and over in the state, Michigan is backing away from a reform it once embraced. Michigan once was a leader in kinship care, which is not only more humane and better for children's well-being than what should properly be called "stranger care" – it's also *safer* than stranger care. In 2006, Michigan placed 35 percent of foster children with relatives;<sup>6</sup> the national average is only about 24 percent.<sup>7</sup>

---

People who love you are far less likely to give up on you than total strangers. So grandparents and other relatives are more likely to put up with behavior that might prompt strangers to either reach for the psychiatric medication or throw the child out.

---

But that was before DHS signed a consent decree to settle a lawsuit brought by CR. The decree is a mixed bag, with more good provisions than bad. It's far more reasonable than what CR originally sought, something that will be discussed in detail in our next report. But the bad provisions include one exceptionally odious clause that threatens vulnerable grandchildren.

Of course, in Mr. Obama's case, no agency like DHS was involved – again, fortunate for the future President. And, in fact, millions of grandchildren are raised in such informal arrangements by dedicated, often heroic grandparents without a government agency butting in with a laundry list of meaningless requirements.

But in cases where DHS used to be able to turn to a grandparent without restriction, the consent decree imposes severe new limits. It requires that any relative who steps forward to care for a loved one whose parents are accused of maltreatment meet all the same hypertechnical licensing requirements imposed on total strangers. With only limited exceptions, the new rule is: No license, no grandchild.

Licensing is an obsession at CR, and whenever CR gets obsessed with something, it plays out in the group's lawsuits. The obsession is in keeping with the bureaucratic mindset of the group. One of their early settlements allegedly included a provision for training manuals with clauses requiring that all classrooms where training take place have waste-baskets.<sup>8</sup> But this time, in particular, CR's bureaucratic mindset is hurting real, live children.

Of course there are certain bare minimum standards, directly related to health and safety, that every foster home should meet. And yes, it's reasonable to do a criminal records check to determine if, say, grandma once was an ax murderer.

But Michigan's foster care licensing requirements run to ten single-spaced pages.<sup>9</sup> They seem to assume that every foster parent owns her or his own home, with multiple requirements beyond the control of anyone at the mercy of a landlord.

There are 41 separate requirements just for bedrooms and their contents. There's also a requirement that every dwelling unit on a floor higher than the second have at least two means of egress. Odds are the 954-square-foot tenth-floor apartment where Madelyn Payne Dunham raised her grandson wouldn't qualify.

Because Michigan caved in to CR's demand, Michigan grandparents like Dunham who want to take in a grandchild placed by DHS must either move or obtain a waiver or variance. That's likely to be a very difficult process, with workers fearful of making any exceptions lest they incur CR's wrath should something go wrong. (Indeed, a recent study found workers reluctant to seek waivers, or unaware that this was possible, even *before* the settlement.)<sup>10</sup> Worse, these new requirements are retroactive. Michigan now faces the prospect of a mass expulsion of children from the homes of loving grandparents.

---

Like so much else in child welfare, the licensing requirement for grandparents flunks the "balance of harms" test.

---

That would, of course, be devastating to the children. But one group might actually benefit: The state's big, powerful, private agencies. Because while private agencies supervise 48 percent of stranger care cases, they oversee only 16 percent of kinship cases.<sup>11</sup>

On one level, when you look at all those regulations one at a time, some of them make sense. Odds are they were added, one by one, in response to one horror story or another. But, like so much else in child welfare, the licensing requirement for grandparents flunks the "balance of harms" test.

Study after study has shown the enormous benefits of kinship care.

Kinship care is still foster care, and even grandma is no substitute for leaving children in their own homes – something that can be done safely far more often than is done now in Michigan.

But at least if a child is placed with grandma, it cushions the blow. The child still is with someone he knows and loves. And, odds are the placement is in his own neighborhood, so he doesn't have to change schools and lose all his friends.

Kinship care also lessens one of the most damaging problems of foster care, moving children from foster home to foster home. People who love you are far less likely to give up on you than total strangers. So grandparents and other relatives are more likely to put up with behavior that might prompt strangers to either reach for the psychiatric medication or throw the child out.<sup>12</sup>

So it's no wonder that in Michigan, the casereading demanded by CR itself found that while fully one-third of children first placed with strangers endured two or more moves, that happened to only one-fifth of the children first placed with a relative<sup>13</sup> - in spite of the fact that relatives get far less help from the state to take care of the children.

---

Because grandparents bring an extra ingredient to the mix – love – it should surprise no one that kinship care generally is safer than stranger care.

---

And there are more benefits to kinship care. A study by the Children's Hospital of Philadelphia found that children placed in foster care with relatives had fewer behavior problems than children placed in stranger care.<sup>14</sup>

Most important, several studies have found that kinship care is *safer* than stranger care.<sup>15</sup>

And now a new study has advanced our knowledge still further. This latest study found that children in kinship care did far better than children in stranger care on multiple measures of safety, permanence and well being. *And it found no difference in these beneficial outcomes between licensed and unlicensed kinship homes.*<sup>16</sup>

Of course, when it comes to safety, recent Michigan experience speaks for itself.

Joshua Causey did not die in a kinship home. He died in the licensed home of a stranger. Allison Newman did not die in a kinship home. She died in the licensed home of a stranger. Isaac Lethbridge did not die in a kinship home. He died in the licensed home of a stranger. Ricky Holland did not die in a kinship home. He died in the licensed home of a stranger. Johnny Dragomir did not die in a kinship home. He died in a licensed group home run by strangers. If either stranger care - or licensing - guaranteed safety, all of these children would be alive today.

Again, because grandparents bring an extra ingredient to the mix – love – it should surprise no one that kinship care generally is safer than stranger care. But the hostility toward families that permeates child welfare systems, and the stereotypes that poison public perceptions, both extend to extended families.

---

The group that so arrogantly calls itself “Children’s Rights” doesn’t know much about either children or rights.

---

Thus, Jackson County has both one of the worst records of racial bias in Michigan child welfare<sup>17</sup> and one of the most hostile attitudes toward extended families, with the county DHS director practically gloating about the new licensing requirement. “Blood is not enough,” she declared. “We have to ensure child safety.”<sup>18</sup> (Just the way licensing ensured it for Joshua, Isaac, Timothy, Ricky and Johnny?)

It’s all summed up in one pernicious little smear: “The apple doesn’t fall far from the tree.” If mom is abusive, it is claimed, it must be because grandma has failed in some way.

For starters, this assumes that if mom is doing a poor job raising the children it has to be grandma’s fault. In fact, there are any number of times when a grandparent may raise four children under circumstances of poverty and need that many of us can’t possibly imagine, and have three of them become happy, healthy productive adults. The fourth is lost to the lure of the streets. When that grandmother then comes forward, at a time when finally she should be able to rest, and offers to take care of that child’s children, she should be treated as a hero, not a suspect.

And, as one of the nation’s leading experts on kinship care has said: “a tree has more than one branch.”<sup>19</sup>

In fact, though it has done nothing to counter the smears, CR’s own primary justification for its war against grandparents isn’t safety, it’s money. Under federal regulations, unless a foster home is licensed, the state can’t receive federal reimbursement for the case. And if it *is* licensed, the state must pay the grandparents as much as it does strangers. So CR would argue they’re only trying to help.

That is in keeping with the way CR seems to see children: as numbers on a spreadsheet or files on a shelf. See children as flesh-and-blood human beings and other solutions come to mind, such as pressing to change the federal regulations and demanding that states simply reimburse grandparents the same way they reimburse strangers, using state funds to do it, if necessary. In the meantime, DHS should go back to court if necessary and seek to reopen this part of the consent decree to protect vulnerable grandchildren.

The group that so arrogantly calls itself “Children’s Rights” doesn’t know much about either children or rights. Because if you ask almost any child who is old enough, he’ll tell you himself: If mom and dad can’t take care of me, I have a right to be raised by grandma and grandpa.

suburban headquarters into inner-city neighborhoods.

- Michigan accepted an innovative waiver that would have allowed \$100 million per year in federal foster care money to be used for safe, proven alternatives as well – only to back out at the very last minute, and slink away from the deal, without ever telling the public or explaining the turnabout. Florida accepted the same deal and, as a result, has made enormous progress in turning around its once dreadful child welfare system.

- Michigan appears poised to back away from still another successful innovation, the Family to Family initiative. Last year, DHS reduced the level of participation in the program at two key sites, Wayne and Macomb counties.

But the consent decree Michigan signed to settle a class-action lawsuit mandates adopting statewide a key Family to Family strategy, Team Decisionmaking.

- A comprehensive study found that the Michigan system is permeated with racial bias. (See *An X-ray of DHS' soul*, p. 13.)

- Michigan still hasn't recovered from the demagogic attacks against family preservation launched by former Lt. Gov. Connie Binsfeld and her disciples. That's scared people at every level into taking away children needlessly, and encouraged an adoption-at-all-costs mentality that has created a generation of legal orphans, with no ties to birth parents and little hope of adoption.

- And even though placement with relatives is far better for children than what should properly be called "stranger care," Michigan has caved into demands to wage what amounts to a war against the state's grandparents. (See page 8)

---

Few people remember the name of

the character played by Marlon Brando in the movie *On The Waterfront*. The washed-up prizefighter was named Terry Molloy. He had a shot at glory but was forced to throw the fight. But even people who never saw the film know his most famous line: "I coulda been a contender."

---

**Over and over Michigan has a chance to be a contender for excellence in child welfare. And over and over, it throws the fight.**

---

Michigan is the Terry Molloy of child welfare. Over and over it has a chance to be a contender for excellence in child welfare. And over and over, it throws the fight.

But it doesn't have to be that way.

There are many good people working in the trenches in Michigan child welfare. When a group of birth parents addressed the giant "task force" now studying Michigan child welfare, they spoke of terrible injustices done to their children. But they also made a point of singling out good workers who gave them both help and hope when they needed it most. Said one parent: "I had a wonderful foster care specialist who breathed life into me."

Michigan can turn that kind of case-work from the exception to the rule. And it won't even take more money to do it, only the will, and the willingness to battle the entrenched interests that have stymied reform so many times before – this time, without throwing the fight.

At the end of this report we offer 37 specific recommendations that will help Michigan become a contender again.

The consequences of Michigan's re-

peated failures are well known. They are well-summarized in two recent in-depth analyses of the system, commissioned by plaintiffs in the recently-settled class-action suit against the Michigan Department of Human Services (MDHS) According to one report, by John Goad:

---

In another case an abuse allegation against a foster parent was “unsubstantiated” when the foster parent explained that the incident in which she hit the foster child in the stomach was an accident – she’d only meant to hit his legs.

---

- Children placed in the custody of DHS “are highly likely to be in danger in the very foster care system intended to protect them.”

- “Children who are wards of MDHS are *certain* to be placed in – or left in – dangerous foster care settings because MDHS has failed to identify abusive and neglectful substitute care providers.” [Emphasis added].

- The very structure of the agency “all but preclude[s] the effective protection of foster children.”

- Michigan’s definitions of maltreatment are so “vague and subjective” that “individual beliefs and biases of caseworkers will inevitably determine how individual cases are classified.”

In one case, DHS found that a foster child had not been abused – even after he’d been murdered in his foster home. In another case an abuse allegation against a foster

parent was “unsubstantiated” when the foster parent explained that the incident in which she hit the foster child in the stomach was an accident – she’d only meant to hit his legs.

- DHS data on abuse in foster care are misleading and report figures so low as to be laughable. Yet DHS reports data to the federal government that it knows or should know are inaccurate.

- In a review of several fatality cases in which private agencies were involved, Goad found casework “ranged from dangerously careless to the outer reaches of incompetence.” DHS overlooked “bad decisions, terrible foster homes and abysmal practice.”

- As for private agencies in general – which some lawmakers have seen as some kind of panacea – there is no evidence that they are functioning any better than DHS. Both reports found that they get rare, cursory inspections that don’t focus on the actual quality of the programs – and they almost always fail to meet even these minimum standards. Corrective action plans are not monitored to see if they actually corrected anything. And, no matter what the inspectors find, the contracts routinely are renewed.

- A second report, by Cathy Crabtree, notes that when it comes to reunifying families “when it is safe to do so” Michigan’s is “among the slowest systems in the nation.”

- Both reports cite one example after another of appalling ignorance on the part of top DHS managers. Goad’s report cites the former chief deputy director in charge of field operations who didn’t know that kinship caregivers get less financial support than strangers. And she didn’t know how many children were placed with relatives anyway. And she didn’t know what proportion of foster children’s cases are eligible for

## An X-ray of DHS' soul

### STUNNING FINDINGS FROM THE MICHIGAN RACE EQUITY REVIEW

The most important report issued on Michigan child welfare in recent years – maybe ever – is not the report you're reading now.

The most important report on Michigan child welfare, and one of the finest ever issued on any child welfare system anywhere in the country, is the *Michigan Race Equity Review*, released in January by the Center for the Study of Social Policy.<sup>20</sup> It's available online at <http://www.cssp.org/uploadFiles/michigan%20report%201%2014%2009%20FINAL.pdf>

It's worth reading every word, particularly the words from page 12 through page 40.

It is to the great credit of former DHS Director Marianne Udow that she commissioned a no-holds-barred, outside review of her agency – and that's exactly what she got. The implications go far beyond even the vital issue of racial bias.

---

The *Michigan Race Equity Review* tells us, in vivid, compelling detail, that every impoverished African American child in Michigan is in danger of being torn needlessly from everyone loving and familiar by a child welfare system that is arbitrary, capricious and cruel.

---

The report reads more like good investigative reporting than a dry recitation of statistics, with actual case histories interwoven throughout. It is less a study than an x-ray of DHS' soul – and the picture is ugly. It tells us, in vivid, compelling detail, that every impoverished African American child in Michigan is in danger of being torn needlessly from everyone loving and familiar by a child welfare system that is arbitrary, capricious and cruel. (And things aren't much better for impoverished white children.)

- How many children have been taken because some agencies that are legally required, and paid by Michigan taxpayers, to provide in-home services, simply refuse to do so because they don't want to go into poor neighborhoods? And why does DHS keep letting them get away with it?

- How many children have been taken when a Team Decisionmaking meeting, an excellent concept meant to be a way to help a family stay together, was turned into a subterfuge designed to lure a family to a DHS office so a child could be taken on the spot? This was something DHS actually tried to do in one of the cases documented in this stunning report.

- But sometimes, it's the little things that reveal the most. The report offers up one particularly telling detail. It's about how a Black parent and a white parent can say the same thing about alleged drug abuse, but the statement is characterized differently in case records, simply by changing one key word. According to the report:

*In several case files of African American families, workers described a parent as "DENIES history of substance abuse." The case file contained no documentation of any past or current substance abuse problem. In case files of Caucasian families with similar documentation, workers described a parent as having "NO history of substance abuse." [Emphasis added].*

In other words, under otherwise identical circumstances, the white parent is taken at her word, the Black parent is not.

Among other key revelations in the new study:

- Structured Decision Making (SDM), the name for checklists used to determine risk

and decide if a child should be torn from everyone loving and familiar, is permeated with racial bias. While SDM has a veneer of objectivity, many of the determinations workers are asked to make are highly subjective.

In one case, a Team Decisionmaking meeting, an excellent concept meant to be a way to help a family stay together, was turned into a subterfuge designed to lure a family to a DHS office so a child could be taken on the spot.

Furthermore, the "risk factors" are self-reinforcing. In other words, a child is rated at higher risk if there have been previous reports of maltreatment. But, precisely because of poverty – and racial bias – poor Black families are more likely to be subjects of such reports.

(In addition, SDM has other serious flaws not mentioned in the Review. Though it supposedly measures a family's strengths as well as its weaknesses, the scoring method is such that, if the "strengths" option didn't exist, the score would be unchanged – in other words, it's just window dressing. In addition, the strengths often were not strengths at all, but simply the absence of a weakness, such as noting that a mother did not have a drug problem. There was no place to measure real strengths such as creativity and resourcefulness.<sup>21</sup>)

- If that's not bad enough, the reviewers found that caseworkers often simply got their facts wrong – and then used this erroneous information to increase the alleged "risk" to the child.

- In other families, a case deliberately is mislabeled "high risk" because it's the only way to get "services" to the family. That, however, may mean the family gets the wrong "help" – counseling instead of, say, a rent subsidy. And then, they may come under suspicion over and over for years, because now they're listed in Michigan's Central Registry of alleged child abusers.

- Team Decisionmaking often is misused. The meetings are dominated by "service providers" the families get little or no say and good alternatives to placement are ignored. Caseworkers fail to tell families their rights at these meetings, and fail to tell them they are allowed to bring relatives, friends and other informal supports. Parents – and older children – were talked *at* instead of talked *to*, sometimes not even accorded the dignity of being addressed by name, and when they did speak up, often they were ignored.

Some agencies that are legally required, and paid by Michigan taxpayers, to provide in-home services, simply refuse to do so because they don't want to go into poor neighborhoods. And DHS lets them get away with it.

Even when the meetings function properly they tend to be geared to determining the type of placement, instead of whether placement itself is necessary.

- Poverty routinely is confused with neglect. Housing problems come up over and over. For instance: A mother loses her housing because her child has been removed. Then she can't get the child back because she doesn't have housing.

In one case, a DHS welfare worker encouraged a mother to call the child protective

services division for help in obtaining a stove. She didn't get a stove, she got a child abuse investigation. She then was told her child would be taken away if she didn't obtain the stove on her own. Similarly, families that make the mistake of calling DHS for help with heat during the winter often end up with nothing but a cold house that now has a child abuse investigator at the door.

- As noted above, big wealthy service providers based in the suburbs sometimes simply refuse to provide services in the neighborhoods where families live. This sometimes happens even with providers specifically contracted to provide in-home services – and DHS has done nothing about it.
- DHS workers fail to seek waivers from requirements unrelated to safety, such as the number of bedrooms in a home, that prevent children from being placed with relatives even in unlicensed homes. (This problem is only likely to worsen now that all such homes must be licensed.)
- Hotline workers screen in far too many cases that are not, in fact, cases of child maltreatment. (In addition to the harm this does to the families that are investigated, it's also overloading caseworkers, reducing the time they have to find children in real danger.) The hotline review process is biased – there are extra reviews when a call is screened out, but not when it's screened in.
- Caseworker reports are permeated with misinformation – and then the people doing psychological evaluations rely on that misinformation. Worse, it appears some evaluators are simply cutting and pasting boilerplate assessments from one person's psychiatric evaluation into another's. In other words, it appears that a "psych eval" that was supposedly done on Ms. Smith winds up with a paragraph that might say something like "It is clear that Ms. Jones suffers from..."

---

Families that make the mistake of calling DHS for help with heat during the winter often end up with nothing but a cold house that now has a child abuse investigator at the door.

---

- Echoing the false claims of Michigan's "foster care-industrial complex" workers, judges and lawyer guardians *ad litem* for children repeatedly claimed it was better for children to be torn from everyone they know and love because then they'd get to live in wealthier neighborhoods and have better "cultural experiences." (And of course, then those service providers wouldn't have to go through the trouble of going from their suburban headquarters into the inner city.) The *Review* called this

*"Reminiscent of the 19th century child rescue ideology that led to the separation of tribal and immigrant children from their families and communities ... The belief that African American children are better off away from their families and communities was seen in explicit statements by key policy makers and service providers."*

But it should be no surprise that this kind of thinking permeates the frontlines of Michigan child welfare. The leader of a trade association for some of the state's powerful private agencies said the same thing at a legislative hearing three years ago. The hearing, and why this kind of thinking is a huge problem for children, are discussed on page 59.

- Parents constantly are stigmatized and stereotyped; files are filled with insults, none of them justified by facts of the case. Parents – and children - are characterized negatively for conduct that is entirely understandable – such as a becoming angry when a child is taken from them, or a child picking a fight with a classmate moments after being told that his rights to his parents have been terminated forever, and he can't see them anymore.

- The requirement to make "reasonable efforts" to keep families together when it is safe to do so is routinely ignored. Parents' lawyers don't even raise the issue – and one judicial officer said that's because raising reasonable efforts is "a losing argument." Worse, in a bit of irony worthy of Kafka, judges now are deeming the mere existence of a Team Decisionmaking meeting sufficient to meet the "reasonable efforts" requirement. All this is especially disturbing in light of the fact that the whole phony rationale for Michigan's so-called Binsfeld laws, and the enormous harm they've done, was that DHS supposedly was fanatical about "reasonable efforts." As is discussed throughout this report, it wasn't true then, and it isn't true now.

- Many in DHS have no clue about what really is required in law and regulation. The problem is so pervasive that the report authors coined a term for it: "Policy mythology." For example, there is a widespread belief that if a parent has lost one child to termination of parental rights – even if, say, a mother voluntarily gave up a child for adoption decades before – all future children must be confiscated at birth and termination of parental rights petitions filed. It's not true – but workers routinely act on this myth. (The reality, that the law encourages this pernicious practice, is bad enough.)

- The investigators found that DHS workers at every level were deep in denial about all of this. Some simply refused to believe the data with which they were confronted. Others responded with Stephen Colbert-like platitudes about how they, personally are "color blind" and "everyone is the same to me."

Of course, when Colbert says it, it's satire.

federal reimbursement. And she didn't know how many cases her workers carried. And she did not draw up or even review the list of annual priorities of her own division.

One could call the way DHS is run a case of the blind leading the blind – but that implies that someone actually is trying to lead.

Both experts were hired by the plaintiffs to help them make their case – and, in fact, there are places where the reports appear geared to supporting specific changes sought by the plaintiffs. But a third report, a casereading agreed to by both sides, is just as damning. Goad and Crabtree may have been hired guns, but DHS gave them plenty of ammunition.

In one respect, however, Goad's report contains a serious error. In the very last sentence, Goad concludes that "it is clear that children are far too likely to be no safer in foster care than they were with their abusive and neglectful parents."<sup>22</sup>

But the very failings Goad and Crabtree describe, and a mountain of other

evidence that will be discussed in this report, make clear that many of the children torn

---

---

One could call the way  
DHS is run a case of the blind  
leading the blind – but that  
implies that someone actually  
is trying to lead.

---

---

from their families in Michigan did *not* have abusive and neglectful parents at all. They had good, loving, but often poor parents, who happened to get caught in the DHS net.

These children are far less safe in foster care than they were with their parents. Indeed, some of them never survived the best efforts of the state of Michigan to protect them. Some were adopted to death, fostered to death – and protected to death.<sup>23</sup>

## Wrongful removal drives everything else

Everyone knows the Michigan child welfare system is a mess, but almost everyone ignores the fundamental cause.

That fundamental cause is *not* lack of money.

While it is very difficult to compare the amount that states spend on child welfare, and the available data are fairly old, it is possible to come up with a rough estimate. Michigan spends on child welfare at a rate that is above the national average, well above the rate in Alabama's system, which is, relatively speaking, a model, and probably at least equal to the rate in Illinois, another model.<sup>24</sup>

The reason Michigan isn't getting more bang for its child welfare buck is because of the great paradox of child welfare: The more an option costs the *worse* it is for children. Safe, proven alternatives to ever taking a child away in the first place cost less than family foster homes, which cost less than group homes which cost less than the worst form of "care" of all – institutions.

Michigan throws its money away by taking away far too many children needlessly – proportionately far more than either Illinois or Alabama, for example. And then it throws far too many of those children into institutions.

Nationwide, 10.2 percent of children are in institutional care. In Illinois it's 8.2 percent. But in Michigan it's 14.5 percent.<sup>25</sup>

In her report, Cathy Crabtree found that children in Michigan "too often linger in institutional settings because [better alternatives] are not available."<sup>26</sup>

The cost of warehousing children in institutions is staggering.

Nationwide, although only about 17 percent of children are in congregate care (institutions plus group homes), paying for that care eats up 45 percent of all foster care spending.<sup>27</sup> In FY 2008, Michigan spent

more than \$223.3 million on "foster care payments."<sup>28</sup> This does not include the cost of the state's foster care bureaucracy, a figure DHS was unable to provide. The state also was unable to break down how much went to stashing children in group homes and institutions.

---

**Michigan might as well take that \$100 million – or possibly much more - it spends on congregate care and burn it on steps of the State Capitol on a cold winter's day. At least then, some passers-by in Lansing could keep warm.**

---

But if Michigan is like the nation as a whole, odds are more than \$100 million, perhaps more than \$200 million per year, was spent on institutionalization – almost all of it wasted.<sup>29</sup>

If the children were benefitting, it would be worth every penny and more. But they're not. Overwhelming evidence, to be discussed in detail in our next report, shows that institutionalization does children no good, and often does them harm. Because of that evidence, in New Jersey, the reform plan developed as a result of a consent decree negotiated by the group that calls itself "Children's Rights" (hereafter, simply "CR") bans the placement of young children in group homes or institutions – and the state has been remarkably successful. Today, of all foster children under age 10, only three percent are in any form of congregate care.<sup>30</sup> Sadly, there is nothing similar in CR's con-

sent decree in Michigan.

For all the good it does for children, Michigan might as well take that \$100 million – or possibly much more - it spends on congregate care and burn it on steps of the State Capitol on a cold winter’s day. At least then, some passers-by in Lansing could keep warm.

Still more money is being wasted traumatizing families with needless child abuse investigations. (See *Reality check*, p. 45.)

---

**Michigan’s prevention and family preservation money was, in effect, stolen from other uses that could have helped the same families. Michigan turned surplus TANF money into a child welfare slush fund.**

---

In contrast to the huge amount lavished on substitute care, the total amount spent on prevention and family preservation programs for the entire state of Michigan in FY 2008 was only \$70 million. That includes programs that define “prevention” very broadly.<sup>31</sup>

But even this figure vastly overstates Michigan’s commitment to doing what really works in child welfare.

Because about four years ago, Michigan effectively abandoned state spending on prevention and family preservation. Since at least 2005, and probably earlier, virtually every dime the state of Michigan spends to help families stay together comes from the federal government. And almost all of that federal money comes from surplus funds in the Temporary Assistance for Needy Families program (TANF). This is money intended to be used to help impoverished families become self-sufficient.

In other words, almost all of Michigan’s prevention and family preservation money comes from the draconian restrictions on public assistance for poor families first initiated at the federal level in 1996 when TANF replaced “welfare as we know it.” So Michigan’s prevention and family preservation money was, in effect, stolen from other uses that could have helped the same families. Michigan turned surplus TANF money into a child welfare slush fund.

And it gets worse. In some cases, Michigan may well have effectively taken money that should have been used to help poor families keep their children, and transferred it to middle class and wealthy adoptive families who had those children handed over to them by the state. And the settlement with CR actually may make this worse. (See *The coming TANF train wreck*, next page).

The problem of misspending money in Michigan was compounded by one particularly craven act. Less than three years ago, Michigan was given an opportunity, almost unique in the nation, to use about \$100 million in federal funds, normally reserved exclusively for foster care, for better alternatives as well. But at the very last minute, after publicly announcing it had accepted the deal, the state walked away, without so much as a public explanation. Had the state accepted the deal it would have gone a long way toward cushioning the blow dealt by the current economic crisis.

An extremely rough, back-of-the-envelope estimate is that Michigan spends anywhere from \$300 million to \$444 million per year on foster care in all its forms. (DHS was unable to come up with an estimate of its own.)

Were Michigan simply to take away children at the same rate as Illinois, those costs could be cut at least in half. That means the state and counties, which pay a sizable share of substitute care costs in Michigan, could save anywhere from \$100

## The coming TANF train wreck

### HARD TIMES FOR MICHIGAN'S CHILD WELFARE SLUSH FUND

*Imagine this scenario: Jenny is a mother in Flint, who loves her pre-school daughter; she dotes on her and does everything she can to nurture her. But under both Michigan and federal welfare "reform" law, Jenny must get some kind of make-work job. She finds such a job, far from home in a suburban shopping mall. But who will care for the child? There's no help for child care; so she leaves her child with a family friend. She's not so sure about the guy but it's that or leave the child home alone – or stay home with the child and get fired and cut off from all public assistance.*

*Someone calls DHS. DHS isn't so sure about the guy either. But instead of offering child care, they take the child away, and place her in a wealthy home in the suburbs. The wealthy parents became foster parents in the first place because they are desperate to adopt – and under Michigan's "concurrent planning" program, DHS is supposed to plan for that from day one – even as they supposedly also try to help the mother get her daughter back.*

*The caseworker falls in love with the adoptive parents – whose home reminds her so much of the one where she grew up. Jenny gets no help with child care, her parental rights are terminated and the wealthy foster parents adopt the child.*

*Then, those wealthy foster, now adoptive, parents get a monthly subsidy to help take care of the child. The subsidy comes from the very federal program that was supposed to help Jenny with child care.*

It's not purely hypothetical. From 2000 to 2003, in Genesee County, the foster-care population doubled – and even the head of the county DHS office at the time said one of the main reasons was they were removing children from women forced to leave their children with unsuitable caretakers while they went to jobs they had to take under the state's welfare-to-work laws.<sup>32</sup>

---

The state abandoned almost all responsibility for helping vulnerable families keep their children out of foster care.

---

As for the source of that adoption money: That's quite a story.

In 1996, Congress replaced the Aid to Families with Dependent Children program with Temporary Assistance for Needy Families. The theory was that draconian restrictions on who could receive assistance would cut people from the welfare rolls. It did.

Then, it was argued, states could use their TANF surplus funds to help families become self-sufficient. They could provide things like job training and child care; things that would help make up for the stringent time limits imposed on recipients.

To some extent, that happened too. But for technical reasons, related to how they spent federal money before 1996, many states were able to exploit a loophole in the law and use TANF surplus money for child welfare.

Some uses of TANF money in child welfare are reasonable. Most notably, TANF "child only grants" sometimes go to grandparents and other relatives serving as kinship care parents. (The scandal there is that Michigan won't supplement those payments, so the grandparents get far less than is paid to total strangers. See *Michigan's war against grandparents*, p. 8). But often, TANF money is, in effect, put in a poor person's pocket only after it's been taken out of some other poor person's pocket.

Money for a worthy program like Families First is taken from funds that might otherwise have gone to job training, so the family might never have needed Families First.

Money for intensive reunification services is taken from funds that could have gone to day care, so parents like Jenny might never have lost their children to a lack of supervision charge.

In short, the state abandoned almost all responsibility for helping vulnerable families keep their children out of foster care. Instead, Michigan turned money that should go to help families become self-sufficient into a child welfare slush fund.

Michigan spends only \$70 million on prevention and family preservation to begin with (see chart below for details and sources) – compared with anywhere from \$300 million to \$444 million – or more – on foster care.<sup>33</sup> And 99.6 percent of the prevention money comes from the federal government.

True, the state does spend \$4.8 million on Children’s Trust Fund programs. But that’s more like a private charity – all of that state money is donated by generous Michigani-ans willing to pay more than their tax bills actually require. But the TANF scandal actually is even worse.

Program	Total funds	Federal	Federal Source	State
Teen Parent Counseling	\$ 3,815,800	\$ 3,790,300	TANF	\$ 25,500
Families First	16,946,700	16,946,700	TANF	0
Child Safety/ Permanency Planning	16,286,700	16,286,700	TANF	0
Child protection/ Community Ptnrs.	5,539,400	5,539,400	TANF	0
Zero to Three	3,843,800	3,843,800	TANF	0
Family Group Decision Making	2,454,700	2,454,700	TANF	0
Family Reunification	3,977,100	3,977,100	TANF	0
Family Preservation and Prevention Svces.	2,255,300	1,992,000	TANF	263,300
Strong Families/ Safe Children	14,908,100	14,908,100	Title IV-B	0
<b>TOTAL:</b>	<b>\$70,027,600</b>	<b>\$69,738,800</b>		<b>\$288,000</b>

Source: State of Michigan Department of Human Services, *Fiscal Year 2007-2008 Report on the Details of Allocations Within Program Budgeting Line-Items in 2007 Public Act 131*, March 26, 2008, available online at [http://www.michigan.gov/documents/dhs/DHS-LegislativeSec214-1-PA131-2007-Allocations\\_229733\\_7.pdf](http://www.michigan.gov/documents/dhs/DHS-LegislativeSec214-1-PA131-2007-Allocations_229733_7.pdf).

At least when money diverted from one prevention program – hard services to ameliorate poverty – goes to more targeted prevention and family preservation programs, it still is going largely to the people who need it most.

But Michigan also has found a way to use its TANF child welfare slush fund as a back door subsidy to the middle class and the wealthy.

More than \$41 million in TANF money is diverted each year into adoption subsidies and adoption support services. Some of that money may go to impoverished relatives adopting grandchildren. But there is no means test for adoptive families who want this state help. Indeed, had Madonna chosen to adopt her child from the Michigan foster care system instead of Africa, she would have been eligible for a subsidy – taken out of money intended to be used to help poor people become self-sufficient.

**In fact, there are good reasons to provide adoption subsidies without a means test. The issue is where that money should come from. It should shock the conscience that wealthy adoptive parents can be given children from poor families, and then get money that should have gone to keep those poor families together in the first place.**

Had Madonna chosen to adopt her child from the Michigan foster care system instead of Africa, she would have been eligible for a subsidy – taken out of money intended to be used to help poor people become self-sufficient.

**And it could get worse still. The settlement with CR requires the state to spend another \$8 million on services based on a “needs assessment” – but that \$8 million can go to foster care and adoption, not just prevention and family preservation.<sup>34</sup> And there is nothing in the settlement to stop DHS from using TANF to meet this obligation as well – so this part of the settlement actually could backfire, with even more money diverted from helping poor people become self-sufficient into foster care and adoption instead.**

**Of course, all this assumes there still will be any TANF surplus money left.**

**The whole premise of using funds from TANF surpluses is that there will, indeed, be surpluses. That worked fine when the economy was booming and there were lots of welfare recipients to throw off the rolls. But what happens now that the economy is collapsing and welfare rolls are increasing again? Does no TANF surplus mean no funding for prevention and family preservation in Michigan?**

**Anybody want to bet that the money for poor people gets cut long before the legislature cuts the money for those middle class and wealthy adoptive parents?**

million to \$148 million per year, and possibly more. (That doesn't include additional savings Michigan could achieve by reducing the proportion of the remaining foster children who are institutionalized.) Because Michigan failed to accept the waiver, an *additional* \$50 to \$74 million in savings would revert to the federal government.<sup>35</sup>

All that money diverted to needless substitute care drains resources from better options and drains creativity from the system.

Why does it keep happening? The late newspaper columnist Jack Newfield had a name for it all: “the permanent government.” The permanent government is unelected and largely unseen – the power brokers and vested interests who wield enormous influence at every stage of the process.

In child welfare, the “permanent government” is that venerable network of providers, that “foster care-industrial com-

plex” of big, private agencies with their blue-chip boards of directors embedded in the business, political, civic, and religious elite of every Michigan community. Governors, DHS directors and legislators come and go; but the foster care-industrial complex is always there.

Like a tapeworm in the system, the foster care-industrial complex drains Michigan child welfare of life and energy and gives back nothing in return. And it is sufficiently brazen to recommend that the legislature take actions that may be illegal, in order to preserve the *status quo*.

So while more money certainly could be helpful, the lack of it is not the major obstacle to helping Michigan's vulnerable children. The major obstacle is simply this: Michigan takes too many children from their homes and places too many of those it takes in institutions.

## Beyond lemonade

For example:

What could be more wholesome, more all-American than a father taking his son to a baseball game and buying him a glass of lemonade? But when a father from Ann Arbor did just that, it led to - -

*But wait* – we all know the lemonade story. That one made the front page. That one provoked outrage all over the country – and rightly so.<sup>36</sup>

But part of the reason we know about it is precisely because it is one of the very rare times when the abuses of a child protective services agency reached into the lives of a white middle-class family – a family that could fight back, a family that could get some of the best lawyers in the state (their colleagues at the University of Michigan) a family that the typical newspaper reader and the typical newspaper reporter can identify with.

A case like the lemonade case is a reminder that, every once in awhile, something like this actually could happen to *our* children.

We all should be grateful to that Ann Arbor family for being willing to tell their story publicly, and remind us of how much harm can be done to children by the unchecked power of DHS. And while the child in that case was in foster care for only a few days, that's plenty of time to cause serious emotional harm.

But most of the time, it doesn't happen to children of people like us. Most of the time, it happens to children of people like *them* – overwhelmingly poor, disproportionately minority. So we're much slower to empathize and much quicker to judge. We think: Well, they must have done *something*. DHS wouldn't just intervene for no reason – would they?

Actually DHS would, and DHS does.

In other cases, the parents *did* do something. Instead of being 100 percent right, they're only 90 percent right, or 75

percent right – or 51 percent right. So we write off the family. Reporters don't write about them, or if they do, it's one quick story, buried inside the paper. And readers fixate on whatever the parent did wrong, instead of on the terrible harm that the removal itself did to the children. That's true even when things go much more horribly wrong than they ever did in the lemonade case.

---

Like a tapeworm in the system, the foster care-industrial complex drains Michigan child welfare of life and energy and gives back nothing in return. And it is sufficiently brazen to recommend that the legislature take actions that may be illegal, in order to preserve the *status quo*.

---

Consider:

- No one accused Sabrina Murphey of abusing her children. No one said she beat them, or starved them. No one said she didn't love them. Her only crime was to have been beaten herself – by the children's father.

She took the children and moved out of the house. But she did keep in touch with the father – for the sake of the children. DHS said that this was reason enough to take away the children.

In fact, witnessing domestic violence can be harmful to children. But taking children from the non-offending parent is far, far worse; even worse than removing a child under other circumstances. According to one leading national expert, taking a child away from a battered mother is, for the child, “tan-

tamount to pouring salt into an open wound.”<sup>37</sup> That’s why a federal court banned the practice in New York City.<sup>38</sup>

But for the children of Sabrina Murphey, DHS’ policy boiled down to “please pass the salt.”

Even after Murphey readily agreed to sever all contact with her children’s father, DHS wasn’t satisfied, forcing her to jump through hoop after hoop, many of them having nothing to do with her ability to raise children and everything to do with her poverty.

Murphey suspected one of her children was being abused in foster care. But no one would listen. “They treated me like I was nothing,” she said. “The foster care system treated me like I was a piece of pavement to walk on.”

And it didn’t stop after she finally wrested her children back from DHS. Then, for reasons even the juvenile court could not

explain, the Wayne County “Friend of the Court” began garnisheeing Murphey’s paycheck – and sending the proceeds to the father.

That almost drove Murphey into homelessness, and into losing her children again.

“They need to change the laws,” Murphey says. “They need to change everything. It’s not me or the women that they’re hurting, it’s the children.”<sup>39</sup>

Still, it could have been worse. At least Murphey didn’t live in Sturgis, in St. Joseph County, where families are torn apart at the second highest rate in the state, a rate well over double the state average,<sup>40</sup> and the courts and DHS have been known to, in effect, hold children for ransom.

•That’s what happened to Melanie and Abigail Cerny, twin girls taken from their parents after a “domestic disturbance” involving the parents and other relatives.

## You’re only damned if you don’t

**DHS caseworkers are not jack-booted thugs who relish destroying families. By and large they are dedicated, idealistic people who want to do what’s best for vulnerable children. They also typically are undertrained for the enormous responsibilities they face. They are probably inexperienced, because turnover is so high. And they have crushing caseloads. All of this makes it almost impossible for even the best worker to make good decisions. They wind up making bad decisions in all directions, leaving some children in dangerous homes even as they take others from homes that are safe or could be made safe with the right kinds of help.**

**But in terms of what will happen to the caseworker personally, all wrong decisions are not created equal. The common argument from caseworkers that they are “damned if we do and damned if we don’t” is disingenuous.**

**We are aware of no child protective services caseworker anywhere in the country who has ever been criminally prosecuted, fired, demoted, suspended, or even slapped on the wrist for taking away too many children. All of these things have happened to workers who left one child in a dangerous home where something went wrong.**

**Similarly, agencies themselves sometimes try to duck scrutiny by applying what could best be called the *Goldilocks and the Three Bears* defense: “If some people say we take too many children while others say we take away too few, then we must be just right.”**

**But the logic of fairytales doesn’t apply to the real world of child welfare. No child welfare agency comes under months of intense critical media scrutiny for taking away too many children. No heads roll over it. It is only the highly-publicized deaths of children “known to the system” that get top agency administrators into trouble.**

**When it comes to taking children from their parents, DHS and its workers are not damned if they do and damned if they don’t. They’re *only* damned if they don’t.**

There also were allegations against the father of marijuana use and, possibly, drinking.

Once again, no one was accused of abusing the children.

---

**“They treated me like I was nothing. The foster care system treated me like I was a piece of pavement to walk on.”**

*--Sabrina Murphey*

---

But the children fared less well in foster care. One of the little girls was seriously injured by “an adult force blow to the stomach [that] perforated her small intestine.”

Like any father, Joey Clipfell wanted to rush to her daughter’s side. But the court wouldn’t let him. Not because he was deemed a danger to the children. But because he hadn’t paid all his overdue fines for infractions like driving with a suspended license.

And what did DHS contribute to all this: Only a warning that they didn’t have the staff to supervise a visit in the hospital.

The judge offered nothing but a lecture, declaring that “the reason you can’t visit your daughters is because of your situation and not the courts.”

But the reason a little girl lying sick in a hospital bed couldn’t see her father was because the court – and DHS – cared more about punishing the father than comforting the child.<sup>41</sup>

•No one ever accused Teresa and Darren Bloodworth of abusing their three children. No one said they beat the children or tortured them or raped them. Their only crime: living in a dirty home that needed repairs to remove lead-based paint.

Yet the Bloodworth children were torn from their parents and thrown into a foster home where the foster mother often abused another foster child.<sup>42</sup> Indeed, as is explained later in this report, the Bloodworth children may have been lucky to escape with their lives.

•Jane Daniels<sup>43</sup> really was abused – horribly. At 12 she was raped by her father and her mother’s boyfriend. She immediately told her mother – and they did the right thing, reporting the rapes to the police.

Four years later, the child wished she’d never told anyone. Because then, perhaps, she wouldn’t have been torn from her mother, bounced from licensed foster home to licensed institution and back, only to wind up in detention – where she probably served more time than one of the rapists.

At the time Jane needed her mother the most, DHS tore her away; apparently because they didn’t like the family’s housing, an issue that would repeatedly stymie reunification.

As Jane was moved from institution to institution she became depressed and suicidal. Over and over again she’d run away.

Meanwhile, though mom had done nothing wrong, she was forced to comply with her cookie-cutter “service plan” - counseling, parent education, and “anger management” classes.

The child would keep running away, and keep winding up in detention.

Then, terrified of assault by other residents in her latest group home, Jane ran away again – she ran back to her mother. Her mother reported that her daughter had returned, and DHS did nothing.

Things started to go better. As the *Detroit Free Press* reported, Jane was “dealing with her depression and anxiety, playing catcher on a softball team, getting baptized, and preparing to start her senior year of high school.” She was doing well in school, taking comfort from her church and looking forward to going to college.

Then, three months after she'd returned home, DHS showed up and hauled her off to detention again – for running away from home. But, as Jane told the *Free Press*:

“I haven't run away from home. I've run *to* home.”<sup>44</sup>

Unfortunately, such treatment is typical. According to the Michigan *Race Equity Review*:

*Police officers reported that the vast majority of youth who go AWOL [from foster care] are running home to immediate or extended family.*

Indeed, police know that the child's own home is the first place to look.

But, the *Review* found, instead of asking if the problem is a lousy foster care placement, or checking to see if, as in Jane's case, home is, in fact, the best place for the child,

*Youth who 'run away' are treated criminally. When police apprehend these youth, the practice is to handcuff and transport them in the backseat of police cars.*<sup>45</sup>

- Andrea Harris of Oakland County made the terrible mistake of calling DHS and asking for help. She said she couldn't control her five boys, who ranged in age from four months to age six. Two of the children were placed in foster care with strangers, the other three with a grandmother. When a sixth child was born, that child also was taken. But then the grandmother said she couldn't care for the boys anymore either.

But DHS did not provide help for the grandmother so she could keep the children.

By now, all of the children had emotional problems – due at least in part to being separated from their mother. It was particularly hard on the second youngest – Joshua Causey. Joshua vomited and threw tantrums every day. A caseworker's report said he had “a difficult time calming himself.”

But DHS would not return the children to Harris. As in so many other cases, the stumbling block wasn't abuse or neglect or any other kind of unfitness – DHS simply didn't like Harris' housing arrangements.

---

“I haven't run away from home. I've run *to* home.”

--Foster child.

---

Perhaps it was too much for the duly-licensed stranger taking care of Joshua to handle. She confessed to beating Joshua, and was convicted of manslaughter.

DHS promised that the case would be used an example to train foster care workers.<sup>46</sup>

- Perhaps the workers who handled the case of Elena Andron missed the training, because when she, too, made the mistake of turning to DHS for help, it set in motion another tragedy.

No one ever accused Elena Andron of abusing her nine-year-old son, Johnny Dragomir. No one ever accused her of neglecting him. No one ever said she didn't love him. Her only crime was losing her job as a factory worker in Dearborn. Her only mistake: turning to the state of Michigan for help when she couldn't afford to care for her son, who could neither walk nor speak.

Instead of providing financial assistance and bringing help into Andron's home, DHS made the same mistake it made in the Causey case – taking away the child and throwing him into foster care; this time, a state licensed group home.

But his mother soon became alarmed as her son started losing weight. She would call the home, sometimes four times a day to complain. And she says the group home quickly responded – by branding her irrational and barring her from even visiting her son.

By the time Johnny Dragomir died, on March 7, 2007, he had lost half his body weight. The Wayne County Medical Examiner says the cause of death was malnutrition.

The group home reportedly closed shortly after Johnny's death. But it still has its license.<sup>47</sup>

---

Once, during a counseling session, the boy was playing with two plastic horses, when he said: "This little horse is going to die if he can't be with his mother."

---

DHS never seems to learn that when a desperate mother turns to them for help, they should provide help instead of destroying the family.

- Casey Jo Caswell had plenty of problems – most notably a tendency to latch on to lousy men; which is what some women do when they have little education and no way to support themselves.

As the *Detroit News* reported in a keenly-observed story:

*Caswell admits she was unable to properly care for [her] baby. She couldn't support him financially or provide him with a stable home. But at least, she says, she never abused him.*

*"There were times when I didn't have money for both of us to eat, so [my son] ate and I didn't," she said. "I loved being his mom."*

When one of those men beat her, and the child, Caswell did the right thing – she got rid of the man. But, homeless and jobless, she also made that terrible mistake: she

sought help from DHS.

DHS offered no help with housing, no help with a job, and no help with education. No help with anything that would allow her to be self-supporting and not depend on men. They gave her only one option: Surrender the child to foster care. Then they issued the cookie-cutter no-services "service plan" and told her she'd have to get a job and get housing before she could get her child back.

In keeping with the mad rush to termination of parental rights that has characterized Michigan child welfare, the state that offered no help to Caswell terminated her rights to the boy 15 months later – right on schedule.

During the termination hearing Caswell's caseworker was asked why Caswell never was offered any help with housing. She didn't qualify, the caseworker explained – because her child was in foster care.

Meanwhile, it seems, the DHS worker had fallen in love – with the middle-class foster parents who lived in a nice big home. The boy went there first as a foster child; then it became his adoptive home.

And each time Caswell would have another child, the caseworker would rush the baby into the same foster/adoptive home.<sup>48</sup>

Neither the caseworker, nor anyone else, noticed how unhappy the boy was with his foster parents. Once, during a counseling session, the boy was playing with two plastic horses, when he said: "This little horse is going to die if he can't be with his mother."<sup>49</sup>

In fact, the conveyor belt carrying babies from impoverished birth mother to middle class foster parents didn't stop, Caswell says, until one day the caseworker told her "You have to stop having babies because the Hollands don't want any more."<sup>50</sup>

That's Tim and Lisa Holland. They were the foster parents. Casey Jo Caswell's first born was named Ricky. And Ricky Holland's comment in that therapy session

proved prophetic.

If she had it to do all over again, says Caswell, "I would've kept him with me, instead of asking the state for help."<sup>51</sup>

But if you really want to know how fanatical Michigan can be about a take-the-child-and-run approach to child welfare, if you really want to know how much an adoption-at-all-costs mentality pervades DHS and the courts, consider this: During the time after Ricky Holland had disappeared, but his body had not yet been found, during the time police already strongly suspected the Hollands of murdering Ricky, the Michigan Department of Human Services gave the Hollands final approval to adopt another foster child in their care.<sup>52</sup>

And remember the Bloodworth children – the children taken from their parents only because of a dirty home and lead-based paint? They, too, had been placed with Tim and Lisa Holland.<sup>53</sup>

### The data behind the cases

It's hard to dismiss so many cases with exactly the same pattern as some kind of "aberration" in a system that, otherwise, supposedly wouldn't even *think* of taking away a child needlessly. But that won't stop DHS and the private agencies from trying.

Spokespersons for child welfare agencies seem to turn into robots when asked about these issues – push a button, get a boilerplate response: "Our first goal is always to try to keep families together," they say. "We're all for prevention," they say. "Foster care is a last resort," they say. "We can't take children on our own authority, a judge has to approve everything we do," they say. (See *Reality Check*, page 45). "We're damned if we do and damned if we don't," they say. (See *You're only damned if you don't*, p. 23).

And none of it is true.

The evidence of wrongful removal goes way beyond the case histories. For starters, there's the fact that if states took

away children only when absolutely necessary, then the rates of child removal across the country would be roughly the same – once you included both the biggest factor in actual maltreatment and the biggest factor confused with neglect: poverty.

---

During the time after Ricky Holland had disappeared, but his body had not yet been found, during the time police already strongly suspected the Hollands of murdering Ricky, the Michigan Department of Human Services gave the Hollands final approval to adopt another foster child in their care.

---

In fact, rates of removal vary enormously. Some states are considerably worse than Michigan. But states that repeatedly are pointed to as national models for child safety do far better:

- Thanks to a class-action lawsuit brought by the Bazelon Center for Mental Health Law, Alabama is rebuilding its entire child welfare system to emphasize keeping families together. (The Center's Legal Director is a member of NCCPR's Board of Directors.) Alabama takes away children at one of the lowest rates in the nation, a rate 25 percent below the rate in Michigan.<sup>54</sup> But the state has cut the rate of reabuse of children left in their own homes in half,<sup>55</sup> and the independent, court-appointed monitor has found that children are *safer* now than they were before the changes.<sup>56</sup> That's why the *New York Times* put the story of the Alabama reforms on its front page.<sup>57</sup>

## Comparison shopping in Grand Rapids LYING IN WAIT FOR A “GOTCHA’ MOMENT”

Mary Callahan is a foster parent from Maine who got fed up with the fact that almost every child the state placed with her never needed to be taken from his or her birth parents. (Thanks to James Beougher, who reformed the Maine system after he was recruited from Michigan, that happens a lot less often now.)

Callahan has a term for how the system works. It puts a family under a microscope, judges anything and everything, and then lies in wait, for as long as it takes for a parent to slip up. She calls it the “Gotcha’ moment.”

And that’s how DHS, a private agency and a judge with an apparent penchant for comparison shopping among parents, got to transplant a child from a mother whose only crimes were poverty and pot smoking, to a well-off adoptive couple.

The bias was so blatant that the Michigan Supreme Court, normally as fanatical about pushing adoption as any in the country, couldn’t stand it. The court blasted Kent County Family Court Judge Patricia Gardner and suggested that her initial decision “may have been influenced by the relative advantages of the adoptive home compared to the mother’s home.”

---

“Several of the trial court’s written findings of fact on remand suggest that it may have been influenced by the relative advantages of the adoptive home compared to the mother’s home. ... This type of comparison may explain why the respondent’s parental rights were terminated despite what we believe is the lack of clear and convincing evidence in support of that termination.”

*--Michigan Supreme Court decision, In re: JK, Minor*

---

But Judge Gardner, the private agency, and DHS simply let the process of reunification drag out – until finally getting their “gotcha moment.”

The child at the center of the case is Jacob Kucharski. He was 16-months-old when he was taken from his mother, Melissa. The only reason: Melissa was a teenage mother who smoked marijuana.<sup>58</sup>

The case was subcontracted to Catholic Social Services, which managed to botch it from the start, moving the child into five different foster homes over 14 months – though for some of that time, at least, mother and child were in the same foster home.

At first CSS wrote glowing reports about Melissa Kucharski. They said she was such a good mother that she didn’t even need parenting classes or a psychological evaluation - a conclusion that is almost unheard-of.

But 14 months after Jacob was taken away, DHS and CSS suddenly reversed course and petitioned for termination for parental rights.

There is nothing in news accounts to explain the sudden change. But at this point, Jacob was in the home of that well-off couple, the one that would be described in a news account as a “good, Christian, wonderful, stable family,”<sup>59</sup> – and they wanted to adopt him.

The termination petition made allegations that, the Michigan Supreme Court would find, simply weren’t true - like a false claim that Melissa still was smoking pot.

Indeed, when the case came to trial, CSS admitted that Melissa had jumped through

each and every hoop. She completed her substance abuse program. She completed her independent living program. She had a job. She had housing. She'd been drug free for a year. She even got the "psych eval" – and passed it.

So CSS simply brought up a whole new issue - playing the bonding card.

They argued, in effect, that because DHS took the child away for little or no reason, and because DHS and CSS then bounced the child from foster home to foster home, making it harder for him to love or trust anyone, and because then they placed him with the foster parents they liked much better, and because then they filed a termination petition and cut off all visits (often standard operating procedure in Michigan) – because of all that, the child had trouble bonding with his mother. Therefore, DHS and CSS argued, he should be taken from his mother forever.

By this reasoning, of course, if someone kidnaps your child at birth, flees to Mexico, takes good care of him, and then returns two years later, the kidnapper should be allowed to keep the child because, after all, they're "bonded."

In fact, the mother's therapist, assigned by CSS, said that, in spite of all this, mother and child *were* bonded, and the family should be reunited. The therapist scheduled weekly sessions to help mother and child with bonding, but the foster mother undercut them by failing to bring the child to several sessions.

Less than a month after these sessions began, CSS ordered up another evaluation, from a "bonding specialist" recommended by the foster mother.

After one session lasting less than an hour, she told the court that mother and child were not well-bonded – though she admitted this may well have been because the child had been bounced through so many foster homes.

---

By this reasoning, of course, if someone kidnaps your child at birth, flees to Mexico, takes good care of him, and then returns two years later, the kidnapper should be allowed to keep the child because, after all, they're "bonded."

---

The claim by this "expert" was based in part on the fact that Jacob had speech problems – and that supposedly was evidence of poor "interactions" between mother and child. But after Jacob had his tonsils and adenoids removed, and tubes placed in his ears, the speech problems disappeared.<sup>60</sup>

But the CSS caseworker had other "evidence:" Kucharski sometimes seemed lethargic during parts of the visits (possibly explained by the fact that she was working to complete her high school degree while also working the job she had to get to get her child back) and she sometimes brought Jacob candy to visits that took place in the morning.

That was enough for Judge Gardner, who not only terminated parental rights, but even rushed to finalize the adoption while Melissa's appeal still was pending before the Supreme Court.

Indeed, it may have been that act – stepping on the prerogatives of the Supreme Court justices – more than destroying a family based on almost no evidence, that really upset a Supreme Court whose fanaticism for adoption is well documented (and discussed elsewhere in this report).

Nevertheless, in a 6 to 0 decision with one judge abstaining (though it is clear she would have dissented had she felt she could participate)<sup>61</sup> the court excoriated Judge Gardner. The justices declared that:

*Several of the trial court's written findings of fact on remand suggest that it may have*

*been influenced by the relative advantages of the adoptive home compared to the mother's home. We remind the family-division judges of what we said nearly fifty years ago:*

*"It is totally inappropriate to weigh the advantages of a foster home against the home of the natural and legal parents. Their fitness as parents and question of neglect of their children must be measured by statutory standards without reference to any particular alternative home which may be offered to the [child]."*

*We note the trial court's fact-finding on remand simply because it suggests that improper comparisons between the homes of the adoptive and natural parents may have been made in determining whether to terminate the respondent's parental rights. This type of comparison may explain why the respondent's parental rights were terminated despite what we believe is the lack of clear and convincing evidence in support of that termination. ...*

*Rather than returning the child after the natural mother completed every task asked of her, the agency delayed the child's security and stability with his own mother and sought the opinion of a different therapist who claimed that the respondent lacked the proper bonding and attachment to properly parent her child.*

But though the Supreme Court reversed the adoption, it neglected to do two things: It neglected to order Jacob's immediate return to his mother, expecting DHS and CSS to act in good faith and begin a meaningful transition. And it neglected to remove Judge Gardner from the case.

So they watched and they waited.

And the pressure grew. It was clear from news coverage that the Supreme Court decision sent shivers through newsrooms – where everyone has a friend or a colleague who adopted a child, and almost no one has a friend or a colleague who was poor and had her child taken away.

The sympathies of the *Grand Rapids Press* were apparent. There was the story about the saintly adoptive parents – including a statement by Jacob's adoptive grandfather seemingly suggesting that it might have been better if Jacob had died than been ordered returned to his own mother.

"It's like a death in the family," the grandfather said, and then added: "In some ways it's worse than death because the child's still alive and we know what's coming."<sup>62</sup>

Imagine what that army of caseworkers, psychologists – and Judge Gardner – would have made of it had Melissa Kucharski said anything like that.

Then came a story on the wisdom of Judge Gardner, a story so fawning that she came across as someone who could have taught King Solomon a thing or two. Even Kucharski's own lawyer in the trial court (not her appellate lawyer) spoke up for the judge.

Among other things, Judge Gardner talked about how sometimes she wished she could just take the kids home herself; how Kent County is a "prevention rich community" and how, many times, birth parents understand that having their children taken from them forever was the right thing to do. "In many cases, parents are able to say, 'I was given every opportunity, I didn't do it, can't do it or won't do it' and say 'I agree adoption is best for the kids.'"<sup>63</sup>

Especially, it seems, if you wait long enough.

Eventually, Kucharski lost her job and didn't tell the court. Why this was the court's business is unclear.

Gotcha!

Judge Gardner promptly held it against her – taking pains to claim the problem wasn't the unemployment (since that would imply she cared about Kucharski's low income) but the failure to tell the court.

One can only imagine the stress on a young mother at the center of this storm. Were she middle class she might have gone to her family doctor and gotten a prescription for a tranquilizer. Instead, she flunked two drug tests allegedly because she smoked pot.

Gotcha!

Judge Gardner herself ordered DHS to initiate a second round of termination proceedings. And Kucharski got the message. She was never going to get Jacob back. She surren-

dered her parental rights.

At which point, for the first time, she won praise from the *Grand Rapids Press*. (That's pretty typical. When an impoverished birth mother fights for her child against well-off adoptive parents, the one time the birth mother always is praised is if she gives up.) Though the paper went on to rub salt into the wound with a huge, gloating feature about the adoptive parents and 80 friends and family celebrating their final victory.<sup>64</sup>

The standards in Kent County apparently are different if the parents happen to be middle class, and adoptive.

In 2006, a couple once named Michigan's adoptive parents of the year by the state Foster and Adoptive Parents Association was charged with abuse after some of their 13 adopted children came forward to say they were beaten with belts and an extension cord, not fed properly and feared being sent back to the couple,<sup>65</sup> charges far more serious than anything leveled at Melissa Kucharski. They also alleged the adoptive parents ignored complaints about sexual abuse by siblings; the parents said they didn't know.<sup>66</sup>

The children were placed in foster care and the judge (not judge Gardner, this time) said the adoptive parents would have to make "radical changes" to get the children back – suggesting she found the allegations credible. But this time, the judge refused to terminate the adoptive parents' parental rights. They gave up those rights voluntarily three months later.<sup>67</sup>

And while Kucharski was regularly vilified in the local press, the adoptive parents got far more solicitous treatment. A story in the *Grand Rapids Press* on the judge's decision not to terminate parental rights was filled with sympathetic comments about the adoptive parents, barely mentioned the allegations and said that the case raised questions such as: "Would this model couple, respected at church, brutalize the children? Did the children make up stories of abuse, as alleged by the defense?"<sup>68</sup>

In the case of Melissa Kucharski and the child taken from her, the Michigan child welfare system functioned as it so often does. It's the place where a "good, Christian, wonderful, stable family" can step right up and take a poor person's child for their very own.

- That's also the lesson from Illinois, whose progress was noted earlier. Illinois takes away children at an even lower rate than Alabama, and less than half the rate of Michigan. And in Illinois, as in Alabama, independent court-appointed monitors have found that, as the number of children taken away has declined, child safety has improved.<sup>69</sup>

But you don't have to look outside Michigan to see such disparities. Again, once poverty is factored in, a child is more than three times as likely to be taken from his parents in Macomb, Isabella, or Ingham Counties than a child living in Wayne, Bay or Shiawassee Counties.<sup>70</sup>

And when one compares Wayne County to the rest of the state, the average rate of removal for the rest of the state is

double the rate in Wayne County.

This may be because, in a county that sees as much poverty as Wayne, people may be less likely to confuse that poverty with "neglect." Conversely, relatively wealthy counties, such as, for example, Grand Traverse, which see relatively little poverty, may be much more likely to confuse it with neglect, explaining why Grand Traverse has the third highest rate of removal in Michigan.

Racism also appears to be a factor.

We know that Black families are no more likely to abuse or neglect children than white families. Yet racial disparities permeate Michigan, and American, child welfare.

But the degree varies. In Wayne County, with a relatively low rate of remov-

al, a Black child is 1.69 times more likely to be in foster care. But in affluent, predominantly white Macomb County, with one of the highest rates of removal, Black children are more than five times as likely as white children to be in foster care. In Oakland County, where the rate of removal is double the rate in Wayne, Black children are more than three times as likely to be in foster care as white children.<sup>71</sup>

That should come as no surprise, given the war waged against families by the former Oakland County District Attorney, who took to having his own office take the children when DHS wouldn't.

It's possible, of course, that places like Oakland and Macomb Counties are, in fact, cesspools of depravity, with double and triple the amount of child abuse found in Wayne or Bay Counties. It's more likely that large numbers of children in innocent families suffered because both a take-the-child-and-run mentality, and racial bias, have taken root in the Oakland and Macomb child welfare systems.

Similarly, you may be sure that some in Michigan's foster care-industrial complex will claim, falsely, that it's the counties taking lots of children who are right and the others are ignoring lots of child abuse.

We know the claim is false because other states with lower rates of removal than Michigan have outstanding records of child safety. That shows it is possible to take far fewer children, and it is the counties – and states – with high rates of removal that are out of line.

Similarly, in several other states, counties with low rates of removal tend to have the better safety outcomes. DHS, however, was unable to provide such data for Michigan, even though it must report the statewide outcomes to the federal government. (In general, NCCPR has encountered only one other state child welfare agency, the one in Arizona, as incapable of providing basic data as Michigan.)

Of course, while a high rate of removal almost always is a sign of a bad system, a low rate does not necessarily mean a system is good. There is a right way and a wrong way to reduce the number of children taken from their parents. The point of this comparison is simply that it is possible to take proportionately far fewer children than Michigan takes while improving child safety. Therefore, there is no excuse for Michigan failing to do either one.

---

**It is possible to take proportionately far fewer children than Michigan takes while improving child safety. Therefore, there is no excuse for Michigan failing to do either one.**

---

But the evidence that DHS takes children needlessly and fails to provide the help families need to reunite goes beyond the numbers and the case histories.

It's amazing what people in the system itself will say when promised anonymity for a report few people are expected to read.

That, it seems, is the lesson from the results when two outside organizations commissioned by the Michigan Supreme Court to write a report on the functioning of Michigan courts in child welfare cases surveyed every constituency involved in child welfare in Michigan.<sup>72</sup>

Among the results:

- Federal law requires that states make “reasonable efforts” to keep families together before resorting to foster care, when it is safe to do so. A judge has to certify either that reasonable efforts were made, or that making such efforts would have been

contrary to the welfare of the child. The judge does this by checking a box on a form. If a judge finds DHS failed to make reasonable efforts even though it was safe to do so, he still can rubber-stamp the removal – but the federal government won't help pay the cost.

---

**Forty percent of judges admitted that they lied, and said DHS had made “reasonable efforts” in cases where the judges really didn't believe it.**

---

But in the survey, 20 percent of the judges said they always concluded that reasonable efforts had been made – in other words their child welfare agencies were perfect. Another 70 percent said they rarely concluded otherwise.

But even more significant: **40 percent of judges admitted that they lied, and said DHS had made “reasonable efforts” in cases where the judges really didn't believe it.** In half those cases, the judges admitted they lied because, if they didn't, their county would have to pick up the federal share of the cost. And if that's the proportion who will admit it on a survey ...

- Judges were asked about the specific issues they raised in determining if reasonable efforts had been made.

- One-third admitted never even asking what services were offered to the family.

- Forty six percent admitted they only sometimes, or never, asked if the services were sufficient or appropriate.

- Fifty-seven percent often failed to ask if the caseworker actually provided the services.

Of course, maybe it's too much to

expect judges to ask such questions, when parents' own court-appointed lawyers typically don't bother to raise the issue.<sup>73</sup> On the other hand, lawyers may not be raising the issue because, according to the *Race Equity Review*, “one judicial officer reported that any objection on reasonable efforts would be ‘a losing argument.’”<sup>74</sup>

- So called “service plans” are supposed to be geared to the needs of individual families. They aren't. According to the report: “Many jurists,<sup>75</sup> attorneys, and others complained that caseworkers ... make the same recommendations for everyone.”

And then it gets worse.

- Parents are set up to fail. According to the report:

*Both parents and attorneys mentioned that so many tasks and service appointments are set up for parents that often they simply cannot meet them in their entirety. Indeed parents' attorneys complained in one county that it was a social service pattern intended to make parents fail and head them down the path toward termination of parental rights...*

It wasn't just the parents and their lawyers who said it – even prosecutors agreed.

*One prosecutor said, if you are poor, lack transportation and a job, you can't get to all the appointments that the social workers pile on, with the result that you lose your children because you don't comply with requirements.*

- “Rigid DHS policies” prevent families from getting services. Said one judge: “Sometimes DHS says that families are not eligible for services and I do not know why.” (Recall Casey Jo Caswell being told she could not get help with housing because her son, Ricky, already was in foster care.)

- Even where the policies themselves are less of a problem, DHS doesn't follow them.

Among the most important factors in reuniting families is keeping them in touch while the child is in foster care. That means regular visits are essential. They also are vital for a child's well-being while in substitute care. Otherwise a child is even more likely to feel alone, abandoned and terrified.

Michigan's requirements are minimal (and typical). In cases where visits are allowed at all, parents are supposed to be able to visit their children once a week. But the casereading done in connection with CR's lawsuit found that this requirement is almost never met. DHS also fails to meet similarly minimal (and similarly typical) requirements for caseworkers to visit birth parents and foster children.<sup>76</sup>

### Who is harmed?

There are some, of course, who are pleased that Michigan takes away so many children so easily and with almost no due process for families. They cling to the myth that it makes children safer.

And they have some great applause lines. Sure, adults may suffer if a child is wrongly taken, they say, but we have to put "child protection" ahead of "family preservation." We have to defend "children's rights" they say. And, over and over they tell us we have to "err on the side of the child."

In fact, there can be no child protection without family preservation. Children have a right to live safely in their own homes and not be subjected to the torment of needless foster care. And there probably is no phrase in the child welfare lexicon that has done more harm to children than "err on the side of the child."

- When a child is needlessly thrown into foster care, he loses not only mom and dad but often brothers, sisters, aunts, uncles, grandparents, teachers, friends and classmates. For a young enough child it can be an experience akin to a kidnapping. Other children feel they must have done something

terribly wrong and now they are being punished. One recent study of foster care "alumni" found they had twice the rate of post-traumatic stress disorder of Gulf War veterans and only 20 percent could be said to be "doing well." How can throwing children into a system which churns out walking wounded four times out of five be "erring on the side of the child"?

---

**"One prosecutor said, if you are poor, lack transportation and a job, you can't get to all the appointments that the social workers pile on, with the result that you lose your children because you don't comply with requirements."**

*--Michigan Court Improvement Program Reassessment*

---

A second study, of 15,000 cases typical of those found on workers' caseloads, is even more devastating. That study found that even maltreated children left in their own homes with little or no help fared better, on average, than *comparably-maltreated* children placed in foster care. (See *Michigan ignores the "evidence base,"* p. 36.)

- All that harm can occur even when the foster home is a good one. The majority are. But the rate of abuse in foster care is far higher than generally realized and far higher than in the general population.<sup>77</sup> Switching to orphanages won't help -- the record of institutions is even worse. In fact it's so bad, that we plan to issue a separate report on institutionalization.

The figures from all of these studies are far higher than official numbers indicate -- because the official numbers are not objec-

tive scholarship, the official numbers are from agencies investigating themselves.

But in Michigan it's worse. In Michigan John Goad's report found that DHS manipulates the data to make even the official figures concerning abuse in foster care look lower than they really are.<sup>78</sup>

---

**None of this means no child ever should be taken from her or his parents. Rather, it means that foster care is an extremely toxic intervention that must be used sparingly and in small doses. But for decades, Michigan has turned back efforts at reform and instead prescribed mega-doses of foster care.**

---

Furthermore, the more a foster care system is overwhelmed with children who don't need to be there, the less safe it becomes, as agencies are tempted to overload foster homes and lower standards for foster parents. If a child is taken from a perfectly safe home only to be beaten, raped or killed in foster care, how is that "erring on the side of the child"? And is it really any comfort to know that Timothy Boss, Joshua Causey, Allison Newman, Ricky Holland, Isaac Lethbridge and now Johnny Dragomir all died with their "children's rights" on?

- But even that isn't the worst of it. Everyone knows how badly caseworkers are overwhelmed – the data on that from Michigan are, well, overwhelming. With no time to investigate any case properly, workers often make bad decisions in all directions – leaving some children in dangerous homes, even as more children are taken from homes that are safe or could be made safe with the

right kinds of help.

That is almost always the real explanation for the horror-story cases that rightly make headlines.

If a child in real danger is overlooked because workers were too busy investigating a family whose only crime was asking for help in obtaining a stove<sup>79</sup> or too busy needlessly throwing some other child into foster care, how is that "erring on the side of the child"?

None of this means no child ever should be taken from her or his parents. Rather, it means that foster care is an extremely toxic intervention that must be used sparingly and in small doses. But for decades, Michigan has turned back efforts at reform and instead prescribed mega-doses of foster care.

Unfortunately, while CR realized that the caseworkers are overwhelmed, CR failed to grasp the reason for it.

CR and DHS assumed that the problem was too few caseworkers. Though in many cases the settlement doesn't require it, DHS has indicated it will try to reduce caseloads simply by hiring more workers - apparently to do the same work they've been doing all along.<sup>80</sup>

In fact, the problem isn't so much too few workers as too many cases. The *Race Equity Review* found that Michigan "screens in" far too many trivial allegations and poverty cases, subjecting families to needless, traumatic investigations – and wasting the valuable time of workers.<sup>81</sup>

Their time is further wasted taking away children needlessly.

If you just go on a hiring binge, without making the hiring part of a comprehensive reform plan, it simply further widens the net of needless intervention into families. The new workers chase down lots more new cases that shouldn't be investigated in the first place and take still more children needlessly. So all you get is the same lousy system only bigger.

## Michigan ignores the “evidence base”

The buzzword in child welfare lately is “evidence-based.” What that really means is: How dare proponents of any new, innovative approach to child welfare expect to get funding if they can’t dot every i and cross every t on evaluations proving the innovation’s efficacy beyond a shadow of a doubt? Old, non-innovative programs, however, are not held to this standard.

Indeed, evidence that those old, non-innovative programs are a failure routinely is ignored. So DHS workers, judges and others rationalize away a mountain of evidence and convince themselves that needlessly tearing apart families is necessary to protect children. It all suggests a disturbing lack of knowledge of the latest research on foster care.

There has long been a wealth of evidence that when children are left in their own homes and the families are given intensive support through programs like Michigan’s pioneering Families First program, this approach is not only more humane (and less expensive) than foster care it also is *safer* than foster care. A series of studies of Families First and similar Intensive Family Preservation Services programs have proven this.<sup>82</sup>

But the new research goes much farther. It finds that children usually are better off left in their own homes even when the family *doesn’t* get intensive help.

The largest and most comprehensive of these studies was released in 2007 by a researcher at the Massachusetts Institute of Technology. He compared outcomes for 15,000 children. He excluded the extreme cases – the horror story cases in which any worker *with enough time to investigate* would agree the children should be taken from their homes. Instead he focused on the “in-between cases” the ones in which there were real problems, but some workers chose foster care and others chose to keep the family together. These are the kinds that make up the overwhelming majority of cases seen by workers for DHS and similar agencies.

The study compared outcomes for children placed in foster care and *comparably maltreated* children left in their own homes. As the children grew up:

- The children left in their own homes were less likely to become pregnant.
- The children left in their own homes were less likely to be arrested.
- The children left in their own homes were less likely to be unemployed.<sup>83</sup>

This is not the only such study. A University of Minnesota study, released in 2006, also compared children in foster care to comparably-maltreated children left with their own families who got little or no help. Once again, on average, the children left in their own homes did better.<sup>84</sup>

Still another study, of foster-care alumni, including many who had been in one of the nation’s best foster care programs, found that the alumni had twice the level of post-traumatic stress disorder of Gulf War veterans and, as young adults, only 20 percent could be said to be doing well.

This study also found that one in three of the alumni reported being abused by a foster parent or another adult in a foster home.<sup>85</sup> The study didn’t even ask about one of the most common forms of abuse in foster care, foster children abusing each other.

As for group homes and, especially “residential treatment centers,” the evidence that they are largely useless – or worse – is so overwhelming that it needs its own report. We plan to issue one later this year.

But what about cases in which the parent, usually the mother, is addicted to drugs? Why bother with mothers in those cases? Once again, for the sake of the children. For a look at the evidence base in such cases, and a typical case, see *When the issue is drugs*, p. 40.

It would be wise for there to be a less casual attitude about throwing children into a system that churns out walking wounded four times out of five. That is the only reasonable conclusion from the “evidence base.”

Michigan should indeed use the new money promised in the settlement to hire workers – but they should be prevention workers, family preservation workers and drug treatment workers.

That way, the new hires really will lower caseloads for everyone, make children safer, and avoid traumatizing children with needless foster care.

### **How taking fewer children can make children safer**

One reason systems that have reformed to embrace family preservation improve child safety is that workers are less likely to be distracted by needless foster care.

Another reason is simply that most parents who lose their children to foster are not who most people think they are.

Contrary to the common stereotype, most parents who lose their children to foster care are neither brutally abusive nor hopelessly addicted. Far more common are cases in which a family's poverty has been confused with child "neglect."

And no wonder. Michigan's definition of neglect includes "...the failure to provide adequate food, clothing, shelter, or medical care."<sup>86</sup> And while some state laws include an exception for cases when a parent simply can't afford the food, clothing, shelter, or medical care, the Michigan statute does not. (Even in states where such exceptions exist, they are routinely ignored.) So there is hardly an impoverished child in Michigan who could not, at some point in her or his life, be branded "neglected" if a caseworker so chose.

And often, they so choose.

- In Genesee County, from 2000 to 2003, the foster-care population doubled – and even the head of the county DHS office at the time said one of the main reasons was the removal of children from women forced to leave those children with unsuitable

caretakers while they went to jobs they must take under state and federal welfare-to-work laws.<sup>87</sup>

- As the *Lansing State Journal* Reported in 2006:

*Rising poverty also means some children enter the system solely because their parents can't afford shelter or clothing or food, said Sharon Claytor Peters, [then-] president and chief executive of Michigan's Children, a Lansing-based child advocacy group. "Neglect is directly related to the material ability to provide for kids," she said.*<sup>88</sup>

Another spokeswoman for the group said: "The line between neglect and poverty needs to be clarified. With no support services, families are falling more deeply into poverty."<sup>89</sup>

---

**There is hardly an impoverished child in Michigan who could not, at some point in her or his life, be branded "neglected" if a caseworker so chose.**

**And often, they so choose.**

---

Data from around the country confirm those impressions:

- Three separate studies since 1996 have found that 30 percent of America's foster children could be safely in their own homes right now, if their birth parents had safe, affordable housing.<sup>90</sup>

- A fourth study found that "in terms of reunification, even substance abuse is not as important a factor as income or housing in determining whether children will remain with their families."<sup>91</sup> (Recall the case of

Johnny Dragomir, who died in a foster home after his mother couldn't afford to take care of him, or the Bloodworth children, taken away and placed with Tim and Lisa Holland, solely because their home was dirty and had lead-based paint.)

---

The biggest addiction problem in child welfare is not substance-abusing parents, though that problem is serious and real. The biggest addiction problem in child welfare is powerful, well-connected private child welfare agencies that are *addicted* to their *per-diem* payments. And they are putting their addiction ahead of the children.

---

- A study of "lack of supervision" cases by the Child Welfare League of America found that in 52 percent of the cases studied, the service needed most was what one might expect -- day care or babysitting.<sup>92</sup> But the "service" offered most often was foster care.

And across the country, several people who have run child welfare systems have acknowledged that their own systems take away too many children.

- In Washington D.C., where the foster care system was run for several years by the federal courts, the first receiver named by the court to run the agency found that between one-third and one-half of D.C.'s foster children could be returned to their parents immediately -- if they just had decent housing.

- The former head of one of the nation's largest child welfare systems, Los Angeles County's, said that up to 50 percent of the county's foster children could have remained in their own homes had their parents gotten the right kinds of help.<sup>93</sup>

There is one circumstance, and only one, in which almost anyone in child welfare, from frontline caseworker to agency chief, effectively will admit to tearing apart families because they're poor. All you have to do is accuse them of tearing apart families because they're Black.

"No, no, it has nothing to do with race," they'll say. "We only take away more Black children because they're more likely to be poor." Of course, these are the same people who also say they never take children because of poverty.

In fact, there is an enormous body of evidence that both kinds of bias are at play. For example, in one study, when workers were given otherwise identical hypothetical cases, they were more likely to deem the child at risk if the family was described as Black.<sup>94</sup> And recall how, in Michigan, caseworkers describe an alleged history of substance abuse very differently depending on the race of the family.<sup>95</sup>

Other cases fall on a broad continuum between the extremes, the parents neither all victim nor all villain. What these cases have in common is the fact that there are a wide variety of proven programs that can keep these children in their own homes, and do it with a far better track record for safety than foster care.

Many of those "in-between cases" involve substance abuse. But even there, the research is clear that drug treatment for the parents almost always is a better first choice than foster care for the children. (See *When the issue is drugs* page 40).

### **Addicted to *per diems***

But every time anyone in Michigan has tried to face up to these challenges and

fundamentally reform the system, that foster care-industrial complex has stood in the way. Michigan's private agencies are paid for every day they hold a child in foster care. If they do what they are supposed to do and work to reunite a family or, when that's truly not possible, try for adoption, the payment stops.

---

**The will to survive can induce in non-profits a form of greed that is as corrosive of common decency as the worst corporate behavior.**

---

As James Beougher, former director of child and family services for Michigan DHS, has written: "When you pay for foster care on a *per diem* basis – you get lots of days in foster care."<sup>96</sup> Beougher's attempts to change that never got past the pilot stage in Michigan – but he's now hailed as a hero in Maine, for transforming one of the worst systems in the country into a national leader. (See *The Michigan child welfare brain drain*, p. 60).

So it's no wonder that the National Commission on Children, one of the most distinguished groups ever to study child welfare, found that children often are removed from their families "prematurely or unnecessarily" because federal aid formulas give states "a strong financial incentive" to do so rather than provide services to keep families together.<sup>97</sup>

Of course the agencies will tell you they don't even think about such things – they claim they care only about "the best interests of the child." After all, they say, they're non-profits. But the will to survive can induce in non-profits a form of greed that is as corrosive of common decency as the worst corporate behavior.

This can be seen in one telling statistic: In Michigan cases where the state maintains direct supervision of a child after the child is placed in foster care, only 40 percent of children return home within a year. That's certainly bad enough. But when children are handed over to private agencies, paid for each day they hold the child in foster care, the proportion returned home within a year falls to 30 percent. And for technical reasons, this actually understates the gap in performance.<sup>98</sup>

The biggest addiction problem in child welfare is not substance-abusing parents, though that problem is serious and real. The biggest addiction problem in child welfare is powerful, well-connected private child welfare agencies that are *addicted* to their *per-diem* payments. And they are putting their addiction ahead of the children.

So try to divert more money to safe, proven alternatives and the foster care-industrial complex will stand in the way. Try to curb institutional care and the foster care-industrial complex will do everything it can to stop it. Try to place more children with extended families and in their own neighborhoods, and the private agencies will march up to Lansing to urge that it stop – even if that may mean the state has to violate federal law.

Most of the time, the agencies won't actually say they oppose the idea – not out loud, not directly, not overtly. Instead, they'll say how much they favor prevention – but... They'll talk about how they, too, wish children didn't have to be institutionalized, but...

That's how it's done in child welfare: Never say no to a good idea, just "Yes, but..." it to death.

Nothing changed in Illinois until things got so bad that the elected government had to stand up to the permanent government. Finally, they took on the foster care-industrial complex.

Instead of simply handing out *per diem*

payments and rubber-stamping license renewals, Illinois forced its private agencies to compete for business, and prove they were helping children. Agencies that couldn't return enough children safely to their own

homes or get them adopted would get no more referrals. Some of those agencies closed.

And lo and behold: Suddenly the "intractable" became tractable. The "dys-

## When the issue is drugs

Many of what we call the "in-between cases" in child welfare involve substance abuse. And that raises an obvious question: Why even bother trying to help the parents in such cases?

The reason to "bother" is not for the sake of the parents, but, again, for their children.

University of Florida Medical Center researchers studied two groups of infants born with cocaine in their systems. One group was placed in foster care, the other with birth mothers able to care for them. After six months, the babies were tested using all the usual measures of infant development: rolling over, sitting up, reaching out. Consistently, the children placed with their birth mothers did better.<sup>99</sup> For the foster children, being taken from their mothers was more toxic than the cocaine.

The problems are less, however, when the newborns were placed with relatives. So in that sense, Sheryl Calloway's newborn daughter was lucky.

Calloway acknowledges that DHS was right to intervene in her case. She'd struggled with addiction for years, even as she successfully raised two sons.

Those sons were adults when Calloway's daughter was born. DHS would not let Calloway take the child home from the hospital.

At the initial Team Decisionmaking meeting in her case, Calloway says, "I felt attacked and belittled." Caseworkers were reluctant to let one of her adult sons and his wife take custody, though ultimately they relented.

But there was no drug treatment program available where mother and daughter could live together.

For awhile, there was no drug treatment program at all.

Day after day, Calloway would call the treatment program every morning at 4:00am – "because that's when they discharged people," Calloway said. Finally, she got into a short term "detox" program, but she had to wait again for longer term treatment.

Seven months after her daughter was taken, Calloway had completed treatment and passed one drug test after another. But it still wasn't enough for DHS – those two barriers DHS always seems to put in the way came up again: Although it is perfectly legal for people who are unemployed and lack adequate housing to have children in the first place, after DHS takes your children, they will demand that you get a job and get housing before giving the children back. But often, they do almost nothing to help families get the housing or the job.

So even if the child wasn't taken because of poverty in the first place, poverty is what prevents reunification.

It took another five months before Calloway was legally reunified with her daughter – or as she puts it "unified" – since she never had been allowed to have custody of her daughter in the first place.

In one other respect Calloway's daughter was lucky: Calloway had an understanding foster care caseworker who saw her strengths and those of her adult children.

After six months, Calloway was allowed to move in with the family.

But had there been drug treatment available immediately in a program where parents could stay with their young children, the separation never would have been necessary.

It is extremely difficult to take a swing at "bad mothers" without the blow landing on their children. If we really believe all the rhetoric about putting the needs of children first, then we need to put those needs ahead of everything – including how we may feel about their parents. That doesn't mean we can simply leave children with addicts – it does mean that drug treatment for the parent is almost always a better first choice than foster care for the child.

functional” became functional, and, as noted at the start of this report, the foster care population plummeted from 50,000 to under 16,000. The providers also had to show the children were safe in their new placements – and independent court-appointed monitors confirmed it. Under the new arrangement, child safety has improved.

So it can be done. We know what works, there is enough money, and there are

plenty of good, capable people in Michigan child welfare. All that is missing is the will to do it – the will to stop embracing all that is worst in American child welfare, start seeking out all that is best, and stand up to the foster care-industrial complex. Michigan can be a contender again.

It just needs to learn the lessons from its own past.

## Michigan’s child welfare history

More than a decade ago, Lizbeth Schorr published her second landmark book about social welfare. Her first, *Within Our Reach*,<sup>100</sup> debunked the myth that when it comes to solving tough social problems “nothing works.” The second, *Common Purpose*,<sup>101</sup> explained how to take pilot successes to scale.

An entire section of one chapter was headed “Michigan’s Statewide Move Beyond Bureaucracy to Protect Children.”

There, Schorr told the story of the program that first made Michigan a contender for leadership in child welfare; the state’s Intensive Family Preservation Services program, called Families First.

Families First was not the first program of its kind, (the first was Homebuilders in Washington State) but it is among the largest and most successful. It’s also among the most rigorously evaluated programs anywhere in child welfare.

A number of features distinguish true IFPS programs like Families First, and they are discussed in detail in Issue Papers 10 and 11 at [www.nccpr.org](http://www.nccpr.org).

But among the most important: Families First workers combine counseling and parent education with a strong emphasis on providing “hard” services to ameliorate the worst aspects of poverty.

Family preservation workers help

families find day care, job training and housing aid, and get whatever special educational help the children may require. They teach practical skills and help with financial problems. They even do windows.

---

**“IFPS programs that adhere closely to the Homebuilders model significantly reduce out-of-home placements *and subsequent abuse and neglect.*” [Emphasis added].**

*--Washington State Institute for Public Policy*

---

Schorr tells the story of a mother who greets a Homebuilders worker at the door by saying “If there’s one thing I don’t need, it’s another social worker telling me what to do.” What she needed, she declared, was to get her house cleaned up. To which the Homebuilders worker replied, in essence: “Should we start with the kitchen?”<sup>102</sup>

A photo in a publication commemorating the tenth anniversary of Families First shows Families First workers learning to

patch holes in drywall and fix wiring.<sup>103</sup>

By providing the concrete help a family needs, family preservation workers set themselves apart from many of the "helping" professionals parents must deal with. They have offered a helping hand instead of a wagging finger. And they have proven they can deliver. Where everything had seemed hopeless, the Families First worker has provided hope. That makes parents more receptive to the worker's ideas for how the parents can do their part to make the family succeed.

---

**Events in the mid-1990s would plunge Michigan from a contender for child welfare leadership into the child welfare dark ages; they would poison the well for reform for more than a decade and destroy the lives of thousands of children. The state still hasn't recovered.**

---

Schorr's book describes how Michigan leaders studied the original Homebuilders program and how they built in rigorous safeguards to make sure that, as Families First expanded, it adhered to the Homebuilders model.

The Michigan program began in 1988. Since then, it has served more than 142,000 children with an outstanding track record for safety.

In one evaluation, children who received Families First services were compared to a "control group" that did not. After one year, among children who were referred because of abuse or neglect, the control group children were nearly twice as

likely to be placed in foster care as the Families First children.<sup>104</sup>

In another Michigan study, judges actually gave permission to researchers to "take back" some children they had just ordered into foster care and place them in Families First instead. So we know that 100 percent of these children would have been placed in foster care. One year later, after being diverted to Families First, 93 percent of these children still were in their own homes.<sup>105</sup>

Last year, the Washington State Institute for Public Policy reviewed 28 different child welfare programs, to see if they met the test of being "evidence-based" successes. IFPS was one of the few to pass – as long as the programs followed the Homebuilders model. According to this review:

*IFPS programs that adhere closely to the Homebuilders model significantly reduce out-of-home placements **and subsequent abuse and neglect**. We estimate that such programs produce \$2.54 of benefits for each dollar of cost.<sup>106</sup> [Emphasis added].*

And Michigan's State Auditor concluded that the Families First program

*has generally been effective in providing a safe alternative to the out-of-home placement of children who are at imminent risk of being removed from the home ... The program places a high priority on the safety of children.*

The state auditor also found that Families First could serve an entire family for just over one-third the cost of placing one child in foster care – and less than one-tenth the cost of placing one child in an institution.<sup>107</sup>

So it's no wonder that Schorr singled out the program, and Michigan's leadership, in her book.

Unfortunately, by the time Schorr's book was published, in 1997, that part of the

book was out of date. Not because Families First wasn't working – it was, and it still is. But because by then, few political leaders in Michigan cared.

Families First was under sustained attack – it was being marginalized. That tenth anniversary publication actually was released two years late – with no public fanfare. Few people even know it exists, and it's still not on the DHS website.

Families First still hasn't recovered. Funded at \$23 million per year in 1995<sup>108</sup> – even then, a small fraction of what was spent on foster care - its funding has been cut repeatedly, to under \$17 million now.<sup>109</sup> And, as noted earlier, Michigan's own contribution has been cut to zero. Every penny spent on Families First is, in effect, taken out of the pockets of poor people themselves; it's TANF surplus money.

And it wasn't just Families First. Events in the mid-1990s would plunge Michigan from a contender for child welfare leadership into the child welfare dark ages; they would poison the well for reform for more than a decade and destroy the lives of thousands of children. The state still hasn't recovered.

What happened? One word: Binsfeld.

### **The Binsfeld Betrayal**

It is not clear if former Michigan Lt. Gov. Connie Binsfeld actually knew she was spouting palpable nonsense for all those years, or whether she simply was willfully blind to any fact that might interfere with her jihad against impoverished families.

Either way, the results were equally tragic.

People speak of the “Binsfeld laws” and the “Binsfeld Commission” (in fact there were two) but the real damage done by the former lieutenant governor and her cronies can best be described as the Binsfeld mentality - embedding in the minds of political leaders and the public a series of myths that can best be summed up as the

Vast Family Preservation Conspiracy.

To understand the mentality, and the damage it did, some history is essential.

Nationwide, by 1979, for reasons related largely to financial incentives that encouraged foster care, there were more than half a million children trapped in foster care on any given day<sup>110</sup> – about the same raw number as now but, of course, as a proportion of the total child population, it was even worse.

Everything we know about today was happening then: Children were taken needlessly when poverty was confused with neglect, they would endure the trauma of multiple placement, bouncing from home to home, emerging years later unable to love or trust anyone. And, at the same time, overwhelmed child welfare agencies were overlooking children in real danger and leaving them in dangerous homes.

As a result, in one of the last acts of the Carter Administration, Congress passed the Adoption Assistance and Child Welfare Act of 1980. The Act doesn't even use the words “family preservation” – that term, invented to apply specifically to programs like Homebuilders, was barely known then.

The law's goal was to promote permanence – in all directions. It was the first law to provide federal aid for adoption subsidies and the first to try to set time limits on how long children could stay in foster care.

And that made sense. Some children truly can't return to their parents. For many of these children, adoption is, sometimes literally, a lifesaver. It is a vitally-important part of any child welfare system, and a crucial means of achieving permanence for children. The problem comes when it is viewed as the *only* way to achieve such permanence.

The authors of the 1980 law understood this. That's why, in addition to encouraging adoption, this law also was the one that first required states to make

“reasonable efforts” to keep families together and to reunite families when it was safe to do so.

---

Some children truly can't return to their parents. For many of these children, adoption is, sometimes literally, a lifesaver. It is a vitally-important part of any child welfare system, and a crucial means of achieving permanence for children. The problem comes when it is viewed as the *only* way to achieve such permanence.

---

Both legislative history and guidance from the federal Department of Health and Human Services make clear that "reasonable efforts" are never to be made if it would mean a child has to stay in or return to a dangerous home.<sup>111</sup> But the law does have one crucial flaw: It does nothing to change the way child welfare services are financed.

As is discussed in detail later in this report, foster care reimbursement remains an open-ended federal entitlement for states and localities – for every eligible child, at least half the cost of holding the child in foster care is reimbursed (in Michigan it's 60 cents on the dollar).<sup>112</sup> Far less is available to prevent foster care, and those funds are "capped." Nevertheless, at first, the law worked. In the early 1980s, it helped cut the foster care population by more than half - to 243,000.

But by then the Reagan Administration was in office. They hated the law because it was seen as unnecessary federal interference in state and local decisions. They pulled back proposed regulations to enforce it.<sup>113</sup> That sent a signal to the states: You can go back to business as usual. Since the financial incentives were never changed, business as usual - placing more and more children in foster care - was the easier course of action.

So beginning in the mid-1980s, once again children were taken from homes that are safe or could be made safe with the right kind of services. Once taken, the children are filed away and forgotten as overwhelmed workers rush on to the next case. The "reasonable efforts" requirement is ignored. Children again languish in foster care, not because of "reasonable efforts" but because of the *lack* of reasonable efforts. Beginning in the mid-1980s, the foster care population began to rise again. The increase didn't stop until 1999.

Then, in 1993, even though entries into foster care were steadily increasing, something happened that kicked the child welfare establishment backlash against family preservation into high gear: Precisely because so many more children still were being taken away, Congress began talking about putting a little more money into family preservation. Not by doing anything as radical as curbing the huge open-ended entitlement for foster care. Congress merely threw a small additional amount into various prevention programs by passing the Family Preservation and Support Act (now the Promoting Safe and Stable Families Act).

The actual amount of money involved was small. But even the prospect of targeting some federal money specifically toward family preservation scared a child welfare establishment that is invested - literally and figuratively -- in foster care.

## Reality check

### HOW THE SYSTEM *REALLY* WORKS

With the entire process shrouded in secrecy, DHS and private agencies have been able to weave a cloak of self-serving myth around what the system really does to families – and how the deck is stacked against them at every turn.

- It begins with the horror stories spread by the likes of former Lt. Gov. Connie Binsfeld and her disciples. Such horrors really exist, but they are a tiny fraction of the cases workers see every day, and a tiny proportion of the children taken from their parents.

- Then comes the myth that goes: Caseworkers can't take away children on their own, a judge has to approve everything they do.

Perhaps. But often, only *after* the caseworkers do it.

The problem actually begins with the way reports alleging child maltreatment are handled.

---

Bottom line: DHS has a free shot at almost any child in the state for two weeks. They can take who they want, when they want, for whatever reason they want.

---

Unlike most states, in Michigan, each county runs its own child abuse “hotline.” Statewide, counties vary enormously in what proportion of calls are investigated.

Although standards for accepting a report are minimal, so many reports are so absurd that, nationwide, at least 38 percent are not passed on for investigation,<sup>114</sup> sparing children the trauma of needless interrogations and stripsearches and allowing workers to concentrate on more serious cases. The statewide average in Michigan is about the same.<sup>115</sup>

In addition, a huge proportion of the cases that *are* investigated turn out to be unfounded. That indicates that the proportion screened out at the hotline should, in fact, be higher. But a comprehensive study of racial bias in Michigan child welfare found that Wayne County accepts for investigation “almost all” referrals, including many reports that either should not be acted upon at all or should lead to provision of help for a family instead of a child abuse investigation. According to the report:

*This is the beginning of the child protection system's compounding, intrusive and sometimes negative interventions with African American children and families.*<sup>116</sup>

Unfortunately, though the consent decree between DHS and CR calls for creating a single statewide hotline, it does not demand creation of a rational method of screening calls to that hotline.<sup>117</sup>

Next, it is up to an often-underprepared, undertrained, inexperienced, overwhelmed caseworker to decide if the report is to be “substantiated.” In Michigan, a worker need merely suspect that abuse is slightly more likely than not to substantiate a case.

That is typical. So it is no wonder that a major national study found that caseworkers were two to six times more likely to wrongly label innocent families as child abusers than they were to wrongly let guilty families off the hook.<sup>118</sup>

Then, that same often-underprepared, overwhelmed caseworker can order the removal of a child from the child's parents – on the spot, entirely on her or his own authority. And in Michigan, it probably happens in at least 25 percent of all cases that wind up in court.<sup>119</sup> In other cases, the worker technically goes to a judge – but she, or a lawyer acting for DHS,

goes alone, the birth parent is not there to defend herself. Judges almost never refuse such requests.

There is supposed to be a hearing within 24 hours, where DHS is supposed to justify keeping the child in foster care. But the standard of proof is not “beyond a reasonable doubt” as in a criminal case, or even “clear and convincing” the middle standard of proof. At the first hearing, the agency need not even offer a “preponderance of the evidence” – normally the lowest standard used in a court of law. DHS need merely satisfy a judge that there is “probable cause” to hold the child in foster care.

And in reality, DHS doesn’t even have to do that.

Because in most cases, only DHS really presents a case at all.

That’s because DHS almost always has a lawyer present who’s had 24 hours to prepare that case – at a minimum, the caseworker is there to give DHS’ version of events.

On the other side is almost always an impoverished, overwhelmed birth parent who, if she has a lawyer at all, met him five minutes before the hearing. And, at least half the time, the lawyer isn’t assigned until *after* the hearing, sometimes weeks after.<sup>120</sup>

---

“Since the burden is on the parents to comply with the service plan, I don’t have much to do.”

*--Attorney for parents*

---

So parents have no way to challenge the removal – and a comprehensive study of Michigan courts found they almost never do. In one jurisdiction, the hearing is waived at least 95 to 99 percent of the time.<sup>121</sup>

But the first hearing is, in fact, the most important. In child welfare, possession is at least nine-tenths of the law. As professor Paul Chill, Associate Dean of the University of Connecticut Law School, and a member of the NCCPR Board of Directors, has written:

*Once a child is removed, a variety of factors converge to make it very difficult for parents to ever get the child back. One court has referred to this as the "snowball effect." The very focus of court proceedings changes--from whether the child should be removed to whether he or she should be returned. As a practical matter, the parents must now demonstrate their fitness to have the child reunited with them, rather than the state having to demonstrate the need for out-of-home placement. By seizing physical control of the child, the state tilts the very playing field of the litigation. The burden of proof shifts, in effect, if not in law, from the state to the parents.*<sup>122</sup>

The next hearing isn’t for two weeks.

And presiding over all this is a judge who knows that if he overrules DHS and sends a child home, and then something goes wrong, his career may well be over. But if he rubber-stamps the removal of hundreds of children, the children may suffer terribly – but the judge is safe.

Bottom line: DHS has a free shot at almost any child in the state for two weeks. They can take who they want, when they want, for whatever reason they want.

- And things don’t get much better for families later. Just ask people in the system and see what they say when given the chance to fill out anonymous surveys. These are some of the findings, based on such surveys and extensive interviews, from a report commissioned by the Michigan Supreme Court as part of its state Court Improvement Program (CIP):

--Of the judges and referees surveyed, only 37 percent believed that parents’ lawyers even bothered to speak to their clients before the day of the hearing “most of the time.”

According to the study:

*Attorneys in [one] court reported that it was not possible to meet with clients in their offices, since they were not compensated for the time. ... [M]ost often they talk to their clients in the lobby or outside the courthouse just before the hearing.*

--In Wayne County, it's worse. There, the study says, each judge creates her or his own list of favored attorneys – which provides an extra incentive to stay on the judge's good side and not rock the boat. And, given the low pay for the work, the lawyers need lots and lots of cases.

“Often the prosecutors are more mindful of the rights of the parents than the defense attorneys. ... It bothers me that a defense attorney in a TPR [termination of parental rights] hearing might never call a witness.”

--Prosecutor

*One person observed that parents' attorneys in Wayne County meet in the cafeteria and “deal the morning's cases like cards.” ... One jurist with a long history with the Wayne Court described some of these attorneys as “greedy,” saying they get assigned to many more cases than they can realistically handle. ... One interviewee estimated that some attorneys have as many as 200-300 cases, and that they seem to rely on the prosecutor to present the case.*

And in many counties, even lawyers who are not greedy can't provide even minimally adequate advocacy and still make a living. In some counties, there are points in the process where, if a lawyer spent even one hour a week on a case, his flat fee would average out to four dollars an hour.<sup>123</sup>

Even prosecutors sometimes are appalled. Said one:

*Often the prosecutors are more mindful of the rights of the parents than the defense attorneys. ... It bothers me that a defense attorney in a TPR [termination of parental rights] hearing might never call a witness.*

But some of the most damning comments come from the defense lawyers themselves – about their own work:

*An attorney in [one] court described case preparation as being “training and learning the law,” as opposed to spending time with the client. ... An attorney in yet another court described his preparation for adjudicatory hearings in this way: “I study the information that the prosecutor and DHS have—their files are completely open to me. I don't need to do any additional investigation.”*

And what happens once that hearing is over, and parents have to jump through one hoop after another thrown at them by DHS? Does that parent have an advocate fighting for a good service plan and making sure services are provided? Or does she have a lawyer like the one who said that by this point: “Since the burden is on the parents to comply with the service plan, I don't have much to do.”

Although Binsfeld sought to portray the minimal requirement in federal law that states make “reasonable efforts” to keep families together when it is safe to do so as some kind of statutory bogeyman, terrifying the entire system into leaving children in dangerous homes, in fact, judges routinely rubber-stamp DHS claims that those efforts were made – and parents'

lawyers rarely even challenge those assertions.<sup>124</sup>

As for the lawyer guardians *ad litem*, (LGALs) who are supposed to investigate independently and then advocate for what they think is in the child's best interests (regardless of whether it's what the child wants) it is so taken for granted that they rubber-stamp DHS, that, in some counties, when a prosecutor isn't available the LGALs' "will often function as the *de facto* prosecutor..."

- The skids are greased for termination of parental rights at every stage, with hearings sometimes just a formality. According to the CIP study:

*Even a chief prosecutor noted that once cases get into the system, many parents do not have a chance to keep up with onerous service requirements, with the result that they lose their children. ... Another attorney said that terminations move swiftly in her jurisdiction because the judge has handled the case up to that point, knows all the issues, and likely has made up his or her mind." [Emphasis added].*

That bias combines with provisions of Michigan law to create a mix that is toxic to families.

In theory, at the termination stage, the burden of proof finally rises to "clear and convincing." The U.S. Supreme Court, in fact, requires it. But Michigan gets around that by including 28 separate grounds for termination, some of them breathtakingly broad, including a catch-all category, which allows the state to take away a child forever if

*"Other conditions exist that cause the child to come within the court's jurisdiction, the parent received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age."<sup>125</sup>*

And if a parent has lost custody of a child forever that way once, in Michigan, the chances are excellent that it will happen again and again.

Because another provision of the so-called Binsfeld laws doesn't just allow, but requires the State of Michigan to immediately go to court and seek termination of parental rights on any future children if DHS thinks there is "risk of harm to the child." This applies even if the parent voluntarily surrendered rights to a child.<sup>126</sup>

So if a teenage mother decides she's not ready to raise the child to whom she's given birth, and surrenders the child to adoption, then a decade or more later gets married, is leading a stable life and gives birth to another child – DHS will be watching, waiting, and may well confiscate the child at birth.

Even if the court ultimately denies the petition, until the court makes up its mind, the newborn will endure needless foster care at a time when it is likely to be most damaging.

Furthermore, though it is no longer required, courts in Michigan still have the right to suspend all visits between parent and child as soon as a termination petition is filed. So even if the courts ultimately decide the removal was a mistake, DHS can simply come back and say: "But now the infant has 'bonded' with the foster parent, so we want to terminate parental rights anyway."

But wouldn't the child be protected from being torn needlessly from his parent by the provision requiring DHS to think there is "risk of harm to the child"?

No. According to the CIP report, DHS, apparently still plagued by the Binsfeld mentality, routinely files such petitions "even when the agency does not believe that termination of parental rights is best for the child."<sup>127</sup> In other cases, workers actually are unaware of the fact that they don't have to file these petitions in every case.<sup>128</sup>

No wonder Michigan has so many legal orphans.

So, suddenly, any death of any child "known to the system" was blamed on "family preservation" and on that federal requirement to make "reasonable efforts" to keep families together - even if the child was nowhere near a real family preservation program - and even when it was a family preservation worker who warned that the child was in danger in the first place.

---

**Connie Binsfeld,  
lieutenant governor of  
Michigan, didn't create this  
climate of fear and hatred –  
but she sure knew how  
to exploit it.**

---

And then it got worse. The debate took an Orwellian turn. Opponents began spreading the Big Lie of American child welfare. They charged that children were languishing in foster care because the Vast Family Preservation Conspiracy was forcing caseworkers to lavish services on ne'er-do-well parents, giving them chance after chance while their children were forced to wait, bouncing from foster home to foster home.

Thus, the foster care-industrial complex, which lives on endless *per diem* payments for holding children in foster care indefinitely said, in effect: Hey, it's not our fault. We'd love to stop being paid for all these children, but that darn family preservation movement is tying our hands – and forcing us to hold the children in foster care.

None of it was true.

For starters, if the Vast Family Preservation Conspiracy was using a 1980 law to hold all these children in foster care, how did people like Binsfeld and her allies explain all the children trapped in foster care in

1979? Nobody ever asked them; it was easier just to scapegoat family preservation.

It served the interests of everyone – except the children. News media had a simple explanation for seemingly inexplicable tragedies; politicians had a means of what's been called "low cost rectitude" – you can campaign to tear apart more families and the bill won't come due for a few years, and even then the federal government will pick up a large share of the tab.

And it was a great "out" for embattled child welfare agency leaders. Faced with a child who died in a case where there were flagrantly obvious warning signs, agency chiefs could tell the truth: "My caseworkers are undertrained, overwhelmed, and don't have time to investigate any case properly, so they overlook the obvious." Or they could say "Well, it's not our fault, that federal law made us do it."

And it was all happening at a time when hostility to the poor, particularly poor, Black mothers, may have been at its highest point in decades. By January, 1995, Newt Gingrich, newly-elected Speaker of the House, had proposed taking away poor people's children and throwing them into orphanages. The next year, members of Congress would call these mothers "wolves" and "animals" as they passed the welfare "reform" law.

To paraphrase one of America's greatest journalists, Edward R. Murrow, Connie Binsfeld, lieutenant governor of Michigan, didn't create this climate of fear and hatred – but she sure knew how to exploit it.

Not long after her second commission issued its report, Binsfeld was invited to testify before Congress.

The 2,400 words of fear and smear she offered up are in some ways a classic – an almost perfect summary of the campaign of hate and misinformation that characterized the era. She painted a picture of state officials terrified to take away children who

had been beaten, raped, and tortured, for fear of running afoul of the “reasonable efforts” requirement.<sup>129</sup>

And don’t worry about legal orphanages, Binsfeld said. Once the Vast Family Preservation Conspiracy was out of the way, every child in foster care either would be returned home – if authorities were absolutely, positively sure the birth parents had become model citizens – or they’d be adopted. “There is a placement of choice for every child,” she told the committee.

Once again, none of it was true.

The real problem with reasonable efforts is that the requirement is routinely ignored, and always has been. Even Marcia Lowry, executive director of CR - a group that brought a lawsuit that, in its original form, would have enhanced the power of Michigan’s private agencies, a group that launched an attack on the state’s grandparents, in short, a group that is no friend of family preservation – even Marcia Lowry knew that was nonsense.

In 1988, the very time opponents of family preservation claim was the heyday of reasonable efforts, Lowry testified at another Congressional hearing about the Adoption Assistance and Child Welfare Act.

Citing a case in which a child had been taken from his mother and separated for five years – because the mother lacked housing, Lowry said:

*These are children who are supposed to be protected by this very fine legislation. But reasonable efforts were not made in this case or in thousands of cases. ... We are trying to enforce this law in the Federal courts because the Congress and the Department of Health and Human Services are not.*<sup>130</sup>

Four years later, and four years before Binsfeld made her claims, the U.S. Supreme Court would prohibit such lawsuits,<sup>131</sup> rendering what little was left of the “reasonable efforts” clause largely meaningless.

The data from the Court Improve-

ment Project report, and the reports from the consultants hired by CR, not to mention the cases in this report, and the success of other states which voluntarily work to keep families together, all make clear that the real problem in Michigan isn’t making reasonable efforts, it’s the *failure* to make reasonable efforts.

---

**Horror story cases are like needles in a haystack. Binsfeld’s approach was to try to find the needles by vacuuming up the entire haystack. That’s impossible. In contrast, states that emphasize family preservation and keep more children safely in their own homes give workers more time to find the needles.**

---

More than a decade after Binsfeld got the laws she wanted, six years after the executive director of the Binsfeld Commission was named to run DHS (and five years after she left) and with the Binsfeld mentality still permeating DHS, the horror stories of children who are, in fact, brutalized by their parents remain rare – but they have not stopped. There is no evidence they have even abated. Binsfeld and her disciples share responsibility for that.

Because the real reason such cases sometimes are missed – even when agencies receive repeated warnings – has nothing to do with family preservation or reasonable efforts. Rather, one almost always finds a caseworker who is underprepared, under-trained and desperately overwhelmed. She

never had time to check files carefully, or stay long enough at the home or interview everyone she should have. Or the case that didn't look urgent when it first came in, and so went to the bottom of the pile, turned out to be extremely urgent after all.

---

**Binsfeld convinced herself that an army of childless yuppies was desperate to adopt Michigan foster children, with only the Vast Family Preservation Conspiracy standing in their way.**

**So Michigan went about repeating the same mistakes. It would be nearly a decade before anyone had the guts to expose the dreadful results.**

---

It can be frustrating for something so mundane to lead to such profound tragedy. And it can be hard to fix. It's so much easier for all concerned to simply blame a law or a policy.

Horror story cases are like needles in a haystack. Binsfeld's approach was to try to find the needles by vacuuming up the entire haystack. That's impossible. In contrast, states that emphasize family preservation and keep more children safely in their own homes give workers more time to find the needles.

As for the suggestion that "there is a placement of choice for every child," perhaps Binsfeld believed her own mythology. But she, and everyone else who has pursued adoption-as-panacea had every reason to know it wasn't true.

Because Michigan had traveled that

road before.

Recall how the Adoption Assistance and Child Welfare Act of 1980 was supposed to promote permanence in all directions. It turns out the direction embraced most fervently was not family preservation – it was rushing to terminate parental rights.

In the spring of 1995, - plenty of time for Binsfeld to have read it – *Family Law Quarterly* published a landmark study by Martin Guggenheim, Fiorello LaGuardia professor of clinical law at New York University School of Law (and president of NCCPR).

Guggenheim studied two states, New York – and Michigan. He found that after the Adoption Assistance Act took effect, particularly starting in the late 1980s, there was a huge surge in terminations of parental rights in the two states – and that surge far outran adoptions.

The result, dramatically documented in a line graph: an ever increasing number of state wards – the number soared from 1,700 in 1987 to more than 3,000 by 1992. Many would never find homes. It was in this article that Guggenheim first coined a name for these children – legal orphans.

"A well-intentioned desire to serve the best interests of children appears to have resulted in needless destruction of families without providing any offsetting gains," Guggenheim wrote.<sup>132</sup>

But Binsfeld convinced herself that an army of childless yuppies was desperate to adopt Michigan foster children, with only the Vast Family Preservation Conspiracy standing in their way.

So Michigan went about repeating the same mistakes. It would be nearly a decade before anyone had the guts to expose the dreadful results.

- The Binsfeld laws expanded the grounds for termination of parental rights, including adding an astoundingly vague catch-all category that boils down to: any other reason we can think of. (See *Reality*

## Michigan's "express lane" to indefinite foster care

As has been shown elsewhere in this report, if DHS wants to take your child (and if you're poor) DHS can do it, and nothing gets in the way. But what if DHS doesn't want to take the time even to go through all the formalities?

If you happen to be in a custody dispute, or simply have an ex who sincerely believes you're not a very good parent, DHS gets a chance to take the "express lane."

And it's a privilege that appears to have been granted to the child welfare agency only in Michigan.

In most states, in cases where there are two parents living apart, it is, unfortunately, common that, after a child is taken from the custodial parent, the *non*-custodial parent is treated as a suspect instead of a resource.

There are exceptions. In California, for example, in such circumstances, if a non-custodial parent wants custody she or he is presumed fit, and the state must prove otherwise by clear and convincing evidence.<sup>133</sup> But in most states it's pretty much the other way around. The non-custodial parent may spend months or years jumping through hoops while the child languishes in foster care with strangers.

But Michigan has taken things to a Kafkaesque extreme.

In Michigan, if a *non*-custodial parent admits to neglect, the *custodial* parent loses the right to a trial. The parent who actually is raising the child can be presumed neglectful and forced to comply with a DHS "service plan" while the child remains trapped in foster care. This goes on until the court is satisfied the custodial parent can raise the child – even though no court ever found the parent *couldn't* raise the child in the first place.

Michigan's Court of Appeals has upheld this practice at least nine times, and the Michigan Supreme Court has refused to hear the issue.

The result, say lawyers for one mother who fell into this trap, is

*a culture within Michigan courts where a finding of neglect against one parent automatically deprives the other of an evidentiary hearing...The pervasiveness of this practice heightens the risk that children in Michigan either have been or will be erroneously removed from fit, custodial parents.*<sup>134</sup>

What kind of harm can this do?

*A disgruntled ex-husband could enter into a no-contest plea to neglect solely to ensure that his ex-wife would lose custody of her children. A domestic violence batterer could admit to neglecting his children as a means of exercising power over the mother, who could lose custody of the children based on his plea. An uninvolved incarcerated parent could stipulate to neglect as form of retribution against the mother for her involvement in his criminal conviction.*<sup>135</sup>

And what grounds might a parent have to cop to neglect if he doesn't even have custody? Simple. He pleads to "failure to protect" the children from whatever it is he claims the other parent has done.

That's what the husband did in the case that has gotten the most attention. In a further illustration of the absurdity of Michigan case law, he was able to deprive the mother of a hearing concerning two of her three children. But she got her trial concerning the third child – when it was revealed that the man was not that child's father after all.

The mother lost, and her parental rights were terminated.<sup>136</sup> Maybe that's what should have happened, maybe not. But children are placed at enormous risk when it can happen after bypassing a trial on the merits and taking the express lane all the way to the termination of parental rights hearing.

*Check*, p. 45). This was the legal ground used the first time Judge Gardner terminated Melissa Kucharski's parental rights. (See *Comparison shopping in Grand Rapids*, P. 28)

- The Binsfeld laws said that once this or any other so-called ground for termination was “proven” courts must presume that termination is in a child's best interests and the parent must prove otherwise.

- The Binsfeld laws require the state to seek termination of parental rights after a year – with fewer and narrower exceptions than similar federal law. According to Kenneth Tacoma, Chief Probate Judge for Wexford County, “this forces many cases into a termination mode even if other options ... might be available for consideration.”<sup>137</sup>

- And the Binsfeld laws said that if a mother lost one child to termination – even if she voluntarily surrendered that child, every time that mother gave birth, forever, the presumption would be that the state of Michigan immediately would petition to terminate parental rights for that child as well. (Technically, the law also applied to fathers, but, of course, that is harder to enforce.)

But more important than the Binsfeld laws was the Binsfeld mentality – it was open season on poor families, especially poor Black families.

Statewide, in the two years after the Binsfeld laws passed, the laws that were supposed to empty out foster care actually caused the number of children trapped in foster care to soar by more than 15 percent.<sup>138</sup> At least since 1993, which is as far back as available records go, there has been nothing like this “Binsfeld binge” before or since.

And in parts of the state, where the war was waged with particular gusto, it was worse, as people who once might have hidden the fact that they thought of poor parents as indolent and uncaring came out into the open.

Poor people often don't have cars and have enormous difficulty getting to the suburbs where many foster children are placed – especially when visits are scheduled during working hours and the birth parents also must keep their jobs to get their children back.

---

**But more important than the Binsfeld laws was the Binsfeld mentality – it was open season on poor families, especially poor Black families.**

---

But in 2000, a Traverse City foster parent made clear she didn't give a damn. She said DHS needs to “not pamper the parents' requests so much” by doing things like moving visits to places that are easier for parents to reach.

The local lawyer guardian *ad litem*, who represents children in these cases, suggested to the local paper that parents should view having their children taken as almost like a vacation, a chance to, as the paper put it,

*straighten out their own lives without the pressure of caring for children as well. “Try not to look at it as the state trying to intervene in your family,” she said. “The problems seem to arise when parents see it as an invasion.”*

As for the head of the local DHS office, Bob Porter, his only concern was that the Binsfeld laws didn't go far enough.

Why wait 12 months before demanding termination in almost every case – why not make it six! He said he wouldn't want his children waiting longer “while I decided whether I wanted to be a parent or not.”<sup>139</sup>

Apparently, Porter hadn't noticed

that in his region, from the passage of the Binsfeld laws to 2000, while adoptions had increased by ten percent, terminations of parental rights had shot up 49 percent. And the number of area children trapped in foster care on any given day had increased by one-third.<sup>140</sup>

And it doesn't look like things have gotten any better. In 2008, Grand Traverse County took away children at the third highest rate in the entire state, a rate more than double the state average and nearly quadruple the rate in Wayne County.<sup>141</sup>

### **Adoption-at-all-costs**

And no wonder. The push for adoption-at-all-costs didn't end with Binsfeld. It was carried on by Michigan Supreme Court Justice Maura Corrigan.

As Chief Justice, she turned the court into a crusader for adoption. In the process, she undercut one of the most noble concepts in all of child welfare – permanence.

The major reason foster care is so inherently harmful is the separation of a child from everyone she or he knows and loves. Sometimes that separation must take place anyway, because leaving the child in the home is even more harmful. But often the separation is unnecessary.

The trauma is compounded, however, by impermanence. The moment a child finally gets used to new, substitute parents, new friends, a new school, he may be uprooted again. Do that to a child often enough, and a child learns not to love or trust anyone.

So permanence is, indeed, one of the most important goals in child welfare. But the best form of permanence is avoiding taking a child away from his parents in the first place. Second best is reunifying that child with the permanent parents he was born with. Only when that's truly not possible

should adoption or guardianship – preferably by a relative - be the next choice.

Almost everyone at least pays lip service to that.

But one of Justice Corrigan's first acts when she was Chief Justice was to create a task force not on permanence, but on adoption. And there would be much more.

There are two ways to know the real priorities of a child welfare system - or a court system. One, of course is how it spends money. And we've already seen that no matter what DHS or anyone else may say about foster care being a last resort, the big bucks are going into foster care, not alternatives.

Another way to know anyone's priorities is by looking at what one chooses to celebrate. The father who has memorized the schedule of his favorite football team but always forgets his children's birthdays is sending a message. So, too, is the child welfare agency which claims that its first priority when a child is taken away is to reunify that child with her or his birth parents, but chooses to celebrate *only* adoption.

The real agenda of most child welfare systems, and most of the people in them, is made apparent every year on National Adoption Day, or, as it should properly be called, National Child Welfare Hypocrisy Day.

Everybody knows the drill. Open the court on a weekend, bring in cake and balloons, finalize foster-child adoptions *en masse* – in the process, reinforcing every pernicious stereotype about how the system supposedly rescues children from horrible birth parents and places them with vastly superior adoptive parents.

In Michigan, Justice Corrigan takes great pride in orchestrating more such cele-

# 1995:

***Five years of aggressively terminating parents rights has produced a clear pattern: The number of children freed for adoption goes up every year; the number of children adopted fails to keep pace with the number of adoption-eligible children; and the total number of orphaned children not adopted, continues to increase fastest of all.***

***Of all the reforms advocated in the 1970s, it appears that the one taken the most seriously is terminating parents' rights of children in foster care. ...***

***A well-intentioned desire to serve the best interests of children appears to have resulted in needless destruction of families without providing any offsetting gains.***

***--Prof. Martin Guggenheim***

# 2005:

***It was a totally unrealistic assumption to believe that the supply of adoptive families could absorb the numbers of new wards available for adoption ... In spite of tax incentives, adoption subsidies, promotion programs, post-adoption support services and other tools to try to place these children, the numbers show that it won't be done, and our group of state-created orphans will continue to grow. ....***

***Unfortunately, as things stand now, we are witnessing one of the great ironies in the legislative world of good intentions gone bad. The number of rootless and alienated permanent state wards has exploded, and these children and young people are still caught in the foster care system from which they were to be rescued. We have made things worse, not better.***

***--Michigan Probate Court  
Judge Kenneth Tacoma***

brations than any other state. The Michigan Supreme Court website is slathered in stories about adoption day, speeches touting adoption and other material promoting adoption, with barely a word about any other form of permanence.<sup>142</sup>

In theory it is possible for one or more justices of this court to give a speech touting adoption in the morning, preside at an adoption luncheon at noon – and hear an appeal of a termination of parental rights that afternoon. If the reality of justice depends at least in part on the perception, it is fair to ask if the actions of Justice Corrigan and her colleagues risk compromising that reality.

That's not all. Getting those adoption numbers up is the one sure way a child

welfare agency can get good press, since the agency can count on most reporters not asking any tough questions about how it was done, or whether all those children ever needed to be taken from their homes.

To top it off, there's big money at stake. The federal version of the Binsfeld laws, the so-called Adoption and Safe Families Act, pays states a bounty for every finalized adoption over a baseline number.

The message to the frontlines is clear: Reunify a family and, if anything goes wrong, you'll be scapegoated and quite possibly fired. Rush to terminate parental rights, and you will reap only rewards, no matter what actually happens to the children.

So is it any wonder the number of legal orphans in Michigan has shot up? Is it

any wonder that Tim and Lisa Holland's adoption worker would let them finalize another adoption even after Ricky had gone "missing"? The adoption-at-all-costs mentality isn't just harmful to children's psyches – it can endanger their lives.

---

**The message to the frontlines is clear: Reunify a family and, if anything goes wrong, you'll be scapegoated and quite possibly fired. Rush to terminate parental rights, and you will reap only rewards, no matter what actually happens to the children.**

---

Abuse by adoptive parents is, in fact, very rare – as is abuse by birth parents. But creating huge incentives to promote adoption-at-all-costs makes it less rare. And, once again, even Marcia Lowry of CR has acknowledged it.

In 2003, she told a Congressional committee that

*... Congress should realize that far too many states ... when they do, for example, raise their adoption numbers, are doing so by including many clearly inadequate families ... along with the genuinely committed, loving families who want to make a home for these children, just to 'succeed' by boosting their numbers.*<sup>143</sup>

And in Michigan, Ricky Holland was not the only Michigan child adopted-to-death.

- In 2002, after what news accounts say was a rushed adoption to allow the family to move from Michigan to Iowa, the adoptive father of Timothy Boss was con-

victed of tying Timothy to a chair, beating him with a paddle, and then burying his body under the basement floor. The father also adopted three other children from the Michigan foster care system before leaving the state.<sup>144</sup>

- In 2006, Alan and Carol Poole became foster parents because they couldn't have children and were eager to adopt. Living in what the *Detroit News* called their "upscale 2,700 foot home" it's no wonder that, as a Wayne County prosecutor put it, Carol Poole "appeared to be the most perfect of parents on paper..."<sup>145</sup>

The first foster child placed with the Pooles was Allison Newman. There wasn't time to get to the question of adoption. Ten months after being placed with the Pooles, Allison was dead. Carole Poole was found guilty of second degree murder.<sup>146</sup>

In other cases, the children survived, but only after enduring exactly the kind of maltreatment the Binsfeld laws supposedly were going to prevent.

- In Warren, eight-year-old twins testified that their adoptive mother "tortured them by denying them food, burning them with cigarettes, hitting them repeatedly with a belt and immersing them in bleach. ..." <sup>147</sup>

The adoptive mother was convicted of two counts of torture and two counts of first degree child abuse.<sup>148</sup>

- In Grand Rapids, two children were raped by their adoptive father – only to be removed from the home and allegedly sexually assaulted again in foster care.<sup>149</sup>

As noted earlier, abuse by adoptive parents is rare – as is abuse by birth parents. But there are bigger problems with Michigan's adoption-at-all-costs mentality. There is the risk of adoption disruption, as parents give up on adopted children after agencies rush the children into quick-and-dirty, slipshod placements,<sup>150</sup> the risk of tearing apart families in which children never needed to be taken in the first place – and the risk of creating all those legal orphans.

Yet Corrigan continues to take actions and make statements suggesting she views permanence as adoption-only. Her priorities were vividly on display at an all-day meeting of the Child Welfare Improvement Task Force, of which she is a member, in Detroit in November, 2008.

---

"... Congress should realize that far too many states ... when they do, for example, raise their adoption numbers, are doing so by including many clearly inadequate families ... along with the genuinely committed, loving families who want to make a home for these children, just to 'succeed' by boosting their numbers."

--Marcia Lowry,  
executive director of the group  
that calls itself "Children's Rights."

---

Arrangements had been made for the one group largely left off the task force itself – birth parents – to speak to the group. Plenty of tears were shed as more than 20 parents whose children had been taken from them worked up the courage to face what amounts to the power elite of Michigan child welfare. Afterwards, several members of the task force said they were deeply moved, and the *Free Press* ran a story about the presentations.<sup>151</sup>

But Corrigan, who had been present at the meeting earlier and would return later, was absent during the birth parents' presentation. Her secretary said she had to return to her office to deal with "pressing court busi-

ness" - preparing for the Supreme Court's weekly conference at which cases are discussed and decided.<sup>152</sup>

But Corrigan was back at the Task Force that afternoon, in time to chastise a task force committee, harshly and at length, for putting forward a recommendation that would require a little more work from the courts in support of family reunification at a time when their budget is being cut. The task force promptly backed down.<sup>153</sup>

---

Given the fanaticism on the state's highest court, one can only imagine the courage it took for a lowly probate court judge to blow the whistle on the lingering hangover from the Binsfeld binge.

A decade after Guggenheim's article was published, Kenneth Tacoma, Chief Judge of the Wexford County Probate Court, published *Lost and Alone on Some Forgotten Highway: ASFA, Binsfeld and the Law of Unintended Consequences*.<sup>154</sup>

In it, he essentially took Guggenheim's line graph and extended it a decade. The new graph showed that the state ward population which had gone from 1,700 in 1985 to more than 3,000 by 1992, had soared to more than 6,000.<sup>155</sup>

And these figures don't even include the number of children who aged out of the system without ever being adopted. They don't include disrupted adoptions either – since technically the adoptive parents still may have rights to the children, but they're back in the system – often Tacoma wrote, the juvenile justice system.

In response, the legislature made some minimal changes, and Corrigan is quick to emphasize she supported them.<sup>156</sup> For instance, once a ground for termination has been "proven," the burden is no longer on the parent to prove that termination is not in the child's best interests. But the broad, vague grounds for termination remain. More important, so does the fact that, given

the often poor quality and limited resources of defense counsel, judges at every level usually are hearing only one side of the story.

And while the changes deal with the back door of the system – termination of parental rights and adoption - they do nothing about the front door which was blown open by the Binsfeld mentality.

In his 2005 article, Tacoma noted that the army of childless yuppies remains AWOL. And, echoing Prof. Guggenheim's conclusion a decade earlier, Tacoma wrote:

*Unfortunately, as things stand now, we are witnessing one of the great ironies in the legislative world of good intentions gone bad. The number of rootless and alienated*

*permanent state wards has exploded, and these children and young people are still caught in the foster care system from which they were to be rescued. We have made things worse, not better.*

By 2008, even Corrigan was admitting that, as the *Detroit Free Press* put it:

*The Binsfeld laws had a faulty assumption ... "I think what we anticipated was that there would be people to step up to the plate to adopt these children or find a permanent solution for them." For whatever reason, she said, "that did not occur."<sup>157</sup>*

But there was no excuse for ever believing that it would.

## Hangover from the Binsfeld binge

The “hangover” from the Binsfeld binge – a suspicion of families that runs so deep as to border on the irrational – can be seen in the response by many politicians to the series of tragedies in Michigan foster care in recent years.

Whether it was the case of Timothy Boss, Joshua Causey, Isaac Lethbridge, Allison Newman, Ricky Holland or Johnny Dragomir, the cases had one thing in common: The children were taken away from their birth parents and died in the duly-licensed homes or institutions of people who were total strangers to them.

And yet, overwhelmingly, the proposed responses to these tragedies involved taking away more children and placing more of them in stranger care.

The worst offenders in this regard may be Attorney General Mike Cox and a “special committee” of the Michigan legislature formed to investigate child welfare after Ricky Holland died.

Even though all of the proposals were offered in the name of preventing

another tragedy like the death of Ricky Holland, every single one of them involved expanding the net of coercive intervention into families; there was not one suggestion to do more to keep families together.

### The Udow era

The biggest sign that Gov. Jennifer Granholm knew her first choice to run DHS – the former executive director of the Binsfeld Commission, Nanette Bowler – had been a huge mistake, was her choice of a replacement.

Marianne Udow was the first DHS leader since Gerald Miller in the early 1990s to have a keen sense of what was really wrong with child welfare and what was needed to get it right.

During Udow's brief tenure, DHS:

- Confronted the racism that permeates child welfare.
- Promoted kinship care.
- Pushed to expand the Family to Family initiative statewide.
- Sought an innovative waiver of

federal funding rules to allow money normally restricted to foster care to be used for alternatives as well.

Once again, Michigan could have been a contender.

But today, the racism issue is on the back burner, kinship care is under siege, the future of Family to Family is tenuous, and the waiver is dead.

In part that's because Udow's biggest weakness was – weakness. She allowed someone in DHS to scrap the waiver at the last minute – slinking away from a reform the agency already had publicly announced and embraced. And she let herself be bullied, most notably by the former District Attorney in Oakland County whose relentless demands to tear apart more families led to a rate of removal double the rate in Wayne County.

But the problem wasn't just Udow's weakness. All of these initiatives had one thing in common: They would have weakened the power, and threatened the prosperity, of the foster care-industrial complex. All of Udow's initiatives would have reduced the number of children entering foster care and, particularly, reduced the number of children placed with strangers or in institutions.

## **The campaign against Family to Family**

One area where the role of private agencies is crystal clear is in efforts to undercut Family to Family. Because this was one of those rare times when the mask slipped, and Michigan's foster-care, industrial complex revealed its ugly side.

First, a brief explanation of the initiative, developed by the Annie E. Casey Foundation. (That foundation is a longtime funder of NCCPR, though it is not funding our current advocacy in Michigan.)

The goals of Family to Family boil down to this: Keep children with their own families when it is safe to do so. If that's

not possible, the goal is to place the child with a relative. And if that's not possible the goal is to at least keep the child in his own neighborhood, to make visiting easier and to keep the child connected to family, teachers, friends, and classmates. Almost everyone pays lip service to these goals. What sets Family to Family apart, and makes it a threat to the foster care-industrial complex is, it's succeeding.

A core strategy of the initiative, though by no means the only element, is Team Decisionmaking. That means, when there is a need to consider out-of-home care, everyone who knows the family and cares about the family is brought together, along with the professionals handling the case, to hammer out a solution. DHS has the final say on what that solution will be. Much more about the program is available on the Annie E. Casey Foundation's website at <http://www.aecf.org/MajorInitiatives/Family%20to%20Family.aspx>

But the most important thing to know about Family to Family is that, like Intensive Family Preservation Services, and unlike foster care, it passes the “evidence-based” test. There is solid evidence that it works, from a comprehensive evaluation of the program done by the University of North Carolina.<sup>158</sup> That evaluation found that “[F]ewer children entered out of home care and those who had to be removed from their homes were placed in less restrictive forms of care.”

Here are some of the other highlights:

- While conventional foster parent “recruiting campaigns” are failing all over the country, Family to Family sites often succeed in recruiting foster parents in the children's own neighborhoods. And instead of the hostility that often characterizes relationships between birth parents and foster parents, many foster parents embraced the Family to Family approach of working with and mentoring birth parents.

## The Michigan child welfare brain drain

Michigan has made enormous contributions to reform of child welfare – in other states. Leaders who may have been frustrated in Michigan have been welcomed elsewhere. Some cases in point:

**David Berns.** Former director of the DHS Office of Children's Services. Left Michigan to run the human services agency in El Paso County, Colorado. Transformed the child welfare system into a national model. Berns turned child protective services into child *poverty* services. Staff assigned to child welfare became experts in public assistance and other help to poor families and vice versa. (Unfortunately, Michigan's settlement with CR may well make it harder to do that in Michigan.)<sup>159</sup> By recognizing the crucial role of poverty in child maltreatment, El Paso County reversed steady increases in its foster care population. The number of children in foster care declined significantly – and the rate of reabuse of children left in their own homes fell below the state and national averages, according to an independent evaluation by the Center for Law and Social Policy.<sup>160</sup> Berns now helps systems across the country as Executive Vice President of Child and Family Services for Casey Family Programs.

**James Beougher,** also a former Director of Child and Family Services for DHS. He pioneered efforts to move to performance-based contracting in Michigan, but it never got past the pilot stage. But Beougher's ideas have been welcomed in Maine, where he was brought in to transform one of the nation's worst child welfare agencies. On any given day in 2001, a child was more likely to be trapped in foster care in Maine than in almost any other state. And, since Maine was profoundly hostile to kinship care, the proportion of children trapped in stranger care may well have been worst in the nation. Now, the number of children trapped in foster care is down nearly 40 percent.<sup>161</sup> Entries into care are way down,<sup>162</sup> kinship care is way up and the number of children trapped in institutions has been cut by nearly two-thirds.<sup>163</sup> It's all been done without compromising safety, earning the support of the state's independent child welfare ombudsman.

The work of **Susan Kelly** is described elsewhere in this report. Kelly was the first director of Michigan's pioneering Families First program. Based on the Homebuilders model in Washington State, Families First became one of the largest and most successful programs of its kind – only to be undercut by the politics of Michigan child welfare. Now Kelly advises systems around the country as Senior Director of Strategic Consulting for Casey Family Programs.

The next Dave Berns, or Jim Beougher, or Sue Kelly is almost certainly working somewhere in DHS right now, whether as a frontline caseworker, midlevel administrator, or perhaps running a county office. Either Michigan policymakers can learn to find these people and support their innovative thinking – or some other state will.

- With more foster families available, fewer children had to be institutionalized.
- Increased use of relatives as foster parents also opened up a new option for permanence, as more relatives agreed to be permanent guardians of children who could not be reunited with their birth parents.

- At most sites, there was a significant reduction in the number of placements children had to endure.
- Perhaps most significant: Because Family to Family succeeded in keeping more children safely in their own homes, the children who *were* removed had more serious problems. Nevertheless, there was no

increase in the “recidivism” rate – the number of children returned home who re-enter care – at any Family to Family site. And in some sites, the recidivism rate went down.

That indicates that all of the other improvements in children’s lives were accomplished while making children safer.

There also is evidence from Michigan.

In Wayne County, where Family to Family has been a key part of child welfare services in recent years, from 2004 to 2006 entries into foster care dropped by 20 percent. At the same time, substantiated allegations of child abuse dropped 22 percent<sup>164</sup> – again, indicating that the reduction in foster care was accomplished without compromising safety.

---

**Some private agencies,  
legally required by contract to  
provide help to poor people in  
their own neighborhoods,  
simply refuse to do it. And  
DHS does nothing about it.**

---

Clearly that kind of success is a threat to agencies that depend on a steady supply of foster children. And in April, 2006, a trade association for some of these agencies, the Association of Accredited Child and Family Agencies, traipsed up to Lansing to oppose Family to Family.

The Association’s president at the time of the hearing was John Schmidt. At the time Schmidt also was president of the Methodist Children’s Home Society – a residential treatment center; in other words, an orphanage, and a form of intervention in children’s lives that has repeatedly proven to be virtually worthless and often inherently harmful.<sup>165</sup>

And clearly, if you run an institution that is “situated on 70 acres of beautifully wooded land and rolling open spaces”<sup>166</sup> you might feel threatened by a program whose goal is to keep children in the same neighborhoods as their birth families.

The Methodist Home website and brochure say the agency also offers foster care and adoption services. They say nothing about services to keep families together.

So, what was the case made by the private agencies? They told lawmakers that children are better off in foster care with total strangers in a swank suburb than with grandma or grandpa, an aunt and uncle, or a trusted friend in their own neighborhood, because there is less crime and there are better schools in the suburbs.<sup>167</sup>

But if that argument applies to children whose poverty has been confused with neglect so child protective services stepped in, why doesn’t it also apply to every other impoverished child? Why should “neglected” children be the only ones to gain benefits from suburban schools that are said to be so enormous they outweigh the love of a family? Why not just confiscate all impoverished children? And if, in fact, these benefits are so huge, then it’s hard to see how these same private agencies can really mean it when they say, with straight faces, “we try our best to reunify these families whenever possible.” After all, why would they want to pursue such reunification when that would doom the children to returning to a poor neighborhood?

Given an attitude like this from people who are supposed to be leaders, it’s no wonder that the *Race Equity Review* found identical attitudes permeating the frontlines, among caseworkers, judges and lawyer guardians *ad litem* for children. The review called this

*Reminiscent of the 19th century child rescue ideology that led to the separation of tribal and immigrant children from their*

*families and communities ...*<sup>168</sup>

In case the problems in suggesting that material comfort and even good schools are more important than love aren't obvious, consider:

- We've been doing it the way the private agencies want for 150 years. The very first foster care program, Charles Loring Brace's 19<sup>th</sup> century "orphan trains" were based on precisely the theory that the Michigan agency chiefs offered the legislature: The dreadful influences of poor big-city neighborhoods supposedly could be overcome only by shipping the children of the immigrant poor off to farms in the south and Midwest.

Only it didn't work too well. Many of the children were not orphans at all; they were taken from parents for the same reason children are taken today: The parents – typically Catholic immigrants -- were poor and despised. Many of the children wound up treated little better than slaves. (Brace himself was, in fact, a raving bigot who believed poor immigrant parents were genetically inferior.)<sup>169</sup>

- It doesn't work well now, either. Regardless of any disagreements over solutions, almost everyone concedes that the current foster care system, which follows precisely the model advocated by Schmidt, is a colossal failure. So why do more of the same?

One of the main reasons foster care is such a failure is the emotional devastation to a child when he loses not just mom and dad but also everyone else in his life who means anything to him. And in many cases, the odds are excellent that as soon as the child gets used to his new surroundings, she or he will be forced to move again, compounding the trauma. What good is a "better" school if a child has to keep moving from one such school to another?

The Michigan agencies' case is built on a foundation of false stereotypes, not on-

ly about the birth parents who lose their children to foster care but also the neighborhoods those parents live in.

---

**It is obscene to suggest that the only way a poor child should get to go to a "good" school is by trading in his family for the privilege.**

---

The portrait of those neighborhoods from the agencies is what one might expect not from people who genuinely care about what's best for children, but rather from people whose only source of information is local television news, with its endless parade of crime scenes and "perp walks."

But – and it shouldn't really be necessary to point this out – even in the most crime-plagued neighborhood, most people don't commit crimes. Even in neighborhoods where drug dealers congregate on the corner, most parents are doing everything they can to keep their children away from that corner. Even the poorest communities have neighborhood associations, community-based social service agencies and churches that can form the foundation for helping DHS keep children safe without forcing them to leave everyone they know and love. The problem is, agencies like DHS often have been clueless about what these groups are and where to find them, and the community groups have been too suspicious, often with good reason, to work with DHS.

Or worse, some private agencies, legally required by contract to provide help to poor people in their own neighborhoods, simply refuse to do it. And DHS does nothing about it.

That was among the most shocking findings in the *Race Equity Review*.<sup>170</sup> But

it might help explain why private agencies keep pushing the legislature to make the families – and the children – come to *them*.

Overcoming these barriers is what initiatives like Family to Family are all about. And, in Wayne County, the initiative has helped begin the building of an infrastructure of community-based supports.

---

**There is one more little problem with what the agencies are recommending that Michigan legislators need to know about: It's probably illegal.**

---

Of course, it would be wonderful if poor children could stay with their birth parents, be surrounded by supportive extended family and neighbors *and* live in upper-middle-class suburban neighborhoods if they so chose. If the Michigan Legislature would like to initiate a program to build more affordable housing in the suburbs, that would be a great idea.

But it is obscene to suggest that the only way a poor child should get to go to a “good” school is by trading in his family for the privilege.

But for the Association of Accredited Child and Family Agencies, this isn't really about the children at all. It was left to the Blog of the Michigan Republican Party to point out the real agenda. Even as Schmidt's organization was smearing Family to Family, the group was “vying for more of [DHS'] money.” It was seeking an increase in agencies' *per diems*.<sup>171</sup>

Unfortunately, legislators have found the private agency arguments about money being more important than love to be seductive in the past. Since at least FY 2004,

they've included “boilerplate” language in the state budget that discourages, but does not prohibit, neighborhood-based placements.<sup>172</sup>

And last year DHS requested the withdrawal of both Wayne and Macomb Counties as Family to Family “anchor sites” – the highest level of participation in the initiative. Anchor sites receive grants from the Casey Foundation and on-site technical assistance.

Wayne and Macomb are now considered “network sites” – a less intensive level of participation.

So there is one more little problem with what the agencies are recommending that Michigan legislators need to know about: It's probably illegal. As the independent casereading done in connection with the CR lawsuit points out: “Federal law requires that children be placed in close proximity to their parents to facilitate visitation and reunification.”<sup>173</sup>

In other words, the feds know that if a child must be taken from her or his home, it is far better for that child at least to be able to see those parents, or be able to see extended family, or be able to live near their friends and classmates and, yes, not have to change schools with all the disruption that causes. Common sense and 150 years of history say that as well. In fact, it's so obvious that, as the casereading points out, even the national trade association for child welfare agencies, the Child Welfare League of America, feels compelled to say that “placement with foster families who live outside of the child's community should be avoided.”<sup>174</sup>

In addition, Michigan's legally-binding settlement with CR calls for working to keep foster children in their own neighborhoods.<sup>175</sup>

This doesn't mean that anyone who testified at that hearing knew they were recommending a course of action that might be illegal. But Michigan legislators need to

know. They also need to check on the likely penalty for enacting a policy that deliberately avoids placing children close to their families. It's likely to be the penalty state lawmakers fear most: loss of federal money. So if the fact that the private agency recommendations would devastate children isn't enough reason for lawmakers to ignore them, the fact that it might further harm Michigan's budget certainly should be.

### **Squandering \$100 million a year the Michigan way**

Earlier in this report we said one of the best ways to know any government's real priorities is how it spends its money. So state and federal officials, and lawmakers, can talk till they're blue in the face about how they really want to keep families together – somehow they never put their money where their mouths are.

For every dollar the federal government spends on safe, proven alternatives to foster care, it spends at least nine dollars on foster care and at least three dollars more on adoption.<sup>176</sup>

The main reason for this is that foster care spending is an “entitlement” – like, say, Social Security or Medicare. For every “eligible” child, states get back anywhere from 50 to 74 cents on the dollar. In Michigan it's 60 cents, and may soon rise to 63 cents.<sup>177</sup> Nationwide, about half of all foster children are eligible. In Michigan, as of 2004, it was only about 34 percent<sup>178</sup> -- largely because Michigan quite properly places many children in unlicensed kinship care homes which are not eligible for federal aid. But that federal aid still brings in about \$100 million per year, and perhaps significantly more, for Michigan alone - a huge pot of money that can be used only for foster care.

In contrast, far less is available for prevention and family preservation – and it's not an entitlement. In American child welfare, children are deemed “entitled” to be

trapped in foster care but not to remain safely in their own homes.

---

### **Who killed the Michigan child welfare waiver? And why did Marianne Udow let it die?**

---

In 2006, the federal government offered a limited number of “waivers” to the states. The waivers work like this: Instead of an entitlement, states and the federal government estimate how much foster care money a given state would have gotten. Then the state gets the money as a flat grant. The money still could be used for foster care, but it also could be used for better alternatives.

Furthermore, if a state then reduced its entries into foster care, it still would get the same amount of money the next year – it wouldn't have to give any back, as long as it plowed the savings into more help for families.

The catch: If a state screwed up and started taking away more children, there would be no more “open spigot” of foster care money; the state would have to foot the entire bill. And that is, in fact, another good feature of the waiver. It discourages states from a take-the-child-and-run approach.

At first, only two states had the guts to go for such a waiver – and eventually, one would drop out.

The state that accepted the waiver and stuck with it is Florida. At the time, that state was virtually synonymous with child welfare failure. Today, the state has turned the corner. The last person to leave the job as head of the state's huge child welfare agency left as a hero – something that is almost unheard-of in the field. In 2007, for the first time in nearly a decade, there was a

significant reduction in entries into care,<sup>179</sup> a significant reduction in deaths of children previously known to the child welfare agency,<sup>180</sup> – and regions taking proportionately fewer children typically have had better safety outcomes.<sup>181</sup>

There are many reasons for the turnaround, notably strong leadership at the state and regional levels. But another key factor was the waiver.

"In Florida we call it the 'Child First Waiver' since this greater flexibility means greater hope for children," says Alan Abramowitz, director of the Florida Department of Children and Families Office of Family Safety, and one of the rising stars in the field. "The ability to have dollars follow the child and not a placement allows Florida communities to be innovative and focus on prevention, education and reunification of families."<sup>182</sup>

And now the waiver is more important than ever. Like Michigan, Florida has been exceptionally hard hit by the collapse of the American economy. Budget cuts threaten the state's child welfare reforms. But the waiver cushions the blow in three ways:

First, of course, it allows the state to get the most for its money by investing it in services that are better for children and less expensive than foster care.

Second, it lets states keep savings from reducing foster care that otherwise would have to be returned to the federal government – as long as the money is plowed back into child welfare.

But also, if the state cuts too deeply, it will lose the money; creating an extra incentive to spare vital child welfare services.

The other state granted a waiver was Michigan.

Pursuing such a waiver was a key recommendation of a high-powered committee of experts studying racial bias in Michigan child welfare, a committee co-chaired by Udow herself.<sup>183</sup> And she was quick to

tout the waiver when it was approved. As the *Lansing State Journal* reported:

*Thousands of Michigan youths may be able to remain in their homes under a federal waiver allowing the state to use foster care money to help families rather than take away their children. ...*

*Families at risk of having their children removed could instead be offered mental health counseling, substance abuse treatment, safer housing, clothing and parenting lessons.*

*"It's all about helping sooner before children are in danger," said state Department of Human Services Director Marianne Udow. "In most cases, these parents want to be good parents, but they don't always know where to go for services."<sup>184</sup>*

Once again, it looked like Michigan would be "a contender."

That was in April, 2006. In August of that year, *Detroit Free Press* columnist Rochelle Riley still was citing the waiver in listing progress at DHS.<sup>185</sup>

And then, suddenly, it was gone.

At the very last minute – after winning approval from the federal government, after the big public announcement -- Michigan chickened out.

And now, as Michigan plunges deeper into recession, in child welfare, there is nothing to cushion the blow.

But that bad news for children is great news for the foster care-industrial complex. Now, not one penny of that \$100 million can be diverted from their foster homes, their group homes or their "residential treatment centers."

What we still don't know is: Who killed the Michigan child welfare waiver? And why did Marianne Udow let it die?

## **And now, the war against grandparents**

Even with the waiver dead, Family to Family under attack, and Families First

constantly getting its budget cut, there still was one area in which Michigan was a leader: Placing children with their own extended families instead of with strangers.

But, as noted earlier, there is a problem with kinship care – if you happen to be a private agency. The private agencies get only a very small piece of that action. While private agencies supervise 48 percent of stranger care cases, they oversee only 16 percent of kinship cases.<sup>186</sup>

But opponents of kinship care, and friends of the foster care-industrial complex are in luck. They're getting high-powered

help from CR, through its war against grandparents. (See page 8).

If CR succeeds and if Family to Family is marginalized there will be nothing left of Marianne Udow's tentative reforms. Once again, Michigan will have thrown the fight and lost the chance to be a contender for champion of children.

So a good place to start turning around Michigan child welfare is by ending the war against grandparents. And that's where our recommendations for reform begin.

## Recommendations

*Before listing the recommendations, a word about money – actually, two words: It's there.*

*Michigan can afford every recommendation in this report – because there is no shortage of funds for child welfare. Rather the money is being squandered on investigating false reports and trivial cases and on needless foster care and institutionalization.*

*Because Michigan turned down the waiver, a portion of the savings from reducing foster care and institutionalization revert to the federal government. Even so, the state share is sufficient to fund serious reform of child welfare.*

### Help for families

**RECOMMENDATION #1: Stop the war against Michigan's grandparents.** DHS should immediately seek renegotiation of the clause in its consent decree with CR requiring formal licensure of all kinship care homes. If CR will not negotiate, the state should go to federal court and seek to reopen that part of the decree.

A mass expulsion of children from the loving homes of grandparents is too high a price to pay for peace with a group that calls itself Children's Rights, but understands neither children nor rights.

**RECOMMENDATION #2: Michigan should dramatically streamline its entire foster care licensing process.** All regulations that do not have a clear and sig-

nificant impact on ensuring health and safety should be eliminated. Licensing does have some benefits – notably it makes the placement eligible for federal aid. But licensing of grandparents should be done with a carrot instead of a stick. For starters, the requirements for licensing should be simplified not only for relatives but for strangers as well. In addition –

**RECOMMENDATION #3: Grandparents and other relatives should be offered aid to meet minimum standards.** For example, if grandparents live in a home that truly is unsafe, they should be given the aid they need to fix the home or move elsewhere.

**RECOMMENDATION #4: Whether or not they are licensed, relatives should be given financial support equal to that paid to strangers.** In the case of unlicensed relatives that may require the

state to pick up the entire tab. That's still likely to save the state money. Because kinship care usually is so much better than stranger care, children are less likely to bounce from home to home and wind up in more expensive institutional care. And, of course, children raised in stable homes by loving relatives are more likely to succeed in later life, becoming contributors to society instead of requiring more help from taxpayers – or more institutionalization in adult psychiatric centers and jails.

**RECOMMENDATION #5: Ban the placement of young children in institutions.** Institutionalization is, by far, the worst form of “care” – it corrodes the psyches of children and typically leaves them prepared for nothing in later life except more institutionalization.

The younger the child, the greater the harm. That's why, as noted earlier, New Jersey's consent decree bans the placement of young children in institutions – and that state has been 97 percent successful in preventing such children from being institutionalized.

**RECOMMENDATION #6: Cut overall institutionalization at least in half within five years, by building a comprehensive infrastructure of Wraparound and other alternative services.** Illinois already institutionalizes only about eight percent of its children, in Michigan it's 14.5 percent.<sup>187</sup> Five years is plenty of time to equal, and slightly surpass, where Illinois is already.

**RECOMMENDATION #7: Michigan should meet the settlement requirements for reducing worker caseloads by hiring prevention workers, family preservation workers and drug treatment workers, not more investigators and foster care workers.**

If DHS tries to reduce caseloads just by hiring more people to investigate families and put children in foster care, without making such hiring part of a comprehensive

reform plan emphasizing family preservation, it won't reduce caseloads; it will just leave Michigan with the same lousy system only bigger.

**RECOMMENDATION #8: Stop using TANF for any family except a birth family and that family's extended family members.** That means no more taking money out of poor people's pockets to subsidize middle-class families' adoptions. At a minimum, TANF should go only into child welfare services that keep birth families together, such as Families First and payments to kinship caregivers. Long term –

**RECOMMENDATION #9: Michigan should phase out the use of TANF as a child welfare slush fund.** TANF funds should be used only for their original purpose: concrete help to assist low income families in becoming self sufficient. This still can have a significant impact on child welfare by funding things like low-income day care so children aren't taken away because of “lack of supervision” charges. But the state should take responsibility for its most vulnerable children and resume funding Families First and the other preventive services it has abandoned in recent years.

**RECOMMENDATION #10 Understanding that much of what is labeled child neglect is, in fact, poverty, DHS must reorient its emphasis from often meaningless counseling and parent education programs which serve largely to make the helpers feel good, to hard services to ameliorate the worst aspects of poverty.** That means subsidies for day care and rent, one-time payments for home repairs and other concrete needs, job training and “flex funds” that can be used for whatever a particular family may need.

**RECOMMENDATION #11 In honor of the 20<sup>th</sup> anniversary of Families First (which was 2008) DHS should finally put the publication issued for the program's tenth anniversary on its website – prominently.** That, of course, would be a

symbolic gesture. It should be backed up with substance:

**RECOMMENDATION #12 Michigan should fully fund Families First.** Funds should be available to help every family who needs it. This will more than pay for itself. The State Auditor's office has shown that this program generates significant savings.

**RECOMMENDATION #13: The Legislature should remove the "boilerplate" language in the state budget that discourages neighborhood-based placements – and may encourage DHS to violate federal law and its own consent decree.**

**RECOMMENDATION #14 Michigan should expand the Family to Family initiative to every county.** DHS should immediately send a loud, clear message that it fully supports the program and expects every county to support it in letter and spirit. Once again, by using Team Decisionmaking correctly, to ensure that only those children who really can't be safe at home enter out-of-home care, by reducing institutionalization when some form of substitute care is necessary, and by building community relationships to enhance support for families, this relatively low-cost program is a money saver.

**RECOMMENDATION #15: Michigan should fully fund the "Parent Partners" program and make it available statewide.**

Parent partners are parents who lost a child to DHS, were reunited, and now help parents going through the same process. A Parent Partner serves as a mentor, coach and advocate. The current program, in Wayne County, is funded by the Annie E. Casey Foundation.

Sheryl Calloway, whose story is told on page 40, says one of the things that made it so difficult to reunite with her child was trying to navigate the whole process alone. "I wish I'd had somebody who'd been

through the process. I felt so ostracized and isolated."

Now Calloway is a Parent Partner for the Association For Children's Mental Health (Southwest Detroit).

"During my years of addiction, I was taking from society," Calloway says. "Now, I'm giving back to society."

---

**The Illinois experience proves that performance-based contracting not only can dramatically reduce needless substitute care, it also can improve child safety.**

---

Funds for these various initiatives could be made available by curbing vastly more expensive institutional placements, improving screening of calls to child abuse hotlines and using funds now committed to hiring investigators for family preservation workers instead. But Michigan also should seek more funding for prevention and family preservation. Here's how:

**RECOMMENDATION #16: Michigan should beg the Obama Administration for a second chance at a waiver like the one it foolishly turned down in 2006.** This would allow about \$100 million currently restricted to foster care to be used for better alternatives as well.

**RECOMMENDATION #17: DHS should fast-track a statewide performance-based contracting system to end the perverse incentive private agencies now have to hold children in foster care indefinitely while their *per diem* payments roll in.** There are a variety of ways that can be done, including the Illinois model, in which agencies compete on the basis of getting children into safe, permanent homes, or

a model in which agencies receive greater payment if children are returned safely to their own homes or adopted, and diminished payments if the children languish in foster care.

The foster care-industrial complex will concoct all sorts of scare scenarios to try to prevent this, and they'll point out that an experiment in performance-based contracting took place in Wayne County some years ago. But, in classic Michigan style, the Wayne County experiment was stopped before it could prove itself. The Illinois experience proves that performance-based contracting not only can dramatically reduce needless substitute care, it also can improve child safety.

Fortunately, some form of performance-based contracting is required by the consent decree.

**RECOMMENDATION #18: Michigan should provide sufficient funding to make drug treatment geared to the needs of parents, usually mothers, available immediately to any parent who wants it. This must include in-patient programs where parents can live with their children.** The infants in that University of Florida study (see page 40) are trying to tell us something. We owe it to them to listen. And all those residential treatment centers that could close if Michigan reduced its overuse of congregate care would make great drug treatment campuses.

**RECOMMENDATION #19: DHS should create a Michigan Child Welfare Brain Trust.** The outstanding Michigan leaders who were lured to other states and other endeavors on behalf of children should be invited to return to advise DHS on a regular basis.

## Due process

*Improving "services" to families is*

*not enough. Comprehensive reform of Michigan child welfare also requires meaningful due process protections for families. Therefore:*

### **RECOMMENDATION #20: Quality legal representation must be available to all parents who must face DHS.**

It is ludicrous to claim that children are protected from needless removal when their impoverished parents often are, literally, defense-less.

The current Michigan system needs to be replaced with one which, at a minimum, guarantees indigent parents high quality legal representation from the moment the child is removed – or the moment an agency decides to go to court to place a family under its supervision, even while leaving the children at home. Every county, or the State, should be required to establish an institutional provider of defense counsel with resources at least equal to those available to the lawyers who represent DHS.

Those resources must include social workers who can offer alternatives to DHS cookie-cutter, no-services "service plans," and parent advocates similar to those in the Wayne County Parent Partners program.

Providing "lawyer guardians *ad litem*" for children is not enough to protect them from wrongful removal, for two reasons.

First, LGALs tend to rubber-stamp child welfare agencies, fighting them, if at all, only when the agencies want to return children home. Indeed, as noted elsewhere in this report, in Michigan LGALs sometimes even fill in for prosecutors.

And LGALs tend to be as overwhelmed as birth parent attorneys – to the point that they had to be ordered even to meet with the children they claim to "represent."<sup>188</sup> And there is evidence some

## **Leveling the playing field in Washington State**

### **HOW PROVIDING GOOD LAWYERS FOR PARENTS HELPS THEIR CHILDREN**

In Pierce County, Washington, the judge in charge of the county's juvenile courts was dismayed at the escalating rate of terminations of parental rights – knowing that he was dooming some of the children to a miserable existence in foster care.

So he persuaded the legislature to provide enough money for defense attorneys to have resources equal to those of the Attorney General's office, which represents the state child welfare agency in juvenile court. The result: successful reunification of families increased by more than 50 percent.

And that's not because lawyers "got their clients off."

Where the parents are innocent, lawyers have time to prove it. Where there is a problem in the home that must be corrected, the lawyers have time to sit down with the parents, explain early on what they are up against and guide them through the process of making whatever changes are needed. Working closely with their own staff social workers, they also can advocate for more and better services geared to what families really need, instead of the cookie-cutter, no-service "service plans" often offered by child welfare agencies.

Between 2000 and 2003, of 144 cases in the program in which families were reunified, not one was brought back to court.

"These children aren't coming back," said Bobbie Bridge, then a Justice of the Washington State Supreme Court, and a supporter of the program, "and we do get them back when we make bad reunification decisions."

The National Council of Juvenile and Family Court Judges is publicizing the results, and even the State Attorney General at the time, who had to face the better-prepared lawyers, supported the project and wanted it expanded.<sup>189</sup> (We don't know if she still holds that view in her current job – governor.) It's now in 25 of the state's 39 counties. Further information about the program is available at <http://www.opd.wa.gov/PRP-home.htm>

New York City has let contracts to provide similar representation for half of all indigent parents. The city is doing this with the full support of its child welfare agency, the Administration for Children's Services. This is because ACS recognizes that it is not infallible, and recognizes the role lawyers for birth parents can play in fighting for help for families.

It's also probably because, while at the Annie E. Casey Foundation, before becoming ACS Commissioner, John Mattingly co-authored a scathing report on how the city's Family Courts ran roughshod over families. The report quoted judges admitting they routinely rubber-stamped removals even when they thought ACS failed to make its case, because they were afraid of winding up on the front page if they sent a child home and something went wrong.<sup>190</sup>

But in Michigan such programs are few and far between.

A new one shows promise for taking quality legal representation to the next level. The University of Michigan Law School's Detroit Center for Family Advocacy will seek to provide this kind of legal assistance and advocacy even before anyone calls a child abuse hotline – heading off problems before a child abuse investigation even begins.

But this largely foundation-funded initiative will operate only in a single Detroit neighborhood. (Funders include the Skillman Foundation, which also funds NCCPR's advocacy efforts in Michigan.)<sup>191</sup>

Such programs should be the rule, not the exception.

of them still fail to do so.<sup>192</sup>

The second problem with relying on law guardians is discussed in Recommendation 22.

**RECOMMENDATION #21: The institutional provider of counsel should have lawyers available 24-hours-a-day, seven-days-a-week,** so that they can begin to work on a case from the moment a child is removed from the home, instead of only at or after the first hearing – or even later – as usually is the case now.

**RECOMMENDATION #22: Law guardians should act as lawyers. For any child old enough to express a rational preference, LGALs should advocate for what that child wants, even if the LGAL does not think it's in the child's "best interests."**

Currently in Michigan, and many other states, the job of the guardian is to fight for what the *guardian* thinks is best for the child – even if the child disagrees. The guardian may make the court aware of what the child wants but, if the guardian thinks that is bad for the child, the guardian fights against the child's wishes. That can mean that the only parties without strong advocates in their corners are the parents – and the child.

Of course, the fact that a child wants a particular outcome doesn't mean he or she should get it. But deciding what's best is what judges are for. And they can't truly do justice unless everyone has an advocate making the best possible case for her or his side.

**RECOMMENDATION #23: The Michigan Legislature should significantly narrow the definition of "neglect."** The current definition "defines in" virtually every impoverished child in the state. Good language can be found in a model law written by Prof. Michael Wald of Stanford University Law School in 1976, and revised by an American Bar Association Committee in

1981.<sup>193</sup>

**RECOMMENDATION #24: The Michigan Legislature should pass legislation clarifying what should, in fact, be obvious: If a non-custodial parent pleads to neglect, that should have no impact on the rights of the custodial parent.** Such a law would overturn the bizarre rulings of Michigan's Court of Appeals which allow a non-custodial parent with an ax to grind to deprive a custodial parent of custody with no due process at all. The legislature should go further and adopt California's approach in which, when a *custodial* parent loses legal custody of a child in a child maltreatment proceeding the non-custodial parent is presumed fit, and the state must prove otherwise.

**RECOMMENDATION #25: The legislature should reexamine the huge number of grounds for termination of parental rights in current Michigan law.** It should streamline these grounds and require findings of specific, serious failings on the part of parents. In particular the catch-all clause described earlier in this report should be repealed.

**RECOMMENDATION #26: The legislature should specifically prohibit the fact that a termination of parental rights petition has been filed from being a factor in determining whether children will be allowed to visit their parents.** It is the height of arrogance to assume that just because the state files a TPR petition the state is right – and therefore the child should be punished by being cut off from her or his parents immediately. At one time that was required under Michigan law; it still is permitted. It shouldn't be.

The fact that some adults have filed a legal document changes nothing in the emotional life of a child. If visits were good for a child before the petition was filed, they are just as good for the child afterwards.

**RECOMMENDATION #27 The**

**legislature should repeal the law requiring DHS to automatically petition for termination of parental rights, in most cases, whenever a parent who has lost a child to TPR in the past has another child.** These issues should be examined on a case by case basis. There is a vast difference between, say, a mother who tortured and murdered one child while pregnant with another and a mother who voluntarily surrendered a child at the age of 16 and has now given birth again at age 32. The law should be flexible enough to recognize such differences.

---

**There always will be screening in child welfare. The choice is not between screening and no screening. The choice is between rational screening and irrational screening.**

---

Although technically, current law allows DHS to make exceptions to the requirement to petition for TPR under these circumstances it still makes termination the default position, and DHS often is afraid to do otherwise.

**RECOMMENDATION #28: Before a call is accepted by a child abuse “hotline” and referred for investigation, the caller must be able to demonstrate that s/he does, indeed, have reasonable cause to suspect maltreatment. That requires a uniform, rational method for screening hotline calls.**

The consent decree requires Michigan to replace its county hotlines with one statewide hotline. But that’s not enough. That statewide hotline must include rational criteria for what kind of call merits and in-

vestigation, what kind of call should trigger sending help to a family, and what kind of call should be screened out entirely.

As the *Race Equity Review* points out, Wayne County appears to accept virtually any call, so, for example, someone calling DHS for help to heat the family home in the winter may well wind up investigated for child abuse.<sup>194</sup>

Not only does that traumatize the child living in the home that simply needs heat, it also steals a caseworker’s time from finding a child in real danger.

**RECOMMENDATION 29: As part of this screening mechanism, anonymous calls should not be accepted.**

Of all the sources of child abuse reports, anonymous reports consistently are the least reliable. They’re almost always wrong.

A study of every anonymous report received in the Bronx, New York, over a two year period found that only 12.4 percent met the incredibly low criteria for “substantiating” reports – and not one of those cases involved death or serious injury. The researchers found that “one case was indicated for ‘diaper rash’ one case for welfare fraud, and two cases because the apartment was ‘dirty.’”<sup>195</sup>

Anonymous reporting should be replaced by *confidential* reporting. If someone who may have a grudge or someone who simply may be clueless wants to claim that, say, a neighbor is abusing a child, that person should be required to give the hotline operator his or her name and phone number. That information still should be kept secret from the accused in almost all cases, but the hotline needs to know. That will immediately discourage false and trivial reports.

The law should allow the accused to go to a judge and explain why he feels he is being harassed by false reports, and by whom. The judge should check the record and, if the accused is right, and if the judge is persuaded that the reports are an act of ha-

rassment, the name should be released to the accused, who should have the right to sue for damages.

Of course, the objection to banning anonymous reports, and the objection to any kind of serious screening mechanism, is that some anonymous calls may be legitimate.

That's true.

If you ban anonymous reports, some real cases might be missed – though anyone who is sincere and has genuine reason to suspect maltreatment should be comfortable with confidential reporting.

But more real cases are missed now by overloading the system. There always will be screening in child welfare. The choice is not between screening and no screening. The choice is between rational screening and irrational screening. The more cases that cascade down upon investigators the less time they get for each one. So some get short shrift. It is far safer for children if cases are screened rationally by eliminating anonymous reports, rather than irrationally based on which file floats to the top of the pile on a caseworker's desk.

As the authors of the Bronx study put it, in recommending that anonymous reports be rejected: "The resources of child protective agencies are not limitless. The time and energy spent investigating false reports could better be given to more serious cases, and children may suffer less as a result."<sup>196</sup>

**RECOMMENDATION #30: Reverse the current presumption that most child welfare records are closed.**

To its credit, Michigan is among the approximately 17 states that allow the press and/or the public into court hearings in child abuse cases. This provides more accountability than states where the entire process is secret. But it is not enough.

The amount that can be learned from what is often a cursory hearing lasting only a few minutes is limited. Therefore it also is urgent to reverse the current presumption

that case records are closed. As long as the records are sealed, families who want to tell their stories still can be thwarted by DHS workers and bureaucrats who will tell a reporter: "Oh, there's really *so* much more to it, and we *wish* we could tell you, but we just can't – confidentiality, you know."

---

**When DHS is right, it's important that the public know it, and the agency have the right to vindicate itself.**

---

Too often, reporters accept this "veto of silence."

If almost all DHS records on a given case were available to the public, reporters would have a much better look at all sides of the story.

(Records are not always accurate, however, and claims in them should not be accepted at face value. The *Race Equity Review* found "notably insufficient and error-ridden documentation" in the majority of case files examined.)<sup>197</sup>

There should be a "rebuttable presumption" that almost all case records are open. As noted in the previous recommendation, the names of people reporting alleged maltreatment still would almost always remain confidential. Other records would be opened unless the lawyer for the parents or the LGAL for the child could persuade the judge, by clear and convincing evidence, that opening a given record would cause severe emotional damage to a child.

The judge then would keep closed only the minimum amount of material needed to avoid the damage.

DHS would not even be allowed to *ask* for secrecy. That's because DHS has no interest in secrecy other than to cover up its own failings.

**RECOMMENDATION #31: allow DHS to comment freely on any case made public by any other source.**

In other words, if a birth parent goes to a reporter and says “my child was wrongfully taken,” DHS should be free to tell its side of the story, as well as to release records under the conditions noted above.

At least four states have similar provisions in their current laws. The broadest is in Arizona, where the child welfare agency is free to “confirm, clarify or correct”<sup>198</sup> any material about a case made public by anyone else.

Such a law serves two valuable purposes. First, it will encourage journalists to override the veto of silence. No longer could DHS say it wished it could talk but it could not. Now reporters would know the agency was stonewalling. Conversely, when DHS is right, it’s important that the public know it, and the agency have the right to vindicate itself.

**RECOMMENDATION #32: The Michigan Supreme Court should declare a statewide Family Reunification Day.** On this day, a special docket should be created, allowing the day to be devoted exclusively to celebrating reunifications of families. The Supreme Court should pour time and resources into this day at least equal to the effort it exerts on behalf of adoption day. And if the Supreme Court refuses to do it, DHS should create an annual statewide reunification celebration of its own.

**RECOMMENDATION #33: All interviews conducted by DHS personnel in the course of child maltreatment investigations – not just interviews with children – should be, at a minimum, audiotaped. For interviews conducted at DHS offices or similar settings, videotape is preferable. Information from any interview that is not taped should be inadmissible in all court proceedings.**

While in general, caseworkers don’t deliberately lie, it is human nature for all of

us to hear what we want, or expect, to hear. That often leads to distortion. In addition, as noted earlier, the *Race Equity Review* found that case files are rife with error. When it comes down to the word of a caseworker vs. a so-called “child abuser,” the only hope the accused may have to set the record straight is a tape-recorded record.

And there certainly is nothing onerous in a requirement that a worker do no more than push the record button on a small, inexpensive microcassette recorder.

### **Additional recommendations**

The following recommendations are discussed in detail in NCCPR’s *Due Process Agenda*, available online at [www.nccpr.org/reports/dueprocess.pdf](http://www.nccpr.org/reports/dueprocess.pdf)

**RECOMMENDATION #34: No one should be listed in a state’s central registry of alleged child abusers, and no allegation should be substantiated, until, at a minimum, the family has had an administrative hearing conducted by a hearing officer outside of DHS. The standard of proof should be “clear and convincing.” That also should be the standard for “substantiating” an allegation in the first place.**

**RECOMMENDATION #35: From the moment a child is removed until the first hearing at which all sides are represented, DHS shall be responsible for arranging daily visits, unless it can show, by clear and convincing evidence, that this would cause severe emotional harm to the child.** This idea was first proposed as part of the model law noted earlier. In addition to the enormous benefits to the child, such a requirement is likely to make workers think twice about taking away children just to protect *themselves*, instead of the children.

**RECOMMENDATION #36: The standard of proof in all court proceedings should be raised from the current stan-**

**standard in most states, including Michigan, “preponderance of the evidence,” to “clear and convincing.”** At the very first hearing, which actually is the most important, the standard in Michigan is even lower. DHS need only provide “probable cause.” That means a child can be held in foster care for months based on a standard lower than the one used to decide which insurance company pays for a fender-bender.

**RECOMMENDATION 37: In all places where it appears, the phrase “best interests of the child” should be replaced with the phrase “least detrimental alternative.”**

Currently, almost all state laws involving custody of children are liberally sprinkled with the phrase “best interests of the child.”

But that is a phrase filled with hubris. It says we are wise enough always to know what is best and capable always of acting on what we know. In fact, those are

dangerous assumptions that can lead us to try to fix what isn’t broken or make worse what is.

More than thirty years ago, three scholars, Albert Solnit, Joseph Goldstein, and Anna Freud, proposed an alternative phrase. They said “best interests of the child” should be replaced with “least detrimental alternative.”<sup>199</sup>

“Least detrimental alternative” is a humble phrase. It recognizes that whenever we intervene in family life we do harm. Sometimes we must intervene anyway, because intervening is *less* harmful than not intervening. But whenever we step in, harm is done.

The phrase “least detrimental alternative” is a constant reminder that we must always balance the harm that we may think a family is doing against the harm of intervening. It is exactly the shot of humility that every child welfare system needs.

###

## NOTES:

<sup>1</sup> Personal communication, Prof. Ronald Davidson.

<sup>2</sup> Illinois Department of Children and Family Services, *Signs of Progress in Child Welfare Reform*, April, 2003, available online at <http://www.state.il.us/dcf/docs/SignsProg.pdf>.

<sup>3</sup> Illinois Department of Children and Family Services, *Executive Statistical Summary*, December, 2008, available online at <http://www.state.il.us/DCFS/docs/execstat.pdf>

<sup>4</sup> Personal communication, Jess McDonald, former Director, Illinois Department of Children and Family Services.

<sup>5</sup> In some cases, the term “informal” is used to denote a case in which an agency like DHS arranges the placement, and may require it, but does not take legal custody of the child. In this report, however, the term is used to denote a kinship placement in which a child welfare agency is not involved in any way; something that some refer to as “private” kinship care.

<sup>6</sup> Child Welfare League of America, National Data Analysis System. Go to [http://ndas.cwla.org/data\\_stats/access/predefined/home.asp?MainTopicID=3&SubTopicID=27](http://ndas.cwla.org/data_stats/access/predefined/home.asp?MainTopicID=3&SubTopicID=27) then follow instructions for creating table.

<sup>7</sup> Ibid.

<sup>8</sup> Tom Condon, “DCF Works to Shift Priorities,” *The Hartford Courant*, December 24, 2000.

<sup>9</sup> Michigan Department of Human Services, *Licensing Rules for Foster Family Homes and Foster Family Group Homes for Children*, March, 2007, available online at [http://www.michigan.gov/documents/dhs/DHS-OCAL-PUB-0010\\_180374\\_7.pdf](http://www.michigan.gov/documents/dhs/DHS-OCAL-PUB-0010_180374_7.pdf)

<sup>10</sup> Center for the Study of Social Policy (CSSP), *Race Equity Review: Findings from a Qualitative Analysis of Racial Disproportionality and Disparity for African American Children and Families in Michigan’s Child Welfare System* (Washington: January 19, 2009).

<sup>11</sup> Personal communication, Mary Chaliman, Field Operations Executive Assistant, Children’s Services Administration, Michigan Department of Human Services, December 13, 2008.

<sup>12</sup> Marc A. Winokur, et. al., “Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes,” *Families in Society*, Volume 89, No. 3, 2008, available online at <http://www.familiesinsociety.org/New/Teleconf/081007Winokur/89-3Winokur.pdf>

<sup>13</sup> Children’s Research Center, *Analysis of Case Practice and Compliance with Standards in Michigan Foster Care*, February 5, 2008. Available online at [http://www.childrensrights.org/wp-content/uploads/2008/05/2008-02-05\\_mi\\_case\\_record\\_review.pdf](http://www.childrensrights.org/wp-content/uploads/2008/05/2008-02-05_mi_case_record_review.pdf)

<sup>14</sup> David M. Rubin et. al., “Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care,” *Archives of Pediatric and Adolescent Medicine*, 162(6):550-556. Published online, June 2, 2008, at <http://archpedi.ama-assn.org/cgi/content/full/162/6/550>

<sup>15</sup> Studies cited in Mark Testa, et. al., *Family Ties: Supporting Permanence for Children in Safe and Stable Foster Care With Relatives and Other Caregivers*, University of Illinois School of Social Work, Children and Family Research Center, October, 2004, available online at [http://www.fosteringresults.org/results/reports/pewreports\\_10-13-04\\_alreadyhome.pdf](http://www.fosteringresults.org/results/reports/pewreports_10-13-04_alreadyhome.pdf), and Generations United, *Time for Reform: Support Relatives in Providing Foster Care and Permanent Homes for Children*, March 2007, available online at <http://www.kidsawaiting.org/tools/reports/files/0004.pdf>

<sup>16</sup> Winokur, et. al, note 12, supra.

<sup>17</sup> Sharon Emery, “Report: Wide racial disparity in child welfare,” *Jackson Citizen Patriot*, March 21, 2006.

<sup>18</sup> “Claire Cummings, “Seventh Heaven: Couple adopts seventh child on Michigan Adoption Day,” *Jackson Citizen Patriot*, November 22, 2008.

<sup>19</sup> Prof. Mark Testa made the remark at a news conference releasing the report cited in note 15. The transcript is available online at [http://www.fosteringresults.org/press/pewpress\\_10-13-04\\_fednewsbureau.pdf](http://www.fosteringresults.org/press/pewpress_10-13-04_fednewsbureau.pdf)

<sup>20</sup> Except as otherwise noted, all information in this section is from CSSP, note 10, supra.

<sup>21</sup> NCCPR has reviewed the SDM questionnaires. The higher the score the greater the risk. “Strengths” generally get a score of zero, therefore if the strengths line did not exist at all, the score would remain unchanged.

<sup>22</sup> All information for this section is from, John Goad, *Michigan Department of Human Services:*

*An Evaluation of the Capacity to Assure the Safety of Foster Children*, February 11, 2008 and Cathy R. Crabtree, “Formula for Disaster,” *A Management Review of the Michigan Department of Human Services*, 2008. The documents are available online at [http://www.childrensrights.org/wp-content/uploads/2008/05/2008-02-11\\_mi\\_abuse\\_and\\_fatality\\_report.pdf](http://www.childrensrights.org/wp-content/uploads/2008/05/2008-02-11_mi_abuse_and_fatality_report.pdf) and [http://www.childrensrights.org/wp-content/uploads/2008/05/2008-02-08\\_mi\\_management\\_review.pdf](http://www.childrensrights.org/wp-content/uploads/2008/05/2008-02-08_mi_management_review.pdf)

<sup>23</sup> We are indebted for the phrase “protected to death” to the no longer published alternative weekly *New Times, Los Angeles*, which used it as the headline for a cover story in 1998.

<sup>24</sup> The Urban Institute has compared the total amount that states spent on child welfare in 2004. (Cynthia Andrews Scarcella, et. al, *The Cost of Protecting Vulnerable Children V*, (Washington: The Urban Institute, May 24, 2006. Available online at <http://www.urban.org/publications/311314.html>) NCCPR divided those totals by the number of impoverished children in each state. Alabama spent \$1,157 per impoverished child. The national average was \$1,895. Michigan spent \$1,982. But the real figure for Michigan almost certainly is higher – because Michigan was one of only 11 states where the Urban Institute was unable to get complete data. Michigan was unable to calculate the amount of Medicaid money spent on child welfare. Add that in and the Michigan total probably would exceed the total for Illinois, which was \$2,170 – and Illinois was able to provide complete data.

<sup>25</sup> CWLA, note 6, supra.

<sup>26</sup> Crabtree, note 22, supra.

<sup>27</sup> Cynthia Andrews Scarcella, et. al, *The Cost of Protecting Vulnerable Children IV*, (Washington: The Urban Institute, December 20, 2004. Available online at <http://www.urban.org/publications/411115.html>).

<sup>28</sup> State of Michigan Department of Human Services, *Fiscal Year 2007-2008 Report on the Details of Allocations Within Program Budgeting Line-Items in 2007 Public Act 131*, March 26, 2008, available online at [http://michigan.gov/documents/dhs/DHS-Legislative-Sec514-PA131-2007-CPS\\_227770\\_7.pdf](http://michigan.gov/documents/dhs/DHS-Legislative-Sec514-PA131-2007-CPS_227770_7.pdf).

<sup>29</sup> We estimate Michigan’s total spending on substitute care at anywhere from \$300 million to \$471.6 million per year. See note 35, infra for further explanation of this estimate. If Michigan is like the nation as a whole, about 45 percent of foster care funds are spent on group homes and institutions.

<sup>30</sup> Judith Meltzer, *Progress of the New Jersey Department of Children and Families, Monitoring Report for Charlie and Nadine H. v. Corzine*, (Washington, D.C.: Center for the Study of Social Policy, October 30, 2008), chart, p.18

<sup>31</sup> *Ibid.*

<sup>32</sup> Ron Fonger, "Foster care number swells; welfare-to-work one reason: Official" *Flint Journal*, September 9, 2003.

<sup>33</sup> See note 35, for details on this estimate.

<sup>34</sup> U.S. District Court for the Eastern District of Michigan, "Settlement Agreement," *Dwayne B. v. Granholm*, Case # 2:06-cv-13548, July 3, 2008, available online at [http://www.childrensrights.org/wp-content/uploads/2008/09/22008-07-03\\_mi\\_signed\\_settlement.pdf](http://www.childrensrights.org/wp-content/uploads/2008/09/22008-07-03_mi_signed_settlement.pdf)

<sup>35</sup> The low end of this very rough estimate is based on the assumption that the cost of the Michigan foster care bureaucracy adds at least \$75 million to the \$223 million we know Michigan spends on "foster care payments" for a total cost of about \$300 million per year. This is based on DHS estimates in news accounts that the waiver was worth about \$100 million in federal money under a program called Title IV-E, and other DHS estimates that IV-E pays for roughly 28 to 32 percent of foster care costs. (Chart: *Foster Care Caseload, Funding Source Per Year*, personal communication, Anita Peters, Michigan Department of Human Services.) The higher end is based on figures compiled by the Urban Institute. They show that nationally, in FY 2004, about 68 percent of IV-E money paid for foster care maintenance, administration and training. Michigan received a total of \$227 million in IV-E payments that year. Our higher end estimate is based on 68 percent of that money going into foster care, and that figure representing one-third of total foster care spending in Michigan.

<sup>36</sup> For anyone who *doesn't* know it, see Brian Dickerson, "Hard Lemonade, hard price," *Detroit Free Press*, April 28, 2008.

<sup>37</sup> Decision of U.S. District Judge Jack Weinstein, *Nicholson v. Williams*, Case #00-CV2229, U.S. District Court, Eastern District of New York, March 1, 2002. The section of the decision summarizing expert testimony is available online at [http://www.nccpr.org/index\\_files/Page339.html](http://www.nccpr.org/index_files/Page339.html)

<sup>38</sup> *Ibid.*

<sup>39</sup> Cleve R. Wootson Jr., "Mother of 6 battles court, past-due rent," *Detroit Free Press*, July 1, 2004.

<sup>40</sup> NCCPR calculates rates of child removal by comparing the number of children taken away in a given jurisdiction over the course of a year to a Census Bureau estimate of the total number of impoverished children in that jurisdiction. DHS provided entry into care data for each county for the first ten months of 2008, we then projected the rate for the full year by assuming entries in November and December equaled the monthly average for the previous ten months. In ranking counties, we excluded any in which the total number of impoverished children was under 2,000. The full *NCCPR Michigan-Rate-of-Removal Index* is available from NCCPR.

<sup>41</sup> Terry Katz, "Dad must pay fines, follow law to see daughters," *Sturgis Journal*, May 7, 2005.

<sup>42</sup> Jack Kresnak, "Hints of trouble: As his behavior worsens, his foster mother is on edge," *Detroit Free Press*, December 3, 2007.

<sup>43</sup> Not her real name. Although the news account of this case, cited below, uses the real names of the child and her mother – with their permission – that was four years ago, and we are withholding those names now in case either mother or child might now prefer it that way.

<sup>44</sup> Laura Potts, "The ups and downs continue for 16-year-old after sexual assaults," *Detroit Free Press*, September 7, 2004.

<sup>45</sup> CSSP, note 10, *supra*.

<sup>46</sup> Jack Kresnak, "Report spreads blame for child's beating death," *Detroit Free Press*, September 16, 2004.

<sup>47</sup> Doug Guthrie, "\$30m suit filed in death of boy," *Detroit News*, November 4, 2008; Tammy Stables Battaglia, "\$30-million suit claims her son starved," *Detroit Free Press*, November 5, 2008.

<sup>48</sup> Karen Bouffard, "The boy who had no chance," *Detroit News*, March 2, 2006.

<sup>49</sup> Kresnak, note 42, *supra*.

<sup>50</sup> Bouffard, note 48, *supra*.

<sup>51</sup> Jack Kresnak, "Mysteries still linger around boy's short life, tragic death" *Lansing State Journal* (reprinted from *Detroit Free Press*) December 16, 2007.

<sup>52</sup> Jack Kresnak, "Suspects and lies," *Detroit Free Press*, December 8, 2007.

<sup>53</sup> Kresnak, note 42, *supra*.

<sup>54</sup> NCCPR calculates rates of child removal by comparing the number of children taken away over the course of a year, a figure each state must report to the federal government, to the total number of impoverished children in each state. Some believe it is fairer to compare to total child population. We strongly disagree but, for the record, when you run the numbers that way, the results are the same, Alabama and Illinois do better than Michigan. Entry into care data through 2006 are available here: [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/statistics/entryexit2006.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/entryexit2006.htm). Data for 2007, the most recent available, are not yet online. NCCPR obtained them via a federal Freedom of Information Act request. Population data are from the Census Bureau.

<sup>55</sup> Erik Eckholm, "Once Woeful, Alabama Is Model in Child Welfare," *The New York Times*, August 20, 2005.

<sup>56</sup> Ivor D. Groves, *System of Care Implementation: Performance, Outcomes, and Compliance, March, 1996, Executive Summary*, p. 3.

<sup>57</sup> Eckholm, note 55, *supra*.

<sup>58</sup> Except as otherwise noted, all information about this case is from the Opinion of the Michigan Supreme Court, *In re: JK, Minor*, No. 121410, May 20, 2003. Available online at <http://courts.michigan.gov/SUPREMECOURT/Clerk/Opinions-02-03/InreJK-12apr03.op.pdf>

<sup>59</sup> Theresa D. McClellan, "Adoptive parents distressed, but won't contest ruling," *Grand Rapids Press*, May 23, 2003.

<sup>60</sup> Supplemental Brief of respondent, *In the Matter of Jacob Kucharski*, Supreme Court No.: 121410, April, 2003.

<sup>61</sup> In one of the amazing examples of public squabbling for which the Michigan Supreme Court is notorious, the justices threw mud at each other when they chose someone other than Gardner to become chief judge of the Kent County Probate Court. Justice Elizabeth Weaver accused to majority of basing their decision on the Kucharski case and another in which they'd overruled Gardner. Justice Weaver made clear she thought Gardner's decision to terminate Melissa Kucharski's parental rights had been correct. (Supreme Court of Michigan, *Order: Appointment of Chief Judge of the Kent County Probate Court*, July 25, 2006.)

<sup>62</sup> John Agar and Barton Deiters, "Difficult changes to follow adoption reversal," *Grand Rapids Press*, May 22, 2003.

<sup>63</sup> John Agar, "Overruled judge sees court as 'place of hope,'" *Grand Rapids Press*, May 25, 2003.

<sup>64</sup> John Agar, "Finally, Jacob is home," *Grand Rapids Press*, November 28, 2004.

<sup>65</sup> "Adoptive parents to give up kids," Associated Press, March 16, 2006.

- <sup>66</sup> John Agar, "Defense witnesses say adoptive parents 'caring and concerned'" *Grand Rapids Press*, November 29, 2005.
- <sup>67</sup> Associated Press, note 65, *supra*.
- <sup>68</sup> John Agar, "Couple must get treatment to regain kids," *Grand Rapids Press*, December 21, 2005.
- <sup>69</sup> Personal communication, Ben Wolf, Illinois Branch, American Civil Liberties Union. Mr. Wolf is the attorney who brought the suit that produced the reforms. See also, Matthew Franck, "The Pendulum," *St. Louis Post Dispatch*, February 2, 2003.
- <sup>70</sup> DHS provided NCCPR with county-by-county entry into care data for the first ten months of 2008. We compared these data to census bureau estimates of the number of children living in poverty in each county.
- <sup>71</sup> Michigan Advisory Committee on the Overrepresentation of Children of Color in Child Welfare, *Equity: Moving Toward Better Outcomes for All of Michigan's Children*, March 21, 2006, chart, p. 11. Available online at: [http://www.michigan.gov/documents/DHS-Child-Equity-Report\\_153952\\_7.pdf](http://www.michigan.gov/documents/DHS-Child-Equity-Report_153952_7.pdf)
- <sup>72</sup> All data and quotes for this section are from Muskie School Of Public Service Cutler Institute For Child And Family Policy, University of Maine, and American Bar Association Center for Children and the Law, *Michigan Court Improvement Program Reassessment*, August, 2005, available online at [http://muskie.usm.maine.edu/Publications/cf/MI\\_CourtImprovementProgramReassessment.pdf](http://muskie.usm.maine.edu/Publications/cf/MI_CourtImprovementProgramReassessment.pdf)
- <sup>73</sup> Vivek Sankaran, "Procedural Injustice: How the Practices and Procedures of the Child Welfare System Disempower Parents and Why it Matters," *The Michigan Child Welfare Law Journal*, Fall 2007.
- <sup>74</sup> CSSP, note 10, *supra*
- <sup>75</sup> The report uses this term for judges and "referees" who sometimes are appointed to hear these cases.
- <sup>76</sup> Children's Research Center, note 13, *supra*.
- <sup>77</sup> The studies or articles citing the studies include: Mary I. Benedict and Susan Zuravin, *Factors Associated With Child Maltreatment by Family Foster Care Providers* (Baltimore: Johns Hopkins University School of Hygiene and Public Health, June 30, 1992) charts, pp.28, 30; J William Spencer and Dean D. Kundsén, "Out of Home Maltreatment: An Analysis of Risk in Various Settings for Children," *Children And Youth Services Review* Vol. 14, pp. 485-492, 1992; Peter Pecora, et. al., *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study* (Seattle: Casey Family Programs, 2005); Leslie Kaufman and Richard Lezin Jones, "Report finds flaws in inquiries on foster abuse in New Jersey," *The New York Times*, May 23, 2003; Affidavit of David S. Bazerman, Esq, *Ward v. Feaver*, Case# 98-7137, United States District Court, Southern District of Florida, Fort Lauderdale Division, Dec. 16, 1998, p.4; Children's Rights, Inc., "Expert research report finds children still unsafe in Fulton and Dekalb foster care," Press release, Nov. 5, 2004; Memorandum and Order of Judge Joseph G. Howard, *L.J. v. Massinga*, United States District Court for the District of Maryland, July 27, 1987; David Fanshel, et. al., *Foster Children in a Life Course Perspective* (New York: Columbia University Press, 1990), p.90.
- <sup>78</sup> Goad, note 22, *supra*.
- <sup>79</sup> CSSP, note 10, *supra*.
- <sup>80</sup> The settlement demands new hiring in two categories: 200 new workers to deal with legal orphans created by the Binsfeld laws and 40 to license grandparents. The settlement goes on to specify how low caseloads must be for other workers, but does not tell DHS how to do it.
- <sup>81</sup> CSSP, note 10, *supra*.
- <sup>82</sup> For a discussion of this research and citations, see *NCCPR Issue Papers 1 and 11* available online at [http://www.nccpr.org/index\\_files/page0003.html](http://www.nccpr.org/index_files/page0003.html).
- <sup>83</sup> Joseph J. Doyle, Jr., "Child Protection and Child Outcomes: Measuring the Effect of Foster Care" *American Economic Review*. In Press, 2007. This study is available online at [http://www.mit.edu/~jidoyle/doyle\\_fosterit\\_march07\\_aer.pdf](http://www.mit.edu/~jidoyle/doyle_fosterit_march07_aer.pdf) See also NCCPR's full analysis of this study, *The Evidence is In*, at [www.nccpr.org](http://www.nccpr.org)
- <sup>84</sup> Byron Egeland, et. al., "The impact of foster care on development" *Development and Psychopathology*, (Vol. 18, 2006, pp. 57-76).
- <sup>85</sup> Peter Pecora, et. al., *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study* (Seattle: Casey Family Programs, March 14, 2005), available online at [http://www.casey.org/NR/rdonlyres/4E1E7C77-7624-4260-A253-892C5A6CB9E1/300/nw\\_alumni\\_study\\_full\\_apr2005.pdf](http://www.casey.org/NR/rdonlyres/4E1E7C77-7624-4260-A253-892C5A6CB9E1/300/nw_alumni_study_full_apr2005.pdf) See also NCCPR's analysis of this study, *80 Percent Failure*, at [www.nccpr.org](http://www.nccpr.org)
- <sup>86</sup> Michigan Department of Human Services, *Child Protection Law* available online at [http://www.michigan.gov/documents/DHS-PUB-0003\\_167609\\_7.pdf](http://www.michigan.gov/documents/DHS-PUB-0003_167609_7.pdf). The document is a compilation of relevant statutes.
- <sup>87</sup> Fonger, note 32, *supra*.
- <sup>88</sup> "Abuse of children increases in Michigan," *Lansing State Journal*, March 29, 2006.
- <sup>89</sup> Sharon Emery, "Hard times put clamps on abuse prevention," *Jackson Citizen Patriot*, March 26, 2006.
- <sup>90</sup> Deborah S. Harburger with Ruth Anne White, "Reunifying Families. Cutting Costs: Housing – Child Welfare Partnerships for Permanent Supportive Housing" *Child Welfare*, Vol. LXXXIII, #5 Sept./Oct. 2004, p.501.
- <sup>91</sup> Ruth Anne White and Debra Rog, "Introduction," *Child Welfare*, note 90, *supra*, p. 393.
- <sup>92</sup> Mary Ann Jones, *Parental Lack of Supervision: Nature and Consequences of a Major Child Neglect Problem* (Washington: Child Welfare League of America, 1987), p.2.
- <sup>93</sup> Troy Anderson, "Ways to care for an ailing foster care system," *Los Angeles Daily News*, December 8, 2003.
- <sup>94</sup> Study cited in Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (New York: Basic Civitas Books: 2002). Many other studies are cited in the book and summarized in NCCPR Issue Paper #7, *Child Welfare and Race*, available online at [www.nccpr.org](http://www.nccpr.org)
- <sup>95</sup> CSSP, note 10, *supra*.
- <sup>96</sup> James Beougher, et. al., *The Wayne County Experience*, Power Point presentation, undated, available online at <http://gpy.ssw.umich.edu/projects/foster/firstConference-WayneCounty.pdf>
- <sup>97</sup> National Commission on Children, *Beyond Rhetoric: A New American Agenda for Children and Families*, (Washington, DC: May, 1991), p. 290.
- <sup>98</sup> Sankaran, note 73, *supra*. The reason this statistic underestimates the problem has to do with kinship care. Although kinship care has many advantages over stranger care, children placed in kinship care tend to stay in care longer before reunification, possibly

because agencies tend to see less urgency in reunification when a child is, at least, with a relative. But private agencies handle very few kinship care cases. So private agencies should be doing better than DHS on reunification, instead of doing worse.

<sup>99</sup> Kathleen Wobie, Marylou Behnke et. al., *To Have and To Hold: A Descriptive Study of Custody Status Following Prenatal Exposure to Cocaine*, paper presented at joint annual meeting of the American Pediatric Society and the Society for Pediatric Research, May 3, 1998.

<sup>100</sup> New York: Anchor Press, 1988.

<sup>101</sup> New York: Anchor Books, 1997.

<sup>102</sup> *Ibid.*, p. 13.

<sup>103</sup> Shannon Brower, *Families First of Michigan: A Decade of Keeping Children and Families Safe*. (Lansing: Michigan Department of Human Services:\* 2000), p.47.

<sup>104</sup> Carol Berquist, et. al., *Evaluation of Michigan's Families First Program* (Lansing: University Associates, March, 1993).

<sup>105</sup> Betty J. Blythe, Ph.D., Srinika Jayaratne, Ph.D., *Michigan Families First Effectiveness Study: A Summary of Findings*, Sept. 28, 1999, p. 18.

<sup>106</sup> Stephanie Lee, et. al., *Evidence-Based Programs to Prevent Children from Entering and Remaining In the Child Welfare System: Benefits and Costs for Washington*, Washington State Institute for Public Policy July, 2008, available online at

<http://www.wsipp.wa.gov/rptfiles/08-07-3901.pdf>

<sup>107</sup> State of Michigan, Office of the Auditor General, *Performance Audit of the Families First of Michigan Program*, July, 1998, pp. 2-4.

<sup>108</sup> Schorr, note 101, *supra*.

<sup>109</sup> State of Michigan Department of Human Services, Note 28 *supra*.

<sup>110</sup> Leroy Pelton, *For Reasons of Poverty: A Critical Analysis of the Public Child Welfare System in the United States* (New York: Praeger, 1989), Chart, p.6.

<sup>111</sup> Testimony of MaryLee Allen, Director, Child Welfare and Mental Health division, Children's Defense Fund, before the House Ways and Means Committee Human Resources Subcommittee, April 8, 1997.

<sup>112</sup> Crabtree, note 22, *supra*

<sup>113</sup> Allen, Note 111, *Supra*.

<sup>114</sup> U.S. Department of Health and Human Services, *Child Maltreatment 2006*, Table 2-1, available online at

[http://www.acf.hhs.gov/programs/cb/pubs/cm06/table2\\_1.htm](http://www.acf.hhs.gov/programs/cb/pubs/cm06/table2_1.htm) .

<sup>115</sup> Michigan Department of Human Services, note 28, *supra*.

<sup>116</sup> CSSP, note 10, *supra*.

<sup>117</sup> "Settlement Agreement," note 34, *supra*.

<sup>118</sup> *Study Findings: Study of National Incidence and Prevalence of Child Abuse and Neglect: 1988* (Washington: U.S. Dept. of Health and Human Services, National Center on Child Abuse and Neglect, 1988), Chapter 6, Page 5.

<sup>119</sup> The casereading done in connection with the CR lawsuit found that children were removed before petitions were filed with the court in 25.4 percent of cases. (Children's Research Center, note 13, *supra*.)

<sup>120</sup> Sankaran, note 73, *supra*.

<sup>121</sup> *Michigan Court Improvement Program Reassessment*, note 72, *supra*.

<sup>122</sup> Paul Chill, "Burden of Proof Begone: The Pernicious Effect of Emergency Removal in Child Protective Proceedings," 41, *Fam Ct. Rev.* 457 (2003).

<sup>123</sup> Sankaran, note 73, *supra*.

<sup>124</sup> *Ibid.*

<sup>125</sup> MCL 712A.19B (3) (c) (ii)

<sup>126</sup> MCL 722.638(b)(i) and (ii)

<sup>127</sup> *Michigan Court Improvement Program Reassessment*, note 72, *supra*.

<sup>128</sup> CSSP, note 10, *supra*.

<sup>129</sup> Testimony of Lt. Gov. Connie Binsfeld, Hearing of the Subcommittee on Human Resources, Committee on Ways and Means, House of Representatives, June 27, 1996; p.27.

<sup>130</sup> "Former Foster Child Tells Panel of Five Lost Years," *The New York Times*, April 17, 1988, available online at

<http://query.nytimes.com/gst/fullpage.html?res=940DE0DC163CF934A25757C0A96E948260&sec=&spn=&pagewanted=print>

<sup>131</sup> *Suter v. Artist M.*, 112 S. Ct. 1360 (1992).

<sup>132</sup> Martin Guggenheim, "The Effects of Recent Trends to Accelerate the Termination of Parental Rights of Children in Foster Care – An Empirical Analysis in Two States," *Family Law Quarterly*, Vol. 29, No.1, Spring 1995.

<sup>133</sup> Vivek Sankaran, "But I Didn't Do Anything Wrong: Revisiting the Rights of Non-Offending Parents in Child Protection Proceedings," *Michigan Bar Journal*, March, 2006.

<sup>134</sup> Petition for a Writ of Certiorari, *Angela Church v. Michigan Department of Human Services*, No. 06-6874, undated copy, 2006.

<sup>135</sup> Sankaran, note 133, *supra*.

<sup>136</sup> State of Michigan Court of Appeals, *Department of Human Services v. Angela Church*, unpublished opinion, December 4, 2007.

<sup>137</sup> Judge Kenneth L. Tacoma, *Lost and Alone on Some Forgotten Highway: ASFA, Binsfeld and the Law of Unintended Consequences*, December 2005, available online at <http://courts.michigan.gov/scao/services/fcrb/Tacoma.pdf>

<sup>138</sup> 1993, 1994: Michigan Department of Human Services *Welfare Reform Data Monitoring, through 2003*, no longer available online; 1995 through 2003: Michigan Department of Human Services, *Welfare Reform Data Monitoring, Data through March, 2005*, available online at [http://www.michigan.gov/documents/DHS-Welfare-Reform-Jan-Mar-05\\_127626\\_7.pdf](http://www.michigan.gov/documents/DHS-Welfare-Reform-Jan-Mar-05_127626_7.pdf), 2004 through 2008: Michigan Department of Human Services, *Welfare Reform Data Monitoring, Data through September 2008*, available online at

[http://www.michigan.gov/documents/dhs/DHS-Welfare-Reform-Oct-08\\_255360\\_7.pdf](http://www.michigan.gov/documents/dhs/DHS-Welfare-Reform-Oct-08_255360_7.pdf)

<sup>139</sup> Cari Noga "Changes put onus on biological parents," *Traverse City Record-Eagle*, May 15, 2000.

<sup>140</sup> Cari Noga, "Old foster care laws put kids in constant transition," *Traverse City Record Eagle*, May 14, 2000.

<sup>141</sup> *Michigan Rate-of-Removal Index*, note 40, *supra*.

<sup>142</sup> See for example, <http://courts.michigan.gov/supremecourt/Press/MichiganAdoptionDayIndex.htm>.

- <sup>143</sup> Statement of Marcia Robinson Lowry, Executive Director, Children's Rights, Testimony Before the Subcommittee on Human Resources of the House Committee on Ways and Means, November 06, 2003.
- <sup>144</sup> Mike Wilson, "As parents face conviction, questions remain," Associated Press, December 5, 2003.
- <sup>145</sup> Norman Sinclair, et. al., "Toddler's foster mom charged in her death," *Detroit News*, October 3, 2006.
- <sup>146</sup> Press release, Canton, Mi., department of public safety, February 27, 2008, available online at [http://www.cantonpublicsafety.org/news\\_events/Press\\_Releases\\_2008/fostermothersentenced022708.html](http://www.cantonpublicsafety.org/news_events/Press_Releases_2008/fostermothersentenced022708.html)
- <sup>147</sup> George Hunter, "We were always scared," *Detroit News*, January 10, 2007.
- <sup>148</sup> Edward L. Cardenas, "Jury: Mom guilty of abuse," *Detroit News*, June 7, 2007.
- <sup>149</sup> "Son of man accused of sexually assaulting foster daughters also charged," *Grand Rapids Press*, January 11, 2001.
- <sup>150</sup> Because child welfare systems almost never ask questions to which they don't want to know the answers, there is very little research on adoption disruption. But even studies that predate the current push at the state and federal levels for adoption-at-all costs suggest that 10 to 25 percent of so-called "forever families" don't turn out to be forever after all – the adoptive parents change their minds. (National Adoption Information Clearinghouse *Disruption and Dissolution*, available online at <http://www.adopting.tk/disruptions.htm>.)
- <sup>151</sup> Robin Erb, "Parents of kids in foster care seek changes," *Detroit Free Press*, November 18, 2008.
- <sup>152</sup> Personal communication from Janice Christophel, secretary to Justice Corrigan.
- <sup>153</sup> The author of this report was present at the Task Force meeting. A video of the meeting is available at <http://www.publicpolicy.com/videos/>. Click on *Adoption Work Group*. Justice Corrigan's comments are about 26 minutes in.
- <sup>154</sup> Tacoma, note 137, supra.
- <sup>155</sup> Ibid.
- <sup>156</sup> Christophel, note 152, supra.
- <sup>157</sup> Robin Erb, "Getting Kids Out," *Detroit Free Press*, November 30, 2008.
- <sup>158</sup> C. Usher, D. Gibbs, and J. Wildfire, *Evaluation of Family to Family*, (Research Triangle Park, NC: Research Triangle Institute / Chapel Hill, NC: Jordan Institute for Families, School Of Social Work, University Of North Carolina, December, 1998), available online at <http://www.unc.edu/~lynnu/f2feval.htm>
- <sup>159</sup> In addition to creating a separate division exclusively for child welfare (another CR obsession) the decree specifies that anyone working in that division "...shall not hold responsibility for any of DHS's other functions, such as cash assistance, Medicaid, and adult services."
- <sup>160</sup> Center for Law and Social Policy, *A Vision for Eliminating Poverty and Family Violence: Transforming Child Welfare and TANF in El Paso County, Colorado*, available online at [http://m15080.kaivo.com/LegalDev/CLASP/DMS/Documents/1043875845.58/El\\_Paso\\_report.pdf](http://m15080.kaivo.com/LegalDev/CLASP/DMS/Documents/1043875845.58/El_Paso_report.pdf)
- <sup>161</sup> U.S. Department of Health and Human Services, *Foster Care FY2002 - FY2006 Entries, Exits, and Numbers of Children In Care on the Last Day of Each Federal Fiscal Year*, available online at [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/statistics/entryexit2006.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/entryexit2006.htm). Data for 2001 are available at [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/statistics/entryexit2005.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/entryexit2005.htm)
- <sup>162</sup> Ibid.
- <sup>163</sup> Personal communication, James Beougher, director, Office of Child and Family Services, Maine Department of Health and Human Services.
- <sup>164</sup> Family to Family, *Semi-Annual Outcome Report*, Wayne County, Michigan, December, 2007.
- <sup>165</sup> A summary of the research, with full citations, is available at [www.nccpr.org/reports/residdntialtreatment.doc](http://www.nccpr.org/reports/residdntialtreatment.doc) These data will be discussed in more detail in NCCPR's next report on Michigan child welfare.
- <sup>166</sup> Methodist Children's Home Society brochure, available online at [http://www.mchsmi.com/04/doc\\_lib/General%20brochure%20Web.pdf](http://www.mchsmi.com/04/doc_lib/General%20brochure%20Web.pdf)
- <sup>167</sup> Gongwer News Service, "State child policy challenged before committee," April 26, 2006; David Eggert, "Private homes criticize state's approach to foster care," Associated Press, April 26, 2006.
- <sup>168</sup> CSSP, note 10, supra.
- <sup>169</sup> For details on Brace and his orphan trains and excerpts from his writing and studies of the results of his efforts, See Richard Wexler, *Wounded Innocents: The Real Victims of the War Against Child Abuse* (Prometheus Books: 1990, 1995), Chapter 2.
- <sup>170</sup> CSSP, note 10.
- <sup>171</sup> "Are kids better off with family?" Michigan Republican Party Blog, April 27, 2006.
- <sup>172</sup> The language reads: "The department shall not implement a geographically based assignment system for foster care unless determined to be in the best interests of the foster children."
- <sup>173</sup> The statute is (42 U.S.C. 6755[A]) available online at [http://www.law.cornell.edu/uscode/html/uscode42/usc\\_sec\\_42\\_0000675----000-.html](http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_0000675----000-.html)
- <sup>174</sup> Children's Research Center, note 13, supra.
- <sup>175</sup> *Settlement Agreement*, note 34, supra.
- <sup>176</sup> The Urban Institute estimates that states spent at least \$3.8 billion in federal funds reserved exclusively for foster care, and at least another \$1.25 billion on funds reserved exclusively for adoption. States spent \$549 million from child welfare funding streams that can be used for prevention and family preservation. But these funds can be used for many other purposes as well. Based on the Urban Institute data, NCCPR estimates that no more than \$400 million of that \$549 million – and probably far less – actually went to prevention, family preservation or family reunification. (Cynthia Andrews Scarcella et. al, *The Cost of Protecting Vulnerable Children IV*, (Washington DC, The Urban Institute) December 20, 2004, available online at [http://www.urban.org/UploadedPDF/411115\\_VulnerableChildrenIV.pdf](http://www.urban.org/UploadedPDF/411115_VulnerableChildrenIV.pdf) ).
- <sup>177</sup> Crabtree, note 22, supra. The foster care reimbursement rate is linked to the reimbursement rate for Medicaid. The economic stimulus bill before Congress as this report is written would increase this rate by 4.9 percent.
- <sup>178</sup> Class Action Complaint, *Dwayne B. v. Granholm*, August 8, 2006, available online at [http://www.childrensrights.org/wp-content/uploads/2008/05/2006-08-08\\_michigan\\_complaint.pdf](http://www.childrensrights.org/wp-content/uploads/2008/05/2006-08-08_michigan_complaint.pdf)
- <sup>179</sup> For details, see NCCPR's Florida *Rate-of-Removal Index*, available online at <http://www.nccpr.org/reports/floridaror03062008.pdf>
- <sup>180</sup> Florida Department of Health, State Child Abuse Death Review Team, *Annual Reports*, available online at <http://www.flcadr.org/reports.html>

<sup>181</sup> Florida *Rate-of-Removal Index*, note 179, *supra*.

<sup>182</sup> Personal communication, Alan Abramowitz, December 20, 2008.

<sup>183</sup> Michigan Advisory Committee... Note 71, *supra*.

<sup>184</sup> Stacey Range, "State may see fewer kids in foster care," *Lansing State Journal*, April 11, 2006.

<sup>185</sup> Rochelle Riley, "Lawsuit complicates state's foster care improvements," *Detroit Free Press*, August 11, 2006.

<sup>186</sup> Chaliman, note 11, *supra*.

<sup>187</sup> CWLA, note 6, *supra*.

<sup>188</sup> Jack Kresnak, "Attorneys say they'll stop representing children," *Detroit Free Press*, January 5, 2004.

<sup>189</sup> Heath Foster, "Relying on good advice can reunite troubled families," *Seattle Post-Intelligencer*, February 12, 2003, p.B1.

<sup>190</sup> Special Child Welfare Advisory Panel for New York City, *Advisory Report on Frontline Practice* (March 9, 2000) p.48.

<sup>191</sup> University of Michigan Law School Child Advocacy Law Clinic, *Detroit Center for Family Advocacy: An Innovative Model to Reduce the Number of Children in Foster Care* (Undated); and personal communication, Prof. Vivek Sankaran, University of Michigan Law School.

<sup>192</sup> CSSP, note 10, *supra*.

<sup>193</sup> Institute for Judicial Administration and American Bar Association, Juvenile Justice Standards and Goals Project, *Standards Relating to Abuse and Neglect* (Cambridge MA: Ballinger Publishing, 1981).

<sup>194</sup> CSSP, note 10, *supra*.

<sup>195</sup> William Adams, Neil Barone and Patrick Tooman, "The Dilemma of Anonymous Reporting in Child Protective Services," *Child Welfare* 61, no. 1, January, 1982, p.12.

<sup>196</sup> *Ibid*.

<sup>197</sup> CSSP, note 10, *supra*.

<sup>198</sup> Arizona Revised statutes, 8-807, available online at <http://www.azleg.state.az.us/ars/8/00807.htm>

<sup>199</sup> Joseph Goldstein, Anna Freud, Albert J. Solnit, *Beyond the Best Interests of the Child*, (New York: The Free Press, 1973), p.53.