

The Unreasonable Assault on "Reasonable Efforts"

Faced with overwhelming evidence of huge numbers of children needlessly placed in foster care -- and what foster care was doing to these children, Congress passed a law in 1980 that included a clause requiring states and localities to make "reasonable efforts" to keep families together. Judges were supposed to certify that "reasonable efforts" had been made - a process that simply involved checking a box on a form -- before the case was eligible for federal foster care funds.

There was nothing in that law that prevented agencies from moving swiftly to remove children from their homes -- and keep them out -- in the small minority of "horror story" cases. The law required "reasonable efforts" -- not ridiculous efforts. And everybody knows it.

By 1997, the debate over "reasonable efforts" had taken an Orwellian turn. Child savers began blaming it for their own failure to get children out of foster care. To make the case, they cited the increase in the foster care population since the early 1980s. But they avoided going back further than that -- because had they done so, they would have had to admit that in the late 1970s, before "reasonable efforts" became law, there were at least as many children languishing in foster care, relative to the total child population, as there are today.

The real problem is the opposite: Rather than making reasonable efforts, agencies typically make little or no effort at all to keep families together. Once children are in foster care, they are filed away and forgotten as overwhelmed workers rush on to the next case.

According to the National Council of Juvenile and Family Court Judges, many judges "remain unaware of their obligation to determine if reasonable efforts to preserve families have been made. Other judges routinely 'rubber stamp' assertions by social service agencies ..."¹

A report released in March, 2000 by a team of leading national child welfare experts found that in New York City's family courts the question of whether reasonable efforts have been made is "very rarely addressed." The same report found that judges admit they often routinely approve requests to take away children even when they don't really believe the child savers have made an adequate case. The report concluded that "Such practice ... comes frighteningly close to abdicating the Court's basic responsibility to protect the rights of children and

families."²

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

But even more significant: **40 percent of judges admitted that they lied, and said the state child welfare agency made "reasonable efforts" in cases where the judges really didn't believe it.** In half those cases, the judges admitted they lied because, if they didn't, the state would not get federal aid for holding the child in foster care, and the county would have to pick up the extra costs.³

And if that's the proportion who will admit it on a survey ...

A study of "lack of supervision" cases in New York City by the Child Welfare League of America found that in 52 percent of the cases studied, the service needed most was what one might expect -- day care or babysitting. But the "service" offered most often was foster care.⁴

Where were the "reasonable efforts"?

Three separate studies since 1996 have found that 30 percent of America's foster children could be safely in their own homes right now, if their birth parents had safe, affordable housing.⁵ **Where were the "reasonable efforts"?**

In Washington D.C., where the foster care system was run for several years by the federal courts, the first receiver named by the court to run the agency found that between one-third and one-half of D.C.'s foster children could be returned to their parents immediately -- if they just had a decent place to live.⁶ **Where were the "reasonable efforts"?**

Even the *Chicago Tribune*, the newspaper that led the crusade that derailed family preservation for years in Illinois, eventually acknowledged that the "reasonable efforts" requirement was not enforced in that state.⁷

It wasn't enforced anywhere else either. The federal government never seriously enforced the reasonable efforts requirement and the U.S. Supreme Court ruled that individuals couldn't even sue to have it enforced.⁸

Children do not languish in foster care because of reasonable efforts. Children languish in foster care because of the *lack* of reasonable efforts.

And none of this is surprising. All of the
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incentives -- for everyone from the frontline worker to the agency administrator -- pushed against making reasonable efforts.

Financial incentives: **The National Commission on Children found that children often are removed from their families "prematurely or unnecessarily" because federal aid formulas give states "a strong financial incentive" to do so rather than provide services to keep families together.⁹** (See Issue Paper 12).

Political incentives: No worker or administrator will ever be penalized for wrongly placing a child in foster care -- even if the child is abused there. But if a child is left at home and something goes wrong, workers may be fired, judges transferred, and all face the wrath of the media.

Personal incentives: When a worker sees a child living in poverty, the first instinct is often to "rescue" the child on the assumption that the child is bound to be "better off" in care. That child in that home is a reality before the worker's eyes. The dangers of foster care, physical and emotional, however real, are an abstraction.

But despite all these incentives and despite the mountain of evidence that the

"reasonable efforts" clause was widely ignored, whenever a child "known to the system" died, someone was sure to blame "the law" -- by which they meant the "reasonable efforts" clause. Why? Because when a child dies, it's usually because workers are overwhelmed with too many cases; or they have little or no training, or paperwork got lost, or any one of dozens of similar problems, many of which require more money to solve and all of which reflect badly on the agencies themselves.

Thus, when asked "Why did this child die?" They can say either: "This child died because 'the law' made us do it" or "This child died because we screwed up." What are most agency administrators likely to say?

Sadly, the scapegoating of family preservation has been so successful that by the end of 1997, Congress had effectively repealed the "reasonable efforts" requirement. Backers of the 1997 law say it only ends reasonable efforts in the most egregious cases. In fact, the law is filled with "catch-all" clauses that make it possible to avoid the requirement in almost every case. The law no longer requires reasonable efforts, but it does not prohibit them. It is up to states and localities to decide what to do next.

Updated, December 28, 2009

1. National Council of Juvenile and Family Court Judges et. al., *Making Reasonable Efforts: Steps for Keeping Families Together*. (New York: Edna McConnell Clark Foundation, 1987), p.8. //2. Special Child Welfare Advisory Panel, Advisory Report on Front Line and Supervisory Practice, March 9, 2000, pp. 47,48. //3. Muskie School Of Public Service Cutler Institute For Child And Family Policy, University of Maine, and American Bar Association Center for Children and the Law, *Michigan Court Improvement Program Reassessment*, August, 2005, available online at [http://muskie.usm.maine.edu/Publications/cf/MI_Court Improvement ProgramReassessment.pdf](http://muskie.usm.maine.edu/Publications/cf/MI_Court%20Improvement%20ProgramReassessment.pdf) //4. Mary Ann Jones, *Parental Lack of Supervision: Nature and Consequences of a Major Child Neglect Problem* (Washington: Child Welfare League of America, 1987) p.2. //5. Deborah S. Harburger with Ruth Anne White, "Reunifying Families, Cutting Costs: Housing -- Child Welfare Partnerships for Permanent Supportive Housing *Child Welfare*, Vol. LXXXIII, #5 Sept./Oct. 2004, p.501. See also: Janita Poe and Peter Kendall "Cases of Neglect May Be Only Poverty in Disguise," *Chicago Tribune*, Dec. 24, 1995, p.6. //6. Tamar Lewin, "Child Welfare Is Slow to Improve Despite Court Order," *The New York Times*, Dec. 30, 1995, p.6. //7. Andrew Gottesman, "System Overload: Juvenile Court Can Rarely Spare the Time to Care," *Chicago Tribune*, Dec. 22, 1993, p.1. //8. *Suter v. Artist M.*, 112S.Ct. 1360, 1992. //9. National Commission on Children, *Beyond Rhetoric: A New American Agenda for Children and Families*, (Washington DC: May, 1991) p.290.