

**MEDICAL COVERAGE FOR ADOPTED CHILDREN UNDER
THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993**

MICHAEL S. MELBINGER*

J - Possibility to test?

President Clinton signed into law the Omnibus Budget Reconciliation Act of 1993 on August 10. Buried among the sweeping changes in the tax and employee benefits areas made by OBRA '93, is one substantive changes that should be of enormous benefit to the families who have adopted a child and families that are considering adoption.

The new law requires that any "group health plan" which provides coverage for dependent children of plan participants, must provide benefits to dependent children placed with participants for adoption under the same terms and conditions as apply in the case of dependent children who are natural children of participants under the plan. This requirement applies irrespective of whether the adoption has become final.

Additionally, an employer's group health plan may not restrict coverage of any dependent child adopted by a participant, or placed with a participant for adoption, solely on the basis of a preexisting condition of such child at the time that such child otherwise would become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant is eligible for coverage under the plan. The law protects children who have not attained age 18 as of the date of the adoption or placement.

"Group health plans" includes the health and medical benefit plans of virtually every employer that is subject to ERISA in the United States. Group health plans includes both plans that are self-insured by the employer and fully insured plans, under which benefits generally are provided directly by an insurance company. Employers that are not subject to ERISA and, therefore, exempt from the new law, are governmental employers (which would be subject to state or federal laws governing coverage) and "churches" (which could include church sponsored organizations, such as hospitals).

For your adopted children to be entitled to coverage under your employer's medical benefit plan you must be a plan participant and you must otherwise be eligible to elect family coverage under the plan. You must follow all other applicable requirements for coverage under the plan.

There still could be circumstances and plans under which your adopted child would not be eligible for medical coverage or would be subject to an exclusion of coverage for a preexisting condition. For example, if you adopted a child at a time when you were not eligible to elect coverage under an employer's medical plan, any preexisting condition clause could still be applicable. Similarly, if you changed jobs, any preexisting condition clause in your new employer's plan could be applicable. Finally, any exclusions or

SCHIFF HARDIN & WAITE



JUL 27 1995

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95-18A

Dear Mr. Melbinger:

This is in response to your request, on behalf of Adoptive Families of America, Inc., for guidance concerning the obligations of group health plans under section 609(c) of the Employee Retirement Income Security Act, as amended (ERISA), relating to coverage of dependent children in connection with adoptions.^{1/} Specifically, you have requested the views of the Department of Labor (the Department) on a number of issues, discussed below, relating to the application of section 609(c) to group health plans.

In general, section 609(c)(1) requires group health plans that provide coverage for dependent children to provide such coverage to children who are placed for adoption with participants or beneficiaries, with coverage being effective upon such placement.^{2/} Benefits must be provided under the same terms and conditions that apply to dependent children who are natural children of participants or beneficiaries under the plan, irrespective of whether the adoption has become final. Section 609(c)(2) provides that a group health plan may not restrict coverage under the plan of any dependent child adopted by or placed for adoption with a participant or beneficiary solely on the basis of a preexisting condition of such child at the time the child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

Section 609(c)(3)(A) defines "child", for purposes of subsection (c), to mean, in connection with any adoption or placement for adoption, an individual who has not attained age 18 as of the date of such adoption or placement for adoption. Section 609(c)(3)(B) defines the term "placement" or "being

^{1/} Section 609 was added to ERISA by section 4301 of the Omnibus Budget Reconciliation Act of 1993, P. L. 103-66, (OBRA) and, under section 4301(d), became effective on enactment, August 10, 1993.

^{2/} The term "group health plan" is defined in section 607(1) of ERISA to mean "an employee welfare benefit plan providing medical care (as defined in section 213(d) of the Internal Revenue Code of 1986) to participants or beneficiaries directly or through insurance, reimbursement, or otherwise."

609(c) apply to any such plan as of August 10, 1993, without regard to whether the plan is maintained under or pursuant to a collective bargaining agreement. Section 4301(d) of OBRA, which contains the effective date of ERISA section 609, does not provide any deferred effective date for plans maintained under or pursuant to collective bargaining agreements.

In the view of the Department, a group health plan that provided dependent coverage prior to August 10, 1993, is required by section 609(c) to provide coverage as of that date to any dependent child previously adopted by or placed for adoption with a participant or beneficiary under the same terms and conditions as coverage was provided to natural dependent children of participants and beneficiaries under the plan. Under section 609(c), therefore, a group health plan may not impose or apply a waiting period for coverage of dependent children who were adopted by or placed for adoption with a participant or beneficiary prior to, on, or after August 10, 1993, unless such waiting period applies to coverage of dependent natural children of participants and beneficiaries. Moreover, section 609(c)(2) specifically provides that, as of August 10, 1993, a plan may not, regardless of the date of adoption or placement, restrict coverage of any dependent child adopted by or placed for adoption with a participant or beneficiary who is eligible for coverage under the plan, solely on the basis of a preexisting condition of such child at the time that the child would otherwise become eligible for coverage under the plan.

Finally, a group health plan subject to Title I of ERISA which provides coverage for dependent children of retired participants may not, without contravening the requirements of section 609(c), deny such coverage to children who are adopted by or placed for adoption with a retired participant solely on the ground that the child has been adopted or placed for adoption.

Placement for adoption issues

Your correspondence presents several questions relating to when a child will be treated as placed for adoption, i.e., when a participant or beneficiary will be treated as having assumed and retained a legal obligation for total or partial support of a child in anticipation of adoption of such child. Assuming that the adoptive parent(s) is otherwise eligible for family coverage under a group health plan, you present the following questions:

(a) Does an agreement to pay the birth expenses of the child and the birth mother constitute "a legal obligation for total or partial support of such child in anticipation of adoption" under section 609(c)?

An agreement to pay the birth expenses of the mother is not, by itself, an agreement to support the child, and thus is not a

Plan coverage issues

Your correspondence presents the following questions relating to what benefits must be provided by a group health plan in the case of a child placed for adoption. For purposes of these questions, it is assumed that the participant or beneficiary seeking dependent coverage otherwise is eligible for family medical coverage under a group health plan and has a legal obligation for support of the child in anticipation of adoption.

(a) Must a group health plan cover the birth expenses of a child adopted or placed for adoption to the same extent that such expenses would be covered if the child were born to the plan participant?

Section 609(c)(1) requires that a group health plan that provides dependent child coverage must provide benefits to dependent children placed for adoption with participants or beneficiaries under the same terms and conditions as apply in the case of dependent children who are natural children of participants or beneficiaries under the plan. Accordingly, to the extent that a group health plan designates certain covered expenses attendant to birth as expenses of a dependent child, the group health plan would be required to extend the same coverage to children who have been adopted by or placed for adoption with a participant or beneficiary at the time such expenses are incurred. Whether any particular expense is attributable to the child, rather than the mother, generally must be determined by reference to the terms of the plan.

(b) Must a group health plan cover the birth expenses of the birth mother as if the birth mother was a covered participant or beneficiary?

No. Section 609(c) imposes no obligation on group health plans to cover expenses attributable to the birth mother of a child that has been placed for adoption with a participant or beneficiary.

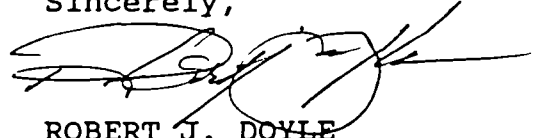
(c) If, as a condition of the adoption, the adoptive plan participant or beneficiary is required to pay certain birth and other expenses of a child incurred prior to the assumption of a the support obligation, is the group health plan of the participant or beneficiary required to reimburse those expenses?

No. Section 609(c) only requires a group health plan to provide coverage to a child upon "placement for adoption" of that child with a participant or beneficiary. As discussed above, "placement for adoption" is defined, in section 609(c)(3)(B), to mean the assumption by a participant or beneficiary of a legal obligation for total or partial support of the child in anticipation of adoption of such child. Accordingly, a group

contravention of section 609(c).^{4/} Thus, if a plan provides coverage to a natural child of a participant or beneficiary in cases in which governmental assistance equals or exceeds 50% of the child's support, the plan may not deny coverage to a child adopted by or placed for adoption with a participant or beneficiary solely because governmental assistance equals or exceeds 50% of the child's support.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 (41 Fed. Reg. 36281, August 27, 1976). Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 relating to the effect of advisory opinions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. J. Doyle', with a large, sweeping flourish extending to the right.

ROBERT J. DOYLE
Director of Regulations
and Interpretations

^{4/} Section 609(c)(3)(A), for instance, defines the term "child" for the purposes of that subsection to include an individual who has not attained age 18 as of the date of adoption or placement for adoption. Accordingly, a plan may not deny dependent coverage to a child within the meaning of section 609(c)(3)(A) who has been adopted by or placed for adoption with a participant or beneficiary on the basis of an age that is different from that at which it denies dependent coverage to natural children.

VCIS

Research Notes

Voluntary Cooperative Information System
American Public Welfare Association

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APWA

No. 12 (June 1996)

U.S. CHILD SUBSTITUTE CARE FLOW DATA FOR FY 1994 AND TRENDS IN THE STATE CHILD SUBSTITUTE CARE POPULATIONS

Toshio Tatara, Ph.D.

Director

Research and Demonstration Department
American Public Welfare Association (APWA)

Child Substitute Care Flow Data for FY 1994

The U.S. child substitute care population reached 468,000 at the end of (state) FY 94, and this figure represents a 5.4% increase from the first day of the same fiscal year. The national flow data on substitute care children for FY 94, assembled and estimated by APWA's Voluntary Cooperative Information System (VCIS), are shown below:

<u>First Day</u>	<u>Entered Care</u>	<u>Total Served</u>	<u>Left Care</u>	<u>Last Day</u>	Difference from <u>First Day</u>
444*	254	698	230	468	+5.4%

As these flow data indicate, there were a total of 444,000 children residing in the U.S. substitute care system at the start of FY 94. During FY 94, an estimated 254,000 children entered care, bringing the total number of children served by the nation's substitute care system in that year

*All figures are in thousands. They also are estimates and will be verified/confirmed when more detailed data become available in 1997.

the *VCIS Research Notes* shows the trends in the U.S. substitute care population, from FY 82 to FY 95, in histogram.

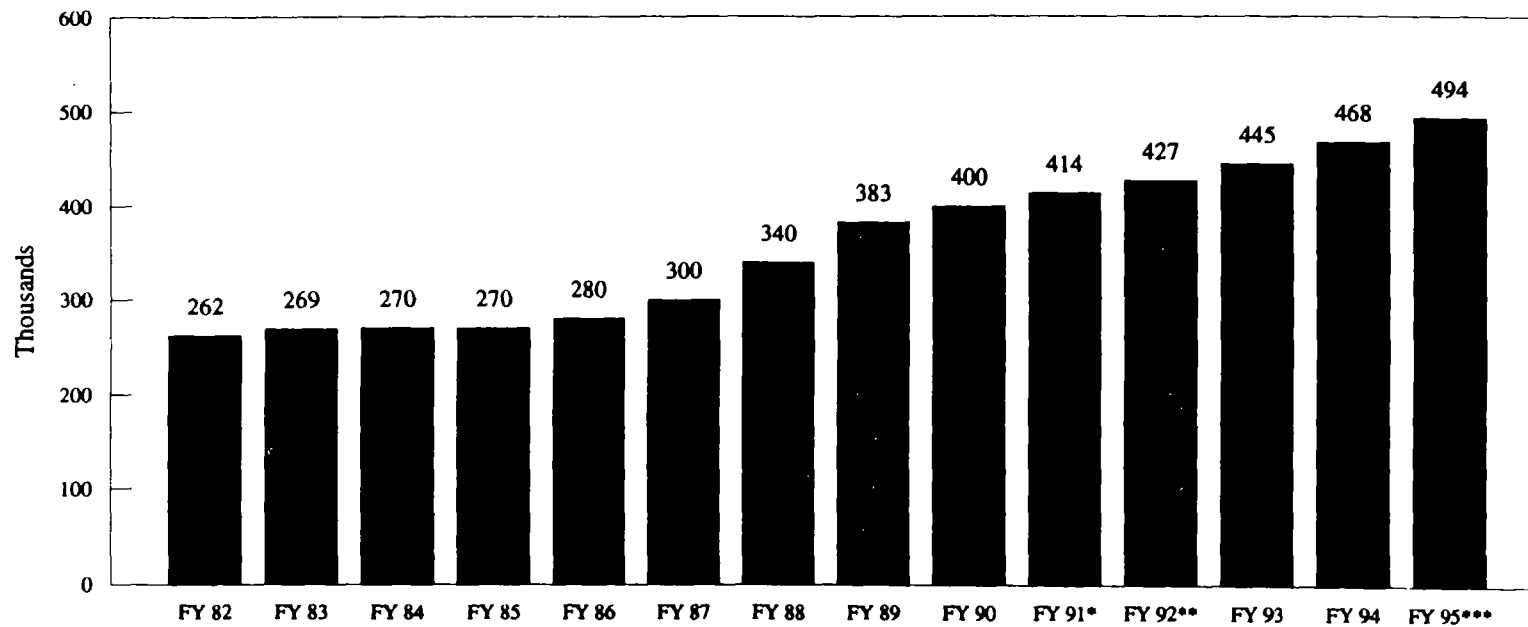
About VCIS Research Notes

APWA's Voluntary Cooperative Information System (VCIS) collected child substitute care and adoption data from state public child welfare agencies between 1982 and 1993, with funding from the U.S. Department of Health and Human Services (HHS) (Grant No. 90-OJ-2015). National summaries of these data for each year were published in a report *Characteristics of Children in Substitute and Adoptive Care.*^{**} Since 1993, VCIS has been operated jointly by LTG Associates (the primary contractor) and APWA, under federal contract (Contract No. 105-93-0880).

The purpose of *VCIS Research Notes* is two-fold: (1) to conduct occasional analyses of national trends in substitute care and adoption services using VCIS data (and data from other sources, as needed); and (2) to disseminate these analyses in a timely manner to policy makers, public child welfare administrators, and researchers. Each issue addresses one or two selected topics. The views expressed in each issue are those of the author and do not necessarily reflect policies of APWA or the federal government.

^{**}Copies of these reports are available at cost from APWA.

Trends in the U.S. Child Substitute Care Population FY 82 to FY 95



* Revised from 429,000
** Revised from 442,000
*** Rough estimate

Source: Voluntary Cooperative Information System (VCIS) of the American Public Welfare Association (APWA)
June 1996

AMERICAN PUBLIC WELFARE ASSOCIATION (APWA)
Voluntary Cooperative Information Systems (VCIS)

CHILD SUBSTITUTE CARE
FLOW DATA FOR FY 84

STATE	ITEM	# OF CHILDREN IN CARE AT THE START OF FY84	# OF CHILDREN WHO ENTERED CARE DURING FY84	# OF CHILDREN WHO LEFT CAR DURING FY84	# OF CHILDREN STILL IN CARE AT THE END OF FY84	# OF CHILDREN IN CARE AS OF DEC. 31, 1984
Alabama		3,903	2,281	2,378	3,788	3,814
Alaska		1,718	1,625	1,465	1,878	1,541
Arizona		4,107			4,271	
Arkansas		1,915	1,831	1,350	2,196	2,358
California		87,420	33,336	27,435	93,321	84,784
Colorado		5,700			8,957	
Connecticut		4,657			4,648	
Delaware		707	734	605	746	812
District of Columbia		2,401	1,100	1,548	1,981	
Florida		9,568	4,450	4,743	9,284	9,233
Georgia		17,277	1,105	1,143	17,239	17,275
Guam						
Hawaii		1,508	1,170	987	1,818	1,938
Idaho		924	1,203	1,080	908	948
Illinois		33,815	11,900	4,823	41,161	44,825
Indiana		8,741	4,425	3,252	8,883	12,384
Iowa		3,287	3,193	2,834	3,528	3,800
Kansas		4,593			4,501	
Kentucky		3,223	3,245	1,898	3,587	3,514
Louisiana		5,807			5,831	
Maine		2,150			2,238	
Maryland		8,182	3,783	3,019	6,636	7,143
Massachusetts		13,311	7,820	8,807	13,574	13,572
Michigan		10,382	8,088	7,882	10,608	10,709
Minnesota		9,700			10,378	
Mississippi		3,283			3,425	
Missouri		8,387	6,047	4,742	8,673	9,048
Montana		1,800	NA	NA	1,414	1,831
Nebraska		3,223	2,381	2,329	3,274	3,144
Nevada		2,831			2,440	2,479
New Hampshire		2,024	1,471	1,520	1,975	1,869
New Jersey		7,873	4,302	4,204	7,771	7,771
New Mexico		2,132	1,871	1,768	2,174	2,158
New York		59,858			58,858	
North Carolina		11,024	3,980	3,068	11,859	12,169
North Dakota		782	862	759	875	931
Ohio		15,822			15,822	
Oklahoma		2,883	4,828	1,172	6,707	5,872
Oregon		4,134	3,781	3,328	4,586	4,678
Pennsylvania		18,978			19,738	
Puerto Rico		1,892			1,930	
Rhode Island		2,894	2,270	2,025	3,139	3,249
South Carolina		4,490	3,402	1,691	4,781	4,886
South Dakota		674	551	594	631	534
Tennessee		5,768	3,184	2,784	6,168	NA
Texas		10,880			11,315	
Utah		1,481	1,108	894	1,622	1,768
Vermont		1,245	863	772	1,338	1,384
Virgin Islands						
Virginia		6,253	3,013	2,817	6,429	6,629
Washington		9,381	22,887	23,032	9,189	9,193
West Virginia		2,483			2,483	
Wisconsin		7,875	5,876	5,486	8,058	8,076
Wyoming		NA	NA	NA	857	1,001
TOTALS		442,484	183,740	138,084	487,958	317,257

VCIS Nat. Estimates:	444,000	254,000	230,000	488,000	NA
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SOURCE: Voluntary Cooperative Information System, June, 1988.

NOTES: The collection of the state data was supported in part by a grant (No. 990-OJ-2016) awarded to APWA by the Administration for Children and Families (ACF)/ HHS. Some figures are estimates. The VCIS national estimates may change when more detailed statistics are collected sometime in 1985. Most states used the "July to June cycle" to report their data, while other states used the "October to September cycle" or the calendar year 1984.

SPECIAL NOTES: State- by-state comparisons of the statistics are discouraged because the definition of substitute care varies among states and such analyses require additional information.

All inquiries about the VCIS data should be directed to Toshio Tazara of APWA at 202/682-0100.

TESTIMONY OF:

Sister Josephine Murphy, D.C.
Administrator of St. Ann's Infant and Maternity Home

Before the
Subcommittee on Human Resources
of the Committee on Ways and Means

June 27, 1996

St. Ann's Infant and Maternity Home
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Hyattsville, MD 20782
(301) 559-5500

Chairman Shaw and other distinguished Members of the Subcommittee on Human Resources:

Thank you for inviting me to testify before you today as you examine whether the provisions of The Adoption Assistance and Child Welfare Act of 1980 promote adoption in appropriate cases. My name is Sr. Josephine Murphy and I am a Daughter of Charity. I am also the administrator of St. Ann's Infant and Maternity Home.

St. Ann's Infant and Maternity Home began in 1860 and was incorporated in 1863. The Acts of Incorporation were signed by Abraham Lincoln. It began as an infant and maternity home and remains that at present. From its inception until the present St. Ann's has been a non-profit corporation serving without regard to race or religion. At present it cares for 57 abused/abandoned/neglected children from the District and Maryland. Of these 57 children, 42 are three years of age or younger. Children are accepted 24 hours a day, 365 day a year on an emergency placement basis. There are no requirements except that there is a bed empty. St. Ann's also serves 32 pregnant and parenting single, adolescent young women in their prenatal program and mother/baby program. Infant and regular day care is another program offered to 85 families in the community. We are supported by fees from the agencies that use our services, United Way, Foundations, business corporations and many other friends and benefactors.

I received my M.S.W. from Virginia Commonwealth University and have worked in child care homes as a child care worker or administrator for 40 years. I have been administrator of St. Ann's for eight years.

My testimony will center around some specific cases, some of the problems I see concerning The Adoption Assistance and Child Welfare Act of 1980 and some of my own views about the terrible abuse and neglect of our children.

"Please don't send me home!" This is the cry we have heard more than once at St. Ann's Infant and Maternity Home. It is the cry of little Billy who at age three has suffered severe abuse over a long period of time. When he was just a year and a half old he was taken to the hospital for treatment of third degree burns to the heel and sole of his right foot. He also had a hematoma on the back of his head and bruises on his right jaw. In addition, X-rays revealed old skull fractures. The injuries were inconsistent with the explanation provided by his mother. Nonetheless he was returned home and came to St. Ann's another year and a half later after again going to the hospital and being seen for scrotal swelling and bruises. His buttocks were bruised and he complained of his stomach aching. He also had a rectal fissure and it took almost a year working with the doctors before he had normal bowel movements again. My question is - why was he returned home in the first place after the abuse he had suffered at age one and a half?

"Please don't send me home!" Billy's plea should be a trumpet call to all of us. Never should we send them home - if home means more abuse and neglect. I firmly believe that child protection should take precedence over family reunification. Children need a sense of permanency, some stability and consistency in their lives. They need to be protected and given the same basic right to life, liberty and the pursuit of happiness that the rest of us have. Our legal system that is so quick to advocate and demand through The Adoption Assistance and Child Welfare Act of 1980 that children be returned to their homes fails to take sufficient time to examine whether family reunification is appropriate in the majority of child abuse cases. Many times I believe, if we are looking to child protection, that it is not. The legal system, and I include Corporation Counsel in the legal system, should take a good, realistic look at what is happening to children and have the intestinal fortitude, when it is needed, to terminate parental rights and place these children in adoption. The time has come, and in my opinion is long overdue, for the legal system to accept its share of the blame for the continuity of the terrible abuse and neglect that we see in the lives of the youngest members of society coming into care today. Many times the courts assume that the best interests of the child subsist within the best interests of the parent. This is wrong! The best interest of the child or if you will, the safety of the child, takes precedence over the best interest of the parent. I am a proponent of long-term OUT-OF-HOME placement for children until a FULL INVESTIGATION is completed and SUFFICIENT REHABILITATION has taken place. The parent should be confronted with the fact

that this rehabilitation takes place within a stipulated time or the child will be placed in adoption. This stipulated time should not drag on for years but the case should be reviewed in six months to see if the parent is really making efforts to change and accept responsibility. Babies should not have to wait years for this to take place!

I am aware that the present trend of our child welfare system is toward family reunification, believing that every family can be "fixed" and that the biological family is ALWAYS the best place to raise a child. I have listened to too many children and seen too many badly abused babies to ever believe this. I do believe that there is a placement of choice for every child. This may be back in their own homes if investigation proves them to be safe and rehabilitation has taken place. It could be in foster care, in adoption or in long-term homes for children. Children entering the system today, for the most part, are extremely traumatized by physical/sexual abuse. Placing them back in their own abusive homes or in unsuccessful foster placement only damages them further.

The best thing for some abused/neglected children is to go into a long-term facility which is a neutral placement where they don't have to relate immediately to another parent substitute figure. I especially think this is helpful for teenagers who have been so horribly abused for so many years that they no longer trust anyone. Mary one of the girls in our maternity program had a horrible early childhood but did well at St. Ann's. Her mother was a drug addict with many run-ins with the law who abandoned her at three weeks of age. Her father was an alcoholic who was given custody of Mary and soon remarried, letting the child believe the woman was her biological mother. He was abusive to both his wife and daughter and a divorce soon took place. Mary was devastated when she learned this woman was not her mother and was leaving her. At age eleven Mary began taking care of herself and doing what she could to run the house. Her father suddenly stopped drinking but then began to sexually abuse her. She went to a counselor at school for help and her father was put in jail. She was placed in the home of her father's former wife and that placement did not last long. From there she went into foster care. Mary says of her foster mother, "It was hell living with her". She ran away and went from shelter homes to girls' homes. She developed an "I don't care" attitude. She got pregnant and her boy friend left her - alone and with no place to go. She knew of St. Ann's and sought help there. Mary did well in both the maternity and mother/baby programs, finished school and got a scholarship to college. Many young people, like Mary, wind up in the shuffle of the welfare system, going from one home to another feeling rejected each time they are moved, feeling unwanted, unloved, and that nobody has time for them. In general they feel they are a nuisance to everybody and that the world wouldn't be in the mess it's in if they had never been born. Hence the increased rate of teen suicides. However, over the years I've seen many desperate teens blossom when placed in long-term care and given a chance to stabilize and feel they belong.

As I reflect on what's happening to these adolescents and young children today I come to one unavoidable conclusion: They are present day slaves. I hate to use the word since I thought slavery had ended in our country years ago. I was mistaken. It has just changed its focus. Those in slavery today are our children.

I see it in their eyes when they come into our home. It's a heart-wrenching look of defeat and longing. I can't explain it, but I've seen it hundreds of times. It's become a constant image in my prayer - the eyes of Christ in this distressing disguise. It's what I imagine the look of the slave was, this child with no hope.

They are the little chattels of their mothers who hold the power of life or death over them. They are the slaves of people's perversions, whims and frustrations. They are beaten, burned, bartered, sold, used and abused - just as the slaves of years ago. I worked with a young girl in Virginia who had been traded, like a slave, by her mother for a transistor radio when she was just a few weeks old. In a few months her new mother did not want her anymore and gave her up to the welfare department. She should have been adopted as an infant but instead spent all of her life in the system going from placement to placement.

We see these little slaves often at St. Ann's. Many of them are sexually exploited to gratify the passions of adults who are obsessed with sex;Alice, a little two year old who had to have stitches for vaginal lacerations because she had been raped.

Kathy, two weeks old, came to us with gonorrhea of the throat.

Pam who at 15 months of age suffered from venereal warts. She had been sexually abused by her mother's boyfriend and needed surgery because of it. Surgery was scheduled but before it took place she was discharged to her mother and right back to the same situation.

They are burned, oh yes, they are burned. That's what happened to Ben who came in with both hands so badly burned that we sent him to the hospital because the nurse on duty thought his hands were infected. He was hospitalized for six days while the hospital staff worked on his hands. When he came back to us we were told by the hospital that they were not water burns but that his hands had been held over an open fire. When his mother came the following week to visit him he took one look at her and raced off down the hall screaming. He and his brother both accused their mother of abuse, and the aunt admitted that there had been long-term sexual activity between the mother and the boys. Yet they were released to their aunt who had been around while all this was going on and done nothing.

Children today are beaten also, but no longer with a hair brush as in years gone by. The implement of abuse now is the electric cord because "loving" mothers and their boyfriends have found out that it inflicts much more pain and the pain lasts a lot longer.. Tommy came in at age seven with his back all torn up in this manner. It took months to heal his "mommy sores" as he called them. As he prepared to go home he wanted to know why we were sending him back when we knew what was going to happen to him. Why indeed! I wish I had been able to come up with a good answer but all I could say was that we were not sending him home but had received a court order which meant the judge had ordered us to send him home. It's nothing but slavery!

This does not happen with every child, but it happens too often for any of us to be complacent. I'm not speaking as a burned out social worker but as one who has become incensed about the plight of children today. We freed the slaves once; it's time we freed the new slaves by making child protection and nurturing the number one priority in our courts, schools and homes. If we do then maybe we won't be trying eight and ten year old children as adults for murder. I don't think age matters, it's just getting big enough and strong enough to do the job. We had a seven year old little boy at St. Ann's who was looking forward to the day he would be big enough to kill his mother's boyfriend who beat him and his younger brothers and little sister and sexually abused them also. They have been back to St. Ann's twice and still the goal is family reunification. Why do we leave children with mothers who can't or won't protect them? Our courts are rather naive to think these moms are going to give up their boyfriends. Maybe we need to clear up the violence in our homes before we can clear up the violence on our streets!

Children are born with a clean slate, all behavior is learned, so what we are seeing played out in our homes, our schools, and our streets today is what they have learned from us - the families, schools, churches, the society that has taught them so well. Children are very quick to learn the bad as well as the good and we are finding that out to our dismay. This is not a minority/white issue, it is not a poor/wealthy issue. It hits all races and classes because our traditions and values, our families have collapsed. Our children are growing up scared, daily exposed to violence and with no support or protection from family because family does not exist for many children. Their family is just a group of people living in the same house and many times these people change rather frequently.

Children have been devalued in our country to the point that their right to "life and liberty" plays second fiddle to their parents' right to the "pursuit of happiness" in whatever form that may take. This devaluing of children occurred gradually and went unnoticed. It began, I believe, when motherhood lost its rightful place as the greatest vocation on earth and fathers became a thing of the past for many children. It began when parents stopped loving and enjoying their children, when they became so caught up in their own pleasureable

pursuits they couldn't even see their children's very basic needs. It began when parents had no time for their children and began to substitute "quality" time for "quantity" time. I had a teenage boy tell me that his parents had given him everything he ever wanted since he had been born except five minutes of their time. He added that he would trade it all in for just a little of their time. We need to speak up for motherhood again whether it be the birth mother, the adoptive mother or the foster mother. What is more important than forming the heart, mind and soul of a child? What profession offers such a challenge or such a great reward?

Every child deserves freedom, the freedom that comes from a happy childhood; freedom from the fear of physical and sexual abuse, freedom from the fear of hunger, freedom from adult responsibilities and worries. Yes, they assume these at a very young age also. They have to just to survive, We took in a little five year old girl and her baby sister and the five year old told us it was hard to realize she didn't have to take care of "her baby" anymore because she had done it since her sister was born. She added that she had also taken care of her mother who, as the child said, "stayed stoned from morning until night". She was also an accomplished thief which means someone had taught her well and she was a quick learner. So we wonder why our jails hold so many juvenile offenders! This little girl is only one among many, believe me. Their emancipation requires our participation in the fight for their basic rights. We have no problem with putting orphans up for adoption. Yet many of the children described above are orphans of the living. Though their parents are alive they are too overwhelmed with their own problems - drugs, alcohol, prostitution and crime - to function as parents in the raising of their children. This gives rise to the terrible abuse and neglect we are seeing today. We wonder about children killing at younger and younger ages. Maybe it's a case of those who have been so horribly neglected and abused finally turning on a society that has treated them so savagely and could care less. Our children are lonely afraid and pushed into adult lives at too early an age. Many come to St. Ann's knowing all about drugs and hiding from the police and living on the streets but they don't know how to jump rope, play dodge ball or ride a bike. Maybe it's time to spend QUANTITY time with them and turn some of them around. Or would we rather continue to leave them to the drug dealers, the rappers and their rock group idols. Believe me these people have plenty of time for them, not because they love them or care about them but because these children represent the almighty dollar to them. It's time to take back the souls of our children and give them all back their childhood. For many it's already too late but adoption could be the road for those that still have a chance.

Now is the time to end this terrible abuse. It's not just stress or the lack of money or health care or the lack of affordable day care that's causing all this. It's our lack of putting some effort into raising children instead of just letting them grow up which is much easier. It's our watering down our educational system until our children are bored to tears and find no exhilaration in learning. It's our making a god of sex and not teaching our children it's only a piece of the total love story commitment. We don't need any more reports or congressional hearings. We know the sad statistics. What we do need is for enough of us to get angry, really and truly angry enough to do something about the terrible injustice that is being done to children by returning them to abusive homes and losing another generation to violence and hate. We have to get angry enough to let our legal system and our welfare departments know we won't put up with child slavery any longer. We need to tell our political leaders they should not be talking about human rights issues in any other country until they clean up their own backyard, the backyard that holds the skeletons of too many neglected little bodies already.

I am aware of all the "we care about kids" rhetoric, but I can't help wondering: "Do we really?" Do we care that 1,271 children died last year as a result of abuse and neglect. Do we care that 88% of the victims were younger than five years of age? Do we care that 46% of the victims were one year old or younger? Do we care that most of the deaths were at the hands of parents or caretakers, the very people responsible for keeping the children safe.

Congress and our legal system are set up to protect the rights of ALL our citizens; and children even though they cannot vote, are citizens too. Therefore, those institutions should be the first to take action on behalf of our children in crisis. I feel they need to address the following issues:

THE FAMILY REUNIFICATION ACT should be clarified or changed to put the best interest of the child (child safety) before the rights of the parent. This was an act of Congress, so Congress needs to define what constitutes a family and realize that not every family can be fixed. The rhetoric concerning this Act is great, but the reality for abused children is horrible and cries to heaven for vengeance.

OUR LEGAL SYSTEM must stop sending children right back to abusive and dysfunctional home situations before the home is THOROUGHLY INVESTIGATED and some degree of REHABILITATION has occurred. To really insure the safety of the child this should mean that real change has been brought about not just promises made. Our judges, lawyers and social workers have to face the fact that you don't cure a drug addict in a week or a month, and stop acting like this is possible.

OUR LEGAL SYSTEM should set a time limit, a short one, for abused/neglected children to be shuffled around before terminating parental rights and placing those children in adoption. Thousand of children stay in the system for years because judges, lawyers and social workers won't terminate parental rights and give the children a chance at some degree of permanency, stability and normalacy in their lives. Babies need to be adopted when they are babies not when they are older and their little personalities and self concepts have been destroyed.

OUR LEGAL SYSTEM needs to take stronger steps to pursue and prosecute those who murder and sexually abuse children and those who permit it to be done. According to a recently released Justice Department study, most of the crimes against children took place in the home of the assailant or victim. More than three million children nationwide were reported abused/neglected in 1994. Then, of course, there are the tens of thousands of other crimes against children that never get reported or prosecuted. It's easy enough to say children are abused but stop for a moment and think of the pain they endure and have to endure over and over again. Do we want any child to go through this?

Let me say that throughout this article I am talking about severe abuse and neglect and sexual abuse, the kind of abuse that children should never have to endure a second time. I am also talking about a parent who is probably never going to change (we had one child whose mother had been in 19 drug treatment programs), mothers who permit their boyfriends to physically and sexually abuse their children and either take part in the abuse or do nothing to protect the child. There has to be REAL CHANGE. Seven to thirty days in drug rehabilitation and staying clean for a few weeks, going to counseling sessions, coming to St. Ann's on visiting days and getting your little slip in saying you came, none of these things do I see as making a difference if change doesn't occur and the boyfriend isn't really out of the house for good. Promises and talk don't mean anything and don't do anything to change the person or the situation. Neither do I feel children have to be returned so mom can keep her housing. We had a very young baby retruned for this reason and came back to us three days later because mom had taken him home and left him locked the apartment alone from Friday until Sunday when concerned neighbors called St. Ann's and were told to notify the welfare department. That baby hadn't been fed or changed during all that time but mom had her apartment. So that's what child protection is all about!

Finally I ask that you DON'T SAY THE WORD MONEY TO ME. It simply infuriates me when we have money for everything else we want including sports stadiums but are always counting the cost of raising children. If it costs so much then how come many poor people raise their children very well on very little. We can't place a money value on our children because each and everyone of them is priceless. I would say though that the money will be spent either when they are older and occupying our jails and prisons. Abused and neglected children are growing up with hate and anger in their hearts and in the future they will feed our prison census and I think we are already beginning to see. All the money in the world won't help if we don't do something to turn the tide for our children who are drowning in a sea of abuse and neglect that stems from drugs, alcohol, sexual promiscuity and the lack of any family support.

And so I question: When will Congress look at the Family Reunification Act with a "children come first" attitude? When will our legal system hold itself accountable for what's happening to our children instead of blaming it all on the welfare system? When will we as a society see that it is better for our children to worship God than drugs, money and sex? When will we be more concerned with building and updating our educational system than our sports arenas? When will we realize that our children need the loving support of a permanent family? When will we realize that children who are abused and neglected are likely to end on a path that leads to jail? When will we begin to do more than meet and talk?

We say we love children. We say they are the future of our nation. We say they are the most vulnerable members of our society. If we believe it, then we should put some action as well as our money where our mouth is. I'm tired of all the rhetoric, the studies, the meetings and the statistics while our children's lives are wasted and their bodies and spirits broken.

I beg you to please take some ACTION. Thank you for this opportunity.

E. CLAY SHAW, JR., FLORIDA, CHAIRMAN
SUBCOMMITTEE ON HUMAN RESOURCES

BILL ARCHER, TEXAS, CHAIRMAN
COMMITTEE ON WAYS AND MEANS

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U.S. HOUSE OF REPRESENTATIVES
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SUBCOMMITTEE ON HUMAN RESOURCES

ER
BILL ARCHER, TEXAS
SAM M. GIBSON, FLORIDA

June 17, 1996

Mr. David Thomas
Founder and Chairman Emeritus
of the Board of Directors
Wendy's International
4288 West Dublin-Granville
Dublin, OH 43717

Att: Jann Heffner

Dear Mr. Thomas:

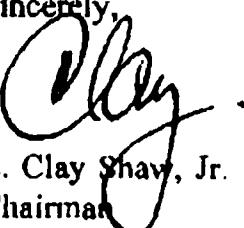
I am pleased to invite you to appear before the Subcommittee on Human Resources of the Committee on Ways and Means on Thursday, June 27, 1996. The Committee intends to examine whether the provisions of The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) promote adoption in appropriate cases. I am particularly interested in your views on how the foster care system creates special needs children and whether the Federal foster care law facilitates adoption as it was designed to do.

A press release announcing the hearing is enclosed. The hearing will be held in Room 1100 Longworth House Office Building beginning at 1:00 p.m.

I am grateful that you have agreed to appear before the Subcommittee. Please read the enclosed press release for particulars regarding submission of your written statement. We would like to have 200 copies of your testimony by Wednesday, June 26. If that is not possible or if you have additional questions, please contact Carol Bevan or Richard Gelles at (202)225-1025.

We look forward to seeing you June 27th.

Sincerely,


E. Clay Shaw, Jr.
Chairman

ECS/rgm
Enclosure

*Look forward to seeing you in
H. Sanderson*

ADVISORY**DRAFT****FROM THE COMMITTEE ON WAYS AND MEANS****SUBCOMMITTEE ON HUMAN RESOURCES**

FOR IMMEDIATE RELEASE

CONTACT: (202) 225-1025

June 20, 1996

No. IIR-[X]

Shaw Announces Hearing On Barriers to Adoption

Congressman E. Clay Shaw, Jr. (R-FL.), Chairman of the Subcommittee on Human Resources of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on barriers to children being placed for adoption. The hearing will take place on Thursday, June 27, 1996, in room 1100 of the Longworth House Office Building, beginning at 1:00 p.m..

Oral testimony at this hearing will be heard from invited witnesses only. Witnesses will include Members of Congress, foster parents, scholars, and program administrators. Mr. Dave Thomas, founder of Wendy's International and Chairman Emeritus of Wendy's Board of Directors will also testify. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) requires that "reasonable efforts" be made to keep children with their parents prior to the placement of a child in foster care, both to prevent or eliminate the need for removal of the child from his family and to make it possible for the child to return to his family. A central goal of Congress in creating the "reasonable efforts" provision was to reduce the likelihood that children would be inappropriately removed from their parents. However, there have been some unintended consequences of this legislation. In several well-publicized cases, it is clear that children were abused, damaged, or even killed when state departments of child welfare, in attempting to meet the "reasonable efforts" mandate, left or returned these children to abusive families. Witnesses have testified before the Subcommittee in the past that the reasonable efforts provision plays some role in children being left with or returned to maltreating families. In addition, the way in which the reasonable efforts provision is actually implemented in many states may be a barrier to children being placed for adoption. Since many states now use intensive family preservation programs as a way of keeping families together, the Subcommittee is interested in learning more about the success of these programs.

In announcing the hearing, Chairman Shaw stated: "Removing barriers to adoption is an important means of addressing the crisis of the nation's child welfare system. While many families can and should be preserved, there are some families and caretakers that cannot be rehabilitated. In these cases we must find caring, loving, and permanent families for children who need them."

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement, with their address and date of hearing noted, by the close of business, Friday, July 12, 1996, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Human Resources office, room B-317 Rayburn House Office Building, at least one hour before the hearing begins.

(MORE)

DRAFT

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are now available on the World Wide Web at 'HTTP://WWW.HOUSE.GOV/WAYS_MEANS/' or over the Internet at 'GOPHER.HOUSE.GOV' under 'HOUSE COMMITTEE INFORMATION'.

**LIST OF WITNESSES TO APPEAR BEFORE
SUBCOMMITTEE ON HUMAN RESOURCES
COMMITTEE ON WAYS AND MEANS
ON HOW P.L. 96-272, THE ADOPTION
ASSISTANCE AND CHILD WELFARE ACT,
IS A BARRIER TO ADOPTION**

THURSDAY, JUNE 27, 1996 - BEGINNING AT 1:00 P.M.

ROOM 1100 LONGWORTH HOUSE OFFICE BUILDING

PANEL:

The Honorable Mike DeWine, U.S.S., Ohio

The Honorable George Miller, M.C., California

The Honorable Harris W. Fawell, M.C., Illinois

The Honorable Connie Binsfeld, Lieutenant Governor, State of Michigan

Dave Thomas, Founder and Chairman Emeritus of the Board of Directors,
Wendy's International, -Dublin, Ohio

PANEL:

Judith Goodhand, Ph.D., Executive Director, Cuyahoga County Department of
Children and Family Services, Cleveland, Ohio;
accompanied by

Patricia Newell, Foster Parent, Cleveland, Ohio; and
Deborah Benn, Birth Parent, Cleveland, Ohio

Sister Josephine Murphy, Administrator, St. Ann's Infant and Maternity Home,
Hyattsville, Maryland

Patricia Warenda, Grandmother, Ft. Lauderdale, Florida

Robert Dean, Foster Parent, Omaha, Nebraska

PANEL:

The Honorable D. Bruce Levy, Administrative Judge, Juvenile Division,
11th Judicial Circuit, Miami, Florida

David Liederman, Executive Director, Child Welfare League of America, Inc.,
Washington, D.C.

Laureen D'Ambra, Child Advocate, State of Rhode Island,
Providence, Rhode Island

Peter Digre, Director, Department of Children and Family Services, County of
Los Angeles, California

Committee: Subcommittee on Human Resources of the Committee on Ways and Means
Thursday, June 27th, 1995
Room 1100 Longworth House Office Building, 1:00 p.m.

Chairperson: B. Clay Shaw, Jr.

Testimony Submitted by: Robert Dean, Foster Parent from Omaha Nebraska

I would like to thank you, Chairman Shaw, Ladies, and Gentlemen of the Subcommittee on Human resources of the Committee on Ways and Means for inviting me to speak on this issue.

My name is Robert Dean. I am a foster parent to a little girl who is five years old who has been in our home for almost 3 years. I have seen first hand how a stable loving home has helped this child grow up happy and healthy. I have also seen the pain and confusion this child is suffering while she waits for her mother to prove she can parent this child. She has waited over half her life for permanency; a place to call home with certainty.

For the purpose of this testimony I will refer to her as Ann.

Ann came to our house in late March, 1993. She was almost 2 years of age. She was not yet speaking more than 5 or 6 words and kept a bottle in her mouth at all times. Ann did not know how to use silverware, but could operate a television remote easily. On her first day with us, she sat on the floor, grabbed a bag of chips and can of pop from the refrigerator and pointed to the television and said "watch".

Ann was a scared, shy, 'unbonded' toddler. Prior to being in foster care, she was moved several times, running from police and crawling out of windows with her mother. She was repeatedly left with her mother's acquaintances or relatives too weak to properly care for her. Ann came into the system when her mother left her with a friend and did not return after a couple of weeks. The friend took Ann to her great-grandmother's (Ann's) home. Ann was dropped off without food, clothing, diapers, or any knowledge of where her mother was at. After two months and several unsuccessful attempts to locate her grand-daughter, Ann's great-grandmother called the police.

Ann was placed in our home and we immediately consulted a physician for an uncontrollable, deep cough. We were told that Ann had an extraordinary high level of lead in her blood, 45 (normal range is under 10). The physician stated this is typical for a child that had lived in older neighborhoods, where lead-based paint was chipping off the walls and a baby could put these in their mouth; especially an unsupervised, malnourished, homeless child.

Ann was returned to her mother, Debbie, on 4-6-93; even though she had been arrested less than 1 week before for felony shoplifting. On 8-4-93, Ann returned to our home as the caseworker had found out Debbie was using drugs and alcohol while she was pregnant with her second child, due in early October.

Debbie gave birth to Gloria in September of 1993. At the time of the birth, both Gloria and her mother tested positive for cocaine. Gloria was born 5 weeks premature. Gloria was placed in out-of-home care once she was able to leave the hospital. Gloria has Osteopenia (low bone density) and Hepatitis of the liver. She continues to have problems with her bowels, ears, liver, susceptibility to infection, and food intolerance. She requires careful medical monitoring as any virus, infection, and/or dietary change could place her medical health in jeopardy. Ann was diagnosed as possible FAE, as Debbie admitted to drinking daily while pregnant with her.

Debbie was ordered in juvenile court to complete many services to address her drug addiction, her parenting skills, her ability to find stable legal employment, and her ability to provide a home for herself and her daughters. She was also ordered to attend weekly supervised visits with her daughter.

Debbie did not comply with any of these services and at first she abandoned Ann. Since then her visits with Ann have been sporadic, sometimes she would not show up, other times she was incarcerated.

There is no father's name listed on the birth certificate. However, a man identified as Ann's father, Mike, petitioned the court to intervene in the case in October of 1995. Ann had been in out-of-home care for 2 1/2 years. Paternity has never been established by the court or by genetic tests. A home study on Mike's residence has not been completed. Mike has not completed a bonding assessment nor does he pay child support. In spite of these facts, in 12-95, Mike was authorized by the court to have weekly unsupervised visits for 7 hours. In February of 1996 we learned that Mike had no intentions of pursuing custody or attending further court hearings. Visitation with Mike continues.

Debbie is scheduled to finish her rehabilitation program in August of 1996. In September she will gain the custody of Ann. She will gain the custody of Gloria in October. Debbie will not have proved the ability to live without the structure her program has provided her, the ability to maintain a job or stable environment, or the ability to parent her children.

Will Debbie be able to lovingly accept that the children she abandoned, have come to know and love other persons as their stable family? Will she be able to gain their trust in her and protect their innocence?

Reunification has to mean that there was a bond before the tragedy of separation. In the case of Ann and Gloria, the facts show they were never "together" before out-of-home placements were found. Reasonable efforts must be tied to strict time frames; and the best interests of the children should be the first priority.

I wish I could say this is an isolated case but it is not. In Nebraska, I volunteer my time and serve on a local foster care review board. I review the permanency plans for children in out-of-home care and along with my fellow board members, I make recommendations to the legal parties regarding the case. My board review cases of children in out-of-home care every month like my foster daughters. My personal experience with my foster daughter and my experience of reviewing hundreds of cases of children from my community has led me to the conclusion that "child protection" and "child advocacy" must be made the primary focus of our child welfare system rather than reunification.

The data collected by the Foster Care Review Board on children in out-of-home care shows that in Nebraska, as of June 18, 1996, out of the 3,360 children in out-of-home care:

- 41% (or 1,360 children) of Nebraska's state wards have been removed from the home for abuse and/or neglect at least twice
- Of the 194 state wards under the age of 5 who have been removed from the home on more than one occasion;
 - 157 have been in foster care twice
 - 32 have been in foster care three times
 - 3 have been in foster care four times
 - 1 child has been in foster care seven times
- Of the 2,940 state wards returned home during 1995, 336 (11%) were returned to foster care within the first 5 months of 1996.

To preserve families, The Child Welfare System often exerts a great deal of effort on parents who through their actions, (abandonment, disregard to court orders, continued drug use, sporadic attendance to visitation, etc.) tell the professionals involved in the case that they are not interested in parenting their children. These lengthy, expensive and frustrating reunifying efforts hurt the children involved by extending the chaos and instability that may have brought the child into care in the first place.

I believe it is possible to strike a balance between parental rights and best interests of the child. The policy of reunification can be qualified to ensure that parents who are habitual drug abusers, violent physical and sexual abusers, mentally ill, or who abandon their children, are kept to a strict time frame to rehabilitate themselves, if the court determines rehabilitation and reunification to be in the best interest of the child(ren), so the child(ren) have a chance to attain permanency.

I would respectfully suggest to the committee that the qualifications and restrictions applied to the policy of reunification outlined in the Utah Law §78-3a-311, be amended to the Federal Law, P.L. 96-272.

Utah Law §78-3a-311 is as follows:

- (1) The court may make any of the dispositions described in Section 78-3a-39, place the child in the custody or guardianship of any individual or public or private entity or agency, order protective supervision, family preservation, medical or mental health treatment or other services.
- (2)(a) Except as provided in Subsection (3), whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the Division of Family Services, it shall order that the division make reasonable efforts to provide services to the minor and his parent for the purpose of facilitating reunification of the family, within a maximum time period not to exceed 12 months from the date that the child was initially removed from his home by the division.
- (b) Any physical custody of the minor by the parent during the period described in Subsection (a) does not interrupt the running of the period.

(c) At the expiration of the 12 month period described in Subsection (a), a dispositional review hearing shall be conducted by the court in accordance with Section 78-3a-312. If at that time the child cannot be safely returned to the care and custody of his parent without court supervisions, a permanency plan for the child shall be finalized. If the child clearly desires contact with the parent, the court shall take the child's desire into consideration in determining the permanency plan.

(3) Because of the state's interest in and responsibility to protect and provide permanency for children who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited. The court may, under any circumstances, determine that efforts to reunify a child with his family are not reasonable, based on the individual circumstances, and that reunification services need not be provided. In any case, there is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

(a) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

(b) the parent is suffering from a mental illness of such magnitude that it renders him incapable of utilizing those services; that finding shall be based on competent evidence from mental health professionals establishing that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months;

(c) the minor has been previously adjudicated as an abused child due to physical or sexual abuse, that following the adjudication the child was removed from the custody of his parent, was subsequently returned to the custody of that parent, and the minor is being removed due to additional physical or sexual abuse;

(d) the parent has been convicted of causing the death of another child through abuse or neglect;

(e) the minor has suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known the person was abusing the minor;

(f) the minor has been adjudicated as an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the child to pursue reunification services with the offending parent;

(g) the parent's rights have been terminated with regard to any other child;

(h) the child was been removed from his home on at least two previous occasions and reunification services were offered or provided to the family at those times; or

(i) if any other circumstance that the court determines should preclude reunification efforts or services.

(4) (a) Failure of the parent to respond to previous services or comply with any previous treatment plan, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, whether a parent continues to live with an individual who abused the child, any patterns of the parent's behavior that have exposed the child to repeated abuse, or testimony by a competent professional that the parent's behavior is unlikely to be successful, are relevant factors to consider in determining whether reunification services should be ordered.

(b) The court shall also consider whether the parent has expressed an interest in reunification with the child, in determining whether to order that reunification services be provided.

(5) If reunification services are not ordered pursuant to Subsection (3)(a), and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court may order the division to provide reunification services. The time limits described in Subsection (2), however, are not tolled by the parent's absence.

(6) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for minors ten years of age or older, the minor's attitude toward the implementations of family reunification services.

and any other appropriate factors. Reunification services for an incarcerated or institutionalized parent are subject to the 12 month limitation imposed in Subsection 2 unless the court determines that continued reunification services would be in the child's best interest.

- (7) If, pursuant to Subsection (3)(b), (c), (d), (e), (f), (g), (h), or (i), the court does not order reunification services, a hearing shall be conducted within 120 days of establishment of a permanency plan for the child, in accordance with Subsection 78-3a-312(3).

I would like to thank Chairman Shaw, Ladies and Gentlemen of the sub-committee for allowing me, as a foster parent, to share my personal experiences with the child welfare system and the policy of reunification with you.

I respectfully urge you to change the Federal Law, P. L. 96-272, from directing child welfare agencies across the country to pursue reunification in all cases of children in out-of-home care - at all costs, to a policy that considers "the best interests of the child" first and foremost.

Please look at this legislation through the eyes of the children it affects. Every day I see the pain and upheaval in one little girl's life caused by this legislation and its interpretation that parental rights have precedence over what the parents have done or what the child's best interests are. I hope by sharing her story with you, you too will see the necessity of qualifying the pursuit of reunification.

Thank you for your time.

HEARING STATEMENT
BARRIERS TO ADOPTION
U.S. SEN. MIKE DEWINE
JUNE 27, 1996

Thank you, Mr. Chairman.

Mr. Chairman, too many children are spending their most important, formative years in a legal limbo that denies them their chance to be adopted -- that denies them what all children should have -- the chance to be loved and cared for by parents.

The job of finding parents for these children becomes infinitely more difficult the longer they are suspended in this foster-care limbo. Sometimes we focus our energies on fruitless attempts to reunify certain families that can't be fixed. As a result, the children lose the opportunity to find a permanent adoptive home.

We are sending too many children back to dangerous and abusive homes. We send them back to live with parents who are parents in name only -- to homes that are homes in name only.

We send these children back to the custody of people who have already abused and tortured them.

We send these children back to be abused, beaten, and many times killed.

We're all too familiar with the statistics that demonstrate the tragedy that befalls these children.

Every day in America, three children actually die of abuse and neglect at the hands of their parents or caretakers. That's over 1200 children every year.

And almost half of these children are killed after their tragic circumstances have come to the attention of child welfare agencies.

Tonight, almost 421,000 children will sleep in foster homes. Over a year's time, 659,000 will be in a foster home for at least part of the year. Shockingly, roughly 43 percent of the children in the foster care system at any one time will languish in foster care longer than two years.

Ten percent will be in foster care longer than five years.

And the number of these foster children is rising. From 1986 to 1990, it rose almost 50 percent.

In summary, Mr. Chairman, too many of our children are not finding permanent homes.

Too many of them are being hurt.

Too many of them are dying.

0 Most Americans have probably heard of the tragedy that befell nine-year-old Elisa Izquierdo of New York City. Her mother used crack when she was pregnant with Elisa. A month before Elisa was born, her half-brother Ruben and half-sister Cassie had been removed from her mother's custody and placed into foster care. They had been neglected -- unsupervised and unfed for long periods of time.

In other words, this woman left her children alone -- and didn't feed them.

But then, Mr. Chairman, the children were sent back -- sent back to her!

Then Elisa was born.

When Elisa was born, she tested positive for crack. She was taken from her mother and transferred to her father's custody.

Tragically, in 1994, Elisa's father died.

Elisa was then five years old. The director of Elisa's pre-school warned officials about her mother's history of child abuse and drug abuse. But -- without any further investigation, and without ordering any further monitoring of Elisa's home situation, a family court judge transferred Elisa back to her mother.

In March 1995, when Elisa was six years old, she was admitted to the hospital with a shoulder fracture.

A shoulder fracture, Mr. Chairman. A little girl from a household with a history of child abuse shows up at the hospital with a shoulder fracture.

The hospital sent her back home to her mother.

Eight months later, in November of 1995, she was battered to death by that same mother. You see, Elisa's mother was convinced that Elisa was possessed by the devil. She wanted to drive out the evil, so she forced Elisa to eat her own feces, mopped the floor with her head, and finally bashed her head against a concrete wall. On November 22, 1995, Elisa was found dead.

It was on the front page of the New York Times. Millions of Americans were shocked.

What shocked me, Mr. Chairman, when I read the story was that anyone would be shocked.

While this horrible tragedy captured the attention of the country, the sad fact is that atrocities against children happen every day in this country. Children are reunited with brutal abusers -- they are abused again -- and yes, sometimes, they die.

O Here's another incredible story. A Chicago woman had a lengthy history of mental illness. She ate batteries and coat hangers. She drank Drano. She stuck pop cans and light bulbs into herself. Twice, she had to have surgery to have foreign objects removed from her body.

Then, when she was pregnant, she denied that the baby was hers.

While pregnant, she even set herself on fire.

That's her idea of what being a parent is all about.

On three occasions, her children were taken away from her by the Department of Children and Family Services -- known as DCFS.

One of her children was named Joseph. Joseph's second foster mother reported to the DCFS that every time Joseph came back from visiting his mother, he had bruises.

But, in 1993, the children were returned to this mother -- one last time.

A month later, in April 1993, she hanged Joseph. She hanged her three-year-old son. Her comment to police was, "I just killed my child. I hung him."

She stood him up on a chair and said "bye." He said, "bye." Then he waved.

And she pushed the chair away. She hanged him.

What kind of person does something like that to her child?

She told a policeman: "DCFS was" blankety-blank "with me."

Mr. Chairman, why on earth would anyone think we should keep trying to reunite that family?

O Last year in Brooklyn, New York, there were allegations that baby Cecilia Williams and her three older siblings had been abandoned by their mother. As a result, they were temporarily removed from her mother's custody. It turned out that they had

not been abandoned by the mother. She had placed them in the care of an uncle -- and he had abandoned the children.

Later, Cecia and the other children were sent back home. Last month in New York, Cecia Williams died after being battered, bruised, and -- possibly -- sexually abused. Her mother and her boyfriend have been charged with the crime.

Cecia was nine months old.

Today, Cecia is dead -- a victim of blunt blows to her torso, and lacerations to her liver and small intestinal area.

0 A young boy in New Jersey named Quintin McKenzie was admitted to a Newark Hospital after a severe beating, for which his father was arrested. Quintin was placed in foster care -- but when the charges were dropped, he was sent back to his family.

In 1988, Quintin was three-and-a-half years old when his mother killed him. She plunged him into scalding water because he had soiled his diapers.

0 In Franklin County, Ohio, the local Children Services agency was trying to help Kim Chandler deal with her children -- 7-year-old Quiana, four-year-old Quincy, and one-month-old Erica. In July 1992, they closed the case on her. On September 24, 1992, all three children were shot dead -- and Kim Chandler was charged with the crime.

0 In Rushville, Ohio, in March 1989, four-year-old Christopher Engle died when his father dumped scalding water on him.

Mr. Chairman, I could multiply example after example of households like these -- households that look like families but aren't. People who look like parents but aren't. People who never should be allowed to be alone with a child.

Why are atrocities like this happening?

There are many factors contributing to this problem.

0 In many cases, the abuse is caused by parents who were themselves abused as children.

0 In other cases, the parent is deeply disturbed or mentally ill.

0 Often, the parent is a teenager -- emotionally unprepared for the responsibility of raising a child.

0 All of these factors were present in earlier generations. What's different today is that too many of the young parents have no role models of good parenting. They didn't have good parents themselves -- so they have no idea how to be parents for their own children.

0 Another major problem is the decline of the extended family -- the support system that used to do so much to make sure the children were taken care of.

0 Add to this, the relatively new phenomenon of crack. As we all know, since the late 1980s we have seen the explosion of a new form of cocaine that's readily available, cheap, and explosively addictive. Crack is so addictive that mothers have sold their children so they can get some more of it.

Put all these factors together and you have a major social problem on your hands. We ask social workers to try and patch up the wounded, but the social workers are underpaid and overworked. When I was an assistant county prosecutor, and then county prosecutor, I worked closely with these dedicated, hard-working social welfare professionals. I have great respect and admiration for them. They are at the front line of our efforts to save children. We expect the impossible from them, and frankly don't give them all the tools and resources they need to do their job. Often, the only option they have -- and the only choices they have for these children -- are all bad.

Many times our social welfare agencies are simply overwhelmed. Some experts say a social worker ought to handle no more than 15 cases -- but we have social workers handling 50 to 70 cases. They don't have enough time -- they don't have enough resources -- to solve the problems these kids have.

In summary, Mr. Chairman, there are many causes for the tragedies I have discussed. Further, there are many things that must change, many things we can do to help these children.

There are many things we can do to lessen the time it takes for children to be adopted, and to lessen the time these poor kids have to spend in the legal limbo of the system. Further, there are many things we can do to lessen the odds of tragedies like the cases of Elisa Izquierdo and Joseph Wallace.

Mr. Chairman, I intend to keep working to find solutions to these problems, recognizing that their causes are multiple -- and that to solve them, we must do many things.

But today, I would like to focus on one of the causes of these tragedies, one that most people haven't heard about. It's the unintended consequence of a small part of a law passed by the

U.S. Congress.

In 1980, Congress passed the Adoption Assistance and Child Welfare Act -- known as CWA. The Child Welfare Act has done a great deal of good. It increased the resources available to struggling families. It increased the supervision of children in the foster care system. And it gave financial support to people to encourage them to adopt children with special needs.

The authors of the CWA deserve a great deal of credit for how they dealt with the problems they faced. Their legislation has done a lot to improve the lives of America's children. But while the law has done a great deal of good, I have come to believe that the law is being commonly misinterpreted, with some truly unintended and undesirable consequences.

Under the CWA, for a state to be eligible for federal matching funds for foster care expenditures, the state must have a plan for the provision of child welfare services approved by the Secretary of HHS. The State plan must provide:

"that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home."

In other words, Mr. Chairman, no matter what the particular circumstances of a household may be -- the state must make reasonable efforts to keep it together, and to put it back together if it falls apart.

What constitutes "reasonable efforts"?

This has not been defined by Congress. Nor has it been defined by HHS.

This failure to define what constitutes "reasonable efforts" has had a very important -- and very damaging -- practical result. There is strong evidence to suggest that in the absence of a definition, reasonable efforts have become -- in practice -- extraordinary efforts. Efforts to keep families together at all costs.

There are hundreds of examples I could give you. Over the last several months, I have talked to people all over Ohio who deal with this problem every day. I have asked them the following hypothetical question: "Let's say there's a cocaine-addicted mother who has seven children. The father is an alcoholic. The seven children have been taken away -- permanently -- by the county.

"The mother gives birth to an eighth child. The child tests positive for cocaine. The father is still an alcoholic. What would you do?"

Some said they would apply for emergency temporary custody of the child -- but they would still have to work to put that family back together. Others said a court wouldn't grant them even temporary custody of the child. One county told me it would be two years before the child would be available for adoption. Another county said it would be five years.

Now, Dr. Goodhand -- who is here today and will be testifying -- in response to a similar hypothetical told me that her department would move immediately for permanent custody. But she said that their success would really depend on the judge assigned to the case.

Now, the answers I got were different from county to county. But one thing is clear: It is the 1980 law, and how it is being interpreted by social workers and judges, that leads to these different results.

In my view, this is certainly not what was intended by the authors of the CWA.

Mr. Chairman, much of the national attention on the case of Elisa Izquierdo has focused on the many ways the social welfare agencies dropped the ball. It has been said that there were numerous points in the story when some agency could have and should have intervened to remove Elisa and her siblings from her mother's custody.

I am not going to revisit that ground. Rather, my point is a broader one: Should our Federal law really push the envelope, so that extraordinary efforts are made to keep that family together -- efforts that any of us would not consider reasonable?

Throughout human history, the family has been recognized as the bedrock of civilization. The family is where values are transmitted. It's where children learn behavior -- develop their character -- and form their personality.

Over the last couple of years, a remarkable convergence has occurred in American social thought. Liberals and conservatives are now in near-total agreement on the need to strengthen the family as an institution. Without stronger families, it will be impossible to avoid a social explosion in which troubled children turn into dysfunctional adults on a massive scale.

But what we are confronting in the terrible stories I have just recounted are not families. They are households that look

like families -- but aren't.

If you look inside one of these households, you see some children. And you see some people who -- superficially, at least -- resemble parents. But this is not what you and I and most Americans would call a "family."

In this household, the children are beaten and abused and neglected. Mr. Chairman, what do we, as a society, do about these households -- these households that aren't families?

By 1980, the child welfare system in this country had come under some pretty strong criticism. After many hearings, Congress concluded that abused and neglected children too often were unnecessarily removed from their parents -- that insufficient resources were devoted to preserving and reuniting families -- and that children not able to return to their parents often drifted in foster care without ever finding a permanent home.

That's how the CWA came to be enacted. The phenomenon known as "foster care drift" -- children who get lost in a child welfare system that cannot or will not find them a permanent home -- simply had to be faced and reversed.

Let me interject at this point that I had substantial experience on this issue before the passage of the CWA legislation in 1980. As long ago as 1973, I was serving as an assistant county prosecutor in Greene County, Ohio -- and one of my duties was to represent the Greene County Children Services in cases where children were going to be removed from their parents' custody.

I saw first hand that too many of these cases dragged on forever. The children end up getting trapped in temporary foster care placements, which often entail multiple moves from foster home to foster home to foster home, for years and years and years.

Congress enacted the CWA to try to solve this very real problem. There were good reasons for the CWA, and the CWA has done a lot of good. There are some families that need a little help if they are going to stay together, and it's right for us to help them. Not only is it right -- it's also clearly in the best interests of the child.

We shouldn't be in the position of taking children away just because the parents are too poor -- or just because there's a problem in the family. If the problem can be fixed, we must try to keep the family together for the children's benefit. It's just that at some point, when it comes to cases of child abuse

and child neglect, we have to step in and say: "Enough is enough. The child's health and safety have to come first."

And that's where we are now, in a lot of cases. Fifteen years after the passage of the CWA, I think we need to revisit this issue, and see how the system is working in practice.

I believe we need to re-emphasize what all of us agree on -- the fact that the child ought to come first. We have to make the best interests of the child our top national priority.

In many of the cases we have looked at, it looks like the CWA has been not been correctly interpreted. Try to imagine what the authors of the CWA would have said if they had been asked: "Should Joseph Wallace be sent back to his mother?"

I can't believe that that was the authors' intent. I can't believe that they would say, "In that case, and in every case, the child must be reunited with the adult at all costs."

Reasonable people agree on one point: Nothing -- nothing -- should take precedence over the health and safety of the child. It's common sense. And I think we need to make sure the CWA is interpreted consistently -- and correctly -- to reflect that common sense.

It is my hope that an important new book will spark the national debate that America needs to have on this issue. The book is called The Book of David: How Preserving Families Can Cost Children's Lives, by Richard J. Gelles.

Dr. Gelles is the director of the Family Violence Research Program at the University of Rhode Island. For years, Dr. Gelles thought children should be permanently removed from their homes only as a last resort, even if it meant that the children may spend years moving back and forth between birth homes and foster homes. He now says -- and I quote: "It is a fiction to believe one can balance preservation and safety without tilting in favor of parents and placing children at risk." End of quote. He believes that the system is weighted too far toward giving the mother and father chance after chance after chance to put their life in order -- putting the adults first, rather than putting the children first.

Even some social-work professionals will tell you how true this is. Krista Grevious, a Kentucky social worker with 21 years of experience, says -- and I quote: "I think it's probably one of the most dangerous things we have ever done for children." End of quote.

Patrick Murphy is the court-appointed lawyer for abused

children in Cook County, Illinois. He says --- and I quote: "Increasingly, people in this business do not look at things from the point of view of the child. But the child is the defenseless party here. We've forgotten that." End of quote.

In 1993, Murphy published an article in the New York Times that put the problem in historical context. I quote from his article: "The family preservation system is a continuation of sloppy thinking of the 1960's and 1970's that holds, as an unquestionable truth, that society should never blame a victim. Of course, the children are not considered the victims here. Rather the abusive parents are considered victims of poverty and addiction. This attitude is not only patronizing, it endangers children."

Marcia Robinson Lowry, head of the Children's Rights Project at the American Civil Liberties Union, sums it up. She says -- and I quote: "We've oversold the fact that all families can be saved. All families can't be saved."

Mr. Chairman, let me make this absolutely clear. I think there's nothing wrong with giving parents another chance. But we have to make sure the health and safety of the child come first. Is that child going to get a second chance at growing up? A second chance to be four years old -- the age when a personality is already fundamentally shaped?

Jann Heffner, the director of the Dave Thomas Foundation for Adoption, has a useful way of looking at this problem -- the concept of "kid days." When you're three years old, one month of experience does a lot to the formation of your personality. It's not a month that can be taken for granted, or treated as routine.

One helpful way of looking at it is this: If you're fifty years old, one year is two percent of your life. If you're three years old, one year is one-third of your life.

There's some important psychological activity going on with these children. And every day -- every hour -- really counts. Lynne Gallagher, director of the Arizona Governor's Office for Children, says -- and I quote: "It's as though these people think we can put the kids in the deep freeze for awhile...and then pull them out when the parents are ready to parent." End of quote.

We all know how crucial those formative years can be.

Let me return to the work of Dr. Gelles. He says -- and I quote: "It is time to face up to the fact that some parents are not capable of being parents, cannot be changed, and should not continue to be allowed to care for children." End of quote. He advocates changes in Federal laws to protect children. He also

thinks that child-protection officials should move to terminate parental rights sooner, thus freeing children for adoption.

I think the time is ripe for these changes. In New York City, Mayor Giuliani has pledged to shift the city's priorities away from family preservation -- and toward protecting children from harm.

But we need to examine how much of the problem we face is a consequence of Federal law -- the lack of precision of the CWA legislation back in 1980. And this is truly a national problem that needs a national response. According to the National Committee to Prevent Child Abuse, child abuse fatalities have increased by 40% between 1985 and 1995.

I think there's something the U.S. Congress should do about that. I think we should make it absolutely clear that the health and safety of the child are the primary concern of social policy.

I think it's time to clarify Congress's intent. While family reunification is a laudable goal, and should usually be attempted, the health and safety of the child should always come first. That, in my view, was the intention of the drafters of the 1980 law. Congress should reaffirm this -- by making whatever clarification is necessary in the law.

It's time for us to break this cycle -- to help children escape their abusers and find a permanent home before they have suffered absolutely irreparable physical and emotional damage. Let's make explicit the commitment of Congress and the American people: The health and safety of America's children must come first.

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STATEMENT BY U.S. SENATOR MIKE DEWINE (R-OH)
HOUSE SUBCOMMITTEE ON HUMAN RESOURCES
HEARING ON BARRIERS TO ADOPTION
JUNE 27, 1996

Thank you, Mr. Chairman. I would like to submit a more detailed statement for the record.

Mr. Chairman, too many children are spending their most important, formative years in a legal limbo that denies them their chance to be adopted -- that denies them what all children should have -- the chance to be loved and cared for by parents.

The job of finding parents for these children becomes infinitely more difficult the longer they are suspended in this foster-care limbo. Sometimes we focus our energies on fruitless attempts to reunify certain families that can't be fixed. As a result, the children lose the opportunity to find a permanent adoptive home.

We are sending too many children back to dangerous and abusive homes. We send them back to live with parents who are parents in name only -- to homes that are homes in name only.

In my view, this situation is caused in part by a misinterpretation of the 1980 Adoption Assistance and Child Welfare Act.

That legislation did a great deal of good. I'm very glad to be here with some of the distinguished individuals who wrote that law.

The Child Welfare Act increased the resources available to struggling families. It increased the supervision of children in the foster care system. And it gave financial support to people to encourage them to adopt children with special needs.

The authors of the Child Welfare Act did an outstanding job -- and their legislation has done a great deal to improve the lives of America's children. But while the law has done a great deal of good, I have come to believe that the law is being commonly misinterpreted, with some truly unintended and undesirable consequences.

Under the Act, for a state to be eligible for Federal matching funds for foster care expenditures, the state must ensure that -- and I quote -- "reasonable efforts" must be made to reunify families.

Too often, Mr. Chairman, these "reasonable efforts" have in practice become extraordinary efforts. Families that are families in name only -- households in which abuse and torture take place -- are being reunited.

There are hundreds of examples I could give you. Over the last several months, I have talked to people all over Ohio who deal with this problem every day. I have asked them the following hypothetical question: "Let's say there's a cocaine-addicted mother who has seven children. The father is an alcoholic. The seven children have been taken away -- permanently -- by the county.

"The mother gives birth to an eighth child. The child tests positive for cocaine. The father is still an alcoholic. What would you do?"

Some said they would apply for emergency temporary custody of the child -- but they would still have to work to put that family back together. Others said a court wouldn't grant them even temporary custody of the child. One county told me it would be two years before the child would be available for adoption. Another county said it would be five years.

Now, Dr. Goodhand -- who is here today and will be testifying -- in response to a similar hypothetical told me that her department would move immediately for permanent custody. But she said that their success would really depend on the judge assigned to the case.

Now, the answers I got were different from county to county. But one thing is clear: It is the 1980 law, and how it is being interpreted by social workers and judges, that leads to these different results.

Mr. Chairman, I have no absolutely no doubt that the authors of the Child Welfare Act did not intend for the law to bring about the results I have just described. They wanted to make it easier for families with problems to work out their problems and stay together. They clearly did not intend to favor the interest of dangerous and abusive adults over the health and safety of children.

But in the years since the passage of the Child Welfare Act, we have seen

case after case after case in which the children are sent back to the custody of people who have already abused and tortured them. Every day in America, three children actually die of abuse and neglect at the hands of their parents or caretakers. That's over 1200 children every year.

And almost half of these children are killed after their tragic circumstances have come to the attention of child welfare agencies. Mr. Chairman, there are many causes for this. I believe the misunderstanding of the 1980 Act is one of them.

I think it's time to clarify Congress's intent. While family reunification is a laudable goal, and should usually be attempted, the health and safety of the child should always come first. That, in my view, was the intention of the drafters of the 1980 law. Congress should reaffirm this -- by making whatever clarification is necessary in the law.

It's time for us to break this cycle -- to help children escape their abusers and find a permanent home before they have suffered absolutely irreparable physical and emotional damage. Let's make explicit the commitment of Congress and the American people: The health and safety of America's children must come first.

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**TESTIMONY OF
R. DAVID THOMAS**

**WENDY'S FOUNDER AND CHAIRMAN
THE DAVE THOMAS FOUNDATION FOR ADOPTION**

**BEFORE THE
U.S. HOUSE COMMITTEE ON WAYS AND MEAN
SUBCOMMITTEE ON HUMAN RESOURCES**

THURSDAY, JUNE 27, 1996

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, GOOD AFTERNOON.
I'M DAVE THOMAS, AND I'M HERE ON BEHALF OF THE DAVE THOMAS
FOUNDATION FOR ADOPTION. THANK YOU FOR INVITING ME TO TALK
WITH YOU TODAY. AS YOU KNOW ADOPTION IS A SUBJECT THAT'S
CLOSE TO MY HEART.

I DON'T CLAIM TO BE AN EXPERT ON ADOPTION LAWS, AND THERE ARE
MANY PEOPLE HERE TODAY WHO KNOW MORE ABOUT THAT THAN I DO.
WHAT I DO KNOW IS HOW IMPORTANT IT IS FOR EVERY CHILD TO HAVE
A HOME AND LOVING FAMILY. I WAS BORN OUT OF WEDLOCK AND
ADOPTED WHEN I WAS SIX WEEKS OLD, AND I KNOW I WOULD NOT BE
WHERE I AM TODAY WITHOUT A FAMILY TO CALL MY OWN.

I'M HERE TO TALK TO YOU TODAY ON BEHALF OF THE 600,000 CHILDREN IN AMERICA WHO ARE HELD IN THE FOSTER CARE SYSTEM, INCLUDING ABOUT 100,000 THAT ARE AVAILABLE FOR IMMEDIATE ADOPTION.

THAT'S 100,000 TOO MANY. EVEN ONE CHILD WITHOUT A PERMANENT HOME IS WRONG.

NOW, FOSTER PARENTS ARE WONDERFUL. THEY OPEN THEIR HEARTS EVERYDAY TO THESE CHILDREN. BUT FOSTER CARE WAS NEVER MEANT TO BE A PERMANENT SOLUTION, BUT THAT'S WHAT IT HAS BECOME.

FOSTER CHILDREN ARE INNOCENT VICTIMS OF A SYSTEM THAT TAKES AWAY THEIR HOPE AND THEIR TRUST. IT WEARS THEM DOWN WHILE THEY WAIT FOR A FAMILY TO LOVE THEM AND A PLACE TO CALL HOME. MOST OF THEM WAIT FOR YEARS...MANY FOR AN ENTIRE CHILDHOOD.

NOW, I FIRMLY BELIEVE THAT EVERYTHING WITHIN REASON SHOULD BE DONE TO KEEP CHILDREN WITH THEIR BIRTH PARENTS...IF, AND ONLY IF, IT'S THE RIGHT THING TO DO FOR THE CHILD. HOWEVER, TOO MANY CHILDREN REMAIN IN HOMES THAT AREN'T SAFE, HEALTHY OR CARING.

PARENTS NEED TO ACCEPT THE RESPONSIBILITY FOR RAISING AND CARING FOR THEIR CHILDREN. THIS IS NOT SOMEONE ELSE'S JOB, AND IT CERTAINLY ISN'T THE GOVERNMENT'S JOB. I THINK WE CAN ALL AGREE THAT THE GOVERNMENT DOESN'T MAKE A GOOD PARENT.

LISTEN TO THE ODDS THAT CHILDREN AWAITING ADOPTION ARE UP AGAINST. MANY CHILDREN GO THROUGH MULTIPLE ASSESSMENT STUDIES DURING THE ADOPTION PROCESS. WHY DO WE NEED SO MANY STUDIES TO LEARN THE SAME THINGS?

THEN CHILDREN IN THE FOSTER CARE SYSTEM ARE MOVED AROUND TO FOUR, EIGHT, SOMETIMES 10 DIFFERENT FOSTER HOMES BEFORE THEY ARE ADOPTED. THAT'S SIMPLY TOO MANY FOR ANY CHILD TO BE ABLE TO GAIN THE STABILITY THEY NEED TO GROW.

I MET A LITTLE BOY IN SOUTH CAROLINA WHO HAD BEEN IN SO MANY HOMES THAT HE LITERALLY COULDN'T REMEMBER HIS LAST NAME.

AND I MET A THIRTEEN-YEAR-OLD TEENAGER IN CHICAGO WHO HAD BEEN IN 15 DIFFERENT FOSTER HOMES AND HE WAS SICK AND TIRED OF BEING PASSED AROUND. ALL HE WANTED WAS A PERMANENT, LOVING FAMILY. HE WAS WORRIED THAT PEOPLE WANTED TO ADOPT BABIES AND HE WAS TOO OLD. WHAT KIND OF LIFE IS THAT FOR A CHILD? WHAT KIND OF AN ADULT CAN WE EXPECT HIM TO BE?

I ALSO MET A LITTLE GIRL WHO TOLD ME SHE KEEPS EVERYTHING SHE OWNS – ALL HER TOYS AND ALL HER CLOTHES — IN A SINGLE PILLOW CASE BECAUSE SHE MOVES SO OFTEN FROM FOSTER HOME TO FOSTER HOME.

THE NUMBERS KEEP GETTING WORSE. A FOSTER CHILD IN AMERICA WAITS BETWEEN THREE AND SIX YEARS BEFORE BEING ADOPTED...UP TO SIX YEARS BEFORE RECEIVING THE LOVE OF A PERMANENT FAMILY.

I THINK YOU'LL AGREE THE NUMBERS ARE STACKED AGAINST WAITING CHILDREN IN AMERICA. THE FOSTER CARE SYSTEM SHOULD PROTECT THE CHILDREN FIRST AND FOREMOST, AND ENSURE EACH FOSTER CHILD HAS EVERY OPPORTUNITY TO HAVE A LOVING FAMILY AND BECOME A PRODUCTIVE CITIZEN.

GROWING UP WITHOUT YOUR OWN FAMILY IS REALLY TOUGH. AND WHAT IT DOES TO KIDS IN THE LONG RUN IS EVEN WORSE.

EXPERTS TELL US THAT KIDS WHO GROW UP IN FOSTER CARE ARE MORE LIKELY TO DROP OUT OF SCHOOL, GIVE BIRTH OUT OF WEDLOCK, GO ON WELFARE OR END UP HOMELESS. THEY ARE ALSO MORE LIKELY TO ENTER A LIFE OF CRIME. ALL BECAUSE THEY DON'T HAVE A STABLE FAMILY THAT CARES ABOUT THEM, ONE THAT HELPS THEM ESTABLISH A SENSE OF RIGHT AND WRONG, A SENSE OF SELF WORTH, AND A PRIDE IN WHO THEY ARE.

AND THE ANSWER TO THIS PROBLEM IS SIMPLE: THE NUMBER **ONE**.

ONE HOME STUDY, **ONE** CASEWORKER, **ONE** FOSTER HOME AND A PERMANENT FAMILY IN JUST **ONE** YEAR. WE NEED AN ADOPTION SYSTEM THAT LIVES UP TO ALL THESE **ONES**...AND SO DO AMERICA'S WAITING CHILDREN.

LET ME EXPLAIN.

MANY OF US IN THE ADOPTION COMMUNITY SUPPORT SOME SIMPLE GOALS OUTLINED BY THE KELLOGG FOUNDATION.

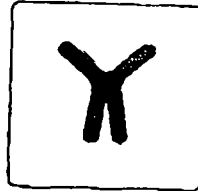
HERE ARE THOSE GOALS.

- GIVE FAMILIES THE SUPPORT THAT THEY NEED TO STAY TOGETHER. BUT REMEMBER THAT THE CHILD'S CONCERNS ARE NUMBER **ONE**.
- JUST **ONE** COMPREHENSIVE ASSESSMENT SHOULD BE MADE FOR EACH CHILD AND EACH FAMILY INTERESTED IN ADOPTION.
- **ONE** CASEWORKER OR TEAM SHOULD BE ASSIGNED TO EACH CHILD AND EACH FAMILY -- AN INDIVIDUAL WHO WILL STAND BY THAT CHILD UNTIL HE OR SHE FINDS A FAMILY.
- CHILDREN SHOULD BE ASSIGNED TO JUST **ONE** FOSTER HOME, AND NOT MOVED FREQUENTLY LIKE THEY ARE NOW.
- AND EACH CHILD SHOULD BECOME PART OF A PERMANENT FAMILY WITHIN **ONE** YEAR.

WE THINK THESE IDEAS ARE SIMPLE TO UNDERSTAND AND WE SUPPORT THEM. WE ASK THAT YOU MAKE THEM YOUR GOALS TOO AS YOU LOOK FOR WAYS TO IMPROVE THE ADOPTION PROCESS.

THE COMMITTEE HAS THE ABILITY TO FIX THE SYSTEM THAT HOLDS THESE CHILDREN HOSTAGE. LET THEM KNOW THAT THEY ARE NUMBER **ONE** IN YOUR MINDS.

THANK YOU FOR INVITING ME TO TESTIFY HERE TODAY. I LOOK FORWARD TO WORKING WITH YOU TO HELP AMERICA'S WAITING CHILDREN.



DAVE THOMAS
FOUNDATION
FOR ADOPTION

FOR IMMEDIATE RELEASE

Contact: Denny Lynch/Rebecca Lusk
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**WENDY'S FOUNDER DAVE THOMAS VISITS CAPITOL HILL:
PROPOSES GOALS FOR FOSTER CARE; ADOPTION SYSTEM REFORM**

Thomas Calls For Waiting Children To Be Adopted Within One Year

DUBLIN, OHIO (June 27, 1996) – Dave Thomas, founder of Wendy's Old Fashioned Hamburgers Restaurants and chairman of the Dave Thomas Foundation for Adoption, returned to Capitol Hill today offering some goals to achieve in adoption system reform, claiming that "each waiting child should become part of a permanent family within one year."

Thomas – who was adopted at the age of six weeks—appeared before the **House Ways and Means Subcommittee on Human Resources** to share the plight of children caught in foster care limbo and propose five goals to be considered to improve the adoption system in this country.

On any day in the United States, there are an estimated 600,000 children in the foster care system, including about 100,000 who need to be adopted.

"Many foster children in America wait between three and six years before being adopted...six years could be half a lifetime spent waiting to share the love of a permanent family. That's a shame," said Thomas. "Foster parents are wonderful. They open their hearts and homes every day to these children. But foster care was never meant to be a permanent solution, and that's what it has become for many children."

"The solution is simple," said Thomas. "It's the number one. Support should be given to keep a family together but the child's safety should be number one. Only one assessment study of each child should be conducted, only one caseworker should be assigned per child, and a child should be placed in no more than one foster home while awaiting adoption. And finally, each child should be placed in a permanent home within one year."

"These kids need an adoption system designed to keep their interests as it's number one priority," claimed Thomas.

The five goals Thomas shared were originally outlined by the Kellogg Foundation and are supported by many in the adoption community.

In urging the Ways and Means Subcommittee to streamline the adoption process, Thomas shared personal stories of children who are held hostage by the system and passed from one foster home to another.

"I met a young man in South Carolina who had been in so many homes that he literally couldn't remember his last name," Thomas told the subcommittee. "And I met a 13-year-old in Chicago who had been in 15 different foster homes and was sick and tired of being passed around. He was worried that people wanted to adopt babies and that he was too old."

Thomas is a longstanding advocate of adoption-related issues. In 1991, President Bush asked him to head the "Adoption Works...for Everyone" White House initiative and he continues to work on behalf of waiting children throughout America.

This is Thomas' fourth visit to Washington in the last two years to share his viewpoint on adoption. Last November, Thomas joined First Lady Hillary Rodham Clinton for a White House celebration of National Adoption Awareness Week. He also addressed the House Ways and Means Committee in January 1995 to encourage Congressional approval of a \$5,000 refundable tax credit for parents who adopt a child. And in January 1994, he addressed the governors of all 50 states, encouraging them to implement adoption benefits (paid time off and financial assistance) for those employees who adopt.

Established by Thomas in 1992, the Dave Thomas Foundation for Adoption is dedicated to the philosophy that every child deserves a permanent home and loving family. Foundation efforts focus on raising public awareness of the tens of thousands of children available for adoption, and on offering educational programs to help prospective parents better understand the adoption process.

In addition to urging employers in both the public and private sectors to provide adoption benefits, Thomas taped radio and television public service announcements encouraging the adoption of special needs children, and donated all royalties from his two books (Dave's Way and Well Done!) to the cause of adoption.

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Congratulations, Mama.

FOSTER CHILDREN

Mr. DEWINE. Mr. President, I rise today to talk about an American tragedy. First, Mr. President, too many children in this country are spending the most important formative years in a legal limbo, a legal limbo that denies them their chance to be adopted, that denies them what all children should have: the chance to be loved and cared for by parents.

Second, we are sending many children in this country back to dangerous and abusive homes. We send them back to live with parents who are parents in name only, and to homes that are homes in name only. We send these children back to the custody of people who have already abused and tortured them. We send these children back to be abused, beaten, and, many times, killed.

Mr. President, we are all too familiar with the statistics that demonstrate the tragedy that befalls these children. Every day in America—every day—three children actually die because of abuse and negligent care at the hands of their parents or caregivers, over 1,200 children per year.

Mr. President, almost half of these children, almost half of them, are killed after their tragic circumstances have already come to the attention of the local authorities. Tonight, Mr. President, almost 421,000 children will sleep in foster homes. Over a year's time, 559,000 will be in a foster home for at least part of the year.

Shockingly, roughly 43 percent of the children in the foster care system at any one time will languish in foster care longer than 2 years. Mr. President, 10 percent will be in foster care longer than 5 years.

Mr. President, the number of these foster children is rising. From 1986 to 1990, it rose almost 50 percent.

In summary, Mr. President, too many of our children are not finding permanent homes. Too many of them are being hurt, and too many of them are dying.

Mr. President, most Americans have probably heard of the tragedy that befell Elisa Izquierdo in New York City. Her mother used crack when she was pregnant with Elisa. A month before she was born, her half brother, Ruben, and her half sister, Cassie, had been removed from her mother's custody and placed into foster care. They had been neglected, unsupervised, and unfed for long periods of time. In other words, Mr. President, this woman left her children alone and simply did not feed them.

But then, Mr. President, amazingly, the children were sent back to the same woman, and then Elisa was born. When Elisa was born, she tested positive for crack. She was taken from her mother and transferred to her father's custody. Tragically, in 1994, Elisa's father died. Elisa was then 5 years old.

The director of Elisa's preschool warned officials about the mother's history of child abuse and drug abuse. Without any further investigation and without ordering any further monitoring of Elisa's home situation, a family court judge transferred Elisa back to her mother.

In March 1995, when Elisa was 6 years old, she was admitted to the hospital with a shoulder fracture—a shoulder fracture, Mr. President. This is a little girl from a household with a history of child abuse, and she shows up at the hospital with a shoulder fracture. What did the hospital do? The hospital sent her back to her mother.

Eight months later, in November 1995, she was battered to death by that same mother. You see, Elisa's mother was convinced that Elisa was possessed by the devil. She wanted to drive out the evil, so she forced Elisa to eat her own feces, mopped the floor with her head, and finally bashed her head against a concrete wall. On November 2, 1995, Elisa was found dead.

Mr. President, this story then was on the front page of the New York Times, and for days after that the story was covered. Millions of Americans were, understandably, shocked. But you know, Mr. President, what shocked me when I read the story, when I heard about it, was that anyone would be shocked at all, because the horrible truth is that while this horrible tragedy captured the attention of the country, the sad fact is that atrocities such as this are happening against children every single day in this country. Children are being reunited with brutal abusers. They are abused again and again, and, yes, sometimes they are killed.

Here is another story. A Chicago woman had a lengthy history of mental illness. She ate batteries, she ate coat hangers, and she drank Drano. She stuck pop cans and light bulbs into herself. Twice she had to have surgery to have foreign objects removed from her body. Then when she was pregnant, she denied that the baby was hers. While pregnant, she set herself on fire. That is her idea of what being a parent is all about. On three occasions, her children were taken away from her by the department of children and family services, known as DCFS.

One of her children was named Joseph. Joseph's second foster mother—keep in mind that this was a child that was being pushed back and forth between foster homes, back and forth with his mother. Joseph's second foster mother reported to the DCFS officials that every time Joseph came back from visiting his mother, he had bruises. Yet, in 1993, all the children were returned to this mother—one last time.

A month later, in April 1993, this mother hanged Joseph; she hanged her little boy. She hanged her 3-year-old son. Her comment to the police was, "I just killed my child. I hung him." She stood him up on a chair and said,

"bye." He said, "bye." Then he waved. And she pushed the chair away. She hanged this little boy.

Mr. President, what kind of a person does something like that to a child? She told a policeman, "DCFS was" blankety-blank "with me."

Mr. President, why on Earth would anyone think we should keep trying to reunite that family?

Another example. Last year in Brooklyn, NY, there were allegations that Baby Cecilia Williams and her three older siblings had been abandoned by their mother. As a result, they were temporarily removed from their mother's custody. It turned out they had not been abandoned by the mother. She had actually placed them in the care of an uncle, and he had abandoned the children.

Later, Cecilia and the other children were sent back home. Last month, after they were sent back home in New York, Cecilia Williams died after being battered, bruised, and, possibly, sexually abused. Her mother and her boyfriend have been charged with the crime.

Cecilia was 9 months old. Cecilia is dead today—a victim of blunt blows to her torso, and lacerations to her liver and small intestinal area.

Another example. A young boy in New Jersey named Quintin McKenzie was admitted to a Newark hospital after a severe beating, for which his father was arrested. Quintin was placed in foster care. But when the charges were dropped, he was sent back to that family. In 1988, Quintin was 3½ years old when his mother killed him. She plunged him into scalding water because he had soiled his diapers.

In Franklin County, OH, the local children services agency, in another case, was trying to help Kim Chandler deal with her children—7-year-old Quiana, 4-year-old Quincy, and 1-month-old Erica. In July 1992, they closed the case on her. On September 24, 1992, all three children were shot dead, and Kim Chandler was charged with the crime.

In Rushville, OH, in March 1989, 4-year-old Christopher Engle died when his father dumped scalding water on him.

Mr. President, we could go on and on and on. Tragically, there is not a Member of the Senate who could not cite examples from his or her own State of these tragedies. I could multiply example after example of households like these—households that look like families but are not, Mr. President; people who look like parents, but who are not; people who never, never should be allowed to be alone with any child. I do intend, in the months ahead, to discuss many of these stories on this floor, Mr. President.

Why are atrocities like this happening? There are many factors contributing to this problem. In many cases, the abuse is caused by parents who were themselves abused as children. In other cases, the parent is deeply disturbed or

mentally ill. Often, the parent is a teenager, who is emotionally unprepared for the responsibility of raising a child.

All of these factors were present in earlier generations. What is different today is that too many of the young parents have no role models of good parenting. They did not have good parents themselves, so they have no idea how to be parents for their own children.

Another major problem, Mr. President, is the decline of the extended family, the support system that used to do so much to make sure children were taken care of. In many cases, it just does not exist today.

Add to all of this the relatively new phenomenon of crack. Since the late 1980's, we have seen an explosion of this new form of cocaine that is readily available, is cheap, and explosively addictive. Crack is so addictive that mothers have sold their children so they can get more of it. Someone said, when talking about crack, that crack is the only thing that has ever been invented by man that will cause a mother to behave not like a mother and abandon all the natural instincts that she might have—to leave that child, sell that child, to abuse that child.

Mr. President, put all these factors together and we have a major social problem on our hands. Now, we ask social workers to try to patch up the wounded. But the social workers are underpaid and overworked. When I was an assistant county prosecutor over 20 years ago, and then when I was the county prosecutor in Greene County, OH, I worked closely with these dedicated, hard-working social welfare professionals. I have great respect and admiration for them. They are literally at the front line of our efforts to save children. We expect the impossible from them and, frankly, do not give them all the tools and resources they need to do their jobs. Often, the only options they have, and the only choices they have for these children, are all bad—no good options, no good choices.

Many times, our social welfare agencies are simply overwhelmed. Some experts say that the social worker handling children ought to handle no more than 15 or 20 cases at a time. But the truth is that we have social workers today handling 50, 60, 70 cases. They do not have enough time or enough resources to solve the problems these kids have.

In summary, Mr. President, there are many causes for the tragedies I have discussed. Further, there are many things that must change, many things that we can do to help these children.

There are many things we can do, Mr. President, to lessen the time it takes for children to be adopted, and to lessen the time these poor kids have to spend in the legal limbo of the system. Further, there are many things we can do to lessen the odds of tragedies like the cases of Elisa Izquierdo and Joseph Wallace.

Mr. President, I intend to keep working to find solutions to these problems, recognizing that their causes are multiple—and that to solve them, we must do many things.

But today, I would like to focus on one of the causes of these tragedies, one that most people have not heard about. It is the unintended consequence of a small part of a law passed by the U.S. Congress.

In 1980, Congress passed the Adoption Assistance and Child Welfare Act—known as CWA. The Child Welfare Act has done a great deal of good. It increased the resources available to struggling families. It increased the supervision of children in the foster care system. And it gave financial support to people to encourage them to adopt children with special needs.

But while the law has done a great deal of good, many experts are coming to believe that this law has actually had some bad unintended consequences.

Under the CWA, for a State to be eligible for Federal matching funds for foster care expenditures, the State must have a plan for the provision of child welfare services approved by the Secretary of HHS. The State plan must provide:

that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home.

In other words, Mr. President, no matter what the particular circumstances of a household may be—the State must make reasonable efforts to keep it together, and to put it back together if it falls apart.

What constitutes "reasonable efforts"? Here is where maybe we have part of the problem.

This has not been defined by Congress. Nor has it been defined by HHS.

This failure to define what constitutes "reasonable efforts" has had a very important—and very damaging—practical result. There is strong evidence to suggest that in the absence of a definition, reasonable efforts have become—in some cases—extraordinary efforts. Efforts to keep families together at all costs.

Mr. President, much of the national attention on the case of Elisa Izquierdo has focused on the many ways the social welfare agencies dropped the ball. It has been said that there were numerous points in the story when some agency could have and should have intervened to remove Elisa and her siblings from her mother's custody.

I am not going to revisit that ground. Rather, my point is a broader one: Should our Federal law really push the envelope, so that extraordinary efforts are made to keep that family together—efforts that any of us in this Chamber or anyone listening would not consider reasonable?

Throughout human history, the family has been recognized as the bedrock

of civilization. The family is where values are transmitted. It is where children learn behavior—develop their character—and form their personality.

Over the last couple of years, a remarkable convergence has occurred in American social thought. Liberals and conservatives are now in near-total agreement on the need to strengthen the family as an institution. Without stronger families, it will be impossible to avoid a social explosion in which troubled children turn into dysfunctional adults on a massive scale.

But what we are confronting in the terrible stories I have just recounted are not families. They are households that look like families—but are not.

If you look inside one of these households, you see some children. And you see some people who—superficially, at least—resemble parents. But this is not what you and I and most Americans mean when we talk about families.

In this type of family when we have heard the horror stories, the children are beaten and abused and neglected. Mr. President, what do we, as a society, do about these households—these households that are not families?

By 1980, the child welfare system in this country had come under some pretty strong criticism. That is why we have the bill. After many hearings, Congress concluded that abused and neglected children too often were unnecessarily removed from their parents—and very significantly that insufficient resources were devoted to the commendable task of preserving and reuniting families—and that children not able to return to their parents often drifted in foster care without ever finding a permanent home.

That is how the CWA came to be enacted. The phenomenon known as foster care drift—children who get lost in a child welfare system that cannot or will not find them a permanent home—simply had to be faced and reversed.

Let me interject at this point, Mr. President, that I had substantial experience on this issue before the passage of the CWA legislation in 1980. As long ago as 1973, I was serving as an assistant county prosecutor in Greene County, OH, and one of my duties was to represent the Greene County Children Services in cases where children were going to be removed from their parents' custody.

I saw first hand that too many of these cases dragged on forever. The children end up getting trapped in temporary foster care placements, which often entail multiple moves from foster home to foster home to foster home, for years and years and years.

Congress enacted the CWA to try to solve this very real problem. There were good reasons for the CWA, and the CWA has done a lot of good. There are some families that need a little help if they are going to stay together, and it is right for us to help them. Not only is it right—it is also clearly in the best interests of the child to reunite families when we can.

Mr. President, I ask unanimous consent for 5 additional minutes, and I apologize to my colleague.

Mr. EXON. Reserving the right to object, I would like to see what the parliamentary procedure is and ask the Chair to make a ruling. I have 15 minutes that was assigned to me under the original schedule, and also Senator LEAHY. The time is about up. I would not object to the request from the Senator so he can finish his remarks so long as the same procedure would be afforded to this Senator after he has finished his presentation.

The PRESIDING OFFICER. Is their objection to the Senator's request?

Hearing none, it is so ordered.

Mr. DEWINE. I thank my colleague. Again I apologize for taking his time and the Senate's time. But I would like to complete. It should not take any more than just a few more moments.

We should not be in the position of taking children away just because the parents are too poor—or just because there is a problem in the family. If the problem can be fixed, we must try to keep the family together for the children's benefit. It is just that at some point, when it comes to cases of child abuse and child neglect, we have to step in and say: "Enough is enough. The child comes first."

And that is where we are now. In a lot of cases. Fifteen years after the passage of the CWA, I think we need to revisit this issue, and see how the system is working in practice.

I believe we need to reemphasize what all of us agree on—the fact that the child ought to come first. We have to make the best interests of the child our top national priority.

In many of the cases we have looked at, it looks like the CWA has been not been correctly interpreted. At least that is the way it appears. Try to imagine what the authors of the CWA—the people who stood on this Senate floor and the House floor in 1979 and 1980—what would they have said if they had been asked: "Should Joseph Wallace be sent back to his mother? Should this little Joseph, this little boy, be sent back?"

I cannot believe that anyone would say he should have been sent back. And I cannot believe that it was the authors' intent that it would take place. I cannot believe that they would say, "In that case, and in every case, the child must be reunited with the adult at all costs."

No, I don't think so.

Reasonable people agree, Mr. President, on one point: Nothing—nothing—should take precedence over the best interests of the child. It is common sense. And I think we need to make sure the CWA is interpreted consistently—and correctly—to reflect that common sense.

It is my hope that an important new book will spark the national debate that America need to have on this issue. The book is called "The Book of David: How Preserving Families Can

Coat Children's Lives," by Richard J. Gelles.

Dr. Gelles is the director of the Family Violence Research Program at the University of Rhode Island. For years, Dr. Gelles thought children should be permanently removed from their homes only as a last resort, even if it meant that the children may spend years moving back and forth between birth homes and foster homes. He now says—and I quote:

It is a fiction to believe one can balance preservation and safety without tilting in favor of parents and placing children at risk.

He believes that the system is weighted too far toward giving the mother and father chance after chance after chance to put their life in order—putting the adults first, rather than putting the children first.

Even some social-work professionals will tell you how true this is. Krista Grevious, a Kentucky social worker with 21 years of experience, says:

I think it's probably one of the most dangerous things we have ever done for children.

Patrick Murphy is the court-appointed lawyer for abused children in Cook County, Ill. He says:

Increasingly, people in this business do not look at things from the point of view of the child. But the child is the defenseless party here. We've forgotten that.

In 1993, Murphy published an article in the New York Times that put the problem in historical context. I quote from his article:

The family preservation system is a continuation of sloppy thinking of the 1960's and 1970's that holds, as an unquestionable truth, that society should never blame a victim. Of course, the children are not considered the victims here. Rather the abusive parents are considered victims of poverty and addiction. This attitude is not only patronizing, it endangers children.

Marcia Robinson Lowry, head of the Children's Rights Project at the American Civil Liberties Union, sums it up. She says:

We've oversold the fact that all families can be saved. All families can't be saved.

Mr. President, let me make this absolutely clear. I think there is nothing wrong with giving parents another chance. But we have to make sure the child comes first. Is that child going to get a second chance at growing up? A second chance to be 4 years old—the age when a personality is already fundamentally shaped?

Jann Heffner, the director of the Dave Thomas Foundation for Adoption, has a useful way of looking at this problem—the concept of "kid days." When you are 3 years old, 1 month of experience does a lot to the formation of your personality. It is not a month that can be taken for granted, or treated as routine.

One helpful way of looking at it is this: If you are 50 years old, 1 year is 2 percent of your life. If you are 3 years old, 1 year is one-third of your life.

There is some important psychological activity going on with these children. And every day—every hour—

really counts. Lynne Gallagher, director of the Arizona Governor's Office for Children, says:

It's as though these people think we can put the kids in the deep freeze for awhile . . . and then pull them out when the parents are ready to parent.

We all know how crucial those formative years can be.

Let me return to the work of Dr. Gelles. He says:

It is time to face up to the fact that some parents are not capable of being parents, cannot be changed, and should not continue to be allowed to care for children.

He advocates changes in Federal laws to protect children. He also thinks that child-protection officials should move to terminate parental rights sooner, thus freeing children for adoption.

I think the time is ripe for these changes. In New York City, Mayor Giuliani has pledged to shift the city's priorities away from family preservation—and toward protecting children from harm.

But we need to examine how much of the problem we face is a consequence of Federal law—the lack of precision of the CWA legislation back in 1980. And this is truly a national problem that needs a national response. According to the National Committee to Prevent Child Abuse, child abuse fatalities have increased by 40 percent between 1985 and 1995.

I think there is something the U.S. Congress should do about that. I think we should make it absolutely clear that the best interests of the child are the primary concern of social policy.

We need to examine, Mr. President, whether in fact the 1980 Child Welfare Act has been misinterpreted—and whether we need to clarify it so there can be no misunderstanding of Congress' intent. While family reunification is a laudable goal, and should usually be attempted, the best interests of the child should always come first. This, Mr. President, was the intention of the drafters of the 1980 law. Congress should reaffirm this—by making whatever clarification is necessary in the law.

To the extent that the 1980 law has been imprecise, ambiguous, and unclear, or just misinterpreted, it has contributed to the syndrome in which children move from child abuse to foster home to child abuse. It is time for us to break this cycle—to help children escape their abusers and find a permanent home before they have suffered absolutely irreparable physical and emotional damage.

If we make explicit our commitment to putting the best interests of the child first, in almost all cases that will mean family reunification. The best interests of the child are almost always served by reuniting and preserving families. But in the cases where family reunification is not in the best interest of the child, in those cases we must protect the child. Federal law must be clearly on the side of the child.

I intend to introduce—in the near future—legislation that will clarify once

and for all the intent of Congress on this issue. Congress should stand with the highest values of the American people. And the mind and heart of America are crystal clear on this issue: The children come first.

When they do not, we, as a society, as Americans, have every right to become outraged, to get mad—and demand change.

I simply conclude by saying we need to look at the best interests of the child. We need to reexamine this law. We need to look at how it is actually working.

I understand that this may be an uphill battle, that there is a reluctance to revisit this. But I think we should revisit it. I think we should look at it, keeping in mind only one thing, what really is in the best interests of children.

I ask unanimous consent that four articles on this subject be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

(From the Baltimore Sun, Dec. 4, 1995)

TINY COFFINS

(By Mona Charen)

WASHINGTON.—The death of 5-year-old Elisa Izquierdo, allegedly at the hands of her mother, has touched New York as few such cases do. Her funeral was attended by the city's mayor, the state's lieutenant governor and hundreds of mourners who didn't even know her.

It mystifies me that some cases of child abuse receive extravagant attention and evoke the tears and guilty questions they ought to arouse. Thousands of others are ignored, their funerals sparsely attended, their files closed, and we never ask how this is possible in a country that calls itself civilized. According to Richard Gelles of the University of Rhode Island, between 1,200 and 1,400 children are killed by their parents or caretakers every year in America. At least half are known to social-service agencies before they die.

Elisa Izquierdo had been tormented for a very long time. When she died from a severe beating, her body bore old scars of scores of other injuries. Neighbors recalled hearing her scream in pain and beg her mother not to hurt her. Her cousin, who had sued for custody, revealed that the mother had, among other tortures, forced the child to eat her own feces.

The number of New Yorkers who knew of Elisa's suffering but did nothing is astounding. She was being seen regularly by social-service workers at her kindergarten. She was known to the city's Child Welfare Administration and to a private agency that intervenes in troubled families.

Social service agencies nationwide complain that they are impossibly overburdened. "There are people who have 40 cases," complained a caseworker to the New York Times. "They don't have time to go back and make second visits." Budget cuts have made it even harder to do their jobs.

Who else can intervene?

Though I am generally opposed to bureaucracy, preventing child abuse is an exception. Who else but the government can intervene to protect these children? The number of children in foster care is increasing dramatically, from 434,000 in 1982 to more than 600,000 today. According to the American Public Welfare Association, 70 percent of

those kids enter the system because of abuse, neglect or "parental conditions" including drug abuse. In the District of Columbia, social workers don't have enough cars or fax machines to keep abreast of their case-loads. If child protective agencies need more money, they should have it.

But the heart of the problem is not money; it is philosophy. Most social-service agencies pursue the goal of "family preservation." Federal money is tied to state efforts to keep biological families together. Children, once removed from abusive homes, are returned again and again. Social workers see their jobs as the provision of "services" to parents who abuse their children. In one case the parents of 10 children were hurting some of them. The Child Welfare Administration assigned them a full-time housekeeper, lamenting only that budget cuts forced them to withdraw her after a year or so.

Unless social-service agencies nationwide can stiffen their spines, stop thinking of the abusing parents as the victims and focus on terminating parental rights in cases of abuse and neglect, this plague of tiny coffins will continue. There are thousands of would-be adoptive couples ready to provide loving homes for kids who have been abused. Yet the system frustrates them at every turn.

(From the Tampa Tribune, Apr. 21, 1996)

TAKE CHILDREN OUT OF HARM'S WAY

(By Joan Beck)

Every day at least three children in America die—killed by their parents or caretakers. Often they are also the victims of efforts by child protection agencies to keep families together, whatever the risks.

Such a child was David Edwards, dead at the age of 15 months, whose mother, Darlene, 23, called 911 one morning to say her son wasn't breathing. Paramedics arrived quickly and immediately began CPR, inserting a breathing tube into his throat and rhythmically compressing his chest in hopes of keeping blood flowing to his brain.

Continuing CPR, the paramedics rushed David to a Rhode Island hospital, where further efforts at resuscitation were futile. An autopsy showed signs of repeated child abuse and suffocation. Investigators found that after David's father, Donald, had left for work, Darlene, who had been working as a prostitute out of their apartment, had entertained a "trick." To keep David quiet, she forcibly held him down and suffocated him.

What's chilling is that David was known to be at deadly risk. His parents had earlier lost custody of David's older sister, Marie, because of severe abuse. The state child protective agency had been called twice about David. His father had raged at the caseworker when she tried to check on the child. But the casework plan had been to keep the family together.

Questioned after David's funeral, attended only by his grandparents and a state investigator, Darlene was charged with murder. She pleaded guilty to manslaughter and was sentenced to four years in prison, followed by a long probation.

There's nothing new about David's story. Similar tragedies are old stuff in big-city newspapers and on TV stations. Only the names of the children are different.

But David shouldn't have died, insists Richard J. Gelles, director of the family violence research program at the University of Rhode Island. Contributing to David's death, he says, are the laws, casework philosophy and public sentiments that keep emphasizing the rights of biological parents and the goal of family preservation.

Like David, more than half of the annual toll of 1,200 children killed by parents or caretakers were already known by state or

local child protection agencies to be in danger. Their deaths are heartbreaking evidence that current policies and services are failing and must be changed.

But the answers don't come easy. The problems are overwhelming the system and getting worse, as dysfunctional families and single-parent homes increase, drug abuse grows and state agencies are dangerously pinched for resources. In his new book, "The Book of David" (subtitled "How Preserving Families Can Cost Children's Lives"), Gelles points out the worrisome realities. State and local child protection agencies get almost 3 million reports of abuse and neglect every year; about 38 percent are substantiated. Many charges are dismissed—in part because some child abuse and neglect can be difficult to detect.

The caseworkers who must make the life-and-death decisions about which children are actually in danger and how to help them, Gelles says, are typically in their 20s—liberal-arts majors with about 20 hours of training. Part of that training is how to fill out paperwork, and some of it emphasizes keeping families together.

But family preservation, however appealing its philosophy and goals, has been dangerously oversold as an answer to child abuse and neglect. Gelles insists—and as savings for taxpayers.

He urges that the rights of abusing parents be terminated much faster—after no more than a year, for example, for those with drug or alcohol problems who are not making good progress in rehabilitation. He would also end parental rights quickly in cases like David's in which abusing parents have already lost custody of another youngster.

Gelles concedes that the foster-care system is overwhelmed with the needs of all the children who should be placed out of their homes for their own safety. But his other solutions only nibble away at the problem.

Making endangered children available for adoption at the youngest ages possible gives them the best shot they can have at a safe and benign childhood, Gelles points out. Adoptive parents are easiest to find for babies and toddlers, before a youngster has been permanently damaged emotionally or physically by abuse.

Even David's sister was eventually adopted, although she was permanently disabled by her parents' abuse. New parents could easily have been found for David had the rights of his biological parents been terminated, Gelles points out.

Gelles also recommends setting up more small residential group homes. He says this setting gives a child the chance to make the long-term attachment to a caring adult that is psychologically essential, although he does not recommend such homes for youngsters under age 3.

Most important, every kind of help for abused children must put their safety first, Gelles insists, even at the expense of the rights of biological parents or the benign-sounding goals of family preservation.

Better solutions to problems of poverty, unemployment, dangerous neighborhoods, drugs, teen pregnancy, crime and poor schools would also help, Gelles agrees, in hopes of reducing abuse and neglect. Better welfare policies could help families "where the overriding problems are those of poverty rather than inflicted injury or sexual abuse."

Gelles knows there is no single answer to problems of child abuse. He acknowledges that family preservation efforts do help in some instances, that foster care sometimes fails, that money and public patience run out. But he has done a public service with his insistence that we make the well-being of children the center of our welfare and protection policies—in ways that we don't now.

[From the Washington Post, May 12, 1996]

ADOPT A SENSE OF OUTRAGE

(By Mary McGrory)

After Sister Josephine finished her wretched remarks about abused children at the spring adoption seminar in a Washington law office, the chairman, former Pennsylvania governor Robert P. Casey, spoke in praise of outrage.

"If you don't have a sense of outrage as a politician, you are not worth a damn. If you have lost it, get out of politics."

He is quite right. Sister Josephine Murphy of the Daughters of Charity told of the grossly abused babies who pass through her hands at St. Ann's Infant and Maternity Home in Hyattsville, where she is the administrator. I add, in the interests of full disclosure, that I am a friend and fan of hers and awestruck at her competence. I believe she could run the Defense Department. I am familiar with her views on what she regards as the uneven contest between women and children—she notes with asperity the hullabaloo over rape in contrast to the relatively mild sentences for infanticide.

She described graphically the sufferings of the abused, abandoned and neglected infants who have been burned at an open fire; children raped and assaulted—and sent back to their abusive homes by judges who don't care to know what is happening. She told of a 7-year-old boy who reproached her for sending him home. He warned her that when he grew up he was going to "go out and kill my mother's boyfriend." She had a warning too. "The money we don't spend protecting children we will have to spend on jails."

The Family Reunification and Preservation Act is the cause of these grotesque practices. The body count of children abused to death in 1995 was 1,271, according to the National Committee to Prevent Child Abuse. Yet in the much-praised adoption reform bills being pushed through Congress in time for Mother's Day, no mention is made of this.

The law's folly—requiring social workers to make "reasonable efforts" to send a child back to abusive parents—was remarked upon at the seminar by William Pierce, president of the National Council for Adoption. Imagine, he said, if a wife-batterer were brought into court and the judge ordered the wife to return to him while he tried to straighten out.

The pendulum has begun to swing the other way, Casey says. Some states have passed laws requiring delinquent parents to improve within a year—or forego their parental rights.

Why don't politicians seize on this deadly danger to children? Well, it could be dangerous to them. Douglas Besharov of the American Enterprise Institute, a leading authority on child welfare, points out the political trickiness of revising the statute. "Don't forget," he says, "that six years ago David Dinkins ran for mayor of New York against [Ed] Koch on a charge that he was taking too many black kids away from their families."

Maybe that is why today's mayor, Rudy Giuliani, one of the most astute politicians in the country, is avoiding the issue in the most notorious (and still reverberating) child-abuse horror: the murder of 6-year old Elisa Izquierdo by her mother. Giuliani has created a new child welfare agency and a review panel that issued a voluminous report and suspended two employees involved in the case. But he never came to grips with the crime in the courtroom.

Elisa had been in the care of her adoring father. When he died, his sister, Elisa's aunt, applied for custody. But under the Family Reunification Act, the judge gave Elisa into

the care of her mad mother. Given that the numerous social workers involved should have been more watchful and more demanding, the mayor should have realized that the tragedy began with the custody award.

Besharov, who served on the mayor's commission, says the terrible irony is that the judge who made the decision had had Elisa's mother before her when the first custody choice was made. She apparently forgot all about it—and had no lawyer or clerk to remind her, thereby sentencing Elisa to beatings and tortures and eventual death.

Too bad Giuliani didn't read "The Book of David," also a true-life tale, by Richard Gelles of the Family Violence Research Program of the University of Rhode Island. Gelles, author of 20 books about child welfare, is currently in Washington, working for Sen. Fred Thompson (R-Tenn) on adoption laws. David, 15 months old, died at the hands of his mother, a part-time prostitute. It was avoidable. His mother had also abused David's older sister, almost to death. Gelles shows the tension in social workers who must work under warring mandates: investigating abusive parents while drawing up plans to reunite them with their endangered children.

The policy, Gelles says, comes of "a persistent unwillingness to put children first." It is also the unwillingness of public men to break taboos. We as a nation, profess to believe that all mothers are like Whisker's and that a "family" can consist of one female, a drug addict and a "home," a drug den. As Casey says, outrage is needed.

[From the Weekly Standard, May 27, 1996]

TWO WORDS THAT KILL

(By Richard J. Gelles)

What if, by changing two words in a federal law, you could prevent the deaths of hundreds of children each year and also prevent tens or even hundreds of thousands of abused children from being victimized again and again?

For 16 years, child welfare policies have been guided by two words: "reasonable efforts." One of the cornerstones of the Adoption Assistance and Child Welfare Act of 1980 (PL 96-272) was the mandate that states make "reasonable efforts" to keep or reunite abused and neglected children with their biological parents. This provision was designed to reduce the number of maltreated children placed in foster care. Although reducing the cost of out-of-home placement was certainly a factor behind the reasonable-efforts provision, the major rationale for these two words was the deep-seated belief that children do best when raised by their biological parents and that parents will stop mistreating their children if they are provided with sufficient personal, social and economic resources.

There was bipartisan support for the doctrine of reasonable efforts. Conservatives supported it because it was consistent with a family-values approach to social policy. Liberals supported it because it was in the best tradition of the safety net for children and families in need. Child advocates enthusiastically embraced "reasonable efforts" because they saw taking children from abusive parents as even more harmful than the abuse, because they felt there was subtle racism in the child welfare system that made minority children more likely to be placed in foster care, and because "reasonable efforts" created a new funding stream for a social service system whose funding, in the 1980s, was being restricted or cut.

Soon after the adoption of the doctrine of reasonable efforts, family-preservation programs were developed. These provide intensive services, such as parent education, help with housekeeping, and assistance dealing

with the bureaucracy, to families deemed at risk of having their children removed. Financially supported and marketed by private foundations such as the Edna McConnell Clark Foundation, embraced by the Children's Defense Fund and the Child Welfare League of America, and ultimately the recipient of \$1 billion of federal support, intensive family-preservation programs are touted as able to both preserve families and protect children.

But reasonable efforts and intensive family preservation have been a false promise. Child-welfare-agency directors and workers believe that family preservation and child safety can be balanced. Because they believe family-preservation programs are effective, child welfare agencies and workers often make every possible effort to preserve families, even when what they are preserving could hardly be called a family and even when there is no evidence that the parents can or will change their abusive behavior. There have been nearly a dozen scientifically reputable evaluations of intensive family-preservation programs and not one has found that such programs reduce costs, reduce out-of-home placements, or improve child safety. Similarly, research finds that children need a stable, giving caretaker, not necessary a biological caretaker.

It is a fiction to believe one can balance preservation and safety without tilting in favor of parents and placing children at risk. More than 1,200 children are killed by their parents or caretakers each year, and nearly half of these children are killed after they or their parents have come to the attention of child welfare agencies. Tens of thousands, if not hundreds of thousands, of children are re-abused each year after they or their parents have been identified by child welfare agencies.

It is time to replace the words "reasonable efforts" with two others: "child safety." It is time to face up to the fact that some parents are not capable of being parents, cannot be changed, and should not continue to be allowed to care for children. Of course, the change will be a bit difficult than merely substituting two words. There will be howls of protest from advocates who will claim that abolishing "reasonable efforts" means that more children will be placed in foster care, thus straining already over-taxed state child welfare budgets. Claims that children are abused or harmed by foster care will also be trotted out, typically without actual research to support such claims. Indeed, some children are harmed in foster care, but research does show that abused children placed out of the home do better in the short and long runs than children left with abusive and neglectful parents. Advocates will also argue that child welfare policy should not be based on child fatalities, because such fatalities are rare. Well, child fatalities are not rare enough. Elisa Izquierdo in New York City, Joseph Wallace in Chicago, and hundreds of other less publicized child fatalities were the direct results of unreasonable efforts to keep children with their abusive biological caretakers. A change in two words will force child welfare agencies to take steps to enhance and speed up adoptions and to consider the use of congregate care facilities (or what some have called "orphanages") for some children who have no other safe permanent home.

The 1995 report on child fatalities by the U.S. Advisory Board on Child Abuse and Neglect was dedicated to children killed by parents or caretakers and concluded with a recommendation that all child and family programs make child safety a "major priority." Changing two words in welfare reform legislation now before Congress would go a long way toward achieving that goal.

Testimony before the
House Ways and Means Subcommittee on Human Resources
June 27, 1996

Connie Binsfeld
Lieutenant Governor
State of Michigan

Thank you very much for inviting me here today. I consider it an honor to come before the Ways and Means Subcommittee on Human Resources on an issue that has been a driving force in my life since becoming Lt. Governor - the issue of giving children a permanent, loving family through early adoption.

In the first few months of our administration, I had a startling experience that became the foundation of my work in the five years Governor Engler and I have been in office. I was invited to a meeting of people who were experiencing problems with "special needs" adoption of state wards. I was totally unprepared for the experience that awaited me. I thought I was going to meet people who were upset with their experience of adopting state wards. What I found were people who WANTED to adopt state wards, but were unable to because of various bureaucratic roadblocks!

The things I heard that night astounded me. I had believed that there were very few people willing to adopt "special needs" children. What I learned was that families were sometimes forced to go *outside the state* to adopt a "special needs" child! They wanted my help in making state wards more available to the many families who wanted to adopt them. That was the beginning of my work that brings me here today.

When I shared that experience with Governor Engler, he immediately began to take action. He issued Executive Order No. 1991-14 creating the Lieutenant Governor's Special Commission on Adoption. He gave us one year to develop recommendations to address the problems of adoption.

As in all difficult issues, we found that even in Michigan, a model for other states in our adoption process, there were multiple obstacles to adoption, not the least of which is the attitude that adoption is the last resort for children instead of a loving, positive way to build a family.

We focused on voluntary infant and state ward adoptions. They are distinguished by the source of the funds which pay for the adoption services. State wards, because they are the responsibility of the Family Independence Agency Adoption Services (formerly the Department of Social Services), are primarily funded by the State of Michigan. Infant adoptions are paid through fees charged to the adoptive families.

For state ward adoptions, we learned how the public/private partnership for adoption service delivery affects the ability to achieve permanent placements. For voluntary infant adoptions, the major concern was the appropriateness of the adoptive placement and the need of birth mothers to have more control over the placement of their infants.

Most of our report focused on state ward adoption issues where the greatest number of children were awaiting permanent homes. Too many of them were waiting too long to be adopted. We learned how complicated the adoption process was and that the adoption system contains several subsystems and is interrelated with other major systems. Each of the subsystems has its own procedures and problems, and each seems powerless to improve adoptions beyond its own portion of the process. The larger, interrelated systems, including in-home services, foster care, the judicial system, legislative funding system, and the public at large, all impact immensely on the adoption system.

In order to improve adoption services in Michigan, we found that our public/private partnerships must be extended to include all of the parties involved, the adoption triad (the birth parent, adoptive parent, and the best interest of the child), private and public child placing agencies, the courts, funding entities and the public - a very complex situation.

In many instances, there were no timeline requirements when tasks had to be completed or goals achieved. In other instances, timelines had already been established, but were not enforced. Administrative rules and statutes needed to be changed in order to structure the timeliness of adoptions.

Workers, public policy makers, and court personnel needed better training on planning for children's permanency. Accurate and comprehensive data needed to be collected and shared for informed decision-making to occur. Additionally, the collection and dissemination of this data would assist in the effort to inform the public. We know that when families are aware that children are waiting, they do adopt.

We found that most transracial placements occurred when the recruitment system failed to keep up with the flow of children entering foster care. The systemic problem of family recruitment that causes children to be placed transracially must be addressed, but not at the expense of children who are already bonded. Rather, recruitment efforts must be increased on the foster care side to ensure an adequate number of families are available. We strongly believe that like-race placement, when possible, is optimal for children. We also believe as strongly that permanency for children should not be sacrificed because of it. Early permanency is essential to child nurturing and connectedness. It is basic to child development.

Adoptive services must emphasize helping families with adjustment during and after adoption. As children and families grow and develop together, resources must be available to support and sustain them.

We found that insurance issues had a profound affect on adoption - the issues of coverage of pre-existing conditions of the "special needs" child and the need to have adopted children added to private insurance policies upon adoptive placement.

We took the somewhat controversial step of recommending parental consent adoption, but we insisted on safeguards for the child through private agency home studies and prohibiting exchange of anything of monetary value beyond the established fee structure to prevent the "buying" of a baby. This prohibition is ensured by sworn testimony by the parties during court proceedings.

Our Commission's report contained sixty-seven recommendations. After our report was issued, the Department of Social Services (now the FIA) formed a working group to study and implement the recommended policy changes and the legislature introduced a legislative package to make our recommended changes in statute. I am proud to be able to tell you that in the years from 1991-1995, there has been an overall increase in adoption of special needs children by forty-four percent and an increase in adoption of African American special needs children by **one hundred fifty-one percent!**

However, until we address the issue of foster care, we will always have problems in adoption. Foster care drives adoption. As long as children are captives of the foster care system, the dream of a childhood in a permanent, loving home will be denied. Because foster care and adoption are inextricably woven, I was lead to a deeper understanding of the effect foster care policy had on permanency for children. I began to hear heartbreaking tales of abused children, of children removed too late from horrifying home situations, of children languishing in foster care as their parents failed and failed again to be rehabilitated by the services they were given.

I was deeply troubled then, as I am still, by the world our children face, a world that so often makes them its last concern. Again I shared my concerns with the Governor and again he took action. He issued Executive Order 1995-12 which created the Lt. Governor's Children's Commission. Our charge was to review state and federal statutes, rules and policies regarding prevention/preservation programs, removal/foster care placement, reunification, termination of parental rights, post termination placement, and adoption of children.

Each member of my Commission came to their duties with the belief that the biological family is the basic and natural structure for raising children. However, in the real world, we know that this is not always possible. Child abuse and neglect has grown at such an alarming rate it is now considered a national emergency. The U.S. Advisory Board on Child Abuse and Neglect reports that

deaths from abuse and neglect of children age 4 and under outnumber those from falls, choking on food, suffocation, drowning, residential fires, and motor vehicle accidents combined!

Society has changed and in many cases government has been left to pick up the pieces. Unless we open new pathways for children of severely abusive homes to flourish and grow, an increasing number of children will be raised by the state. Children will lose something that can never be replaced: a chance at childhood; a chance at a forever family.

The history of child welfare reveals that the foster care system became overwhelmed by the number of children entering the system which resulted in "foster care drift" - a term used to describe years of foster care placement with no permanency for the child. To address the problem, Congress enacted The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272). This Act requires that "reasonable efforts" be made both to prevent the need for removal from the family and to provide services to the family so the child can be returned as quickly as possible if removed from the home. Congress hoped, through the creation of the "reasonable efforts" provision, to reduce the number of children removed from their parents. The federal legislation was well intended and may have been appropriate at the time. However, as society changed, due to an increase of drugs, violence and abandonment by birth parents, we have witnessed unintended consequences of that legislation.

We face a new kind of "foster care drift" resulting from the "reasonable efforts" provision of this Act. "Foster care drift" was not eliminated by that provision. It merely changed. Prior to the 1980 Act, "foster care drift" was caused by taking children from their families, placing them in foster care and not providing services to the parent to help them reunite with their children.

Today, however, "foster care drift" continues as a variation of its former self. Today, "reasonable efforts" have become "unreasonable efforts" as we provide services again and again to abusive parents. Children are entering foster care more damaged because they are left in their abusive homes while workers attempt to prove the unprovable to the federal government - that the undefined, nebulous "reasonable efforts" have been made to prevent the removal of the children from their home.

Because children are more damaged upon entering the system, our foster care and adoption subsidy costs have soared due to the intensive care these children need. Their damage is compounded as they are shuffled from disrupted placement to disrupted placement due to their behavior and overwhelming needs. They become unadoptable.

We need to challenge the present trend of our child welfare system which is based on the "reasonable efforts" provision that implies that every family can be "fixed" and a biological family, regardless of the severity of its dysfunction, is always the

best place to raise a child. I have seen far too many loving and happy adoptive families with children adopted from abusive homes to believe that. There is a placement of choice for every child. The placement may be back in the child's own home, if investigation proves the parents have *learned* rather than simply *complied* with the services they have received. It could be adoption if the biological family can not be saved. However, our current system, instead of focusing on the best interest of the child, directs its attention on the adults. The rights of the adults override the needs of the child. In my opinion, reuniting a child with an abusive parent is nothing less than ordering a beaten wife to return to live with her abusive husband. The abused wife is no longer seen as the property of her husband. It is time we free our children from similar bondage.

Let me tell you a little bit about the children of whom I speak lest you think I'm referring to all the children who come under the supervision of the child protective services. I'm not talking about children whose parents keep a dirty, cluttered house or who don't know how to prepare nourishing meals or have no food in the refrigerator. Nor are they the children whose parents love them but need our help in learning the skills to care for their children. Those families deserve our help and our department works compassionately and determinedly to provide the services needed to teach them the proper skills to care for their children. It is our duty and moral obligation to help those families help themselves.

The children of whom I speak are the shattered bodies in tiny coffins; the little ones who have been raped; the babies who have been shaken so hard the blood vessels burst in their skulls; the children who have been burned with cigarette butts or set on hot stoves or put in scalding water to "make them behave"; the little faces and bones broken by the people who brought them life or those they allow into their homes.

Generally, the public and state and federal officials continue to regard these stories as rare and tragic events. Let me assure you, from five years experience of working with abused children, they are not rare.

Let me give you just two startling examples of how taxpayer's money is spent on achieving "reasonable efforts" to preserve families. A woman with four felony convictions and who was known by protective services to have abused, abandoned, terrorized and sold one of her children for one year's free rent and twelve hundred dollars cash was flown, on probation, round trip from another state, housed in a motel, provided meals and spending money for weekend visitation with her children. This continued for a period of thirteen months. These children were so traumatized by the visits that they experienced nightmares and bedwetting after the visits. In another case, services were provided for a parent who put her baby's face in scalding water because she was tired of her crying. The child's face was virtually melted and required countless surgeries to try to rebuild her face, but still "reasonable efforts" had to be made and reunification services were offered and visitation, though terrifying to the child, was ordered.

I've told you the problems, now let me tell you some of the recommendations our Children's Commission made that will help our caseworkers document abuse and establish grounds for early termination, *without reunification efforts* and free our waiting children for early adoption. We have recommended: increased training for protective service workers; field investigations on all complaints; portable computers for field investigations; development of a uniform assessment tool for investigations; increased ability to track families who have moved to avoid further protective services involvement; multi-disciplinary teams of the prosecutor and appropriate specialists to identify and collect enough evidence to sustain the "clear and convincing" burden of proof to terminate parental rights; decentralizing protective service workers to off-site assignments in hospitals that make more than 200 referrals of abuse and neglect per year; development of a data bank with each county prosecutor; and the establishment of a presumption to seek termination of the parent's rights at the first dispositional hearing when certain severe abuse has occurred. These abuses that the Commission determined merit termination are as follows:

when children have been tortured; there has been severe physical abuse of a child or sibling; a sibling has been killed by the parent(s); the parent(s) has attempted to murder a child or sibling; a child or sibling has been sexually penetrated by a parent; or a very young or severely impaired child has been abandoned by the parent(s). This presumption should also be made in cases when parental rights to previous children have been terminated, or multiple attempts have been made to rehabilitate the family or when substance abuse has been ongoing and has resulted in previous harm to the children and the addiction has proved to be intractable even with appropriate treatment. This presumption that a termination petition should be filed at the first dispositional hearing should only be negated if it can be demonstrated that termination of parental rights is not in the child's best interest.

These are just a few of our one hundred and ninety-seven recommendations that are designed to achieve a permanent family for abused children, whether that is a return to a rehabilitated family or through adoption if the family can't be saved.

But we need your help on the federal level. Without it, we will never be rid of the fear that the federal government may come into our state and tell us that we have not reached that undefined, nebulous standard of "reasonable efforts". We need your support to put into federal law what we have recommended be put into state law. Without it, we are still at the mercy of federal regulators and judicial interpretation. Without federal changes, states will continue to fear that federal money will be lost because we have not met the mysterious and vague standard of "reasonable efforts."

There is such a small window of opportunity to save an abused child. If we allow them to stay in an abusive home for years as we struggle to change their parents, they become damaged. If we leave them in foster care for years as their parents fail repeatedly to change, they become damaged, **so damaged that adoption is not possible**. When abuse is severe, we must move quickly. Identify it, prosecute it, and terminate parental rights with no reunification efforts. As we are doing this, we should simultaneously and aggressively identify a permanent, loving, adoptive home for the child.

I am the guardian of our vulnerable children by virtue of my moral and my civic responsibility. And so are you, my fellow colleagues. On behalf of every child who shudders when Daddy - or Mommy's boyfriend - opens the bedroom door at night; whose screams are ignored by the neighbors; whose tortured minds and bodies are sick with fear, I ask your help.

Thank you for receiving this testimony today.

U.S. House Of Representatives, Committee On Ways and Means, Subcommittee on Human Resources. E. Clay Shaw Jr. Chairman.
Written Testimony of Deborah Benn. 1393 E. 59th Street, Cleveland Ohio 44102.
Phone (216)229-2221, Fax (216)229-1707

Thank you Mr. Chairman, members of the committee for inviting me to testify.

I am Deborah Benn, a 34 year old mother of 3

Both my parents are deceased. My mom was a L.P.N. nurse, my father was a welder. My father as an alcoholic, and while growing up I witnessed domestic violence between my parents. My mother was the primary caretaker for the family, due mainly to my fathers alcoholism. My mom died of M.S. when I turned 22 years old. I was pregnant with my second child when she died. I was living with the father of my two sons. I was a manager with Burger King, Inc., and was doing well, I thought however, I was in a violent relationship, and I stayed with this relationship for six years, despite my families pleading for me to leave. One night I came home late; and we got into a physical fight. This night I was really tired of the beatings. I had suffered a broken arm, black eyes, and, hospitalized for one week due to internal bleeding. I took enough clothes for my kids and went to a friend's house. However, my sons' father would consistently harass me at work and in the community. Burger King, Inc., changed my job site 2 times, and I was eventually fired. I became so depressed with everything and one night some friends invited me to their house and I was introduced to crack/cocaine. Within the same week I tried it again. the drugs were free and available whenever I needed them. Within the next three - four months I saw myself becoming addicted, but I rationalized it, telling myself that I could quit anytime.

I moved in with my sister, and stayed with her for a year. I would leave my kids with my sister for days at a time, or if necessary leave them by themselves. They were 6 and 3 years old. After a year of this, my sister put me out. I went into the West Side Shelter. They helped me find housing, where I stayed for two years. I was still using drugs, but I thought I was okay, I was working and taking care of my kids. Finally, things got worse, I spent all my rent money, food stamps, and utility money on drugs. I was finally evicted. Me and my kids moved in with a drug using friend, who I became pregnant by with my 3rd child. I had no running water (I got water out of the fire hydrant), no gas and no heat, I lived this way for a year. One day I came home from picking up my check and found a note from a social worker. I never called, but the worker came back a few days later and my friend had told them that I moved. Actually I came back, and me and my friend had spent all my money on drugs. We got into a fight, and me and my kids left. It was cold, and I had no place to go. We slept at an RTA bus shelter. That morning I went back to my friend's, but couldn't get in. I don't know why I kept the card from the social worker, but I did, and I called. I asked the worker what would happen if I brought my kids down. Would I get them back? The worker told me if I brought them down she would give me referrals for treatment, and would work with me to help me get my children back. She told me it would take at least a year. I told her that I would talk to my kids and get back to her. The worker kept asking me to bring my kids now that day. I did not give the worker any information she wanted. In fact, I think the worker was "shocked" when I showed the next day. The worker met me in the lobby. She explained to me what I needed to do. She helped me get into a shelter, and placed my kids in foster care. Within a week I was in treatment. I was in treatment for 6 months. I saw my children once per month. Once I completed treatment, my worker referred me to Family Transitional Housing. I was accepted, but didn't have enough income for the program. I was able to work at the treatment facility and earn enough to live at Family Transitional Housing. During this time my children were able to have overnight visits with me. My oldest son came home first. When he came home I got a chance to meet the foster parent, who lived in the same community. My second son came home a month later. My daughter who was placed in another foster home came home a month after my second son. Within 90 days I had all my children back.

I lived at Family Transitional Housing for 2 years. I went back to school, received my G.E.D., and did volunteer work at Family Transitional Housing. I moved into a SAFH (Facility to assist the Homeless) home. I lived there for about a year. During this time I applied for a Habitat House, and was hired as a full time child advocate for Family Transitional Housing. I work with children of recovering parents. I moved into my own home two years ago.

I still work for Family Transitional Housing, and I am a part-time student at Tri-C Community College. I also train new social workers and foster parents. My children are recovering as well. My oldest is 15 and in the 10th grade. He carries a B average, and plans to be a architect. My second son is 13, in the 8th grade. He is a straight A student with a 4.0 average. He is an Upward Bound program at Case Western Reserve University. Only two children from the Cleveland School district received this scholarship; my daughter is 8, and also does well in school. I currently have her in private school.

It was hard, but because my social worker believed in me and made efforts to help me, I was able to get my children back. I don't know where me or my children would be if these efforts had not been made.

U. S. House of Representatives, Committee On Ways And Means,
Subcommittee on Human Resources. E. Clay Shaw Jr, Chairman.
Written Testimony of Patricia Newell. 1264 East 123rd Street, Cleveland, Ohio
44108. Phone (216) 268-3909, Fax (216) 268-0207.

Thank you Mr. Chairman, members of the committee for inviting me to testify concerning this vitally important subject which is one that is very dear to my heart.

I wear two hats as I sit before you today. I am the assistant director of St. Martin De Porres Family Resource Center, a private nonprofit agency in Cleveland, Ohio, and I am a foster parent. Our agency was selected as one of the two sites to pilot the Family To Family Neighborhood Foster Care Initiative and I had no idea at that time that as a result of that contract my life was about to be radically changed. In fact my very soul was about to be challenged.

My husband and I opened hearts and our home to a scrawny little 10-year-old boy named Damu Bridges on May 28th 1992. We had no idea at that time how long we would have Damu with us and that seemed relatively unimportant to us. We had no children of our own at that time and we had plenty of room in our home and in our lives for little Damu. Damu was the middle child of a family of nine children and, needless to say, he was enjoying all of the attention lavished upon him by our family and friends. He would often ask us if we could adopt him so that his last name would be Newell like ours. I would always respond by telling him that his parents loved him very much and that they had not given him to us -- that they were only asking us for a little help while they got their lives back in order. Having a professional background in the field of drug treatment I was able to talk to Damu about his father's chemical dependency without ever putting his dad down. Damu never talked much about his mom at first. I later found out that she had abandoned Damu and his brothers and sisters about six months prior to the children being taken from the home by the Department of Children and Family Services. He had a great deal of anger locked inside about his mom leaving him and the other children.

Well, having given you a little background information about Damu I need to talk about how the Family To Family Initiative affected us. An important part of the Family To Family agenda was to begin to bring about more interaction between the foster family and birth parents. I was concerned when I heard this concept being tossed about. After all I had not become a foster parent thinking I would ever have to interact with the child's parents. I knew that this could be risky not to mention potentially dangerous. However, being the type A personality that I am I stepped up to the challenge. I determined that I would be willing to meet Damu's parents as a sort of test case. I would arrange for the meeting to take place at St. Martin De Porres, a safe place, on my own turf. I remember that day vividly. I was a nervous wreck but I tried to appear to be in control. I waited in my office busying myself with paperwork, having given my staff instructions to notify me when Mrs. Bridges entered the building. Finally, the moment had arrived, and out to the main lobby I went. There sat this very docile unassuming little woman. She looked so very scared and I remember thinking that she looked nothing like I had imagined. Up to the conference room we went, not saying a word to one another in the elevator. We sat around trying to make small talk until Damu was brought from school by his social worker. Suddenly there was a knock at the door. Damu walked into the room with a timid look on his face and what I saw after that would change my life. Mrs. Bridges looked into her son's eyes and pulled his little chin toward her and kissed him. It was a gesture that only his mom could make. I could provide Damu with shelter, clothing and food but I knew at that moment that she had just given him something that I could never give him. I was moved to tears just watching her tenderness with him and his respect for her. I didn't know how I would be able to help but I knew that Damu needed to be with his mom.

Four years later on June 17th 1996, Damu Bridges went home. Adoption is a wonderful thing and I applaud the efforts of those who make it happen, but it is not the answer for every child. In reality, there may be too many barriers for adoption of a 15-year-old African-American male. For Damu, permanency was achieved when he went home to his mother. Damu's mom will need a great deal of support and I have pledged to give her that support so that this reunification will be a successful reunification.

In closing, I plead with you members of the government that in our effort to contain cost, and keep children safe, we do not decimate the resources that should be available to provide the supportive services to families to preserve them and to protect children when they cannot protect themselves.

U.S. House of Representatives
Committee on Ways and Means
Subcommittee on Human Resources
E. Clay Shaw, Jr., Chairman

Written Testimony of Judith Goodhand
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I am Judith Goodhand, Director of the Department of Children and Family Services in Cleveland, Ohio and I have worked in children's services for 24 years. I began my career in Knox County, Ohio, a small rural county of 45,000 people, later moved to the county agency in Toledo (population: 350,000) and, for the past 4 years, I have directed the county agency in Cleveland. So for 24 years, I have known the rewards and the pain of developing children's services under a broad range of circumstances and conditions.

Today in Cleveland we are working to improve and reform our system in response to dramatically changing conditions. Currently my agency must respond every month to 1,500 reports involving children who are abused, abandoned, homeless, hungry or toxic with drugs at birth. We provide services to almost 60,000 children and their parents each year, take custody of close to 300 children each month and on any given day are seeking adoptive families for 700 waiting children.

These are very different circumstances than existed in 1972 in Knox County or even Cleveland when we often removed children from their homes to foster care or institutions for the slightest reasons. We took children from their parents too easily, and worse, kept them indefinitely. In that process we sometimes lost track of where, and who, they were. In 1972, we did not have 15,000 homeless children on our streets and in our shelters in Ohio, as we did in 1994. We had never heard of crack cocaine, which did not hit our streets until the late 1980's.

The threats to children are significantly different and greater today from what they were in 1972, and the decisions we are called to make are more complex. As this Committee opens discussion on the reasonable efforts standards for agencies such as ours, I ask you to please keep in mind the pressures on social workers and other professionals every day to make the right decisions about when to remove the child, when to reunite the child with the birth parents, and when to permanently sever the ties between the two. Social workers need sophisticated training and a broad range of knowledge, tools and skills to protect children today. Our response to that first notice of an incident of abuse or neglect is critical. We must be thorough investigators to determine the appropriate action. A child's safety must and always does come first. In Cleveland we use a structured risk assessment process to help social workers determine the level of risk to that child. Our goal is to make sure the most serious cases get quick and intense action. We also need to have access to a broad range of *preventive* services based on what is best for the child and the family, including family preservation, drug treatment, health care, and parent training. If a child needs to be removed to be safe, we need a wide range of *placement* resources for children who aren't safe in their own homes. We need to provide special services for those foster and adoptive families who care for special needs children. And we must be able to provide adoptive families for those children who can never return home. Mr. Chairman and members of this Committee, there is no one response or service that is appropriate for every child, or every family. We do not have a one-size-fits-all system. We need both

home-based services, such as family preservation, and out-of-home services, such as foster care.

We often hear and read about what *doesn't* work: the child who is not removed and dies of abuse, the child who is reunited and reabused.

We do not hear very much about the thousands of children who remain safely in their homes because they received appropriate services, which is why I urge you to pay close attention to the testimony of Pat Newell and Deborah Benn, who join me here today. They are successful because our system worked for them and their children. They represent the thousands of children and families who are in safe, secure and stable homes because of systems that worked. And we rarely hear about the other risk: the risk of growing up without a family, separated from home, brothers and sisters, schools and friends when children are removed unnecessarily. A review of reasonable efforts should not focus on just family preservation or reunification or adoption services. We need all of these services to respond to different levels and different kinds of risk. Most of all we need safe, secure, permanent families for our children.

There are successful programs which protect children at home, and others which place them outside of their homes in foster care. We need to build on these new models. In Cleveland we've been very fortunate to have private funds to assist us with our reform effort. Thanks to a grant from the Annie E. Casey Foundation, we have developed a program called Family to Family, which trains foster parents who live in the same or nearby communities as the birth parents. Birth and foster parents work as a team with social workers for changes that will allow the child to be returned home and, when that is not possible, to facilitate adoption. (Sixty percent of our children are adopted by their foster parents.) This process involves a whole network of community and neighborhood supports for these families, and builds on a partnership with the private sector.

Our first goal is to keep children safe from harm and we must use every resource available to do this. The key is to choose the right resource in each case. We know that some children cannot be protected in their own homes, even with family preservation or other resources. No one has ever claimed that family preservation is right for all families. But we also know that foster care does not always provide the stability, commitment or nurturing that all children need. And I tell you, with great sorrow, that if we are not able to find adoptive homes for the 700 children in our permanent custody, they will grow up without families of their own.

I firmly believe that children need families. And that we should make reasonable efforts to help families break the cycle of violence, learn how to discipline children without abusing them and stop neglect, too often due to poverty. As a society, we cannot afford to take children from their homes, breaking family ties, just because they are poor. If you look at the child welfare system through the eyes of a child, reasonable efforts need reasonable services.

Yes, we must do what is best for the child, but permanent families, whether birth or adoptive, are best for children and young people. We all need families.

Specifically on barriers to adoption there are a number of things that could help children who wait too long for families.

Wendy's and the Dave Thomas Foundation have done a good job developing public/private partnerships around the country with child welfare agencies. With a grant from the Families for Kids Initiative of the W.K. Kellogg Foundation, nine counties are working together on a special Wendy's recruitment project in northern Ohio focusing on five key outcomes described by Mr. Thomas. Quite frankly, the proposed legislation passed by the House on tax credits would not really help children in foster care who are waiting for families. There are

important issues Congress and the government can do on adoption. Over the past twenty years, you have identified many of these problems, but it is time to take another look at what is working. Specifically in the areas of:

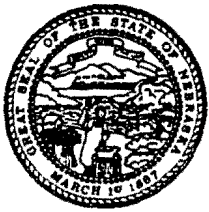
- **Technology and uniform data collection:** Most child welfare agencies still rely on paper systems to track their children and families. Computerization has been too slow in coming to our field. This is why so many children can literally get "lost" in the system. Good management information systems and improved data collection and utilization technologies are key toward identifying problems and finding solutions for the backlog of children in the system. We are just beginning this process in Ohio and it is a hard one. Each state should not have to recreate the wheel, over and over again on MIS systems and data collection. Congress has taken action in this area over the last ten years. But we need more and better technical assistance given the rapid advances in this area.
- **Recruitment:** The U.S. Department of Health and Human Services' Adoption Opportunities Program provides funds for developing recruitment campaigns featuring special needs children legally free to be adopted. Under this excellent program, our county developed a set of materials that I would like to submit for the record as an example of what others are doing around the country. The program is under-funded and still is just a "pilot." But much more can and should be done. The Federal government could provide ongoing funds for national and regional recruitment efforts. Just as the Army asks people to "Be all that you can be" or the Parks Service has Smokey the Bear telling people "Only You Can Prevent Forest Fires," we could use some leadership on foster care and adoption utilizing both mass media, radio and television spots, and on-going, child-specific recruitment.
- **The backlog of Waiting Children:** In Ohio and many other states, the log jam for kids in foster care and permanency comes during the home study process. We must be thorough in our investigations when certifying foster and adoptive families. The public expects us to set high review standards and to ensure that children in foster and adoptive homes are truly safe, secure and stable. But a good home study costs between \$600-\$1200. I fear that without additional resources to help relieve the backlog of children in foster care, we may never find enough homes for all the children who need them.

Ohio is very lucky to have several national foundations investing in us to reform our system. Both the Family to Family program supported by the Annie E. Casey Foundation in six states and the Families for Kids Initiative by the W.K. Kellogg Foundation in 11 states are identifying important best practices to improve the child welfare system in foster care and adoption. We now know what parts of the system can be fixed and the new and improved tools needed for reform.

I urge you to preserve the entitlement which IV-E maintenance and administrative dollars give to our children in foster and adoptive placements. But there is more Congress can do: we also need to assure that there are adequate funds to support family preservation, prevention services, drug treatment, health care and other services. And finally we need both resources and technical assistance to help us in developing and supporting adoptive families for special needs children. I am keenly aware that it is not a good time to come and talk about additional needs. But out of the 24 years of my experience in working with children, I am telling you that the situation of our children today is desperate and they need your help.

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STATE OF NEBRASKA



E. Benjamin Nelson
Governor

STATE FOSTER CARE REVIEW BOARD

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June 24, 1996

Honorable E. Clay Shaw, Jr., Chairman
Subcommittee on Human Resources
B-317 Rayburn Building
Washington, D.C. 20515

FOR THE RECORD

Dear Congressman Shaw:

I would like to commend the Subcommittee for looking into the serious issue of the problems that arise when children and youth are inappropriately returned home. Thank you for allowing me to submit written testimony for this hearing.

As Executive Director of the Nebraska Foster Care Review Board, I respectfully request that you consider changing PL 96-272 to define cases when reasonable efforts are not required to meet federal law. There are many fine aspects to PL 96-272, including requiring case plans for each child in foster care, having a state-wide information system that provides data on the children, and requiring 6-month court or administrative reviews.

However, I think it is important the law be revised to reflect the type of cases we're seeing today. Every day I see the damage children suffer when the system puts children and youth back home inappropriately. They return to foster care, never knowing the fundamental security most of us take for granted.

One area of evidence regarding how badly the system is functioning is the recidivism rate we are seeing in Nebraska.

- 41% of Nebraska's state wards have been removed from the home for abuse and/or neglect at least twice.
- 14% of the state wards have experienced being removed from the home for abuse and/or neglect at least 3 times.
- Of 2,940 state wards returned home during 1995, 336 (11%) were returned to foster care within the first 5 months of 1996.

The following chart shows the number of times children were placed in foster care and the ages of the children:

No. of times in foster care	No. of children	Newborn - 5 yrs	6 yrs - 12 yrs	13 yrs - 15 yrs	16 yrs or older
2	905	157	312	257	176
3	309	32	98	94	85
4	101	3	39	26	33
5	28	1	5	9	13
6	13	0	8	2	3
7	4	1	2	0	1

In my role working with citizen reviewers, I have seen the implementation of the reasonable efforts requirements of PL 96-272 as everything but reasonable. It offers little or no protection to children who have suffered extreme abuse. The following is a typical case example:

Case Example: "Betty," age 10 and twins "Bobby" and "Benjamin" age 9, were first placed in foster care in 1987 due to neglect and unsanitary home conditions. When "Barbara" was born the following year, she too was placed in care because of physical abuse by her mother. The children have gone home and been returned to care three times. Their parents have been provided intensive services, yet have difficulty demonstrating stability and a safe home for their children. In 1993, a new baby, "Billy," was also placed in foster care. All five children have spent more than 50% of their lives in out-of-home care. Recent testing indicates Betty suffered childhood trauma symptomatic of being sexually abused. Bobby is behaviorally impaired, has set at least two fires in the home, and has threatened to kill himself with a

knife. The behavior of all of the children regress when visitation occurs. In spite of the length of time these children have spent in care, the services provided, and multiple unsuccessful reunification attempts, the plan remains "reunification."

As a result of PL 96-272 and other regulations, agencies have interpreted "reunification" in the most absurd way requiring agencies to pursue reunification at all costs. Since 1988 the Foster Care Review Board has recommended that "child protection" and "child advocacy" replace "family reunification" as the guiding policy of child welfare agencies. In Nebraska, our state legislature change the Nebraska Family Policy Act so "best interest of the child" could replace "reunification."

In my research of what other states have done, I've been impressed with Utah. Because of that state's interest in and responsibility to protect and provide permanency for children who are abused, neglected, or dependent, the State of Utah has found that the parent's interest in receiving reunification services is limited. Based on individual circumstances, the court may determine that efforts to reunify the family are not reasonable. Reunification service need not be provide to a parent if the court finds, by clear and convincing evidence, any of the following circumstances exist:

- (a) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;
- (b) the parent is suffering from a mental illness of such magnitude that it renders him incapable of utilizing those services; than finding shall be based on competent evidence from mental health professionals establishing that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months;
- (c) the minor has been previously adjudicated as an abused child due to physical or sexual abuse, that following the adjudication the child was removed from the custody of his parent, was subsequently returned to the custody of that parent, and the minor is being removed due to additional physical or sexual abuse;
- (d) the parent has been convicted of causing the death of another child through abuse or neglect;
- (e) the minor has suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known the person was abusing the minor;
- (f) the minor has been adjudicated as an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the child to pursue reunification services with the offending parent;
- (g) the parent's rights have been terminated with regard to any other child;
- (h) the child was been removed from his home on at least two previous occasions and reunification services were offered or provided to the family at those times; or
- (i) if any other circumstance that the court determines should preclude reunification efforts or services.

I have enclosed a fact sheet of case examples of children who have suffered as a result of being returned home prematurely or to parents who are unwilling or unable to parent their children. I want to emphasize that these are not isolated incidents. It is time we started thinking of the children first. Again, I would like to thank your Subcommittee for doing just that.

If you have any questions or need additional data from our tracking system, please let me know.

Sincerely,


Carolyn Stitt
Executive Director

CKS:pk

Nebraska Foster Care Review Board Recidivism Case Examples

Case Example #1: "Sam," age 10, and "Susie," age 8, were removed from their home in 1989 because the home was filthy, roach-infested, and contained no food. "The "Smith" family had been receiving nearly constant services since 1986. The children were returned home in June, 1992. Within a month, the children were showing signs of sexual abuse. Sam was masturbating, playing with matches and attempting to have sex with his sister. Susie was masturbating and killing animals. The children returned to foster care in March, 1993, because they were not attending school. The children reported sexual misconduct by their father who threaten to cut off their hands if they told. A therapist has stated that unless measures are taken to terminate parental rights, the damage to the children will be irreversible. While the plan has been changed to "long term foster care," monthly visits with the parents are still being pursued.

Case Example #2: "James," age 8, was placed in foster care in 1987 due to physical abuse and abandonment. His mother completed the case plan and James was returned home. He re-entered foster care in 1989 due to physical abuse by his mother and her boyfriend. The mother completed the case plan and James again returned home. James was voluntarily placed in care in 1993 due to his aggressiveness. At the time he had bruises on his back and buttocks. Numerous support services were put in place, including individual and family therapy and family support services, and he returned home. In 1994, James again was placed in foster care. He was bruised and withdrawn. James has become increasingly more aggressive, and, according to his therapists, his aggressiveness is a learned behavior. James is in the third grade. The permanency plan for James is reunification.

Case Example #3: "Mike," age 8, and "Mark," age 7, have been involved with Social Service since they were born. At 9 months, Mike was treated for burns on the palms of his hands. Shortly thereafter, he was treated for serious facial lacerations. Mike and Mark were placed in foster care in 1989 when their father pour scalding water down Mike's diaper. The father was charged with child abuse. The children were returned home. In 1990 the children were placed in care because the family was homeless and they had been evicted from a mission due to alcohol possession. Services were provided and the children returned to their parents. Numerous CPS reports were received between 1990 and 1991 for neglect and physical abuse. The children re-entered foster care in 1991 when Mike was burned on his back by his father and Mark displayed several healing burns on his body. A petition was filed alleging the children were suffering behavioral, psychological, and emotional disorders as a result of abuse by their father. This abuse included being teased with knives, held under water, and having hot sauce poured on their food. There have been numerous court delays on this case including genetic testing to determine paternity of Mike, Mark, and their two siblings and a finding that the children fall under the Indian Child Welfare Act. The children have been in foster care four years.

Case Example #4: "Terri," age 13, "Tom," age 12, "Tony," age 9, and "Tess," age 8, were placed in foster care in 1988 due to sexual abuse, physical abuse, neglect, and unsanitary living conditions. Because of their mother's transient lifestyle, the children were moved frequently so their mother could visit. After several reunification attempts, the children returned home in 1991. In 1992, the girls were removed from the home due to sexual abuse by the mother's boyfriend. The boys were returned to foster care later that year. Terri has experienced 15 placements. Tom and Tony have had 16 placements, and Tess has had 10 placements. The children exhibit oppositional and aggressive behaviors, are having difficulties in school, and the boys are sexually acting out. All of the children are receiving therapy. Parental rights were relinquished in 1995, and the current plan for the children is adoption or guardianship.